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CHALLENGES OF HUMANITARIAN DIPOMACY IN THE PROTECTION OF PRISONERS OF WAR

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Kovalchuk V., Helemei Yu. Challenges of humanitarian diplomacy in the protection of prisoners of war.

The article provides a generalized analysis of the shortcomings in the functioning of humanitarian diplomacy institutions in the field of protecting the rights and freedoms of prisoners of war. It is noted that, in general, the war in Ukraine actualizes deep ideological and legal concepts of justice, dignity, and universal human values under conditions of armed conflict, and requires a comprehensive approach to their realization. At the same time, the situation in the conflict zone poses a serious challenge to existing human rights mechanisms in ensuring effective protection. Safeguarding the inalienable rights of prisoners of war requires not only appropriate legal regulation but also the practical implementation of these norms under the difficult conditions of armed conflict.

It is emphasized that the protection of the life and health of prisoners of war belongs to the canonical imperatives of ethics, embodied in the normative acts of international humanitarian law. This imperative obligation, based on the principle of the inviolability of the human person, reflects the highest anthropological ideals. However, contemporary reality demonstrates the insufficient effectiveness of these normative principles in the context of ongoing armed conflicts. Violations of the rights of prisoners of war, unfortunately, have become commonplace, which necessitates the improvement and strengthening of mechanisms for their protection.

The main task of the humanitarian community and the state, seeking to stabilize the situation in the conflict zone, is to ensure elementary or "minimum" standards of humanity in military conflicts, including with regard to prisoners of war. This requires a comprehensive approach that involves not only a strong regulatory framework but also the active participation of international organizations, civil society, and humanitarian institutions. One of the key directions in this regard is the establishment of independent monitoring of the conditions of detention and treatment of prisoners of war.

An analysis of the practice of international and national "humanitarian diplomacy" in the context of the ongoing war in Ukraine has made it possible to identify a number of significant problems in the protection of prisoners of war's rights, in particular: limited access of representatives of "humanitarian diplomacy" to specific territories or groups of prisoners of war and the camps where they are held; possible financial constraints of missions due to the scarcity of resources for humanitarian assistance; political pressure and restrictions imposed on "humanitarian missions," which undermine the principles of neutrality and independence of humanitarian aid; and security threats to the personnel of these institutions.

Key words: prisoners of war, military law, rights of prisoners of war, international diplomacy, International Committee of the Red Cross, international humanitarian law.

Ковальчук В., Гелемей Ю. Виклики гуманітарної дипломатії у захисті військовополонених.

У статті представлено узагальнений аналіз ключових недоліків функціонування гуманітарно-дипломатичних інституцій у сфері захисту прав і свобод військовополонених. Зазначено, що війна в Україні актуалізувала фундаментальні ідеолого-правові концепти справедливості, людської гідності та універсальних цінностей, які набувають особливого значення в умовах збройного протистояння та потребують системного, комплексного підходу до їх реалізації. Водночас ситуація у зоні бойових дій демонструє обмеженість наявних правозахисних механізмів у забезпеченні

ефективного захисту. Реальне гарантування невід'ємних прав військовополонених вимагає не лише вдосконалення нормативного регулювання, а й дієвої практичної імплементації міжнародних гуманітарних норм у складних умовах війни.

Обґрунтовано, що захист життя та здоров'я військовополонених є одним із базових етичних імперативів закріплених у нормах міжнародного гуманітарного права. Цей обов'язковий імператив, який впливає з принципу недоторканності особи відображає найвищі гуманістичні та антропологічні цінності. Проте сучасна практика свідчить про недостатню ефективність реалізації цих засад у реаліях збройних конфліктів. Порушення прав військовополонених, на жаль, мають системний характер, що зумовлює потребу у зміцненні та вдосконаленні механізмів їх захисту.

