

DENAKPON LUC RODRIGUE TCHOBO,

*Doctor of Juridical Science (S.J.D.),
Case Western Reserve University School of Law (USA),
Adjunct Professor of Law,
Department of ICC Moot Court;
e-mail: dlt50@case.edu*

**POTENTIAL INTERNATIONAL CRIMES IN UKRAINE:
SHOULD ATROCITIES IN BUCHA BE CLASSIFIED AS GENOCIDE,
WAR CRIMES, OR CRIMES AGAINST HUMANITY?**

The dilemma between the root of the word *Genocide* and its legal meaning is affecting the international criminal justice system. The proof is that Presidents Volodymyr Zelenskyy of Ukraine and Joe Biden of the USA called the atrocity crimes observed in Ukraine “Genocide”. The purpose of this study is to examine whether the atrocities that recently occurred in Bucha could be qualified as a crime of genocide. This article substantially analyzed the meaning of the terms composing the word genocide in the context of the nature of those atrocity crimes. In this regard, it was found that there is etymologically a gap between the legal meaning of genocide and the nature of the crime in question which shields its alleged perpetrators from impunity. Thus, this paper attempted to demonstrate that the alleged atrocity crimes observed in Bucha could not be classified as genocide and then, exposed the potential international crimes committed in Ukraine.

Key words: *Russia's Invasion, Ukraine, Bucha, Genocide, International Criminal Law.*

Original article

INTRODUCTION. Ukrainian President Volodymyr Zelenskyy described as “genocide” the killings of civilians in the town of Bucha outside the capital Kyiv reclaimed from Russian forces. “These are war crimes and it will be recognized by the world as genocide,” Zelenskyy said during a visit to Bucha, where bodies were discovered strewn throughout the town after it was reclaimed by Kyiv’s army. A few days later, U.S. President Joe Biden for the first time labeled Russia’s atrocities in Ukraine as genocide. He said: “It’s become clearer and clearer that Putin is just trying to wipe out the idea of being Ukrainian. The evidence is mounting. It looks different than last week”, the president said before departing Iowa. “More evidence is coming out, literally, of the horrible things that the Russians have done in Ukraine. And we’re gonna only learn more and more about the devastation, and we’ll let the lawyers decide internationally whether or not it qualifies, but it sure seems that way to me”. The problem is whether atrocity crimes observed in Bucha could be classified as genocide. In this regard, this paper analyzes substantially through the international legal instruments first the meaning of genocide, and second, exposes a comparative analysis between war crimes and crimes against humanity. It raises in conclusion the nature of potential crimes committed in Bucha.

PURPOSE AND OBJECTIVES OF THE RESEARCH. This work aims to expose the sub-

stantial gaps in the convention on the prevention and the punishment of the crime of genocide through a comparative analysis with regard to Russian atrocities in Ukraine and the meaning of genocide. The main objective is to touch first on the conscience of the international community, on the fact that deciding to prosecute alleged perpetrators under the label of “genocide” may possibly result in their acquittal and on the enforcement of that genocide convention. Thus, it is crucial to review and adopt the proposal draft convention on the emergence of the new term of those crimes called “groupicide” in order to prevent the nations from any similar future atrocities.

METHODOLOGY. This article attempts to enforce international criminal law by applying a legal theory to the situation in Ukraine through existing international legal instruments. The analysis is led under the governs of the convention on the prevention and the punishment of genocide, and the Rome Statute of the International Criminal Court towards an approach doctrinal tending to substantially enforce objective views.

