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LIFE AS THE HIGHEST VALUE IN WARTIME: BETWEEN LEGAL NORMS AND MILITARY REALITY

Abstract. Purpose. The purpose of this scholarly article is to conduct a comprehensive analysis of the relationship between war and violations of the right to life, to systematize international legal norms regulating these relations, and to outline ways of strengthening accountability for such violations. **Results.** The article is devoted to examining the right to life as a fundamental value in the context of armed conflicts and warfare. It explores the evolution of this right's concept—from its philosophical foundations to its universal recognition in international law. Special attention is paid to contemporary military actions, in particular, the full-scale invasion of Ukraine by the Russian Federation, which has revealed unprecedented violations of the right to life. The paper systematizes the typology of crimes against life, including direct and intentional deprivation of life, indiscriminate attacks, the creation of conditions leading to death, as well as assaults on persons hors de combat and other forms of offences. Possible mechanisms for bringing perpetrators to justice at the international level (the International Criminal Court, the European Court of Human Rights, UN monitoring missions) and at the national level, particularly through the application of universal jurisdiction, are analyzed. It is emphasized that the problem of impunity remains a significant challenge, requiring the continuous development of international law, enhanced inter-state cooperation, and the adaptation of legal instruments. The study substantiates that ensuring the inevitability of punishment for violations of the right to life is not only a moral imperative but also a necessary condition for upholding the rule of law and maintaining a stable international order. **Conclusions.** It is concluded that the right to life is an absolute and inalienable value forming the foundation of the entire system of human rights, yet during armed conflicts it faces the most severe challenges. The historical development of the concept—from the philosophical principles of natural law to universal codification in international legal instruments—highlights its paramount importance. Modern warfare, particularly the full-scale invasion of Ukraine by the Russian Federation, demonstrates unprecedented violations of this right, encompassing direct and intentional deprivation of life (extrajudicial executions, targeted attacks on civilians, torture, use of “human shields”), indiscriminate attacks and disproportionate use of force, creation of conditions leading to death (destruction of infrastructure, obstruction of humanitarian aid), as well as crimes against persons hors de combat and other forms of assaults (enforced disappearances, use of children, sexual violence resulting in death). These acts constitute grave breaches of international humanitarian law and qualify as international crimes. Ensuring the inevitability of punishment for violations of the right to life is not only a moral imperative but also a vital prerequisite for affirming the rule of law and achieving a stable international order.

Key words: right to life, international humanitarian law, international criminal law, war crimes, European Court of Human Rights, impunity.

1. Introduction

Wars and armed conflicts, which unfortunately remain an inseparable part of modern human history, represent the greatest threat to fundamental human rights, primarily the right to life. This category of rights is foundational, since without its realization the exercise of any other rights and freedoms becomes impossible. In the context of armed conflicts, the right to

life is subject to systematic and large-scale violations, which necessitates a thorough analysis of both the international legal mechanisms for its protection and the practical challenges faced by states and the international community.

The relevance of this study is reinforced by the scale and brutality of contemporary military actions, in particular, the full-scale invasion of Ukraine by the Russian Federation, which

has demonstrated egregious examples of disregard for the lives of military personnel, civilians, and prisoners of war.

The purpose of this scientific article is to conduct a comprehensive analysis of the interrelation between war and violations of the right to life, to systematize international legal norms governing these relations, and to outline ways of strengthening accountability for such violations.

The study of the right to life originates from philosophical concepts of natural law, which asserted the existence of inalienable rights belonging to every person by birth, independent of state recognition. In this context, the ideas of the English philosopher John Locke cannot be overlooked. In his *Two Treatises of Government*, Locke justified the concept of natural rights, stating that the rights to life, liberty, and property are inalienable and pre-exist the state (Locke, 2001). He examined how these rights form the foundation of the social contract and limit the powers of government, whose primary purpose is to safeguard them.

The ideas of another English philosopher, Thomas Hobbes, though less liberal than Locke's, also emphasized the paramount importance of life. In his seminal work *Leviathan*, Hobbes analyzed the right to life from the perspective of its preservation as the highest value in the "state of nature" – a condition of "war of all against all." The philosopher argued that people relinquish part of their natural rights in favor of the sovereign to ensure safety and self-preservation (Hobbes, 2000). Thus, Hobbes's concept of the right to life is grounded in the fundamental imperative of survival and the absence of rights in the natural state. At the same time, this very imperative underlies the formation of political authority and justifies the absoluteness of sovereignty. In Hobbes's philosophy, the right to life serves an instrumental role, functioning as the basis of political order rather than as an inviolable individual right.

