

Criminalising looting in wartime: International and national experiences

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■ **Abstract.** The relevance of this research topic is conditioned by the increasing number of cases of looting during armed conflicts, which requires the improvement of legal mechanisms for criminalising this act. Even though looting is recognised as a war crime at the international level, there are significant differences in approaches to its criminalisation and the determination of liability for such acts in national legal systems. This creates the risk of ambiguous interpretation of legal norms in judicial practice and complicates the administration of justice. The purpose of this study was to analyse the global and national experiences with the criminalisation of looting during armed conflicts, using the cases of Bosnia and Herzegovina, Sierra Leone, and Ukraine, as well as to formulate recommendations for improving Ukraine's national legislation in this area. The study employed the methods of comparative legal analysis, formal legal analysis, and case law analysis. The study compared the criminal law provisions and approaches of different countries to the prosecution of pillage, specifically the concepts of "military necessity" and "spoils of war". The findings of the study showed that the absence of clear legal definitions and criteria for assessing "military necessity" and "gravity of the violation" complicates prosecution for this crime and creates risks of abuse. The study revealed major differences in approaches to the criminalisation of looting, particularly in determining the scope and conditions of liability. The practical value of this study lies in its recommendations for harmonising Ukrainian legislation with international standards. It was suggested that a separate law be drafted to define the mechanisms for criminalising looting during armed conflicts, to establish clear criteria for assessing military necessity, and to unify approaches to judicial practice. This will help to increase the effectiveness of investigations and prosecutions of this type of war crime and strengthen Ukraine's legal framework in armed conflict

■ **Keywords:** justice; spoils of war; military necessity; gravity of the offence; legal regulation

■ Introduction

The relevance of the topic of looting in the context of armed conflicts is critical, as this crime violates the basic norms of international humanitarian law. War-time conflicts are accompanied by many instances of unlawful seizure of property, which poses a threat not only to the rights and freedoms of individuals, but also to the moral and ethical foundations of society. The lack of clear legal mechanisms to regulate looting and its incompatibility with the principles of

military necessity underline the need to improve the legal framework. Furthermore, the investigation of this issue will contribute to a better understanding of ways to prevent this phenomenon and to increase accountability for the crimes committed.

The protection of property rights during armed conflicts is a crucial issue that is gaining increasing significance in the modern world. However, war disrupts these rights, impoverishes people, and causes

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grave damage (Matthews *et al.*, 2020). Civilians, civilian populations, and individuals who are no longer taking part in combat are the ones who endure the greatest hardships as a result of war (John, 2024). There is a growing interest among researchers in the issue of looting during armed conflicts, which leads to the need for a comprehensive study of this phenomenon. The current state of the considered problem emphasises the relevance of research on looting. Y. Nuzban (2020) discussed the complexities of legislating for international courts, focusing on the unintended consequences of including a special intent requirement (*dolus specialis*) in the crime of looting under the Rome Statute. The cited study examined the ambiguity around the terms “military necessity” and “necessity” related to pillage and proposed conservative, radical, and pragmatic approaches to address these uncertainties.

J. Isański (2024) analyses the post-war resettlement in Central and Eastern Europe, focusing on the mass migrations and the resulting social chaos marked by lawlessness, including looting. By examining over a thousand memoirs from migrants in western Poland, the cited study explores the complex dynamics of looting during this period, contributing to a better insight into its impact on post-war society and the history of Poland. A. Wierzcholska (2022) also focused her research on looting in Poland. The researcher explores how the German occupation in Tarnów, Poland, disrupted social dynamics, particularly focusing on the rapid expropriation of Jewish property and the involvement of local non-Jewish Poles in this pillaging. The cited study revealed how pre-war ethnic tensions influenced the behaviours and attitudes of Poles during the occupation, highlighting both complicity in and resistance to the looting of Jewish-owned assets.

S. Reddy (2020) examined various acts of plunder and piracy in the 17th century Indian Ocean, focusing on their impact on Mughal imperial authority. Through case studies of pirate raids and battles, the study explores how maritime activities challenged Mughal power and contributed to the shifting dynamics of imperialism and colonialism in the region. A. Al-Ansi *et al.* (2021) provided insights into sustainable tourism and suggest mitigation strategies for looted artifacts to guide international authorities and organisations in addressing this global issue.

From the perspective of looting, combating deforestation in non-international armed conflicts is vital because illegal felling often constitutes a form of pillaging, exploiting natural resources unlawfully. P. Martini & M. Sarliève (2022) explored whether large-scale deforestation in Senegal’s Casamance region, occurring during a non-international armed conflict, can be prosecuted as war crimes under the Rome Statute’s provisions on looting and destruction

of property. The study examined the challenges of establishing a link between deforestation and the conflict and considered whether natural resources can be classified as “property” under these provisions, suggesting ways to determine ownership to meet the Rome Statute’s requirements. P. Martini (2024) explores the role of international criminal law (ICL) in environmental protection, emphasising how ICL, including the International Criminal Court (ICC), could prosecute severe violations of environmental rights. The researcher also discusses the potential for addressing looting and destruction of natural resources under ICL, while considering the limitations of ICL in tackling broader environmental impacts, such as climate change, and integrating “Indigenous peoples” Earth-centric perspectives for enhanced environmental protection.