Наголошено, що головним завданням гуманітарної спільноти та держав, які прагнуть до стабілізації ситуації у зонах збройних конфліктів, є забезпечення базових, «мінімальних» стандартів гуманності, зокрема щодо ставлення до військовополонених. Це потребує комплексного підходу, який поєднує належну нормативно-правову базу з активною участю міжнародних структур, громадянського суспільства та гуманітарних організацій. Одним із ключових напрямів виступає забезпечення незалежного моніторингу умов утримання та поведінки з військовополоненими. Аналіз діяльності міжнародних і національних інституцій гуманітарної дипломатії в контексті сучасної війни в Україні дав змогу виокремити низку суттєвих проблем у сфері захисту прав військовополонених. Серед них: обмежений доступ представників гуманітарних місій до певних територій або таборів утримання, фінансові труднощі, що ускладнюють реалізацію гуманітарних програм, політичний тиск, який підриває принципи нейтральності та незалежності гуманітарної діяльності, а також загрози безпеці для персоналу таких інституцій.

Ключові слова: військовополонені, військове право, права військовополонених, міжнародна дипломатія, Міжнародний комітет Червоного Хреста, міжнародне гуманітарне право.

Problem statement. In the modern world, where military conflicts have intensified, it is essential to address the rights of prisoners of war in the context of implementing and ensuring the high standards established by international law, which are based on universal human values and norms.

The ontological nature of prisoners of war's rights grants them a special status as subjects of international law, which requires specific mechanisms of protection. The ongoing war in Ukraine has made this issue particularly acute, as the norms of military and humanitarian law cannot fully guarantee adequate protection for participants in the armed conflict. From an axiological perspective, the problem becomes especially urgent due to widespread violations of fundamental human rights and freedoms across the entire territory of Ukraine, as well as the erosion of core values that should characterize any society – peace, dignity, and justice. The aggressive war waged by the Russian Federation and its allies against Ukraine raises complex questions about the nature of the conflict itself, human belonging to a community, and interpersonal relations within the context of war.

The rights of prisoners of war constitute a complex axiological problem intertwined with the fundamental ontological dimensions of society. In this regard, the concepts of justice and dignity acquire particular significance, as military conflict generates new aspects of legal order that require in-depth analysis. The humanistic ideology of modern society demands a humane attitude toward prisoners of war, recognizing the inherent value of every human being regardless of their role during wartime. This forms a crucial component of the legal mechanism grounded in moral and ethical principles that must underpin the protection and defense of prisoners of war.

In analyzing the current practice of protecting this category of subjects of international law – namely, prisoners of war – under the conditions of the ongoing Russian-Ukrainian war, it is appropriate to examine compliance with the standards of international humanitarian law and to assess the effectiveness of international institutions engaged in safeguarding prisoners of war.

The purpose of this article is to examine the shortcomings in the functioning of humanitarian diplomacy institutions in the field of protecting the rights and freedoms of prisoners of war.

State of research. The issues concerning the norms of international humanitarian law are particularly relevant for scholars in the context of the development of military law as a distinct branch of law in Ukraine. The proper legal status of prisoners of war has been the subject of analysis by numerous specialists in the fields of constitutional and international law, as well as general theory of law, including I.M. Zharovska, N.P. Bortnyk, I.O. Lychenko, M.M. Sirant, V. Kovalchuk, and others.

Representatives of the foreign school of law – such as Şeyşane V. Tanrıverdi, G. Repucci, S. Slipowitz, A.M. Nakib, and others – have addressed these issues in greater depth and from a wider comparative perspective.

However, given the scope and complexity of the topic, certain aspects still require additional and comprehensive analysis.

Main provisions. In times of crisis, legal norms often prove ineffective. During armed conflict, the legal regulation of social relations raises the issue of preserving international humanitarian law and protecting human rights under wartime conditions. This sphere becomes the domain of both international organizations and the state, which are responsible for safeguarding citizens' rights and ensuring their security.

