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## CHARACTERISTICS OF CRIMES COMMITTED DURING MILITARY CONFLICTS INCLUDING THE TRAFFICKING OF HUMAN ORGANS

*In many European countries, including Ukraine, the human-being, its life and health, honor and dignity, immunity and safety are the highest social values. Unfortunately, at present day, their provisions are only declarative. In reality the rate of cruelty, violence, aggression, terror, aggravated crimes, including murders, trafficking in human-beings, trafficking in human organs and tissues is continuing to grow.*

**Keywords:** trade in human organs; military conflicts; organized crime; corruption; transplant tourism; donor; recipient; rule of law; police and military power; medical personnel; victims of crime; preventive measures.

The analysis of the recent researches' works. Among Ukrainian and foreign scientists there several who have made a serious contribution into the research of military conflicts crimes and trafficking in human organs problem: Richard Monk, Silke Meyer, S. Grynchak, A. Vilks, O. Kustova, A. Musienko, V. Ovchynskiy N. Pavlova, O. Sapronov, G. Chebotariova, T. Fabryka, O. Yakymenko.

The aim of the publication is to interpret the experts' points of view and main provisions of the international law in the sphere of combating regular crimes and trafficking in human organs during the military conflicts and post-conflict conditions.

The main results of the research.

Types and modes of crime are as variable as human behavior in our complex and constantly changing society. People capable of committing crimes within the range of their opportunities and among those find their own way to make them.

The crimes of poor and powerless people mostly enrage and frighten the affluent, comfortable and advantaged majority. Riots, muggings, robberies and rapes are loathsome not only because they are inherently irrational and inhumane but also due to the fact that they and their causes are alien to the experience of people with power. If opportunities which are open to the poor offer more rational and humane avenues to the sequences which can be achieved by the crime commission, their meaning could be utilized. There are the inhumane and irrational conditions of the poor that finally causes some of them to commit such crimes.

A very few people think analytically when they consider the problem of crime. It is an emotional subject. At first, we mind some crimes that we have experienced. Then we think of crimes we perceive with the greatest horror – those which we fear the most. As a result we ignore many types of crime. We are aware of the crimes decried in the headlines but remain unaware of most other crimes. Comparatively rare occurrences in the world of crime become so notorious that they form our basic impression, even knowledge of crime. But to conceive of crime as only an inhuman murder or rape or a robbery is like viewing measles as a mere skin blemish. The real danger is beneath the surface. Crime is the mutation of basic human qualities that may be transmitted to the next generation. The simplistic diagnosis of crime leads to the wrong prescription: all that is necessary is to control a few individuals. But crimes are interrelated.

All war conflicts are characterized by crimes. They also include the degree of the gravity which it is still not sufficiently understood. The conditions of famine, overpopulation, economic decline, tribalism, drugs, religious intolerance alert us to the conditions which lend themselves to criminal exploitation and what it may follow.

The international organizations have by far the great experience of policing world disorder but we have to understand that it's a sufficient failure to address the link between a crime and a conflict. It lies not at the door of the international organizations and the degree

of their participation depends on the Member States and their political will to participate in these operations.

However, we want to offer and establish the Rule of Law to be the basis for the way we create the prevention of conflict or post-conflict re-building. Are we seriously suggesting that the Rule of Law to be the absolute basis for every other form of development we seek to achieve? Well, yes, because any meaningful social, political and economic development is impossible without it and because how many political springs may follow repressive winters, an increase of personal freedom has to be balanced by order and stability. And the benefit is that the manner by which the Rule of Law is administered is a crucial element in building mutual respect and tolerance within and between societies [1].

There are a lot of crimes that join mutual interests of rich and poor people in any place and any time. One of them is a trafficking in human organs.

What is trafficking in human organs really? Generally, the forms, this phenomenon actually take, are very different. In most cases this activity include victims as well as organized criminals that get together due to certain socio-economic circumstances as well as fateful decisions to improve their living conditions. But, in the case of war conflicts we are talking about crime rings snatching living (healthy, injured, wounded) people without their consent to take out any kind of a transplantable organ which could be available for selling at the black markets because this business is mainly based on living donation.

