

визначення, складність встановлення відповідальної сторони та участь недержавних акторів створюють серйозні виклики для міжнародної спільноти. Необхідно розробити узгоджені міжнародно-правові норми та механізми співробітництва, які б забезпечили ефективну боротьбу з кібератаками та зміцнили безпеку у реаліях сьогодення.

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PROSECUTING CONFLICT-RELATED SEXUAL VIOLENCE: INTERNATIONAL LEGAL FRAMEWORK AND ACCOUNTABILITY MECHANISMS

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Conflict-Related Sexual Violence is recognized by international law as a serious violation of human rights, international humanitarian law and international criminal law. Throughout human history, rape and sexual violence during armed conflicts has been used as one of the varieties of weapons, as a tool for terror, humiliation of the population and even genocide [1, 2].

History indicates that sexual violence is committed to dominate not only an individual, but also an entire community, to weaken resistance and deeply

destabilize the civilian population. This suggests that sexual violence during armed conflict is part of deliberate military tactics. And this is what distinguishes it from sexual violence committed in "peacetime".

A number of international treaties, conventions, resolutions, and other sources of international law define and criminalize CRSV. We can ascertain that this type of crime is prohibited by various international human rights treaties, including the right to security, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as well as rules of international criminal law.

Such violence is not limited to rape and can take many different forms, including those that do not involve any physical contact. According to the United Nations, it "refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict."

In its 1998 judgment against Anto Furundzija – the local commander of a special unit of the military police of the Croatian Defence Council known as the "Jokers" – the Trial Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) found that international criminal law punishes not only rape but also other serious acts of sexual violence that do not cover penetration, including, among others, observing acts of sexual violence [3].

In the 1998 Jean-Paul Akayesu judgment the International Criminal Tribunal for Rwanda (ICTR), found that sexual violence was defined as not limited to physical assault on a person's body and could include acts other than penetration or even general physical contact, including forced nudity. The Trial Chamber also provided a definition of sexual violence as

"...any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact" [4].

International criminal law defines crimes of sexual violence as one of the most serious, for which criminal liability is provided both at the national and international levels. Under the provisions of the Rome Statute of the International Criminal Court (ICC), sexual violence may be prosecuted as a war crime under article 8(2)(b)(xxii), as a crime against humanity under article 7(1)(g) or as one of the forms of genocide under articles 6(b),(d).

From this we can conclude that an important aspect of prosecuting CRSV crimes at both the international and national level is that it is not subject to any statute of limitations. Meanwhile, it is important that national

and international systems have the capacity to protect survivors of CRSV and establish relevant mechanisms in place to redress their rights.

The issue of fight and facing sexual violence in armed conflict should be considered through the prism of UN Security Council Resolutions. For example, it is important to refer to the provisions of one of the most important UN Security Council resolutions in the field of security policy – UNSC Resolution 1325 (2000) «Women, Peace, Security»:

«The resolution 1325 (2000) addresses the impact of war on women and the importance of women's full and equal participation in conflict resolution, peacebuilding, peacekeeping, humanitarian response and in post-conflict reconstruction. The resolution also calls for special measures to protect women and girls from conflict-related sexual violence and outlines gender-related responsibilities of the United Nations in different political and programmatic areas» [5].

Resolution 1325, inter alia, emphasizes that sexual violence as a tactic of warfare can significantly exacerbate armed conflicts and impede international peace. The provisions of the Resolution also confirm that rape may constitute a war crime, a crime against humanity and/or genocide. The resolution called on all states to establish effective systems for investigating and punishing perpetrators of sexual violence in armed conflict. In addition, UN Security Council Resolution 1820 (2008) affirmed that sexual violence is a weapon and tactic in war, and an integral part of genocide [6].

One must take into consideration the conflict-related sexual violence is a war crime with no statute of limitations and may be investigated years later, for example, from the experience of other countries, it can be in 10 or even 30 years. It should also be mentioned that victims of CRSV are not at all obliged to prove that an act of violence was committed against them contrary to their consent. Presence of enemy military, weapons, military equipment, restriction of freedom of movement of civilians, etc – these are the circumstances that immediately exclude consent from the victims, because a person was sexually abused while in such conditions.

Since the beginning of full-scale military aggression of the Russian Federation, the whole world has witnessed the unprecedented cruelty of the Russian Federation and disregard for international law as a whole, as well as the norms of international humanitarian law and international human rights law. Russia's full-scale invasion of Ukraine is accompanied by an influx of atrocious international crimes, a significant part of which are precisely crimes of a conflict-related sexual violence. Although it is important to realize that the cases of the CRSV have been regularly committed by the Russian military in the temporarily occupied territories of Ukraine since 2014.

The prosecution of those responsible for the CRSV is the responsibility of states and various institutions in accordance with international law and should promote justice and restore peace and international security.

A key part of the process of achieving justice in cases of conflict-related sexual violence is to ensure that victims receive proper reparations. Thus, U.N. General Assembly Resolution 60/147 (2005) stipulates that in accordance with the principles of international law, victims of gross violations of international human rights law and serious violations of international humanitarian law, the following legal protection should be provided:

- a) Equal and effective access to justice;
- b) Adequate, effective and prompt reparation for harm suffered;
- c) Access to relevant information concerning violations and reparation mechanisms [6].

One of the most common forms of reparations is compensation, but while the full-scale war of the Russian Federation against Ukraine is still ongoing, Ukraine faces numerous challenges, including the issue of sovereign immunity, to recover funds from the Russian Federation for the damage caused. And last November the General Assembly took an important step by adopting a Resolution which recognized that Russia should be held accountable for violations of international law in Ukraine, and that Russia should bear legal consequences for all its internationally wrongful acts, including reparations. The resolution also recognized the need to establish an international reparation mechanism and recommended the establishment of an international register of damage.

Ukraine has become the first country to launch an all-encompassing coordination mechanism to combat crimes of conflict-related sexual violence.

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