The protection of the life and health of prisoners of war constitutes a canonical ethical imperative, enshrined in the normative acts of international humanitarian law. This moral obligation, grounded in the principle of the inviolability of the human person, reflects the highest anthropological ideals. However, contemporary reality demonstrates the insufficient effectiveness of these normative principles in the context of ongoing armed conflicts. Violations of prisoners of war's rights, regrettably, have become widespread, necessitating the improvement and strengthening of protection mechanisms.

An analytical report by the Office of the United Nations High Commissioner for Human Rights (OHCHR), based on interviews with released Ukrainian servicemen who had been held in captivity, revealed that the most common forms of torture or ill-treatment included beatings with hands (often while wearing tactical gloves), batons, or wooden mallets, as well as kicking various parts of the body. Electric shocks were also used – both with stun guns and the so-called military field telephone TA-57 ("TAPik"). One man, tortured in the disciplinary cell of a correctional colony near Olenivka, stated: "They tied wires to my genitals and nose and shocked me with electric currents. They were simply having fun and were not interested in my answers to their questions" [1].

Scientific sources reflect the actual state of ensuring the proper legal status of civilians, combatants, prisoners of war, and other groups involved in armed conflict. Scholars argue that "in almost all regions where armed conflicts occur, the laws of war are violated, and prohibited means and methods of warfare are employed. These include violations of the principles of distinction and proportionality during artillery shelling and aerial missile and bomb attacks; the recruitment, training, financing, and/or use of mercenaries in military activities; the destruction of settlements; executions in the form of deliberate killings motivated by hatred or political, ideological, racial, national, or religious enmity; torture; and other inhumane forms of behavior and horrific atrocities which, by their nature and degree of cruelty, cannot go unpunished and constitute war crimes and crimes against humanity.

The problem of protecting the life and health of prisoners of war is of particular importance; therefore, the activities of both governmental and non-governmental international organizations play a key role in this regard. As M.O. Kravtsova and T.K. Datsyuk note, "The protection of the rights and interests of military personnel is an important task at both international and national levels. Existing international standards and national laws and policies are aimed at ensuring the safety, health, and well-being of military personnel, as well as at preventing violations of their rights during armed conflicts" [2, p. 401].

In the academic literature, humanitarian diplomacy is generally defined as a set of measures carried out by various actors, in cooperation with governments, (para)military organizations, or individuals, with the aim of intervening or encouraging intervention in contexts where humanity is at risk [3]. Humanitarian diplomacy thus represents a specific form of diplomatic activity undertaken by different stakeholders to protect human life and dignity when they are under threat. Initially, the concept was mainly associated with humanitarian non-governmental organizations and certain United Nations agencies. However, in recent years, an increasing number of states have begun adopting humanitarian diplomacy as a foreign policy instrument, positioning themselves as global humanitarian actors [4].

The principal task of the humanitarian community and states striving to stabilize the situation in conflict zones is to ensure elementary, or "minimum," standards of humanity during armed conflict, including with respect to prisoners of war. This requires a comprehensive approach that encompasses not only the regulatory framework but also the active involvement of international organizations, civil society, and humanitarian institutions. One of the key components in this regard is the establishment of independent monitoring of the conditions of detention and treatment of prisoners of war. Such monitoring enables the timely identification and response to violations of their rights, thereby ensuring the provision of necessary protection.

The main organization representing humanitarian diplomacy is the International Committee of the Red Cross (ICRC). The Red Cross is an international humanitarian institution that operates in the areas of medical care and humanitarian assistance during wars, armed conflicts, and natural disasters. The ICRC uses its unique legal and moral status to provide protection and assistance to victims of conflicts and crises, with particular specialization in the protection of prisoners of war.

The ICRC possesses special mandates concerning military personnel under international humanitarian law, in particular those arising from the Geneva Conventions and their Additional Protocols. Its core responsibilities include monitoring the conditions of detention of military personnel, providing humanitarian assistance to meet their needs, and safeguarding their fundamental rights – such as the

right to life, personal integrity, dignity, and health. The organization is also entrusted with disseminating information and fostering dialogue between parties to the conflict to ensure the protection of military personnel.