The conducted analysis found that researchers often cover the issue of appropriation of cultural values. H. Liu (2022) investigated the impact of Japanese invasions on Chinese cultural heritage, focusing on the catastrophic loss and the complex issues surrounding the restitution of looted cultural relics. The researcher analysed two cases of recovery efforts, addressing legal challenges related to ownership rights and the legal grounds for reclaiming both state-owned and privately owned cultural relics from Japan.

P. Shydlovskiy *et al.* (2023) examined the challenges in monitoring the destruction of Ukraine’s archaeological heritage due to the Russian aggression, emphasising the difficulties posed by limited access and safety risks. The study also discussed the unlawful appropriation of property, commonly referred to as pillage or looting, and highlighted the need for a comprehensive state program to document archaeological losses and update the registration system using international standards.

Despite the extensive scope of studies on this topic, certain aspects are still underexplored, particularly considering current challenges, which is why the present study aims to address these gaps. The contribution consists of analysing the issues faced by Ukraine’s national legislation regarding the crime of looting during wartime. This includes a focus on gaps in the legal framework, particularly in the lack of standardised definitions for terms such as “gravity of violation”, “military necessity”, and “spoils of war”. Furthermore, the study was aimed to provide effective recommendations for improving Ukrainian legislation to align it with international standards, ensuring the effective investigation and prosecution of looting cases.

The purpose of this study was to fill the gaps in existing research by providing a detailed analysis of the challenges within Ukraine’s national legislation on looting during wartime and to develop recommendations for enhancing this legislation following

international standards. This aimed to ensure a consistent and effective legal response to cases of looting. The primary tasks this study paper were as follows: to examine Ukraine's national legislation and international agreements concerning looting, to differentiate between the concepts of "looting" and "spoils of war", to explore the concepts of "military necessity" and "gravity of violation".

■ Materials and Methods

This study employed a comprehensive approach, combining general scientific and specialised methods, to thoroughly analyse the concept of unlawful appropriation of property as a war crime and its legal implications in Ukraine, Bosnia and Herzegovina, Sierra Leone, and within the framework of international conventions. The study used methods of formal logic, including synthesis, analysis, deduction, and induction, to clarify the content of the issues under study and to deepen the understanding of the concept of unlawful appropriation. Through doctrinal research, the study examined the legal interpretation of such acts using various legal literature, the Criminal Codes of Bosnia and Herzegovina and Ukraine, and relevant international treaties. These methods enabled a detailed exploration of the legal frameworks and interpretations of unlawful appropriation in different jurisdictions. This study employed statistical research method to analyse and compare looting in occupied territories. This approach was used to provide a comparative characterisation of looting in different countries, including Bosnia and Herzegovina, Sierra Leone, and Ukraine. It enabled the identification of the items most commonly looted and the impact of these actions on the population during armed conflict.

A comparative research method was employed to analyse the concepts and academic research related to unlawful appropriation, as well as the opinions of different researchers. This method was instrumental in examining and comparing the current criminal codes and other legislative acts of the countries under study. This helped to classify and identify the characteristics of unlawful appropriation and provided a basis for comparing the legal approaches in Bosnia and Herzegovina, Sierra Leone, and Ukraine. The comparative analysis highlighted the similarities and differences in the legal regulation of such acts, thereby assessing the effectiveness and efficiency of these approaches.

The case study method played a crucial role in this study. Court decisions from the International Criminal Tribunal for the former Yugoslavia (ICTY) and the Special Court for Sierra Leone (SCSL) were selected based on their relevance to the issue of looting, their contribution to the development of legal standards and their significance in shaping international law on war crimes. The choice of cases from

Ukrainian courts was made using the keywords "Article 438 of the Criminal Code of Ukraine" and "looting" in Ukrainian language in the Unified State Register of Court Decisions. 23 court decisions from 1995 to 2024 were analysed to reflect the evolution of legal interpretations of looting in different international conflicts. These cases were selected for their importance in shaping international law on war crimes, specifically unlawful appropriation. The case study method enabled an in-depth examination of the legal precedents set by these cases, focusing on the interpretation of concepts such as "military necessity" and "spoils of war", as well as the assessment of the "gravity of violation". This approach allowed for a comprehensive analysis of how different legal systems prosecute unlawful appropriation and the implications of these prosecutions for international humanitarian law (IHL). The selection of cases was based on their relevance to the tasks of the study. Cases from the International Criminal Tribunal for the former Yugoslavia, the Special Court for Sierra Leone and Ukrainian courts were selected for their contributions to defining the legal boundaries of unlawful appropriation and the application of IHL. These cases were selected to represent a wide range of legal interpretations and outcomes, thus providing a robust basis for comparative analysis.