Following the world wars of the twentieth century, the right to life received universal international legal recognition, becoming the subject of numerous studies by international law scholars. The works of Hersch Lauterpacht were instrumental in shaping the *Universal Declaration of Human Rights*, in which the right to life occupies a central place. Lauterpacht analyzed the imperative nature of this right and its application in international relations (Rabinovych, 2013).

The research of René Cassin, one of the principal authors of the *Universal Declaration of Human Rights* and Nobel Peace Prize laureate, focused on the systematization and universalization of human rights—

including the right to life—as the cornerstone of the international legal order. He emphasized that the right to life constitutes a prerequisite for all other rights and freedoms, substantiating its absolute character (Sviatotskyi, 2010).

Many scholars, including Jean-Marie Henckaerts and Louise Doswald-Beck (Henckaerts & Doswald-Beck, 2005), have examined the application of the right to life in the context of armed conflicts. Their research focuses on the principles of distinction, proportionality, and humanity, which limit the means and methods of warfare to protect the lives of civilians and persons hors de combat. They analyze the Geneva Conventions and Additional Protocols, as well as customary norms of international humanitarian law (IHL) relevant to the protection of life.

International law and criminal law scholars specializing in international criminal law study the legal foundations of accountability for mass violations of the right to life during armed conflicts, including genocide, war crimes, and crimes against humanity. Researchers analyze the jurisdiction of the International Criminal Court, ad hoc tribunals, and the principles of universal jurisdiction.

In Ukraine, the issue of the right to life has been the subject of extensive academic research, gaining special relevance under conditions of armed aggression. Ukrainian scholars have made a significant contribution to the development of theoretical foundations and practical mechanisms for the protection of this fundamental right. For instance, the works of Volodymyr Pylypenko (Pylypenko, 2024) focus on the analysis of war crimes under the Rome Statute and the mechanisms of accountability for such crimes. The scholar examines the implementation of international criminal law norms into the national legislation of Ukraine and the issue of liability for violations of international humanitarian law, particularly in the context of armed conflicts.

The studies of Mykola Hnatovskyi, a prominent expert in international humanitarian law, are devoted to the protection of human rights during armed conflicts, especially the right to life. He analyzes the application of IHL principles such as distinction and proportionality in contemporary warfare, as well as issues related to the protection of civilians and prisoners of war (Hnatovskyi, 2011).

In his dissertation, Yurii Usmanov identified the legal boundaries of protecting the right to life in situations of armed conflict and internal violence, as well as the specific mechanisms and regimes of such protection (Usmanov, 2018).

These scholars, along with many other Ukrainian researchers (L. Linyk, M. Kalchenko,

H. Romanovskyi, O. Miroshnychenko, V. Rusynova, M. Savryha, K. Basovska, D. Boichuk, A. Demydas, and others), have actively contributed to the development of the doctrine of the right to life, the analysis of its violations, and the elaboration of effective protection mechanisms in the face of modern challenges.

2. The Right to Life as a Fundamental Right of Every Individual

The right to life is recognized as a fundamental, inalienable, and absolute right of every individual, enshrined in a number of international and national legal instruments. Its peremptory nature (*jus cogens*) implies that it is non-derogable, even in situations of emergency, except under strictly defined circumstances. The concept of the right to life encompasses not only the prohibition of arbitrary deprivation of life but also the positive obligations of the State to protect it and to create conditions conducive to existence. In the context of armed conflict, the right to life acquires particular importance, as it faces the gravest threats precisely under such circumstances.

Existing international and European human rights protection mechanisms were established to prevent a recurrence of the tragic experiences of the Second World War. However, the full-scale military aggression of the Russian Federation against the sovereign and independent state of Ukraine has resulted in an unprecedented number of deaths among both combatants and civilians. The aggressor has systematically disregarded the fundamental values that form the basis of human existence, including the rights to life, health, honor, and dignity. In this context, the prioritization of guaranteeing the right to life, ensured in particular by the European system of human rights protection, becomes especially significant.