However, the ICRC's limited effectiveness in fulfilling these functions increasingly suggests that its moral authority in the sphere of protecting combatants under international humanitarian law is being eroded [5]. An analysis of the practice of international and national humanitarian diplomacy in the context of the ongoing war on the territory of Ukraine makes it possible to identify several significant problems in protecting the rights of prisoners of war.

The first challenge concerns the limited access of representatives of humanitarian diplomacy to specific areas, groups of prisoners of war, and the camps where they are held. From the standpoint of legal ideology, this can be characterized as a problem of inconsistency with the principles of justice and humanitarian fairness. Such restrictions may contradict the fundamental axiological values of law, including the primacy of human dignity and the protection of human rights. In this context, the rights of prisoners of war should be viewed as a matter of the highest state and moral interest, requiring maximum protection and attention. However, due to the resistance and obstruction by the aggressor state, this goal cannot be fully achieved.

The second challenge relates to the financial limitations of humanitarian diplomacy, resulting from the scarcity of resources available for the provision of humanitarian assistance. From the perspective of legal objectivism, humanitarian and diplomatic missions are generally carried out on a voluntary basis, and neither states nor international organizations bear binding legal obligations or responsibilities for failing to allocate additional financial resources for humanitarian aid. The issue of accountability for insufficient financial support becomes particularly acute during armed conflicts, when humanitarian needs reach their peak.

Therefore, legal analysis should focus on assessing the fairness and equitable distribution of resources in the sphere of humanitarian assistance. Within this dimension, financial constraints can be seen as a question of justice in terms of resource equalization: inadequate or irresponsible funding may result in meeting only the most basic needs, without addressing the broader scope of humanitarian requirements. As E. Polinski and J. Kuzmanovich aptly observe, "The search for coherence and complementarity between humanitarian, development, and peace efforts in protracted conflicts challenges many aspects of the traditional operational and financial architecture of aid" [6].

The third challenge concerns political pressure and restrictions imposed on humanitarian missions, which lead to violations of the principles of neutrality and independence in the provision of humanitarian aid. In general, such interference can be regarded as a breach of international norms and treaties that guarantee the neutrality and independence of humanitarian assistance during armed conflicts. These actions may be viewed as infringements on the sovereignty of humanitarian organizations and as obstacles to the fulfillment of their mission to protect the life and dignity of prisoners of war.

The principles of international humanitarian law underscore the centrality of neutrality as a moral and legal foundation of humanitarian assistance. This principle implies that humanitarian aid must not be subordinated to political or military objectives but should instead be guided by universal values – namely, the protection of human life and dignity.

A clear example of political pressure occurs when the government of a particular state seeks to restrict an organization's access to certain conflict zones or deliberately delays the delivery of humanitarian aid for political purposes. Such pressure may aim to manipulate the distribution of aid, conceal violations of human rights, or postpone the delivery of essential resources. These interventions have serious implications for the implementation of humanitarian missions in conflict zones and raise doubts about the ethical and moral commitments proclaimed at the declarative level.

The fourth challenge pertains to security risks faced by humanitarian diplomacy personnel, particularly those of the ICRC, highlighting the problem of ensuring the immunity and safety of humanitarian workers. One of the key issues involves guaranteeing the personal security of ICRC staff who carry out their missions in dangerous and unpredictable environments. Threats may include exposure to firearms, explosions, hostile armed groups, terrorist attacks, and other forms of violence that endanger their lives and physical integrity.

UN monitoring reports on the situation in Ukraine indicate incredible and particularly inhumane actions by both the Russian authorities and society toward prisoners of war. This is especially important to emphasize, as international standards clearly establish that all responsibility for the detention and treatment of prisoners of war lies not with private individuals, separate citizens, or enemy soldiers, but with the state. The responsibility for the treatment of prisoners of war and protected persons rests with the detaining state, regardless of any individual liability. Article 12 of the Third Geneva Convention states that "Prisoners of war are in the hands of the enemy Power, but not of the individuals

or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given to them”[7].

