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Legal analysis of gaps in the protection of prisoners of war in view of the historical aspects

Druchek, Olena¹

Correo: olenadruchek@gmail.com

Orcid: <https://orcid.org/0000-0002-7460-8137>

Polunina, Lilia²

Correo: larkal1835@gmail.com

Orcid: <https://orcid.org/0000-0002-8898-2162>

Koba, Mariia³

Correo: mari.anna.nerozna@gmail.com

Orcid: <https://orcid.org/0000-0001-9407-2838>

Beikun, Andrii⁴

Correo: andrijbejkun2@gmail.com

Orcid: <https://orcid.org/0000-0003-2016-2077>

Kondratyuk-Antonova, Tetyana⁵

Correo: tetiana.n.1000@gmail.com

Orcid: <https://orcid.org/0009-0002-6548-7772>

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Abstract

The study of legal gaps in the protection of prisoners of war (POWs) is relevant in the context of current armed conflicts, in particular Russia's war against

¹ Associate Professor, PhD in Law, Department of Legal Support and Law Enforcement Activities of the Faculty of State Security of the Kyiv Institute of the National Guard of Ukraine.

² Associate Professor, PhD in Law, Department of Legal Support and Law Enforcement of the Faculty of State Security of the Kyiv Institute of the National Guard of Ukraine.

³ Associate Professor, PhD in Law, Department of Legal Support and Law Enforcement Activities, Faculty of State Security, Kyiv Institute of the National Guard of Ukraine.

⁴ Associate Professor, PhD in Law, Department of Legal Support of the National Guard of Ukraine of the Faculty of State Security of the Kyiv Institute of the National Guard of Ukraine.

⁵ Associate Professor, PhD in Philosophical sciences, Department of Social, Humanitarian and Legal Disciplines of the Faculty of State Security of the Kyiv Institute of the National Guard of Ukraine.



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Ukraine, which is accompanied by massive violations of international humanitarian law. The analysis of the regulatory framework identified its shortcomings and assessed the effectiveness of international mechanisms for monitoring the observance of the rights of prisoners of war. The aim of the study was to identify legal gaps in international humanitarian law and assess the effectiveness of law enforcement practice in cases of war crimes. The study employed the following methods: content analysis of international legal acts and court decisions, case studies of modern armed conflict, interviews with military experts and human rights defenders. The results showed that the Geneva Conventions and other international treaties contain contradictions that allow avoiding responsibility for crimes against prisoners of war. An analysis of historical conflicts, including World War II, the wars in Vietnam and the Balkans, confirmed the systemic nature of the problem of ineffective law enforcement. Numerous cases of torture, ill-treatment and extrajudicial executions of Ukrainian POWs have been recorded in the current conflict, which indicates the need to reform international law. The study confirmed the insufficient effectiveness of existing mechanisms for monitoring and punishing war crimes, as the implementation of decisions of international courts depends on the political will of states. The academic novelty of the study is the comprehensive analysis of current violations of the POWs' rights, taking into account historical aspects and international judicial practice. The study supplemented the theoretical framework with new facts about the trends in violations of the POWs' rights and the effectiveness of international response mechanisms. Further research may focus on the analysis of the impact of international sanctions on compliance with humanitarian law, an assessment of changes in international law after the end of the conflict, and the development of new mechanisms for bringing to justice for war crimes.

Keywords: international humanitarian law, war crimes, Geneva Conventions, law enforcement, international tribunals, military conflict, human rights mechanisms.

Análisis jurídico de las lagunas en la protección de los prisioneros de guerra a la vista de los aspectos históricos

Resumen

El estudio de las lagunas jurídicas en la protección de los prisioneros de guerra es pertinente en el contexto de los conflictos armados actuales, en particular la guerra de Rusia contra Ucrania, que va acompañada de violaciones masivas del Derecho Internacional Humanitario. El análisis del marco normativo permitió identificar sus carencias y evaluar la eficacia de los mecanismos internacionales de control del respeto de los derechos de los prisioneros de guerra. El objetivo del estudio era identificar las lagunas jurídicas del derecho internacional humanitario y evaluar la eficacia de la práctica policial en los casos de crímenes de guerra. El estudio empleó los siguientes métodos: análisis de contenido de actos jurídicos internacionales y decisiones judiciales, estudios de casos de conflictos armados modernos, entrevistas con expertos militares y defensores de los derechos humanos. Los resultados mostraron que los Convenios de Ginebra y otros tratados internacionales contienen contradicciones que permiten eludir la responsabilidad por crímenes contra prisioneros de guerra. El análisis de conflictos históricos, como la Segunda Guerra Mundial, las guerras de Vietnam y los Balcanes, confirmó el carácter sistémico del problema de la ineficacia de la aplicación de la ley. En el conflicto actual se han registrado numerosos casos de tortura, malos tratos y ejecuciones extrajudiciales de prisioneros de guerra ucranianos, lo que indica la necesidad de reformar el derecho internacional. El estudio confirma la insuficiente eficacia de los mecanismos existentes para vigilar y castigar los crímenes de guerra, ya que la aplicación de las decisiones de los tribunales internacionales depende de la voluntad política de los Estados. La novedad académica del estudio es el análisis exhaustivo de las violaciones actuales de los derechos de los prisioneros de guerra, teniendo en cuenta los aspectos históricos y la práctica judicial internacional. El estudio complementa el marco teórico con nuevos datos sobre las tendencias de las violaciones de los derechos de los prisioneros de guerra y la eficacia de los mecanismos internacionales de respuesta. Futuras investigaciones podrían centrarse en el análisis del impacto de las sanciones internacionales sobre el cumplimiento del derecho humanitario, la evaluación de los cambios en el derecho internacional tras el final del conflicto y el desarrollo de nuevos mecanismos de enjuiciamiento de los crímenes de guerra.