The experimental basis of the study included a detailed analysis of legal documents, judicial decisions, and international treaties relating to unlawful appropriation during armed conflict. The study focused on the legal frameworks of Ukraine, Bosnia and Herzegovina, and Sierra Leone, as well as the applicable international treaties, such as the Geneva Conventions and the Rome Statute. This experimental basis ensured that the findings of this study were grounded in well-established legal precedents and international norms. The methodology employed in this study provided a valuable insight into the legal challenges associated with the prosecution of unlawful appropriation during armed conflict. By integrating statistical research methods with doctrinal research, comparative analysis and case study approaches, the study yielded an in-depth analysis of the legal implications of unlawful appropriation and outlined the steps necessary to improve the legal framework for effective prosecution and accountability.

■ Results and Discussion

The concept of looting in legislation and practice of the courts of Ukraine, Bosnia and Herzegovina, Sierra Leone, and international law. Lawyers agree that the defining features of war crimes are as follows: commission of actions during an armed conflict or in connection with it; the gravity of the violation of International Humanities Law (IHL) norms;

the object of encroachment is people and their rights protected by IHL; acts are committed by combatants or persons who can give them orders (Pidubna, 2016). On a global scale, looting is recognised as a war crime; however, different countries interpret this crime in distinct ways, necessitating the harmonisation of legal approaches.

Addressing looting is crucial worldwide due to the increasing number of incidents reported in open sources that have not been thoroughly investigated by law enforcement. This lack of proper registration is partly caused by the challenges of working in occupied areas and distinguishing looting from other crimes, which is caused by the objective impossibility of using conventional approaches to gathering evidence (Shulha *et al.*, 2023).

In Ukraine's criminal law looting specifically refers to stealing things of the killed or wounded persons on the battlefield and is classified as a military offence (Article 432 of the CC of Ukraine)¹. This

interpretation differs significantly from broader acts of looting and robbery against civilians, which are carried out for personal gain. Under the international conventions^{2,3}, Ukraine is under an obligation to criminalise grave violations of international humanitarian law in domestic legislation. Ukraine achieved it by including Article 438. According to this norm, the appropriation of property can be criminalised by military opponents who invade or occupy the territory. This Article contains a blanket provision.

As of July 2024, there have been 14,161 registered criminal offences under Part 1 of Article 438⁴. It is impossible to determine the exact number of looting cases, as all types of violations of the rules of the warfare under this Article are registered in the Unified State Register of Pre-trial Investigations. According to a selective search in the Unified State Register of Court Decisions, 11 court decisions on looting were issued as of August 2024. These judgements are listed in table 1 below.

Table 1. Judgements of Ukrainian courts regarding looting of property according to Article 438 of the CC of Ukraine (as of August 2024)

Date of judgement	Judgement No.	References to international agreements			In person or in absentia
		Geneva Convention (IV) ⁵ (GC (IV))	Additional Protocol I	Hague Convention (IV) ⁶ (HC (IV))	
28 June 2023	case No. 366/869/23, proceedings No. 1-кп/366/140/23 ⁷	Articles 32, 147	–	Articles 28, 47	In absentia
14 September 2023	case No. 748/855/23, proceedings No. 1-кп/748/117/23 ⁸	Article 33	–	–	In absentia
06 March 2024	case No. 367/3486/22, proceedings No. 1-кп/756/617/24 ⁹	Articles 27, 31, 32, 33, 146, 147	Articles 11, Parts 1, 2 of Article 75	–	In absentia
17 July 2023	case No. 751/3261/22, proceedings No. 1-кп/743/14/23 ¹⁰	Articles 31–32, 34, 147	Article 75	–	In absentia
13 August 2024	case No. 638/11302/23, proceedings No. 1-кп/638/915/24 ¹¹	Articles 27, 31, 32, 33, 146, 147	Article 11, Parts 1, 2 of Article 75	–	In absentia
15 August 2023	case No. 361/6215/22, proceedings No. 1-кп/361/696/23 ¹²	Article 33	Article 75	Articles 28, 47	In absentia

¹ Criminal Code of Ukraine. (2001, April). Retrieved from https://sherloc.unodc.org/cld/uploads/res/document/ukr/2001/criminal-code-of-the-republic-of-ukraine-en_html/Ukraine_Criminal_Code_as_of_2010_EN.pdf.

² Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War. (1949, August). Retrieved from <https://www.legal-tools.org/doc/d5e260/>.

³ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I). (1977, June). Retrieved from <https://www.refworld.org/legal/agreements/icrc/1977/en/104942>.

⁴ Criminal Code of Ukraine. (2001, April). Retrieved from https://sherloc.unodc.org/cld/uploads/res/document/ukr/2001/criminal-code-of-the-republic-of-ukraine-en_html/Ukraine_Criminal_Code_as_of_2010_EN.pdf.

⁵ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War. (1949, August). Retrieved from <https://www.legal-tools.org/doc/d5e260/>.

⁶ Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land. (1907, October). Retrieved from <https://www.refworld.org/legal/agreements/hague/1907/en/31788>.

⁷ Verdict of the Ivankivskiy District Court of Kyiv Region in Case No. 366/869/23, Proceedings No. 1-кп/366/140/23. (2023, June). Retrieved from <https://reyestr.court.gov.ua/Review/111894270>.