The international community at the highest level calls on the aggressor state to treat prisoners of war humanely and to implement the mechanism of prisoner exchange. The UN High Commissioner for Human Rights, Volker Türk, has called for the immediate release of Ukrainian civilians detained in Russia [8]. According to a UN report, in 2024 the Office of the United Nations High Commissioner for Human Rights (OHCHR) recorded a significant increase in credible reports of executions of Ukrainian service members captured by Russian armed forces – at least 62 individuals in 19 incidents. The Office obtained and analyzed video and photographic materials showing executions or the bodies of those killed, and collected data through detailed interviews with witnesses.

For example, in one incident captured on video, four Russian soldiers are seen lining up and firing automatic rifles at unarmed Ukrainian servicemen, whose bodies then fall to the ground. The Office also confirmed incidents involving the execution of 11 Ukrainian prisoners of war that occurred in 2023. Furthermore, it verified the execution of 68 Ukrainian prisoners of war and incapacitated servicemen (all men) by Russian armed forces in 2022 [9].

UN monitoring reports on the situation in Ukraine indicate extremely cruel and inhumane actions by both the Russian authorities and society towards prisoners of war, which is especially important to emphasize, since international standards clearly state that all responsibility for the detention and treatment of prisoners of war lies not with private individuals, individual citizens, or enemy soldiers, but with the state, in particular under Article 12 of the Third Geneva Convention.

The main protection of prisoners of war should take place under the auspices of the UN, as the primary global institution authorized to ensure peace, security, and human rights. The international community, including UN institutions at the highest level, calls on the aggressor state to treat prisoners humanely and to apply the institution of prisoner-of-war exchange. However, the situation of Ukrainian military and civilian prisoners of war is characterized by total violations of human rights. Torture, humiliation, violence, and deprivation of access to basic needs such as food and sleep characterize the behavior of the aggressor state. The ineffectiveness of the functioning of UN-based bodies and the lack of effective means of influencing the state holding prisoners have been noted.

Moreover, the aggressor state employs an illegitimate institution of judicial proceedings against prisoners of war, as evidenced by numerous violations of their right to a fair trial. There is systematic and widespread use of torture against Ukrainian prisoners of war, as well as confirmed persecution of at least ten female prisoners of war under national anti-terrorism legislation. The government has designated the “Azov” Regiment and the “Aidar” Battalion of the Armed Forces of Ukraine as terrorist organizations and considers all their members to be engaged in terrorism. Such actions are incompatible with the combatant immunity that protects prisoners of war from prosecution merely for participation in hostilities or other lawful acts of war. The situation of prisoners of war in Russian captivity demonstrates inhumane treatment and severe violations of fundamental human rights carried out by the public authorities of the aggressor state. The norms of international humanitarian law appear to have no effect, as they are rendered meaningless within the territory of this warring state.

Conclusions. In general, the problem of the war in Ukraine actualizes deep ideological and legal constructs about justice, dignity, and universal human values in conditions of conflict and requires a comprehensive approach to its solution. At the same time, the situation in the conflict zone presents human rights mechanisms with a challenge in ensuring effective protection. Ensuring the inalienable rights of prisoners of war requires not only legal regulation but also the practical implementation of these norms in difficult conflict conditions.

Analysis of the practice of functioning of international and national «humanitarian diplomacy» in the context of the modern war on the territory of Ukraine gave us the opportunity to identify a number of significant problems in the field of protection of the rights of prisoners of war, in particular: limited accessibility of representatives of «humanitarian diplomacy» to specific areas or groups of prisoners of war, to the camps where they are held; possible financial limitations of missions due to the problem of limited resources and means for providing humanitarian assistance; political pressure and restrictions on «humanitarian missions», which violate the principles of neutrality and independence of humanitarian aid; and security problems for employees of institutions.

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