Palabras clave: derecho internacional humanitario, crímenes de guerra, Convenciones de Ginebra, aplicación de la ley, tribunales internacionales, conflictos militares, mecanismos de derechos humanos.

Introduction

The problem of protecting the POWs' rights remains one of the key in international humanitarian law, especially in view of current armed conflicts. Despite the existence of a developed system of international norms, including the Geneva Conventions for the Protection of War Victims of 1949, the Rome Statute of the International Criminal Court (2011) and a number of other international agreements, ensuring the legal protection of POWs remains a significant problem. Analysis of historical examples and modern violations shows that the effectiveness of law enforcement mechanisms is extremely limited, and many states participating in armed conflicts ignore the international obligations they have undertaken. This is confirmed both by facts from the history of the 20th century and by current events related to Russia's war against Ukraine.

Past military conflicts, including World War II, the Vietnam War, and the Balkan Wars of the 1990's, revealed significant violations of the POWs' rights and gaps in international law. The Nuremberg and Tokyo Tribunals were the first steps in establishing accountability, but they were applied only after the wars had ended, failing to prevent crimes.

The Vietnam War revealed the problem of unequal status of prisoners of war, as guerrilla fighters were not always recognized as combatants. The Balkan conflicts led to the creation of the International Criminal Tribunal for the former

Yugoslavia (ICTY), which tried war criminals for the first time since World War II, although its activities were limited.

Analysing Russia's current war against Ukraine, we can observe similar trends, where international law remains powerless in the face of large-scale violations of the rights of prisoners of war. Numerous cases of torture, ill-treatment, extrajudicial executions, and deportations of Ukrainian POWs have been documented by international human rights organizations, including the United Nations (UN) in Ukraine, the International Committee of the Red Cross, Amnesty International Ukraine, and Human Rights Watch. However, effective accountability mechanisms remain weak. The Russian Federation does not recognize the jurisdiction of the International Criminal Court (ICC) (2024), which makes it impossible to automatically prosecute war criminals, and also blocks access of international organizations to places where prisoners are held.

The case law of the European Court of Human Rights (ECHR) and the ICC sets standards for the enforcement of prisoners of war, but their implementation remains problematic, especially if the aggressor state ignores international mechanisms. Russia's withdrawal from the Council of Europe (CE) in 2022 eliminated the possibility of legal protection for prisoners through the ECHR.

The sanctions mechanism is ineffective without the political will of states, and if the aggressor state does not recognize the jurisdiction of international courts, punishing criminals becomes difficult. This emphasizes the need to reform international humanitarian law and create effective mechanisms for enforcing its norms.

The legal aspects are also complemented by humanitarian challenges: medical care, detention conditions, POWs' exchange, and access for international observers. Russia's war against Ukraine demonstrates that prisoner exchanges are irregular and politicized, and international pressure has not yet led to a systemic improvement in the situation.

The aim of the study is to identify the main legal gaps in international humanitarian law regarding the protection of POWs, assess the effectiveness of law enforcement mechanisms, and develop recommendations for improving legal procedures for the protection of POWs.

The aim was achieved through the fulfilment of the following research objectives:

- Conduct an analysis of international legal instruments regulating the protection of POWs, including the Geneva Conventions, the Rome Statute, and decisions of the ECHR and the ICC, to identify contradictions and legal gaps.
- Study specific cases of violations of the POW's rights in the Russian war against Ukraine based on reports from human rights organizations and assess the effectiveness of existing international response mechanisms.

1. Literature review

The protection of the POWs' rights is one of the most important topics for discussion in modern international humanitarian law. Different researchers cover both the achievements and shortcomings of existing protection mechanisms, proposing different approaches to solving the identified problems.