⁸ Verdict of the Chernihiv District Court of the Chernihiv Region in Case No. 748/855/23, Proceedings No. 1-кп/748/117/23. (2023, September). Retrieved from <https://reyestr.court.gov.ua/Review/113458684>.

⁹ Verdict of the Obolon District Court of Kyiv in Case No. 367/3486/22, Proceedings No. 1-кп/756/617/24. (2024, March). Retrieved from <https://reyestr.court.gov.ua/Review/117778018>.

¹⁰ Verdict of Ripkinsky district court of Chernihiv region in Case No. 751/3261/22, Proceedings No. 1-кп/743/14/23. (2023, July). Retrieved from <https://reyestr.court.gov.ua/Review/112364078>.

¹¹ Verdict of the Dzerzhinsky District Court of Kharkiv in Case No. 638/11302/23, Proceedings No. 1-кп/638/915/24. (2024, August). Retrieved from <https://reyestr.court.gov.ua/Review/120995921>.

¹² Verdict of the Brovary city and district court of Kyiv region in Case No. 361/6215/22, Proceedings No. 1-кп/361/696/23. (2023, August). Retrieved from <https://reyestr.court.gov.ua/Review/112819115>.

Table 1. Continued

30 May 2024	case No. 366/2305/23, proceedings No. 1-кп/366/86/24 ¹	Article 147	Article 85	–	In absentia
13 June 2022	case No. 554/3864/22, proceedings No. 1-кп/554/374/2022 ²	not specified			In person
09 June 2022	case No. 554/3925/22, proceedings No. 1-кп/554/387/2022 ³	not specified			In person
20 March 2024	case No. 127/15500/23, proceedings No. 1-кп/127/463/23 ⁴	Article 33	–	Article 47	In absentia
28 February 2024	case No. 743/380/23, proceedings No. 1-кп/737/11/24 ⁵	Articles 27, 31, 32, 33, 147	Articles 51, 52, 75	–	In absentia

Source: created by the author of this study based on the judgements

The Criminal Code of Bosnia and Herzegovina⁶ states that during the times of war, armed conflict, or occupation, ordering or taking part in looting against civilians in violation of international law is considered a war crime. Article 178 specifies that unlawfully taking belongings from the dead or wounded on the battlefield is punishable by imprisonment ranging from six months to five years, and in cases of particularly cruel conduct, from one to ten years. Additionally, the Code mandates that ordering or violating the laws and customs of war is punishable by imprisonment of not less than ten years or long-term imprisonment, with plundering and looting of public and private property included among these violations. The legislation of the Republic of Sierra Leone guarantees everyone the right to enjoy their property and protects them from being deprived of it without compensation⁷.

The lack of a unified international definition of looting complicates criminalising this crime in different countries. It is worth supporting the opinion of A. Zimmermann & R. Geiß (2022), who note that the definition should consider “the unauthorised appropriation or acquisition of property to transfer it to oneself or a third party against the will of the rightful owner during war”. According to E. Haye (2020), looting is a theft that takes place during a time of war and this act is designated as “spoliation”, “plunder”, “looting”. None have been sufficiently defined for the purposes of international law (Dormann, 2004), but all these terms involve the unlawful appropriation of

property without the owner’s consent. It is covered in Articles 23 (g), 28, and 47 of the HC (IV)⁸; Article 33 of the GC (IV); Articles 8 (2) (a) (iv), 8 (2) (b) (xiii), 8 (2) (b) (xvi), 8 (2) (e) (v) of the Rome Statute⁹. The commentary of the GC emphasises that pillage has always been associated with “looting, plunder...” whether it is committed in occupied or other territories, carried out by individual soldiers. Such misappropriation of property should be distinguished from spoils of war, which refers to the seizure of any movable state property on the battlefield (regardless of its military nature) (Pictet *et al.*, 1987).

Interpretation and use of the concept of the spoils of war. Capturing and displaying spoils of war has not been considered an international crime since ancient times (Zétola, 2021). Throughout history, there have been countless instances of victorious military forces forcibly appropriating private property, cultural property of their defeated enemies as “spoils of war” that were not used for military purposes – a practice now recognised as plunder (Zhang, 2024). On the other hand, today there are new cases known as the example of the war between Russia and Ukraine, where, according to the investigation, in May the Russian courier service SDEK sent at least 58 tonnes of parcels from points near the Ukrainian border (Fig. 1). The shipments were made by people in military uniform – Russian servicemen or militants in eastern Ukraine. The peak of transportation occurred at the beginning of April, when Russian troops were retreating

¹ Verdict of the Ivankiv District Court of the Kyiv Region in Case No. 366/2305/23, Proceedings No. 1-кп/366/86/24. (2024, May). Retrieved from <https://reyestr.court.gov.ua/Review/119382555>.

² Verdict of the Oktyabrsky District Court of Poltava in Case No. 554/3864/22, Proceedings No. 1-кп/554/374/2022. (2022, June). Retrieved from <https://reyestr.court.gov.ua/Review/104739440>.

³ Ibidem, 2022.

⁴ Verdict Vinnytsia city court of Vinnytsia region in Case No. 127/15500/23, Proceedings No. 1-кп/127/463/23. (2024, March). Retrieved from <https://reyestr.court.gov.ua/Review/117947422>.