This article focuses on the phenomenon of trafficking human organs which exists on the territories of military conflicts and on the extent it can be considered an organized crime. It is an attempt to identify people involved in this business as well as circumstances smoothing the way for the organs trade. The main difficulty is that the law enforcement faces the great problems with the accessibility and reliability of the data. At last regulations, legislations and operative measures to prevent or combat the trafficking in human organs must be elaborated [2].

We know that the organized crime is commanded by incalculable wealth, sufficient to threaten and in some cases overwhelm some countries' economies.

We also know that criminals try to turn the process of crime commission, including trafficking in human organs into legitimate business and it becomes difficult to prosecute them and far too much it's difficult to follow the money which appears at their foreign bank accounts. Wars create economic opportunities for a minority of players even if they destroy the majority for achieving of their goals. While some scientists defined organized crime as the form of crime which involves the economic motives, other tried to define it in accordance with the structure of the criminal group or in correlation with certain period of time during which criminals have to operate within that group. In addition the use of violence and/or corruption to advance the illegal business it still included. The difference between a traditional form of trafficking in illicit goods, e.g., drugs, and trafficking in organs can be seen in the fact that, while trafficking in drugs, for example, includes harmful consequences for those receiving and consuming them, this is usually not the case for recipients of illicitly donated organs, because it rather helpful than harmful for the recipients. And in this case it is very difficult for the police to find an informant from the recipient's circle [3].

The organs are supposedly transplanted in hospitals, usually by internal medical staff, where medical records are not being checked on by the government and often take place at night – aside with the illicit daily business of the hospitals.

It also requires intermediaries or brokers who are searching for donors and well-paying recipients, in many cases via the internet. In addition, the «exchange» of the illicit goods cannot take place anywhere, as it is possible in other forms of trafficking, because it requires a setting which provides the entire necessary medical instruments, e.g. an operating premise. The corruption is also included in order to facilitate the trade and the transport of organs or human beings.

When it comes to trafficking in organs any official or reliable data is hardly exists. Adequate proof of the crimes' commission can be either given by the victims or by criminals themselves. In comparison to information, provided by bystanders and victim-witnesses, information provided by the real offenders, who are involved in planning and organizing the business is much richer.

There are three ways of getting information from an offender – surveillance, covert investigation or offenders as informants.

Experts became familiar with so-called organ tourism or transplantation tourism, which includes wealthy people traveling to some places to purchase organs from donors living in poor conditions especially at the time of military conflicts.

Trafficking in organs requires different kinds of professionals in order to carry out the whole operation – from the location of potential donors to the successful transplantation of organs into a new human system. Therefore, different kinds of actors are involved. In some cases, depending on the locations of the donors and the places where the transplantation will take place, people arranging and carrying out transportation to and from the hospital may be needed as well. Recipients usually travel to the places of destination themselves. At the hospitals highly skilled medical and nursing staff is required because transplantation of human organs cannot be performed just by anyone. Furthermore, the criminals committing these crimes are often suspected to have excellent connections with official authorities (the police or custom services), to facilitate the movement of organs or people across borders and inside the country. In addition to those involved in the practical procedure itself, there are people operating in the background. Those are usually the ones taking care of the criminal proceedings.

The fundamental requirement for successful crime control is the presence of a government that is capable of providing institutions that are strong enough to manage the effective police force. If it can't, it is profitable to behave as though it can and aim to make it so by pressing on its tangible support not just for law enforcement but for law-making, and strengthening or reforming legal, judicial bodies and penal institutions in an efficient way and in a way that responds to the notion of a more equal world [4].

The most detrimental to international deployments is the delay which attends police engagement in post-conflict situations and not at all in pre-conflict ones. The criminal records or the police communications' infrastructure cannot survive during such conflicts which massively impaired the ability to reinstate any form of effective operational policing quickly.

Giving the military men the responsibility for policing world's disorder – which many militaries don't want anyway and none are equipped to deliver – has very much to do with the status of military planning. One of the achievements is to remove the Police Adviser from the Military Adviser's line of command, because their respective roles are different.

History teaches us that the key to greater effectiveness in crime combating is public cooperation with the police.

Saying that the police must gain the support of the people doesn't mean they'll be cheered to the echo. Equally it doesn't mean that they can't use force or be forceful. The Rule of Law is provided for that. Furthermore, if security is to be transferred as quickly as possible to a civil administration, the police capability to manage public disorder, visibly using no more force than is necessary to protect other citizens or themselves, is critical. In the absence of a proficient capability to do this by the forces of the local police, the responsibility falls onto the internationals.