RESULTS AND DISCUSSION

1. What is genocide?

Although the crimes of genocide would be analyzed under the Rome Statute, it would be obvious to consider it *a priori* under the international tribunals’ ad hoc. For instance, the Nuremberg Tribunal classified them as a component of crimes

against humanity. Emphasizing that the term “genocide” did not exist before. Viewing the quintessence of the nature of those crimes, Raphael Lemkin (1946), created the term “genocide” that is accepted by the international community in 1948. According to him, there were no existing words that could sufficiently describe the horrors of the Holocaust. Further, Winston Churchill linked those horrible crimes to the Nazis’ large-scale exterminations as “*a crime without a name*”. Thus, Raphael made the construction of this term “from the ancient Greek word *genos* (race, tribe) and the Latin *cide* (killing) corresponding in its formations to such words as tyrannicide, homicide, infanticide, etc.” Yet, towards an approach to punishment, this term was printed in the acceptance of the U.N. General Assembly that adopted the Convention on the Prevention and Punishment of the Crime of Genocide, classifying it as the most heinous international crimes¹. Thus, it is defined as: “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group [...]”². Furthermore, the convention mentions that the following acts of genocide such as conspiracy, direct and public incitement, attempt, and complicity shall be punished³. Meaning genocide is prohibited in times of war as well as peace.

Moreover, under the Rome Statute of ICC “genocide”⁴ means: “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group”.

It shall be noted that the Convention’s definition of “genocide” has been verbatim exported in the Rome Statute; as well as the Statutes of International Tribunals. So, in comparative observation, it is obvious to highlight that its target character, of “intent” towards a “group”, is the

fundamental element of differentiation in war crimes from crimes against humanity. Hence, considering the term “genocide” through its meaning as defined by Raphael Lemkin (1946), it might seem that that term is intrinsically and etymologically inadequate and inappropriate with the real nature of the crime. In other words, the meaning of *Geno* from Greek does necessarily not mean “Group”. Thus, it is clear that the commission of that crime is not only based on race, even though its definition with regard to articles 6 of the Rome Statute and 2 of the Convention on the punishment and prevention of genocide mention the terms “national” and “religious” groups. Further, the genocides recognized by the international community are the Genocide of Armenians committed by the Ottoman Empire (1915–1916), the Genocide of the Jews committed by the Nazis (1941 to 1945), and the Genocide of the Tutsis in Rwanda (1994).

As a matter of the fact, proving the crime of genocide requires the existence of its double legal character of intent. In other words, in addition to the *actus reus* that is the material element or the consequences of the conduct of alleged perpetrators such as killing the Ukrainians, there is a necessity to prove the *mens rea* that requires a double character of intent in the context of genocide. That’s said the *dolus directus* (i.e., intent to kill directly the Ukrainians) must be proved first. Second, the psychological element must also be proved. This is the *specific dolus* (specific intent) to destroy in whole or in part the national group (i.e. the Ukrainians).

2. What is the difference between war crimes and crimes against humanity?

War Crimes

The violations of the laws and customs of war are considered serious if they endanger protected persons or objects or they breach important values; but when those violations are made willfully, then it is a question of grave breaches. In this regard, the term *grave breaches* will be tied to the principle of *mens rea*. The meaning of the term *serious* should be the *actus reus* of crime, and the grave breaches the *mens rea* of the crime. The sum of both would be regarded as the most serious international crimes under the International Criminal Court, even in non-international armed conflict. In fact, the meaning of war crime is broadly detailed under the Rome Statute of ICC. Indeed, the meaning of war crime is⁵ broadly detailed under the ICC. In other words, it is observed differently in international armed conflict on the first hand, and in non-international armed conflict

¹ See Convention on the Prevention and Punishment of the Crime of Genocide, adopted by U.N. General assembly (1948).

² See, Convention on the Prevention and Punishment of the Crime of Genocide, *supra* note 6. Art. 2.

³ *Id.* Art. 3.

⁴ ICCSt. Art. 6.