⁵ Verdict of the Kulykiv District Court of the Chernihiv Region in Case No. 743/380/23, Proceedings No. 1-кп/737/11/24. (2024, February). Retrieved from <https://reyestr.court.gov.ua/Review/117304451>.

⁶ Criminal Code of Bosnia and Herzegovina. (2003, June). Retrieved from <https://rm.coe.int/bih-criminal-code-consolidated-text/16806415c8>.

⁷ Constitution of Sierra Leone. (1991, October). Retrieved from <https://www.sierra-leone.org/Laws/constitution1991.pdf>.

⁸ Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land. (1907, October). Retrieved from <https://www.refworld.org/legal/agreements/hague/1907/en/31788>.

⁹ Rome Statute of the International Criminal Court. (1998, November). Retrieved from https://asp.icc-cpi.int/sites/asp/files/asp_docs/Publications/Compendium/RomeStatute-ENG.pdf.

from the Kyiv region and the north of Ukraine (Syvodied, 2023). So, what are the spoils of war?

Diversity of opinion leads to a misunderstanding of the difference between looting and spoils of war.

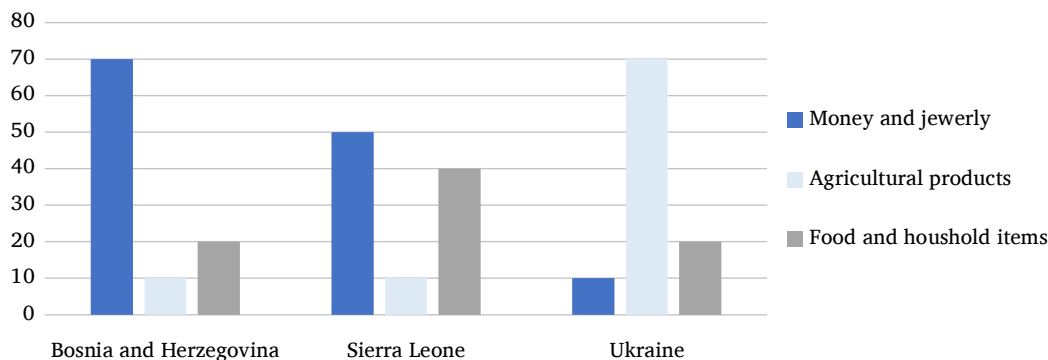


Figure 1. Comparison of looted object types by country

Source: developed by the author on the basis of courts decisions of Bosnia and Herzegovina^{1,2,3,4} Sierra Leone^{5,6,7} and Ukraine^{8,9,10}

The percentages presented in Figure 1 represent the proportional distribution of diverse types of items looted in each country. In Bosnia & Herzegovina, 70% of the looted property includes money, jewellery, chains, bracelets, watches, livestock, clothing, household appliances, furniture, technical equipment, and gold; 20% includes other types of property, such as building materials, food, and vehicles; 10% accounts for other items. In Sierra Leone, 50% of the looted property includes money, household items, doors, roofs, videos, generators, rice, ammunition, medicine, clothing, and cars; 40% accounts for household items and medical supplies; 10% – other types of property. In Ukraine, 70% of the looted property consists of agricultural products; 20% accounts for household items, such as washing machines, petrol generators, air compressors, and cars; 10% – other

types of property. To summarise, cases mainly concern basic items, such as food, money, housewares, and husbandry things.

Pillage is subject to an absolute prohibition without exception. The Elements of Crimes¹¹ clearly states that military necessity cannot be invoked as a justification for an offence committed with the intent to appropriate property for private or personal use. Misappropriation of property should be distinguished from spoils of war, which refers to the seizure of any movable property belonging to the enemy state on the battlefield (e.g., weapons and military equipment) (Clapham *et al.*, 2015) and other types of property, including private. War plunder is not considered justified if it is taken for personal motives or private gain rather than military necessity (Nuzban, 2023). The item did not serve any military purpose while it

¹ Trial Judgement of the International Tribunal for the former Yugoslavia in the Case No. IT-95-14-T “Prosecutor v. Tihomir Blaskic”. (2000, March). Retrieved from <https://www.refworld.org/jurisprudence/caselaw/icty/2000/en/19490>.

² Trial Judgement of the International Tribunal for the former Yugoslavia in the Case No. IT-96-21-T “Prosecutor v. Zdravko Mucic aka “Pavo”, Hazim Delic, Esad Landzo aka “Zenga”, Zejnil Delalic”. (1998, November). Retrieved from <https://www.refworld.org/cases,ICTY,41482bde4.html>.

³ Trial Judgement of the International Tribunal for the former Yugoslavia in the Case No. IT-01-47-T “Prosecutor v. Hadzihasanovic and Kubura”. (2006, March). Retrieved from <https://www.legal-tools.org/doc/8f515a/pdf>.

⁴ Trial Judgement of the International Tribunal for the former Yugoslavia in the Case No. IT-95-14/2-T “The Prosecutor v. Dario Kordic and Mario Cerkez”. (2001, February). Retrieved from <https://www.refworld.org/jurisprudence/caselaw/icty/2001/en/19636>.