Helemey (2023) criticizes the ineffectiveness of “humanitarian diplomacy” in the protection of POWs, noting that the Geneva Conventions do not have enforcement mechanisms, and humanitarian missions, in particular the ICRC, cannot really influence the parties to the conflict.

In *Keeping POWs Safe*, Meron (2021) also points to the problem of states’ failure to comply with international obligations, but suggests practical measures, including strengthening sanctions against violators of POWs’ rights.

Hamza et al. (2023) analyse the classification and legal protection of POWs, emphasizing the problem of the ambiguity of their status, especially in conflicts involving irregular forces. They propose updating the Geneva Conventions to take into account new types of wars.

In *Protection of Prisoners in Armed Conflict*, Bothe et al. (2021) examines the difficulties in implementing the Geneva Conventions, in particular the politicization of the issue of POWs, which complicates humanitarian initiatives and prisoner exchanges.

In *Status of Prisoners of War in the Contemporary World*, Jha (2024) analyses the impact of modern conflicts on the status of POWs, drawing attention to the challenges associated with the fight against terrorism and asymmetric wars, where traditional legal norms are ineffective.

Jacques (2020) offers a historical analysis of the protection of POWs, in particular, he examines the cases of survival of Jewish POWs in German captivity during World War II. The author notes that even under the brutal conditions of the Nazi regime, certain groups of POWs had a relatively higher

chance of survival if their status was recognized in accordance with international norms.

Hunt (2021) in *Prisoner Regimes and a Transnational History from Below* analyses the changes in prisoner of war regimes in the international context, noting that states adapt the rules for the treatment of prisoners in accordance with their own interests, even despite the existence of international norms.

Petrilionis (2024), in *Under the Law and Customs of War*, emphasizes that the problem is not in the absence of a regulatory framework, but in ineffective mechanisms for enforcing international obligations.

Morieux (2021), in *Author's Response: Some Thoughts on War Prisons*, examines the historical development of approaches to POEs, emphasizing that the gap between international law and its implementation has always existed. He believes that the problem goes beyond the control of treaty implementation and is related to the nature of war, where humanitarian norms are subordinated to political and military goals.

In *Protection of a Dignity of Prisoners of War*, Myl-Chojnacka (2022) emphasizes that international law should not only physically protect POWs, but also guarantee their dignity, which remains insufficiently developed in international instruments.

Bechor et al. (2023) in *What Do We Know about the Treatment of Prisoners of War?* draw attention to the lack of real control over the conditions of detention of prisoners. They emphasize that states often manipulate their status for political purposes, proposing to strengthen monitoring missions and sanctions pressure.

In *Legal Status of Prisoners of War in Ukraine*, Mytska (2023) analyses Russian war crimes against Ukrainian prisoners, including torture and deportation. She assesses the effectiveness of the international response, focusing on a specific conflict, in contrast to researchers who study general legal aspects.

2. Methods and materials

The study was conducted in three stages aimed at analysing legal gaps in the protection of POWs, taking into account historical aspects, in particular in the context of the current war between Russia and Ukraine.

The first stage involved a theoretical analysis of international legal acts regulating the status and protection of POWs. The regulatory legal documents subject to analysis included the Geneva Convention relative to the Treatment of Prisoners of War and its Additional Protocol I, which are the main international legal acts on the protection of POWs in armed conflicts. The provisions of the Rome Statute of the International Criminal Court, which defines the legal principles for bringing to justice for war crimes, including the cruel treatment of POWs, were analysed. Particular attention was paid to the provisions of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), which sets international standards for the prohibition of torture, particularly against persons held in captivity. The European Convention on Human Rights and the case law of the ECHR were also examined in the context of cases involving the ill-treatment of POWs.

The second stage included an empirical study based on the case study method. The main attention was paid to the analysis of violations of the POWs'

rights in the modern war of Russia against Ukraine. Official reports of international organizations were used, in particular the United Nations, the International Committee of the Red Cross, Amnesty International, Human Rights Watch, which contain documented cases of torture, enforced disappearances, executions of POWs, as well as an assessment of the effectiveness of legal mechanisms for their protection. The historical context of the study included the analysis of similar cases during World War II, the conflicts in Vietnam and the Balkans in the 1990's in order to assess the evolution of legal regulation and the shortcomings of human rights mechanisms in different periods.

The third stage involved a content analysis of legal documents, court decisions, and reports of human rights organizations using systematic coding of violations. Quantitative and qualitative analysis identified the main trends in circumvention of international humanitarian law and their implementation in modern human rights practice.

2.1. Methods

The study employed three main methods:

Content analysis was used to study international legal documents, decisions of international courts, and reports of human rights organizations. Particular attention was paid to gaps in their application and uncertainties in mechanisms for monitoring compliance with the norms.

