

## UPDATE OF THE LEGAL STATUS OF CAPTIVE SERVICEMEN OF THE ARMED FORCES OF THE RUSSIAN FEDERATION

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### Summary

The scientific article is devoted to the analysis of the criminal-executive and international humanitarian-legal nature of the special legal status of prisoners of war originating from a country with the status of a state-sponsor of terrorism, the ruling elite of which is granted the status of a terrorist in the international order, conducted on the basis of a scientific understanding of the conventional legal framework.

Theoretical constructions and proposals for the potential future adoption of norms of international law regarding the difference in the legal status of prisoners of war countries, whose ruling regime is recognized as terrorist, and which themselves are state-sponsors of terrorism, are formulated.

It is noted that the current international norms apply a universal approach to determining the legal status of prisoners of war, and without reference to individual possible legal statuses of states. Therefore, the current norms establish the same legal status for prisoners of war, including those of the state whose ruling regime is recognized as terrorist, and the country itself is a state sponsor of terrorism. It is emphasized that international humanitarian law is actually endowed with a compromise character between the principles of humanity and military necessity.

It is substantiated that prisoners of war – representatives of the armed forces and other armed formations of the Russian Federation, as countries with the status of state-sponsors of terrorism, whose ruling regime is internationally recognized as terrorist, should receive a specific legal status aimed at deterring the continuation or escalation on the part of the terrorist country. The conditions and limitations of the legal status of this category of prisoners of war have been formulated, which should form a special legal status of prisoners of war.

Based on the scientific systematization of the facts, it is noted that the UN is obviously experiencing a multi-year and systemic crisis, turning into a stage for verbal demarches. It is noted that in such a discredited status, the UN is unable to update the international humanitarian legal framework and is subject to critical reform.

**Key words:** war crimes in Ukraine, special legal status of prisoners of war, treatment of prisoners of war in places of detention, reforming the UN.

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## 1. Introduction

The world history of wars led to the emergence of a number of specialized international contractual acts. At the same time, the years after the First and Second World Wars were especially stormy periods of consolidation at the international level of the rules of warfare, the rules of treatment of prisoners of war, etc. At that time, an understanding was reached at the international level of the need to do everything possible to prevent wars in the future, which, however, seems to be a somewhat utopian idea today. Among other things, international organizations – first the League of Nations, then the United Nations (hereinafter referred to as the UN) – became tools for preventing wars at that time. The aforementioned international contractual acts were adopted at the level of such organizations. These include, in particular: Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention (*Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention, 1907*); Convention respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (*Convention respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, 1907*); Convention respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (*Convention respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, 1907*); Convention relating to certain Restrictions with regard to the Exercise of the Right of Capture in Naval War (*Convention relating to certain Restrictions with regard to the Exercise of the Right of Capture in Naval War, 1907*); Convention concerning the Rights and Duties of Neutral Powers in Naval War (*Convention concerning the Rights and Duties of Neutral Powers in Naval War, 1907*); Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (*Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949*); Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (*Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949*); Geneva Convention relative to the Treatment of Prisoners of War (*Geneva Convention relative to the Treatment of Prisoners of War, 1949*); Geneva Convention relative to the Protection of Civilian Persons in Time of War (*Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949*); Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) (*Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1949*); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (*Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1949*).

However, today we are able to realize that the modern war, an example of which is the Ukrainian-Russian war, is a completely different type of war, which, quite possibly, does not fall under the previously proposed and formalized model of war. At least, it seems that before, mankind did not encounter the practice of formalizing wars, in which the ruling regime of one of the parties to the conflict was recognized as terrorist unilaterally by individual countries, or even internationally, and such a belligerent country itself was declared a state sponsor of terrorism. This problem, at least for Ukrainian legal science, is new and previously not considered, which determines the novelty of this study.

Therefore, the **purpose** of this study is to investigate individual issues of the inconsistency of modern international humanitarian legal regulation in terms of the theoretical differences between the status of a prisoner of war of the armed forces of a conventional "conventional" state and the status of a prisoner of war of the armed forces of a state whose ruling regime is recognized as terrorist.