⁵ ICCSt. Art. 8.

on the second hand. It is considered firstly as a grave breach of the four Geneva Conventions:

- (i) *Wilful killing;*
- (ii) *Torture or inhuman treatment, including biological experiments;*
- (iii) *Wilfully causing great suffering, or serious injury to body or health;*
- (iv) *Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;*
- (v) *Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;*
- (vi) *Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;*
- (vii) *Unlawful deportation or transfer or unlawful confinement;*
- (viii) *Taking of hostages.*

Furthermore, the Rome Statute describes twenty-six war crimes as: other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

- (i) *Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;*
- (ii) *Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;*
- (iii) *Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peace-keeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;*
- (iv) *Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;*
- (v) *Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;*
- (vi) *Killing or wounding a combatant who, having laid down his arms or having no longer means of defense, has surrendered at discretion;*
- (vii) *Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;*

(viii) *The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;*

(ix) *Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;*

(x) *Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;*

(xi) *Killing or wounding treacherously individuals belonging to the hostile nation or army;*

(xii) *Declaring that no quarter will be given;*

(xiii) *Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;*

(xiv) *Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;*

(xv) *Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;*

(xvi) *Pillaging a town or place, even when taken by assault;*

(xvii) *Employing poison or poisoned weapons;*

(xviii) *Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;*

(xix) *Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;*

(xx) *Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;*

(xxi) *Committing outrages upon personal dignity, in particular humiliating and degrading treatment;*

(xxii) *Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;*

(xxiii) *Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;*

(xxiv) *Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;*

(xxv) *Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including Wilfully impeding relief supplies as provided for under the Geneva Conventions;*

(xxvi) *Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.*

In the case of an armed conflict without international character, serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(i) *Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;*

(ii) *Committing outrages upon personal dignity, in particular humiliating and degrading treatment;*

(iii) *Taking of hostages;*

(iv) *The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.*

Additionally, of war crimes listed in Article 8(2)(b) and 8(2)(c) which is applied to non-international armed conflicts and “thus, does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature”, the Rome Statute provided in Article 8(2) (e) an approximately identical list of other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts¹:

(i) *Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;*

(ii) *Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;*

(iii) *Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peace-keeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;*

(iv) *Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;*

(v) *Pillaging a town or place, even when taken by assault;*

(vi) *Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;*

(vii) *Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;*

(viii) *Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;*

(ix) *Killing or wounding treacherously a combatant adversary;*

(x) *Declaring that no quarter will be given;*

(xi) *Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;*

(xii) *Destroying or seizing the property of an adversary.*

thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups).

¹ ICCSt. Art. 8(e)(2). (This paragraph applies to armed conflicts not of an international character and

In conclusion, war crimes, in international armed conflicts as well as in non-international armed conflicts, are perceived essentially under two angles: protection of persons and objects and conduct relating to breaches of important values (such as desecration of the dead, humiliating treatment, or recruitment of child soldiers). Indeed, crimes against protected persons constitute grave breaches under the four Geneva Conventions. In other words, the four Geneva Conventions lay down the notion of grave breaches only in protected person's international armed conflict; respectively, in Articles 50¹, 51², 130³ and 147⁴. It is, additionally, noticed that grave breaches provisions in Additional Protocol I in-

cludes additional grave breaches regarding the treatment of persons⁵. Thus, the meaning of serious crimes is the crimes not mentioned in the provisions above such as the crimes directed against circumstantial victims; for instance, the enlistment and use of child soldiers in hostilities. Thus, "[t]o charge a perpetrator with a war crime, the chapeau elements must be satisfied – i.e. that the conduct took place in the context of and was associated with an armed conflict, and the perpetrator was aware of the existence of an armed conflict".

Crimes Against Humanity

Crimes against humanity are also crimes related to international concerns. Prior to the existence of the ICC, crimes against humanity seem to be confused with war crimes. Indeed, as noted by General Telford Taylor (1949) in his final report No. 10 64-65 *to the secretary of the army on the Nuremberg war crimes trials under control council law*: "These crimes cover the vast and terrible world of the Nuremberg laws, yellow armbands, "Aryanization", concentration camps, medical experiments, extermination squads, and so on..." Actually, "when committed in the course of belligerent occupation" (whether in the occupied country or elsewhere), these were also "war crimes". But the concept of crimes against humanity comprises atrocities that are part of a campaign of discrimination or persecution, and which are crimes against international law even when committed by nationals of one country against their fellow nationals or against those of other nations irrespective of belligerent status. However, highlights that act of crimes against humanity are technically different from war crimes. This has been acknowledged under the Rome Statute. Specifically, "[f]or the purpose of this Statute, "crime against humanity"⁶ means any of the following acts when committed as part of a widespread or systematic attack directed against **any civilian population**, with knowledge of the attack":