The case study method was used to analyse violations of the POWs' rights in the modern Russian war against Ukraine. Documented facts of war crimes were investigated, including torture, illegal detention, and killing of prisoners. The obtained data were compared with historical examples of similar violations,

which made it possible to assess patterns in international law enforcement. The method of expert interview involved conducting semi-structured conversations with international lawyers, military experts and representatives of human rights organizations. The goal was to obtain a professional assessment of modern mechanisms for the protection of POWs and identify the main gaps in international law.

2.2. Sample

The study was based on an analysis of regulatory legal acts, court decisions and human rights reports. International treaties regulating the protection of POWs were considered, as well as decisions of international courts, in particular the ECHR and the ICC. The interviews with fifteen experts were conducted as part of the qualitative study, including human rights defenders, international lawyers and military experts with experience in the protection of POWs.

The inclusion of historical cases in the sample was justified by the need for comparative analysis and identification of shortcomings in international law enforcement in different periods. The analysis of cases from World War II, the Vietnam War, and the Balkan conflict made it possible to assess relevant legal gaps and determine the effectiveness of the modern protection mechanisms.

2.3. Instruments

MAXQDA was used to analyse regulatory legal acts, court decisions, and human rights reports, which allowed for qualitative content analysis. Google Forms tools were used to collect data from expert interviews. The legal databases HUDOC and ICC Legal Tools Database were used as sources of case law, which provided access to the decisions of the ECHR and the ICC.

The use of these methods and analytical tools provided a comprehensive approach to the study and enabled identifying key problems in the international human rights protection of POWs.

3. Results

International humanitarian law has significant gaps in the protection of POWs, which makes it difficult to apply effectively. Despite the Geneva Conventions, their provisions are often ignored, especially in relation to irregular units. The lack of enforcement mechanisms allows states to avoid responsibility, as international organizations, in particular the ICRC, do not have sufficient leverage.

The Rome Statute of the ICC provides for prosecution of war crimes, but its effectiveness is limited by political factors and the non-recognition of the jurisdiction of the court by some countries. Russia's war against Ukraine confirmed that states that have not ratified the Statute can avoid responsibility for war crimes.

An additional problem is the difficulty of recording violations and collecting evidence. The prisoners' detention conditions make it impossible to document torture, and there are no effective mechanisms for filing complaints after their release. The practice of the ECHR shows that the protection of POWs depends on the political will of states, and the implementation of decisions is complicated, especially after Russia's withdrawal from the CE in 2022.

The massive violations of the POWs' rights in World War II prompted a review of humanitarian law. The Wehrmacht, the Japanese army, and the Union of Soviet Socialist Republics (USSR) ignored the 1929 Geneva Convention,

which led to millions of deaths. The Nuremberg and Tokyo tribunals recognized cruel treatment as a war crime, and the 1949 Geneva Conventions detailed mechanisms for the protection of captives.

In the Vietnam War (1955–1975), both sides violated the captives’ rights, but effective punishment did not follow because of political factors. The Balkan conflict of the 1990’s was the first case of international prosecution of war criminals: the ICTY, created after the mass executions in Srebrenica, convicted military and political leaders.

These conflicts proved that even after the Geneva Conventions, war crimes remained unpunished without international political will. The Balkan precedent demonstrated the possibility of legal prosecution, but emphasized the need for mechanisms for enforcing decisions.

Table 1 analyses the main problems in the legal regulation of the status of POWs, the conditions of their detention, the mechanisms of international responsibility, and the reaction of the international community in different historical periods — from World War II to the current war of Russia against Ukraine.

Table 1. Comparison of historical and contemporary legal gaps

Gap Category	World War II (1939–1945)	Vietnam War (1955–1975)	Balkan Wars (1990s)	Russia’s War Against Ukraine (2022–2024)
Determinati-on of the status of POWs	Limited, not all categories of POWs recognized as protected	Combatants of irregular forces were not recognized as POWs	Recognition of POWs, but massive violations	Russia does not recognize some POWs as combatants
Prohibition of torture and	Mass violations (torture, forced	Systematic torture, inhuman treatment	Ethnic cleansing,	Documented torture,