⁵ Trial Judgement of the Special Court for Sierra Leone in the Case No. SCSL-04-14-T “The Prosecutor v. Moinina Fofana, Allieu Kondewa”. (2007, August). Retrieved from <https://www.refworld.org/jurisprudence/caselaw/scsl/2007/en/91923>.

⁶ Trial Judgement of the Special Court for Sierra Leone in the Case No. SCSL-04-15-T “Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao”. (2009, March). Retrieved from <https://www.refworld.org/jurisprudence/caselaw/scsl/2009/en/92027>.

⁷ Trial Judgement of the Special Court for Sierra Leone in the Case No. SCSL-04-16-T “The Prosecutor vs. Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu”. (2007, June). Retrieved from <https://www.refworld.org/jurisprudence/caselaw/scsl/2007/en/91904>.

⁸ Verdict of the Kulykiv District Court of the Chernihiv Region in Case No. 743/380/23, Proceedings No. 1-кп/737/11/24. (2024, February). Retrieved from <https://reyestr.court.gov.ua/Review/117304451>.

⁹ Verdict of the Ivankivskiy District Court of Kyiv Region in Case No. 366/869/23, Proceedings No. 1-кп/366/140/23. (2023, June). Retrieved from <https://reyestr.court.gov.ua/Review/111894270>.

¹⁰ Verdict of the Chernihiv District Court of the Chernihiv Region in Case No. 748/855/23, Proceedings No. 1-кп/748/117/23. (2023, September). Retrieved from <https://reyestr.court.gov.ua/Review/113458684>.

¹¹ Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court “Elements of Crimes”. (2010, June). Retrieved from <https://www.refworld.org/reference/research/icc/2011/en/87658>.

was in the possession of its country of origin (Dibb, 2024) during armed conflict (Walker-Munro, 2024).

The right to take plunder is allowed when there is no requirement for restitution or compensation for such plunder (Power & Kiswanson, 2023). This includes items such as cash, financial assets, securities, military equipment, and military transport vehicles (ICRC, 2002). Lawful appropriation during armed conflict includes requisition, confiscation, and spoils of war (Nuzban, 2020). Owners of property may be persons protected by conventions (civilians, sick and wounded, shipwreck victims, and prisoners of war) (Williamson, 2016) and a combatant or a person who directly took part in military operations¹. Civilians also commit looting, who may target shops or residences. The breakdown of social structures, lack of efficient law enforcement, and/or economic struggles and unemployment can push individuals towards theft and looting after conflict or environmental catastrophe. This behaviour may occur sporadically on an individual basis or evolve into deliberate, systemic, and occasionally targeted looting orchestrated by organised criminal groups to sustain their illicit activities.

In summary, the framework of international law governing armed conflict suggests that the appropriation of property, such as spoils of war, may be lawful under certain conditions. These conditions are generally based on established international standards, including:

1) distinction between military targets and civilian objects: appropriation is lawful only if the seized property is directly connected to the enemy's military efforts, such as military equipment or transport, and not civilian property; however, the offence of looting occurs when private property belonging to combatants is appropriated without justification by military necessity;

2) proportionality: actions must be proportionate to the military advantage gained. This standard ensures that the harm caused by the appropriation of property is not excessive in relation to the expected military benefit;

3) legitimacy of purpose: property can only be appropriated for a legitimate military purpose, not

for personal gain or motives unrelated to military operations;

4) military necessity: appropriation must be justified by legitimate military necessity. This means that the seizure of property must directly contribute to the success of military operations and not be excessive or unnecessary.

Comparative analysis of ICTY, SCSL & Ukrainian cases. ICTY had jurisdiction over grave violations of international humanitarian law committed in the former Yugoslavia since 1991. According to Article 3(e) of the ICTY Statute², the Tribunal had authority over violations of the laws and customs of war, including the "plunder of public or private property". SCSL was established to prosecute individuals responsible for grave violations of international humanitarian law and crimes under Sierra Leonean law. Article 3 of the SCSL Statute provides jurisdiction over serious violations of common Article 3 of the GC of 1949 and Additional Protocol II of 1977³, including pillaging.

The ICC, established under the Rome Statute⁴, has jurisdiction over pillaging as one of the "other grave violations of the laws and customs of war" applicable in both international and non-international armed conflicts. While these courts may have overlapping jurisdictions concerning the types of crimes they address, their mandates and operational periods are designed to complement rather than contradict each other. Each court defines and prosecutes looting based on the legal frameworks established in their respective statutes. As mentioned above, one of the defining characteristics of war crimes is the gravity of the violation of international humanitarian law. It analysed a series of decisions that can be distinguished by a range of criteria.

Monetary value and impact on victims. In the case of Prosecutor v. Zdravko Mucic *et al.*⁵, the charges of plunder of private property in a prison camp were dismissed on jurisdictional grounds. The court found that the stolen items (money, watches, and other property) did not have sufficient monetary value to cause grave consequences for the victims. This decision suggests that for a violation to be considered grave, the appropriated property must have substantial value or impact on the victims.