At the same time, in order to achieve the goal of the research, we set a number of accompanying **tasks**, namely:

1. Justification of the fact that the existing international humanitarian legal framework (with the exception of the parts related to the goals and principles of regulation in this field) is gradually losing its relevance and needs immediate updating in accordance with modern requirements.

2. Formulation of a theoretical construction and putting it forward as a proposal for the potential future adoption of norms of international law regarding the difference between the legal status of prisoner-of-war countries, whose ruling regime is recognized as terrorist, and they themselves are state-sponsors of terrorism, from the legal status of prisoner-of-war countries that have not acquired such status.

3. Scientific systematization of the evidence that the UN actually lost the status of a universal international organization capable of guaranteeing peace to humanity, and therefore should be eliminated or significantly reformed (using the example of the Ukrainian-russian war).

**Methodology.** We used a number of scientific methods during the implementation.

General scientific methods of analysis and synthesis were applied when studying the norms of the international contractual acts considered in the research materials. The general scientific method of deduction was used when formulating a conclusion about the relevance and applicability of the norms of international humanitarian treaty law in the conditions of modern warfare, in particular, in the context of today's Ukrainian-russian war.

The method of collecting empirical data (statistical method) was used during the collection of all publicly available materials on issues of interest to this scientific study. The historical method was used in the study of the history of the UN in relation to its influence on countries with the status of state sponsors of terrorism. The modeling method was used in the formation of an argument regarding the unfairness of applying a general approach to granting the status of prisoners of war to representatives of the armed forces and other armed formations specifically of the Russian Federation as a country with the status of a state sponsor of terrorism, the ruling elite of which is granted the status of a terrorist in the international order, as well as all states in general with a similar status. The methods of forecasting and extrapolation were used in the course of providing proposals for establishing additional options for the legal status of the proposed theoretical model of prisoners of war – representatives of the armed forces and other armed formations of countries with the status of state sponsors of terrorism, the ruling elite of which is granted the status of a terrorist in the international order.

## 2. Modern legal status of prisoners of war

To determine the main provisions in this matter, we must refer to two relevant international treaty acts in the field of international humanitarian law – the Geneva Convention relative to the Treatment of Prisoners of War and the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Yes, in the sense of clause A of Art. 4 of the Geneva Convention on the Treatment of Prisoners of War, prisoners of war are several categories of persons, namely:

- «personnel of the armed forces of the parties to the conflict, as well as members of the militia or volunteer units that are part of these armed forces;
- members of other militias and volunteer units, in particular members of organized resistance movements, who belong to one of the parties to the conflict and operate in their territory or outside its borders, even if this territory is occupied, provided that these militias or volunteer units, in particular organized resistance movements, meet the following conditions:
  - a) they are commanded by a person who is responsible for his subordinates;
  - b) they have a permanent distinctive mark, well recognized from a distance;
  - c) they carry their weapons openly;
  - d) they conduct their operations in accordance with the laws and customs of war;
- members of the regular armed forces who declare their allegiance to a government or authority not recognized by the detaining power;
- persons who accompany the armed forces but are not actually part of them, such as civilians from the crews of military aircraft, military correspondents, suppliers, personnel of the work units or domestic services of the armed forces, provided that they have received the permission to do so from those armed forces of the forces they accompany, for which the latter issue them identity cards...;
- members of the crews of vessels of the merchant fleet, in particular captains, pilots and mates, as well as the crews of civil aircraft of the parties to the conflict, who do not enjoy more favorable treatment under any other provisions of international law" (*Geneva Convention relative to the Treatment of Prisoners of War, 1949*). A similar definition of prisoners of war is given in the provision of Art. 13 of the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (*Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949*).