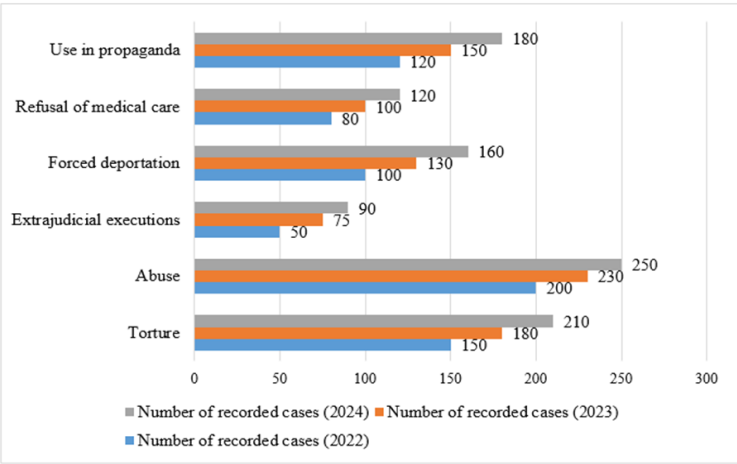
Gap Category	World War II (1939–1945)	Vietnam War (1955–1975)	Balkan Wars (1990s)	Russia’s War Against Ukraine (2022–2024)
inhuman treatment	labour, executions)	of captives	torture, mass executions	executions, forced deportation
Mechanisms for the enforcement of norms	Almost absent, states did not fulfil their obligations	Geneva Conventions were not observed, lack of enforcement mechanism	International tribunals (ICTY) started working for the first time	Geneva conventions violated, UN mechanisms ineffective
International responsibility for crimes	Nuremberg and Tokyo Tribunals only after the war	Lack of international tribunal, crimes went unpunished	ICTY considered crimes, first war criminals convicted	ICC issues warrants, but Russia does not recognize jurisdiction
Protection of POWs’ rights in courts	There was no international court, national courts rarely heard such cases	Review in national courts was limited	Tribunal decisions had international jurisdiction	ECHR issues rulings, but Russia does not realize them
Possibility of intervention by international organizations	ICRC had limited powers, the states blocked access	ICRC had minimal impact, governments restricted access	ICRC actively operated, but access was limited	ICRC gets limited access to POWs
Reaction of the international community	Weak, with limited sanctions against aggressor states	International community condemned, but without effective sanctions	Sanctions against Yugoslavia and its leaders	International community imposes sanctions, but effect is limited
Access to medical care	Inadequate level, mass deaths because of lack of treatment	Minimal access, poor medical care	Access to medical care was uneven	Insufficient medical care, deaths because of lack of treatment
POWs’ detention conditions	Terrible conditions, hunger, insanitation, forced labour	Harsh conditions, isolation, malnutrition	Forcible detention, sexual violence, torture	Harsh detention conditions, isolation, psychological pressure
POWs’ exchange	Exchanges were rare, depended on political	Exchanges were carried out through diplomatic	POWs’ exchanges were carried out	Exchanges are carried out, but slowly and

Gap Category	World War II (1939–1945)	Vietnam War (1955–1975)	Balkan Wars (1990s)	Russia’s War Against Ukraine (2022–2024)
	agreements	agreements, but limited	under UN supervision	selectively

Source: developed by the author based on the 1949 Geneva Conventions, Additional Protocol I (1977), Rome Statute of the ICC (1998) (2021), official UN reports, International Committee of the Red Cross, Amnesty International, Human Rights Watch, decisions of the European Court of Human Rights, materials of the Nuremberg and Tokyo tribunals (2023), and the International Criminal Tribunal for the former Yugoslavia (ICTY) (2017).

Russia’s current war against Ukraine has been accompanied by widespread violations of the POWs’ rights, including torture, ill-treatment, extrajudicial executions, and forced deportations (Figure 1). These actions violate the Third Geneva Convention of 1949, but Russia has systematically ignored these obligations, as documented in the UN, ICRC, Amnesty International, and Human Rights Watch reports.

Figure 1. Number of recorded violations of the POWs’ rights in Russia's war against



Source: developed by the authors based on the results of their own research.

Cases of torture, prolonged detention without food and water, psychological pressure, and forced confessions have been documented. Human Rights Watch says this is a systematic practice sanctioned by the Russian military. At the same time, Ukraine is cooperating with the ICC to document these crimes, but limited access to places where prisoners are held makes it difficult to gather evidence.

Russia does not recognize the jurisdiction of the ICC and blocks the work of international monitoring missions, which contributes to the impunity of the perpetrators. In return, Ukraine provides the ICRC with access to Russian prisoners of war. The lack of effective mechanisms for enforcing compliance with humanitarian law confirms the gaps in the international system for the protection of POWs, which require reform and increased accountability for war crimes.

The massive violations of POWs' rights in World War II prompted a review of humanitarian law. The Wehrmacht, the Japanese army, and the USSR ignored the 1929 Geneva Convention, which led to millions of deaths. The Nuremberg and Tokyo tribunals recognized ill-treatment as a war crime, and the 1949 Geneva Conventions detailed mechanisms for the protection of captives.