According to Article 2 of the *European Convention on Human Rights* (1950), everyone's right to life shall be protected by law, and no one shall be deprived of life intentionally except in the execution of a court sentence following conviction for a crime for which this penalty is provided by law. Article 15 of the Convention establishes the conditions under which a State Party may derogate from its obligations: in time of war or other public emergency threatening the life of the nation, a High Contracting Party may take measures derogating from its obligations under the Convention to the extent strictly required by the exigencies of the situation, and provided that such measures are consistent with its other international legal obligations.

It is important to note that Article 2 of the Convention, which enshrines the right to life, is non-derogable even in time of war or other public emergency threatening the life

of the nation, except in respect of deaths resulting from lawful acts of war. This reflects the absolute and inviolable character of the right to life within the European human rights system.

The principles of human rights and the provisions of the *European Convention on Human Rights* remain fully applicable and relevant even in times of war. States Parties are under an obligation to ensure the observance of human rights throughout the duration of armed conflict. Every individual retains the right to demand respect for his or her rights and to submit an application to the *European Court of Human Rights* (ECtHR) alleging a violation by the State of its conventional obligations in the context of hostilities.

The role of the ECtHR in this process is indisputable, as it remains accessible to individuals affected by armed conflict who believe that their rights cannot be effectively protected through national remedies. However, given its institutional design, which focuses on individual cases, the Court faces certain limitations—particularly its capacity to process a large number of applications arising from widespread violations during armed conflicts.

Therefore, the optimal approach lies in strengthening effective legal protection mechanisms at the national level. Nevertheless, when national institutions prove incapable of fulfilling their protective functions, or when a State violates its obligations under the Convention, the ECtHR assumes a decisive role in ensuring justice and accountability.

Analyzing the practice of the ECtHR in relation to armed conflicts, Liudmyla Andrusiv (2023) identifies several principal categories of cases: those concerning the Turkish–Cypriot issue; the conflict between Turkish security forces and the Kurdistan Workers' Party (PKK); NATO operations in the former Yugoslavia; the conflict in Chechnya; the war in Bosnia and Herzegovina; the Armenian–Azerbaijani conflict over Nagorno-Karabakh; the case concerning the Katyn massacre during the Second World War; the inter-state case concerning the Georgian–Russian conflict; cases related to international military operations in Iraq; the war in Croatia; and, most recently, cases concerning the Ukraine–Russia conflict.

3. Violations of the Right to Life in War-time

The right to life, as a fundamental value of human existence, suffers from systemic and large-scale violations during armed conflicts. The norms of international humanitarian law (IHL) and international human rights law (IHRL) establish clear standards for its protection; however, their disregard leads to severe and irreversible consequences. The clas-

sification of the main violations of the right to life during wartime, particularly in the context of the Russian–Ukrainian armed conflict, allows for the systematization of such crimes, the identification of their nature, and contributes to effective documentation and prosecution of those responsible under international law.

One of the gravest violations of the right to life is **the deliberate and intentional deprivation of life** – the intentional killing of persons who do not take a direct part in hostilities (civilians) or who are hors de combat (prisoners of war, the wounded, the sick, or those who have surrendered), without a fair trial or judicial sentence. Such acts include shootings, hangings, strangulations, and other forms of killing committed by either state or non-state actors of the conflict. These acts constitute a direct violation of Article 3 common to the Geneva Conventions of 1949, which prohibits violence to life and person against those not actively participating in hostilities, and are qualified as war crimes and, in certain cases, as crimes against humanity or genocide under the Rome Statute of the International Criminal Court (ICC). Striking examples of such violations can be observed during the full-scale invasion of Ukraine, notably in Bucha, Izium, and Mariupol, which demonstrate a systematic disregard for IHL principles and cruel treatment of civilians.

The category of intentional killings also includes **targeted attacks on the civilian population** – deliberate acts aimed at killing civilians or destroying objects that are not military targets. These may include sniper fire at civilians, shelling of evacuation convoys, deliberate attacks on residential areas, markets, or public spaces with the aim of inflicting maximum casualties among civilians. Such acts constitute a gross violation of the **principle of distinction** under IHL, which obliges parties to an armed conflict to distinguish clearly between civilian objects and military objectives.

Torture is absolutely prohibited and can never be justified under any circumstances, including in armed conflict. It encompasses physical or psychological violence that causes unbearable suffering and may result in the victim's death. Death resulting from torture constitutes a particularly aggravated form of crime against life.