Accordingly, the above regulations apply a universal approach to the definition of prisoners of war. However, there are no mentions of individual possible legal statuses of states represented by certain armed forces. That is, the above norms establish the same legal status for prisoners of war, including those of a state whose ruling regime is recognized as terrorist, and the country itself is a state-sponsor of terrorism; if such legal statuses exist for the country and its ruling regime, we assume that, with high probability, representatives of its armed forces committed one or more war crimes before being captured (at least from among those criminal offenses which, at least, are equally recognized by the national criminal legislation of the parties to the military conflict, for example: marauding, genocide, ecocide, mercenary, etc.). Hence, we believe that such a normative situation of the modern legal framework of international humanitarian law is, at least, unsatisfactory.

### **3. A proposal to change approaches to determining the legal status of russian prisoners of war**

The nature of today's Ukrainian-russian war, as well as the methods of its conduct, led to the recognition of the russian federation as a state sponsor of terrorism, and its current ruling regime as a terrorist by: Lithuania (10.05.2022 p.), Latvia (11.08.2022 p.), Parliamentary Assembly of the Council of Europe (13.10.2022 p.), Estonia (18.10.2022 p.), Poland (26.10.2022 p. – Senate of Poland, 14.12.2022 p. – Sejm of Poland), Czech Republic (15.11.2022 p.), NATO Parliamentary Assembly (21.11.2022 p.), the European Parliament (23.11.2022 p.), Netherlands (24.11.2022 p.), Slovakia (16.02.2023 p.); in addition, a number of countries have taken the first steps towards granting the russian federation the specified status (for example, 23.06.2022 p. – corresponding resolution from the US Senate Committee on International Relations).

In a previous study, we raised the question of the legal status of the PWC "Wagner" and the issue of the specifics of keeping the militants of the specified PWC as prisoners of war in Ukraine (Pyvovarov, Sirets, 2023). In this study, we outline the following scientific hypothesis: are servicemen of the armed forces of the Russian Federation, captured by the Defense Forces of Ukraine, subject to the acquisition of the status of prisoners of war on general principles (taking into account, including, the recognition by a number of countries and international organizations of the Russian Federation (and/ or its regime) by terrorists and/or sponsors of terrorism)? Or, on the contrary, in connection with the acquisition of the above-mentioned status by their country, should such prisoners of war be subject to a different, different from the general, procedure as prisoners?

First of all, it is necessary to find out what are the generally negative consequences for the state, which is endowed with the specified terrorist status. The Ukrainian Helsinki Union for Human Rights provides the following list of such consequences: (1) introduction of a ban on entering this state: (a) weapons; (b) dual purpose products; (2) introduction of financial and fiscal sanctions; (3) introduction of control over financial transactions carried out by such a state; (4) conducting an investigation into the facts of the commission of terrorist acts by representatives of such a state; (5) loss of diplomatic and functional immunities by representatives of the highest authorities of such a state ("*Status "derzhavy-terorysta": shcho za nym sliduie*", 2022). It seems quite logical that the negative consequences according to this list concern mainly the state itself (in the context of its capacity for certain actions) and its political leadership. However, using the example of today's war, we must note that primary war crimes are often committed by combatants – servicemen of the armed forces of the Russian Federation, and it is from this that we must state that the problem of negative consequences for a state with such a status in the modern understanding of both criminal and executive, and international humanitarian law.

We emphasize once again the recognized fact that the issue of the legal status of prisoners of war concerns both criminal law and international humanitarian law. As for the second branch of law, it is well known that international humanitarian law is actually endowed with a compromise character between the principles of humanity and military necessity, where: (1) the principle of military necessity indicates the need to limit the use of force to achieve the so-called legitimate goal of an armed conflict, i.e., the suppression of armed forces opponent; (2) the principle of humanity indicates the prohibition of causing damage, suffering, harm, if it is not necessary to achieve the legitimate goal of an armed conflict. "Unrestricted war is arbitrariness, and IHL (international humanitarian law – *authors' note*) limits this arbitrariness in favor of humanity" (Hnatovskyi et al., 2017). Based on the above-mentioned principles, the international community introduced the rules for capturing combatants recognized at the international treaty level.