In the Vietnam War (1955–1975), both sides violated the POWs' rights, but effective punishment did not follow because of political factors. The Balkan conflict of the 1990's was the first case of international prosecution of war criminals: the ICTY, created after the mass executions in Srebrenica, convicted military and political leaders.

These conflicts proved that even after the Geneva Conventions, war crimes remained unpunished without international political will. The Balkan precedent demonstrated the possibility of prosecution, but emphasized the need for mechanisms to enforce decisions.

Table 2 provides an overview of the main international judicial cases related to prisoners of war, indicating the judicial bodies, the years of the decisions, the main charges, the sentences and their impact on the development of international humanitarian law.

Table 2. Judicial decisions on POWs: an analysis of key precedents

Court case	Judicial body	Year of decision	Main charges	Verdict / Decision	Impact on international law
Nuremberg Tribunal (1945–1946)	International Military Tribunal (Nuremberg)	1946	War crimes, including illtreatment of POWs	12 people convicted, 3 sentenced to life imprisonment	Laid the foundation for future prosecution of war criminals
Tokyo Tribunal (1946–1948)	International Military Tribunal for the Far East	1948	War crimes, violations of the Geneva Conventions	7 military leaders sentenced to death	Formed basic principles of responsibility for war crimes
ECHR judgment in the Srebrenica case (2013)	ECHR	2013	Genocide, mass executions of POWs	Judgment against Serbia for responsibility in mass murders	Confirmed the possibility of prosecution for genocide
Slobodan Milosevic trial (ICTY, 2002–2006)	ICTY	2006	War crimes, ethnic cleansing, unlawful detention of POWs	Case discontinued due to death of the accused	Enforced the concept of command responsibility
Lubanga Case (ICC, 2012)	ICC	2012	Recruitment of child	Lubanga sentenced to 14	Precedent for prosecution of

Court case	Judicial body	Year of decision	Main charges	Verdict / Decision	Impact on international law
			soldiers, illtreatment	years in prison	child recruitment in war
ECHR Judgment in the case of Ilașcu and Others v. Moldova and Russia (2004)	ECHR	2004	Torture and detention of prisoners of war in inappropriate conditions	Recognition of Russia’s responsibility for violation of the Convention	Established State Responsibility for War Crimes
ICC Judgment in the case of Radovan Karadžić (2016)	ICTY	2016	Genocide, executions of POWs, torture	Karadžić sentenced to life in prison	Expanded the definition of genocide and ethnic cleansing
ICC Decision in the Omar al-Bashir Case (2009)	ICC	2009	Genocide, deportation, war crimes	Arrest warrant issued, case not closed	Emphasized the importance of international law jurisdiction
ICC Decision in the Dominic Ongwen Case (2021)	ICC	2021	Crimes against humanity, war crimes, torture of POWs	Sentenced to 25 years in prison	Enshrined the responsibility of military commanders for war crimes
ECHR Decision in the Ukraine v. Russia Case (2023)	ECHR	2023	War crimes, torture, illegal detention of POWs	Recognizing Russia responsible for violations of POWs’ rights	Became the basis for further lawsuits regarding violations of POWs’ rights

Source: developed by the author based on the Nuremberg Tribunal, Tokyo Tribunal (2023) decisions of the European Court of Human Rights, materials of the International Tribunal for the Former Yugoslavia, official documents of the International Criminal Court, as well as the UN, Amnesty International, and Human Rights Watch reports.

The ICRC, Amnesty International, and Human Rights Watch document violations of POWs’ rights, but their effectiveness is limited by the lack of enforcement mechanisms. The ICRC has a mandate under the Geneva Conventions, but its access to prisoners is often blocked, as in Russia’s war against Ukraine.

Amnesty International and Human Rights Watch collect evidence of war crimes, but they do not have the legal authority to prosecute perpetrators, and their reports only add to the evidence base in international courts. Violating states often refuse to cooperate or discredit their investigations.

Nevertheless, the collected materials contribute to international investigations and sanctions, and human rights defenders submit requests to the ICC and support victims of war crimes, depending on the political will of states.

Table 3 provides a comparative analysis of the activities of the International Committee of the Red Cross, Amnesty International, and Human Rights Watch, including their mandate, access to POWs, influence on international investigations, and major limitations to their work.