Another form of direct violation of the right to life is the use of **“human shields”** – the coercive placement of civilians or protected objects (such as hospitals, schools, or cultural monuments) near military objectives or operations to protect them from attack or to conceal military actions. Such conduct includes: moving civilians into areas of active hostilities or near military targets; stationing weapons, military

equipment, or personnel in residential areas, schools, or hospitals using civilians as cover; and obstructing civilian evacuation from conflict zones. Civilian deaths resulting from such practices are a direct consequence of their use as “human shields” and qualify as war crimes, particularly as violations of Article 51(7) of Additional Protocol I to the Geneva Conventions of 1949, which explicitly prohibits the use of the presence of civilians or individual civilians to render certain areas or military forces immune from military operations (Protocol Additional to the Geneva Conventions of 1949, relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977).

A second group of violations of the right to life includes **indiscriminate attacks** – actions that, although not always aimed directly at killing civilians, nevertheless cause civilian deaths due to the disregard of fundamental IHL principles. Such actions involve the use of means or methods of warfare that fail to distinguish between military objectives and civilian objects or that are inherently indiscriminate. They include: bombardments or shelling of areas containing both military and civilian targets without distinction (for example, attacks on entire cities or districts without targeting specific military facilities); the use of weapons that are by nature indiscriminate (such as certain types of cluster munitions, unguided rockets, or drones lacking precision in densely populated areas); **disproportionate use of force** (carrying out attacks expected to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated); and **failure to take precautions in attack** (omitting all feasible measures to avoid or minimize incidental loss of civilian life, injury to civilians, and damage to civilian objects).

Crimes against the right to life also include **the creation of conditions leading to death**, that is, indirect or mediated violations. This category encompasses acts or omissions that, while not constituting direct attacks, systematically cause the death of civilians by creating unbearable living conditions and violating their basic needs. Such actions include the deliberate deprivation of civilians of objects indispensable to survival – for instance, blocking access to food, water, or medicine, or destroying agricultural land and water supply sources.

The **intentional destruction of critical civilian infrastructure** – the demolition of facilities essential for the survival of the population (water and sanitation systems, energy infrastructure, medical institutions, and facilities responsible for food production and distribu-

tion) – deprives civilians of the basic conditions necessary for existence, leading to humanitarian catastrophes and increased mortality, particularly among vulnerable groups.

Closely related is the **obstruction of access to humanitarian assistance** – the deliberate blocking or restriction of humanitarian organizations' access to civilians in need, which exacerbates humanitarian crises and increases the risk of death.

Attention must also be paid to the **creation of hazardous environments and contamination** – the mining of territories, the leaving of explosive remnants of war, and the pollution of the environment with hazardous substances that continue to endanger civilian life and health even after active hostilities cease. All such acts may constitute **crimes against humanity** or **war crimes**, as they are aimed at causing suffering and death among the civilian population.

A separate category of violations concerns **crimes against members of the armed forces who are hors de combat**, as well as medical, religious, and other protected personnel. These include:

- **Denial of medical care** – the failure or deliberate obstruction in providing necessary medical assistance to wounded or sick combatants and civilians, resulting in death or serious deterioration of health. This may involve denial of access to medical facilities, refusal of evacuation, or inadequate detention conditions leading to death.

- **Killing and ill-treatment of prisoners of war** – the deprivation of life of captured combatants, torture, or detention in life-threatening conditions (such as lack of food, water, or medical assistance, and unsanitary conditions), as well as forcing them to perform dangerous labor. Numerous documented cases during the current Russian–Ukrainian war include executions of prisoners of war, denial of medical aid, and inhumane detention conditions resulting in death. These acts constitute gross violations of the **Geneva Convention relative to the Treatment of Prisoners of War (1949)**.

- **Attacks on medical and religious personnel, medical units, and transport** – deliberate attacks on persons and facilities under special protection of IHL, such as medical staff, chaplains, hospitals, ambulances, and medical aircraft, which result in death or injury. Such attacks undermine humanitarian assistance systems and constitute serious war crimes.

Ensuring the right to life during wartime remains one of the most complex challenges for both international and national legal systems. Violations of this fundamental right, which often amount to international crimes, require effective mechanisms of accountability.

Accountability is a key element in restoring justice, preventing impunity, and deterring future crimes.

The system of accountability operates on several levels – including **international criminal justice**, the work of international judicial and monitoring institutions, and **national legal mechanisms**. Despite the crucial role of international mechanisms, **national judicial systems** play a primary role in prosecuting violations of the right to life. States have an obligation to investigate and prosecute individuals responsible for war crimes, crimes against humanity, and other crimes against life committed on their territory or by their nationals. This requires the harmonization of domestic legislation with international standards, the training of law enforcement officers and prosecutors, and the establishment of an independent and effective judiciary.