However, returning to the realities of today, the following sequence seems quite controversial: (1) a serviceman of the armed forces of the Russian Federation as a state sponsor of terrorism as part of his unit performs the tasks set by the political leadership of the state sponsor of terrorism, often resorting to excesses – bombing civilian infrastructure, looting, abuse of the civilian population, physical liquidation of Ukrainian prisoners of war, etc.; (2) the specified serviceman is captured by the Defense Forces of Ukraine; (3-1) in the absence of an excess, the specified serviceman is in captivity until the moment of the exchange of prisoners of war / (3-2) in the case of an excess, the specified serviceman has certain chances to avoid responsibility due to the difficulty of collecting proper, permissible, reliable information during active hostilities and in the totality of sufficient evidence of his commission of certain crimes; (4) after the exchange of prisoners, the specified serviceman returns to the Russian Federation, where he is highly likely to return to the ranks of the armed forces and continue to fulfill the tasks set by the

political leadership of the state sponsor of terrorism. Therefore, we come to the conclusion that there is an obvious need to distinguish the specific legal status of a prisoner of war state-sponsor of terrorism, whose ruling regime is recognized as terrorist. Even more, any possible reference to such a phenomenon as "combatant immunity" can in no way affect either the status of a country recognized as a state sponsor of terrorism, or, even more so, the status of a prisoner of war who acted on behalf of such a state (*Orlovska & Dermenzhy, 2023*); this thesis reconfirms the above-mentioned need to distinguish the specific legal status of a state sponsor of terrorism, whose ruling regime is recognized as terrorist.

#### **4. There is an urgent need to significantly reform or liquidate the UN**

The UN as a global international organization, one of the stated goals of which is to ensure and guarantee global peace and security, has existed since 1945. Accordingly, the currently existing international humanitarian legal contractual framework was formed and legalized on the UN platform. At the same time, the contractual basis was constantly supplemented.

At the same time, in the period from 1945 to 2023, many armed conflicts or even full-scale wars took place in the world, parallel to the most global – the Cold War between the United States of America (hereinafter – the USA) and its allies, on the one hand, and the Soviet Union (hereinafter referred to as the USSR) and its allies, on the other hand.

Also, during the existence of the UN, a number of countries have already been granted the status of state sponsors of terrorism at the international level: these are Syria (1979), Cuba (1982, again after exclusion in 2021), Iran (1984), Korea People's Democratic Republic (hereinafter referred to as the DPRK) (1988, repeated after exclusion – 2017); a number of countries acquired and later lost this status – Iraq (2004), Libya (2006), South Yemen (1990, after unification with Yemen). The Russian Federation, on the other hand, joined the circle of state sponsors of terrorism in 2022, after the start of its full-scale invasion of Ukraine, as well as as a result of its repeated methods of warfare.

We made an attempt to find open data on the capture during various types of hostilities of persons belonging to the personnel of the armed forces of states that have been granted the status of a sponsor of terrorism, in order to identify the presence or absence of the practice of differential treatment of prisoners of such states. In particular, we took Syria and Iran as the basis of our methodological approach, since they took an active part in hostilities after they were recognized as states sponsoring terrorism. However, we have not received any convincing and verified data both regarding the general population of prisoners of war and regarding our special question.

From here, we can draw an intermediate conclusion regarding the fact that, even despite the already exceptional legal precedent – the presence on the world geopolitical map of the so-called state-sponsors of terrorism, to representatives of their armed forces, as well as other armed formations that perform tasks recognized in international order by the terrorist ruling elite, while often resorting to additional (as an excess) criminal methods of their implementation, the UN has not formulated even a theoretical concept of a separate status of a prisoner of war state sponsor of terrorism.