Table 3. Effectiveness of mechanisms for the protection of POWs in international organizations

Organization	Main activities	Legal status and authority	Access to POWs	Impact on international investigations	Restrictions on activities
ICRC	Monitoring compliance with the Geneva Conventions, providing humanitarian	Officially recognized in the Geneva Conventions, has the right to visit places of detention	Has formal right of access, but often faces obstacles from states	Reports can be used as evidence in international courts, but the organization avoids public	Dependence on consent of states to visit POWs, lack of coercive mechanisms

Organization	Main activities	Legal status and authority	Access to POWs	Impact on international investigations	Restrictions on activities
	assistance to POWs, negotiating with governments			pressure	
Amnesty International	Documenting human rights violations, conducting independent investigations, advocacy before international courts	Independent human rights organization, has no official status in international law	Has no official access, receives information from victims and witnesses	Reports often become the basis for investigations in the ICC and other courts	States may ignore or discredit reports, limited access to POW detention sites
Human Rights Watch	Investigating war crimes, conflict analysis, public pressure on governments	Independent organization that conducts investigations, but has no legal authority to prosecute	Has no access, analyses testimonies, open sources, satellite imagery	Collected evidence helps to initiate international investigations and sanctions	Has no legal mechanisms for influence, depends on international pressure and support from other organizations

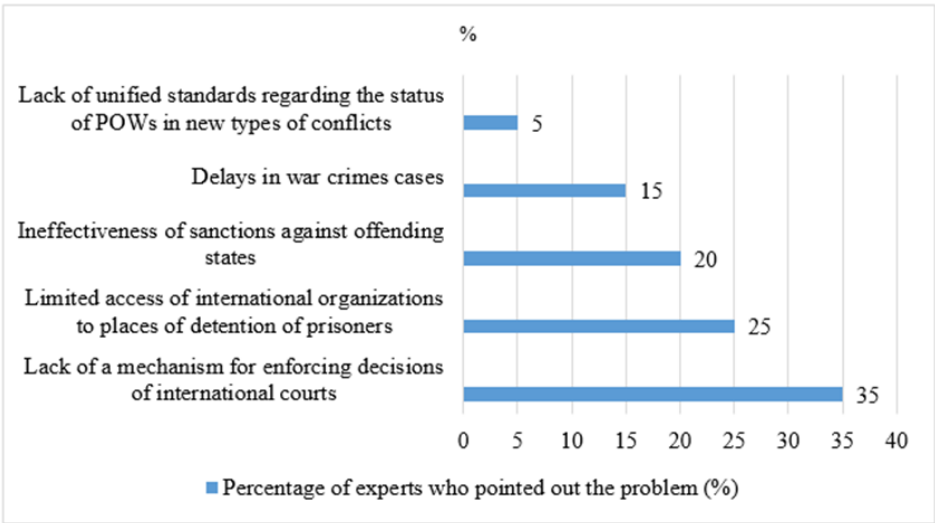
Source: developed by the author based on the 1949 Geneva Conventions, official reports of the International Committee of the Red Cross, Amnesty International, Human Rights Watch, as well as UN materials and the International Criminal Court.

The analysis of legal gaps in international humanitarian law revealed systemic shortcomings in the protection of prisoners of war (Figure 2). The main problem is the lack of a mechanism for enforcing court decisions, which allows violators to avoid responsibility (35% of experts). International courts, such as the ICC and the ECHR, act only ex post facto, without mechanisms to prevent violations. The lack of operational monitoring and limited access of international organizations to prisoners (25%) contribute to abuses. The use of prisoners as a political tool complicates their exchange and control by the ICRC.

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Figure 2. Distribution of expert opinions on the main legal gaps in the protection of POWs



Source: developed by the authors based on the results of their own research.

Sanction pressure on violators is considered ineffective (20%), as it depends on political agreements. An additional problem is the length of trials: 15% of experts emphasize that delays in considering cases make it difficult to punish the guilty.

Human rights activists see the need to strengthen international mechanisms for enforcing humanitarian law, in particular by expanding the mandate of international organizations to independently monitor places where POWs are detained. At the same time, 5% of experts note that the lack of unified standards regarding the status of prisoners in modern asymmetric conflicts creates legal uncertainty, which allows states to manipulate their status. Despite the proposed reforms, the effectiveness of their implementation depends on international political will, which remains one of the main challenges in the field of protection of POWs.

4. Discussion

The current discourse on the protection of POWs provides different approaches and views that requires detailed analysis.

Balole and Steenberghe (2024) in Enhanced Labour Protection for Prisoners of War analyse forced labour of POWs, noting that exceptions in international law facilitate abuses. They propose improving humanitarian law and integrating human rights norms to more effectively protect captives.

Scheck (2020) in The Treatment of Western Prisoners of war in Nazi Germany points out the asymmetric treatment of prisoners in Nazi Germany, where, despite formal compliance with the Geneva Convention, severe punishments were applied for minor violations.

Hasan and Haque (2023) in Should Unlawful Combatants be Considered as Prisoners of War when Captured? question the granting of POW status to illegal combatants, arguing that they do not comply with humanitarian law.

Boothby and von Heinegg (2018) in *Prisoners of War* examines the changing conditions of detention and legal status of POWs depending on the historical context, emphasizing its importance for the analysis of contemporary problems.