4. Conclusions

The **right to life** is an absolute and inalienable value that forms the foundation of the entire human rights system. However, during armed conflicts, this right is subjected to the most severe challenges. The historical development of the concept of the right to life – from the philosophical ideas of natural law to its universal recognition in international legal instruments – underscores its paramount importance.

Modern armed conflicts, particularly the full-scale invasion of Ukraine by the Russian Federation, reveal **unprecedented violations** of this right, encompassing direct and intentional killings (extrajudicial executions, targeted attacks on civilians, torture, and the use of “human shields”), **indiscriminate attacks** and **disproportionate use of force**, **creation of life-threatening conditions** (destruction of infrastructure, obstruction of humanitarian aid), as well as crimes against persons hors de combat and other forms of violations (enforced disappearances, use of children, and sexual violence resulting in death). These acts constitute gross breaches of international humanitarian law and are classified as **international crimes**.

Ensuring the inevitability of punishment for violations of the right to life is not only a **moral imperative** but also a **necessary condition** for upholding the rule of law and maintaining a stable international order.

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ЖИТТЯ ЯК НАЙВИЩА ЦІННІСТЬ В УМОВАХ ВІЙНИ: МІЖ ПРАВОВИМИ НОРМАМИ ТА ВОЄННОЮ РЕАЛЬНІСТЮ

Анотація. Мета наукової статті – комплексний аналіз взаємозв'язку між війною та порушеннями права на життя, систематизація міжнародно-правових норм, що регулюють ці відносини, та окреслення шляхів посилення відповідальності за такі порушення. **Результати.** Стаття присвячена аналізу права на життя як фундаментальної цінності в контексті збройних конфліктів, війни. Досліджено еволюцію концепції цього права від філософських засад до універсального міжнародно-правового закріплення. Особливу увагу приділено сучасним воєнним діям, зокрема повномасштабному вторгненню російської федерації в Україну, що виявило безпрецедентні масштаби порушень права на життя. У роботі систематизовано типологію злочинів проти життя, включаючи прями та умисні позбавлення життя, невибіркові напади, створення умов, що призводять до загибелі, а також посягання на життя осіб, які вибули з бою, та інші форми злочинів. Проаналізовано можливі механізми притягнення винних до відповідальності на міжнародному (Міжнародний кримінальний суд, Європейський суд з прав людини, моніторингові місії ООН) та національному рівнях, зокрема через застосування універсальної юрисдикції. Акцентовано, що проблема безкарності залишається значним викликом, що вимагає постійного розвитку міжнародного права, посилення співпраці між

державами та адаптації правових інструментів. Обґрунтовано, що забезпечення невідворотності покарання за посягання на життя є не лише моральним імперативом, а й необхідною умовою для утвердження верховенства права та стабільного міжнародного порядку. **Висновки.** Зроблено висновок, що право на життя є абсолютною та невід’ємною цінністю, що становить фундамент усієї системи прав людини, проте в умовах збройних конфліктів воно піддається найжорстокішим випробуванням. Історичний розвиток концепції права на життя, від філософських ідей природного права до універсального міжнародно-правового закріплення, підкреслює його першочергову значущість. Сучасні воєнні дії, зокрема повномасштабне вторгнення російської федерації в Україну, демонструють безпрецедентні масштаби порушень цього права, що охоплюють прямі та умисні позбавлення життя (позасудові страти, цілеспрямовані напади на цивільне населення, катування, використання «живих щитів»), невибіркові напади та непропорційне застосування сили, створення умов, що призводять до загибелі (знищення інфраструктури, перешкоджання гуманітарній допомозі), а також злочини проти осіб, які вибули з бою, та інші форми посягань (насилені зникнення, використання дітей, сексуальне насильство з летальними наслідками). Ці дії є грубим порушенням норм міжнародного гуманітарного права та кваліфікуються як міжнародні злочини. Забезпечення невідворотності покарання за посягання на життя є не лише моральним імперативом, а й необхідною умовою для утвердження верховенства права та стабільного міжнародного порядку.

Ключові слова: право на життя, міжнародне гуманітарне право, міжнародне кримінальне право, воєнні злочини, Європейський суд з прав людини, безкарність.

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