In the context of today's Ukrainian-Russian war, it seems obvious that the UN is going through a multi-year and systemic crisis, turning into a stage for outrageous speeches and demarches, senseless and anarchic procedural decisions (for the last example, from April 1, 2023, Russian Federation became the presiding country in the UN Security Council a federation is a country with the status of a state sponsor of terrorism). UN documents are not perceived

as legitimate and are widely ignored. In such a discredited face, the UN is obviously unable to update the international humanitarian legal framework, including both due to the loss of authority and due to specific and outdated mechanisms and regulations of its functioning.

## 5. Conclusions

In order of general conclusions on the research, we consider it necessary to note the following:

1. On the example of international treaties related to the issue of the legal status of prisoners of war in the field of international humanitarian law – the Geneva Convention relative to the Treatment of Prisoners of War and the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field – it was established that the definition of the term "prisoner of war" is too universal. It does not take into account the peculiarities of waging war in modern geopolitical conditions, in particular, those important new geopolitical conditions and legal realities, when one of the parties to an armed conflict is a country with the status of a state sponsor of terrorism, and the ruling regime of the country is internationally recognized as terrorist.

2. Prisoners of war – representatives of the armed forces and other armed formations of the Russian Federation, as countries with the status of a state sponsor of terrorism, whose ruling regime is internationally recognized as terrorist, should receive a specific legal status aimed at deterring the continuation or escalation by the terrorist country. Therefore, we propose the following conditions and limitations of the legal status of this category of prisoners of war, which, in our opinion, should form a special legal status of prisoners of war not only for prisoners of war originating from the Russian Federation, but also, of course, for all states that sponsor terrorism:

– prisoners of war of the armed forces and other armed formations of a state sponsoring terrorism, whose ruling regime is internationally recognized as terrorist, do not have the right to be exchanged in the course of hostilities between states, one of the parties of which is such a state with the status of terrorist sponsor, they must be kept on the territory of the state that took them prisoner until the formalization of the end of hostilities. After all, there are real threats and examples of the fact that after the return of such a former prisoner of war to his country, he will be returned to the ranks of the armed forces or other armed formations, in which such a person will continue to carry out the orders of the internationally recognized terrorist ruling elite;

– in relation to each individual prisoner of war of the armed forces and other armed formations of the state sponsoring terrorism, whose ruling regime is internationally recognized as terrorist, upon the fact of capture, criminal proceedings must be opened immediately, and a set of necessary and sufficient operational-search and other measures must be carried out in order to establishing the involvement of this person in the commission of specific military and other criminal offenses both in the context of the execution of the orders of the internationally recognized terrorist ruling regime and as an excess of the executor;

– deliberate deterioration of the conditions of detention of such a category of prisoners of war in places of detention, introduction of discriminatory measures, restriction or termination of the basic universal human rights of such persons during detention in places of detention is not necessary.

3. We consider the above systematized facts of inaction and dysfunction of the UN to be convincing, both in the general institutional issues of responding to modern wars of the XX–XXI centuries, and in the local issue of distinguishing a special (different from the general)

legal status of prisoners of war originating from countries endowed with the status of state sponsors of terrorism, whose ruling regime was internationally recognized as terrorist. Starting with the first precedent in 1979 – the recognition of Syria as a state sponsor of terrorism, the UN did not take appropriate steps in the matter of logical legalization of new international legal realities. The self-discrediting and incompetence of the UN is especially contrasted today against the background of the Ukrainian-Russian war, where one of the parties, the Russian Federation, was granted the status of a state sponsor of terrorism in 2022, and its ruling regime was internationally recognized as terrorist; despite this, the Russian Federation presides over the UN Security Council, starting from April 1, 2023, since, it turns out, it is procedurally possible.

Citing an appropriate allegory, we must admit: with the joint efforts of the international scientific community, democratic institutions of the world, interstate political and economic associations, it is necessary to decide where exactly to put a comma in the sentence – “OOH ліквідувати не можна реформувати” (the exact translation of this sentence into English is impossible; in English it sounds approximately like – “The UN should be or reformed, of liquidated”). It is no longer possible to leave the UN in its current format.

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