In some cases expectations are strong but mandates are notoriously weak and place impossible burdens on the chiefs of international law enforcements to achieve them whilst failing to provide the leverage or resources to do so.

Chiefs of law enforcements are given power to help to the local police but expected to exercise the law enforcement authority when they possess none. In several states, there was some effective intervention against criminal gangs but it happens only due to the friendship and creative interpretation of the mandate by the military commander. The fact that international police officers possess no power to arrest is frequent but it is not understood by even members of the international community and its absence despair the victims of the local criminality.

Laws are out-of-date. Courts are weak or inoperative; defense lawyers are scared; detention facilities and prison conditions are ghastly; judges are corrupted or intimidated. All these failings detract from an ability to be credible in the eyes of victims and local families.

Local police officers exist in miserable conditions and are not adequately equipped. In some countries, police officers are paid derisory

salaries and reduced to surviving on 'administrative charges' for such things as returning driving licenses to drivers at random checkpoints. It can be easily understood that they lack the motivation to face armed killers.

It is pointless to organize the study of the progressive countries' experience in combating financial and profitable crime in the impoverished countries when at home they don't have a table to sit at.

There is insufficient to control the borders. This means arms, drugs, petrol being smuggled, human being and human organs are trafficked by all means. This is quite astonishing in countries with the presence of large military units. A reduction of the military component and an increase in a professional police one would seem to be the answer.

The fact is that if we are going to reform the culture of policing there has to be a political vision and ownership from the top of the host-State administration which includes a dialogue with the population as to the civil responsibilities and their co-relative obligation to support the police [5].

In fact, positive reforms cannot possibly succeed unless they find domestic political support. Foreign support is not enough. A failure to understand this simple truth has undermined a great deal of technical assistance delivered by the rich countries to the poor states. The rule of law cannot be consolidated or institutionalized unless domestic rule-of-law creation and implementation will take place. Foreign support for legality and constitutionalism is not only a weak reed in the process of a new model's building, it can even be counterproductive when managed haphazardly by rival or ill-informed consultants.

Society cannot hope to control violent and irrational antisocial conduct while commissions of crimes by people in power remain unpunished.

And if we are talking about trafficking in human organs we have to understand that this is a catastrophe for the humanity. Today exist several types of trafficking and we can divide them into the two main directions: «trafficking in material property» and «trafficking in human lives».

Every nation which wishes to prevent this kind of crime must be aware of the whole range of such activity.

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**Ілляшенко О. В.** – аспірант кафедри кримінології та кримінально-виконавчого права Національної академії внутрішніх справ

### **Характеристика злочинів, пов'язаних із торгівлею людськими органами, учинених під час військових конфліктів**

Розглянуто особливості вчинення загальнокримінальних злочинів під час військових конфліктів. Розрито зв'язок між військовими конфліктами та можливістю вчинення дій, пов'язаних із торгівлею людськими органами. Висвітлено окремі проблемні питання щодо набуття досвіду в боротьбі зі злочинами, що вчиняються під час військових конфліктів.

**Ключові слова:** торгівля людськими органами; військові конфлікти; організована злочинність; корупція; трансплантаційний туризм; донор; реципієнт; верховенство права; поліцейські та військові повноваження; медичний персонал; жертви злочинів; превентивні заходи.



*Илляшенко А. В.* – аспірант кафедри кримінології і уголовно-исполнительного права Національної академії внутрішніх дел

**Характеристика преступлений, связанных с торговлей  
человеческими органами, совершенных во время  
военных конфликтов**

Рассмотрены особенности совершения общекриминальных преступлений во время военных конфликтов. Раскрыта связь между военными конфликтами и возможностью совершения действий, связанных с торговлей человеческими органами. Освещены некоторые проблемные вопросы относительно приобретения опыта по борьбе с преступлениями, совершаемыми во время военных конфликтов.

**Ключевые слова:** торговля человеческими органами; военные конфликты; организованная преступность; коррупция; трансплантационный туризм; донор; реципиент; верховенство права; полицейские и военные полномочия; медицинский персонал; жертвы преступлений; превентивные меры.