Lake and Trerise (2022) in *Coercion, Interrogation, and Prisoners of War* examine the ethical and legal aspects of interrogation, emphasizing that coercion is contrary to international law, contributes to the human rights violations, and provides unreliable information.

Martinez (2020) in *Defection and Prisoner of War Status* examines the status of individuals who have defected to the enemy, noting that their legal protection remains controversial and needs to be clearly defined in international law.

Burnos (2024) in *Ways of Committing Cruel Treatment of Prisoners of War and Civilian Population* analyses methods of cruel treatment of POWs, emphasizing the need to strictly condemn torture and inhuman treatment.

Mangku and Yulianti (2021) in *Legal Protection of Children in Armed Conflict* focus on the protection of children during conflicts, emphasizing the importance of respecting humanitarian law for all who do not participate in hostilities, including POWs.

Wylie (2020) in a review of *Captives of War* by Clare Makepeace analyses the experience of British POWs in Europe during World War II, emphasizing the dependence of the detention conditions on the circumstances and the attitudes of the parties to the conflict.

Arman et al. (2021) in The Updated ICRC Commentary on the Third Geneva Convention present the updated ICRC commentary on the Third Geneva Convention, emphasizing its relevance for the protection of prisoners of war in the current context.

Nelson (2023) in What Brereton Obscures emphasizes that war crimes against prisoners go beyond their killing, and draws attention to the need to investigate torture and other forms of ill-treatment.

Petrilionis (2023) in In Heavy Chains examines the POWs' treatment in Prussia, Poland and the Grand Duchy of Lithuania in the 15th century, emphasizing the prevalence of cruel practices.

Buscemi (2022) in Rejecting the Military to Serve the Nazis analyses the imprisonment of Italian conscientious objectors, emphasizing the importance of protecting the rights of all those deprived of their liberty during conflicts.

The overall analysis of the studies shows that compliance with international law depends on specific circumstances, which emphasizes the need for their improvement for the effective protection of POWs.

4.1. Limitations

The study is limited by the availability of official data on POWs and court decisions, as some information remains closed or distorted due to political and military factors. The analysis was based on open sources and expert assessments, which could affect the completeness of the reflection of law enforcement practice.

4.2. Recommendations

It is recommended to improve the mechanisms for monitoring compliance with the Geneva Conventions by expanding the powers of international monitoring organizations and ensuring their unhindered access to POWs' detention sites. It is necessary to improve law enforcement mechanisms, in particular, simplify the procedures for bringing to justice for war crimes and ensure the effective implementation of decisions of international courts. Further studies may focus on assessing the effectiveness of sanctions measures and developing new mechanisms for the protection of POWs.

Conclusion

The results of the study confirmed the existence of significant legal gaps in international humanitarian law regarding the protection of POWs. An analysis of international legal acts, court decisions and empirical data showed that despite the existence of the Geneva Conventions, their application faces problems of law enforcement and non-compliance with the norms by the states involved in the conflicts. The violations identified, in particular during the war of Russia against Ukraine, demonstrate a systematic disregard for international obligations and insufficient effectiveness of accountability mechanisms.

An analysis of historical cases showed that violations of the POWs' rights are a recurring problem in international conflicts, and the existing legal mechanisms need to be improved. The case law of international courts confirms the difficulty of proving crimes against POWs, which creates space for impunity.

The academic novelty of the study is the comprehensive approach to the analysis of modern violations of the POWs' rights, taking into account historical aspects and law enforcement practice.

The practical value of the study is the possibility of using the obtained findings to improve the international mechanism for the protection of POWs, develop recommendations for strengthening control over compliance with the norms of international humanitarian law and reform the mechanisms of international responsibility for war crimes.

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Editorial note

The article examined the legal shortcomings in the protection of prisoners of war in the context of contemporary armed conflicts, with a particular focus on the Russian Federation's full-scale invasion of Ukraine. The topic was approached from an academic perspective and grounded in international humanitarian law, supported by official documentation from internationally recognized institutions, including the United Nations, the International Criminal Court, and the International Committee of the Red Cross. The analysis integrated legal content with historical references, highlighting systemic gaps in law

enforcement mechanisms across different geopolitical contexts. The methodological design relied on primary legal sources, verified reports of war crimes, and expert assessments, thereby ensuring scientific integrity and neutrality. The editorial board reviewed the text and confirmed that it complied with the standards of academic independence and ethical publishing practices. No elements of propaganda, political advocacy, or partisan bias were identified in the structure, content, or conclusions of the article. The responsibility for the opinions and interpretations expressed rests solely with the authors, and the journal maintains its commitment to editorial objectivity and academic freedom.

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