¹ Trial Judgement of the International Criminal Court in the Case No. ICC-01/04-01/07 "The Prosecutor v. Germain Katanga". (2014, March). Retrieved from <https://www.legal-tools.org/doc/f74b4f/pdf>.

² Statute of the International Criminal Tribunal for the former Yugoslavia. (1993, May). Retrieved from <https://legal.un.org/avl/ha/icty/icty.html>.

³ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II). (1977, June). Retrieved from <https://www.refworld.org/legal/agreements/icrc/1977/en/14705>.

⁴ Rome Statute of the International Criminal Court. (1998, November). Retrieved from https://asp.icc-cpi.int/sites/asp/files/asp_docs/Publications/Compendium/RomeStatute-ENG.pdf.

⁵ Trial Judgement of the International Tribunal for the former Yugoslavia in the Case No. IT-96-21-T "Prosecutor v. Zdravko Mucic aka "Pavo", Hazim Delic, Esad Landzo aka "Zenga", Zejnil Delalic". (1998, November). Retrieved from <https://www.refworld.org/cases,ICTY,41482bde4.html>.

Substantial consequences for victims. The case of *Prosecutor v. Issa Hassan Sesay et al.*¹ involved looting funds from the Tankoro Bank by AFRC/RUF fighters. The court found that the amount of funds stolen was sufficient to constitute a grave violation. This shows that the gravity is also measured by the significant negative consequences for the victims, which could be economic or personal. Similarly, in the *Prosecutor v. Dusko Tadic*² appellate decision, the Appeals Chamber stated that a violation must be “grave”, meaning it must breach a rule protecting important values and have grave consequences for the victim. For instance, a combatant taking a loaf of bread in an occupied village would not be considered a “grave violation” unless it caused significant harm.

Nature, volume, and collective scale of looting. In the *Prosecutor v. Issa Hassan Sesay et al.* decision³, the Trial Chamber noted that while international law does not require the looted items to be of significant value, the court’s jurisdiction is only exercised in cases of grave violations. The gravity can be assessed based on the nature, volume, size, or collective scale of the robbery. For instance, looting that affects many people or involves substantial quantities of goods (e.g., vehicles, food) is considered a grave violation.

Personal gain vs. military necessity. In the *Katanga case*⁴, the court ruled that looting conducted for personal gain, even if it involved basic items like food, was grave because it was not justified by military necessity. This case underscores that looting motivated by personal interest rather than military necessity is a grave violation. The scale of appropriation was also one of the criteria. In the case of the *Prosecutor v. Jean-Pierre Bemba Gombo*⁵, the Chamber highlighted that the war crime of looting presupposes the appropriation of property on a rather large scale, which goes beyond isolated acts of theft. This suggests that the extent and scale of looting contribute to its gravity.

Economic and personal impact on victims. In a case decided by the Ivankiv District Court of Kyiv Region (case No. 366/869/23)⁶, the court ruled that

the theft of property that significantly contributed to a victim’s livelihood (worth nearly 15 times the subsistence level) constituted a grave violation. This judgement highlights that if stolen property is essential to a person’s daily life and survival, its looting is considered a grave offence. The last criterion was the recurrence and widespread nature of the incidents. In the *Katanga case*⁷, the Chamber noted that the value of the looted items varied significantly, encompassing everything from kitchenware and furniture to livestock, including goats and chickens. Although the items differed in value, they collectively constituted the majority of the owners’ possessions and were vital to their daily survival. The Chamber pointed out that the recurring and widespread instances of looting exacerbated the gravity of the violation. This shows that when such acts are recurrent and deprive many people of their essential property, they are regarded as graver.

To summarize, the key features of determining the gravity of a violation are as follows: substantial consequences for the victims: this gravity is assessed even if the consequences are not equally grave for all victims. The focus is on the overall impact on those affected, highlighting that the degree of harm to individuals can vary but still constitute a grave violation; large scale of deprivation: if many people are deprived of their property, the violation is considered graver. This consideration emphasises the collective impact on a community or group, rather than just isolated incidents; economic and personal impact: if the looting involves a substantial portion of a victim’s property, especially when it was earned through their personal labour and is crucial for their livelihood, it is considered a grave offence.

The term “gravity of violation” is still evaluative and is determined on a case-by-case basis by examining the concrete circumstances of each case. There is a suggestion to establish clear criteria within the International Criminal Court’s Elements of Crimes⁸ to better classify looting as “grave”. It is proposed to create in Ukraine a clear and objective basis for assessing

¹ Trial Judgement of the Special Court for Sierra Leone in the Case No. SCSL-04-15-T “Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao”. (2009, March). Retrieved from <https://www.refworld.org/jurisprudence/caselaw/scsl/2009/en/92027>.

² Appeal Judgement of the International Tribunal for the former Yugoslavia in the Case No. IT-94-1-T “Prosecutor v. Dusko Tadic a/k/a “DULE”. (1995, October). Retrieved from <https://www.legal-tools.org/doc/866e17/pdf>.

³ Trial Judgement of the Special Court for Sierra Leone in the Case No. SCSL-04-15-T “Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao”. (2009, March). Retrieved from <https://www.refworld.org/jurisprudence/caselaw/scsl/2009/en/92027>.