- (a) *"Murder;*
- (b) *Extermination;*
- (c) *Enslavement;*
- (d) *Deportation or forcible transfer of population;*
- (e) *Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;*
- (f) *Torture;*

¹ GC-I, Art. 50 ("Grave breaches meaning ... shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly").

² GC-II, Art. 51 ("Grave breaches ... shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly").

³ GC-III Art. 130 ("Grave breaches ... shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention").

⁴ GC-IV, Art. 147 ("Grave breaches ... shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly").

⁵ See Article 11 of Additional Protocol I includes "additional grave breaches regarding treatment of persons".

⁶ ICCSt. Art. 7.

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health”.

For the purpose of paragraph 1:

(a) “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) “Extermination” includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) “Torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) “Forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(g) “Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) “The crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and

domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.

Accordingly, the fundamental elements required in light of this definition for identifying a crime against humanity are based on the requirements of “an attack” which must be “widespread or systematic”; and then “must be directed against any civilian population”. Apart from those, the acts of the accused must be part of the attack; and then he or she had to be aware of the commission of a “widespread or systematic attack”. That said, when an attack is widespread or systematic and is only directed against any civilian population, it then is examined under crimes against humanity.

3. What would be the alleged international crimes committed in Bucha?

Bucha was seized early in the invasion of Ukraine, which was ordered by President Putin on February 24, 2022. Russian atrocities in Bucha are violations of international humanitarian law. Summary executions, other unlawful killings, enforced disappearances, and torture said Human Rights Watch¹. Additionally, Amnesty International declared that “there are civilians in Ukraine killed by indiscriminate attacks in Kharkiv ... an airstrike that killed civilians queueing for food in Chernihiv, and gathered evidence from civilians living under siege in Kharkiv, Iziium and Mariupol”². Further, most of the crimes committed in Bucha could also potentially amount to crimes against humanity, which is a widespread or systematic attack on the civilian population and could be part of a government policy.

CONCLUSION. In addition to the potential crime of aggression committed against Ukraine, the atrocity crimes observed in Bucha could not be classified as genocide. Because it would be very difficult to prove it because of its psychological element or double character of intent. However, there are alleged war crimes and Putin could be prosecuted under the chain of responsibility of commander or superior on the ground that he failed to take all necessary and reasonable measures within his power to prevent or repress the commission of those crimes. Further, these crimes committed in Ukraine could also potentially

¹ End Cluster Munition Attacks in Ukraine // Human Rights Watch. 11.05.2022. URL: <https://www.hrw.org/news/2022/05/11/end-cluster-munition-attacks-ukraine> (Accessed 20.05.2022).

² Ukraine: a devastating human rights crisis // Amnesty International. URL: <https://www.amnesty.org/en/latest/news/2022/03/latest-news-on-russias-war-on-ukraine/> (Accessed 20.05.2022).

amount to crimes against humanity, which is a widespread or systematic attack on the civilian population. Hence, there is necessity to enforce the genocide convention in order to hold accountable the responsible of these atrocity crimes. Why not review and adopt the proposal

convention on the prevention and the punishment of the crime of “groupicide?” As mentioned Tchobo, D.L.R. (2021) in that proposal convention the term “group” would be intrinsically in perfect adequation with the nature of those atrocities. This would grant a full protection to the victims.

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ДЕНАКПОН ЛЮК РОДРИГ ЧОБО,

доктор юридических наук,
Школа права Университета Кейс Вестерн Резерв (США),
адъюнкт-профессор права,
отдел судебного рассмотрения МУС;
e-mail: dlt50@case.edu

ПОТЕНЦИАЛЬНЫЕ МЕЖДУНАРОДНЫЕ ПРЕСТУПЛЕНИЯ В УКРАИНЕ: НУЖНО ЛИ КВАЛИФИЦИРОВАТЬ ЗВЕРСТВА В БУЧЕ КАК ГЕНОЦИД, ВОЕННЫЕ ПРЕСТУПЛЕНИЯ ИЛИ ПРЕСТУПЛЕНИЯ ПРОТИВ ЧЕЛОВЕЧЕСТВА?

Дилемма между корнем слова «геноцид» и его юридическим значением влияет на систему международного уголовного правосудия. Доказательством может быть то, что президент Украины Владимир Зеленский и президент США Джо Байден назвали жестокие преступления, которые наблюдаются в Украине, геноцидом. Целью этого исследования является выяснить, можно ли квалифицировать недавно произошедшие в Буче зверства как преступление геноцида. Проанализированы значения терминов, входящих в понятие «геноцид», в контексте сущности этих жестоких преступлений. Выявлено, что этимологически существует разрыв между правовым значением геноцида и природой преступления, о котором идет речь, что защищает виновных от безнаказанности. Таким образом, сделана попытка продемонстрировать, что вероятные жестокие преступления, которые наблюдались в Буче, нельзя было квалифицировать как геноцид, а затем облачать потенциальные международные преступления, совершенные в Украине.

Ключевые слова: вторжение России, Буча, Украина, геноцид, международное уголовное право.

ДЕНАКПОН ЛЮК РОДРІГ ЧОБО,

доктор юридичних наук,
Школа права Університету Кейс Вестерн Резерв (США),
ад'юнкт-професор права,
відділ судового розгляду МКС;
e-mail: dlt50@case.edu

**ПОТЕНЦІЙНІ МІЖНАРОДНІ ЗЛОЧИНИ В УКРАЇНІ:
ЧИ ПОТРІБНО КВАЛІФІКУВАТИ ЗВІРСТВА В БУЧІ ЯК ГЕНОЦИД,
ВІЙСЬКОВІ ЗЛОЧИНИ АБО ЗЛОЧИНИ ПРОТИ ЛЮДСТВА?**

Дилема між коренем слова «геноцид» і його юридичним значенням впливає на систему міжнародного кримінального правосуддя. Доказом є те, що президент України Володимир Зеленський і президент США Джо Байден назвали жорстокі злочини, які спостерігаються в Україні, геноцидом. Метою цього дослідження є з'ясувати, чи можна кваліфікувати звірства, які нещодавно сталися в Бучі, як злочин геноциду. Визначено суттєві прогалини в Конвенції про запобігання злочину геноциду та покарання за нього шляхом порівняльного аналізу звірств Росії в Україні та значення геноциду. Головна мета – повідомити міжнародне співтовариство про те, що рішення притягнути до відповідальності винних під ярликом «геноциду» було б монументальною помилкою, яка може поставити під загрозу права жертв і міжнародну систему кримінального правосуддя.

Проаналізовано значення термінів, що входять до поняття «геноцид», у контексті сутності цих жорстоких злочинів. Таким чином, аналіз здійснено відповідно до положень Конвенції про запобігання злочину геноциду і покарання за нього, Римського статуту Міжнародного кримінального суду та доктринального підходу, який має тенденцію суттєво підтримувати об'єктивні погляди. Виявлено, що етимологічно існує розрив між правовим значенням геноциду та природою злочину, про який ідеться, що захищає винних від безкарності. Таким чином, зроблено спробу продемонструвати, що звірячі злочини, які спостерігалися в Бучі, не можна кваліфікувати як геноцид. Винні можуть бути притягнуті до відповідальності за ймовірні воєнні злочини та, можливо, злочини проти людства.

Ключові слова: вторгнення Росії, Україна, Буча, геноцид, міжнародне кримінальне право.

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