⁴ Trial Judgement of the International Criminal Court in the Case No. ICC-01/04-01/07 “The Prosecutor v. Germain Katanga”. (2014, March). Retrieved from <https://www.legal-tools.org/doc/f74b4f/pdf>.

⁵ Trial Judgement of the International Criminal Court in the Case No. ICC-01/05-01/08 “The Prosecutor v. Jean-Pierre Bemba Gombo”. (2016, March). Retrieved from https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2016_02238.PDF.

⁶ Verdict of the Ivankivskyi District Court of Kyiv Region in Case No. 366/869/23, Proceedings No. 1-кп/366/140/23. (2023, June). Retrieved from <https://reyestr.court.gov.ua/Review/111894270>.

⁷ Trial Judgement of the International Criminal Court in the Case No. ICC-01/04-01/07 “The Prosecutor v. Germain Katanga”. (2014, March). Retrieved from <https://www.legal-tools.org/doc/f74b4f/pdf>.

⁸ Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court “Elements of Crimes”. (2010, June). Retrieved from <https://www.refworld.org/reference/research/icc/2011/en/87658>.

the seriousness of violations during armed conflicts in Ukraine, based on the following criteria: the level of damage caused, the size and value of the appropriated property, considering the context and circumstances, and the scale of the impact on communities. Concrete examples and precedents need to be included in legislation or judicial practice to help judges apply these concepts in practice, which will contribute to more accurate and consistent judgements.

The concept of military necessity is defined as measures that are genuinely needed to achieve a legitimate military objective and are not prohibited by IHL. According to K. Dormann (2016), military necessity can only be invoked if it is explicitly prescribed by the law and cannot serve as an additional justification outside these provisions. The principle of military necessity must be balanced with the principle of humanity, which limits the use of force to what is necessary to weaken the enemy's military capabilities without causing unnecessary suffering (Senatorova, 2021). The Rome Statute¹ explicitly states that the crime of looting requires intent to

deprive the owner of property for private or personal use. It excludes appropriations justified by military necessity from this definition, as these do not fall under looting. This interpretation was upheld in the *Prosecutor v. Brima et al.* decision² by the (SCSL), which noted that the term “private or personal use” excludes actions justified by military necessity, reinforcing the view that such appropriations cannot be classified as looting.

The HC³ permits the requisition of private property “for the needs of the army of occupation” (Article 52), indicating that property necessary for the immediate maintenance of an army, such as food, supplies, or equipment, could be requisitioned. However, this must be strictly for military needs, such as maintaining occupying forces or ensuring the functioning of the occupying power, as seen in *The Krupp Judgement*⁴, which allowed the requisition of supplies essential for military operations (e.g., food, equipment, and transportation means). Examples of justified and unjustified military necessity are listed in Table 2 below.

Table 2. Examples of lawful and unlawful appropriation

Category	Example	Reason
Justified military necessity	Using medical supplies from a deceased soldier to save lives, stop the bleeding, use the dead soldier's weapons and ammo to continue the fight	Necessary actions to save lives, not for personal gain, not dictated by a selfish component
	Using a civilian vehicle to transport wounded soldiers	Necessary action for transporting wounded soldiers, not for personal gain
Unjustified military necessity	Destruction or damage to property in Dubrovnik's Old Town ⁵	No military facilities nearby; destruction was not necessary for military objectives
	Looting of medical supplies and household materials from civilians ⁶	Civilians were not participants in the conflict; actions lacked military necessity

Source: created by the author of this study based on the judgements

A special constructive feature, the establishment of which is necessary for the qualification of an act as looting, is the performance of the specified actions out of forced necessity. This issue is vital because forced actions are acts of behaviour of a person in which, being in the specified situation, considering its characteristics and conditions, they could not act otherwise.

The concept of military necessity can be subjective and potentially open to abuse, especially if invoked by an aggressor without clear and legitimate grounds. This concern is clear in cases where the appropriation of property is claimed to be an urgent military necessity, without unambiguous evidence of urgency or necessity, as highlighted by the critique of the Chernihiv District Court of Chernihiv Region

¹ Rome Statute of the International Criminal Court. (1998, November). Retrieved from https://asp.icc-cpi.int/sites/asp/files/asp_docs/Publications/Compendium/RomeStatute-ENG.pdf.

² Trial Judgement of the Special Court for Sierra Leone in the Case No. SCSL-04-16-T “The Prosecutor vs. Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu (the AFRC Accused)”. (2007, June). Retrieved from <https://www.refworld.org/jurisprudence/caselaw/scsl/2007/en/91904>.

³ Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land. (1907, October). Retrieved from <https://www.refworld.org/legal/agreements/hague/1907/en/31788>.

⁴ Trial Judgement of the International Military Tribunal in the Case No. 58 “The Krupp trial”. (1948, July). Retrieved from https://www.worldcourts.com/imt/eng/decisions/1948.06.30_United_States_v_Krupp.pdf.

⁵ Trial Judgement of the International Criminal Tribunal for the former Yugoslavia in the Case No. IT-01-42-T “Prosecutor v. Pavle Strugar”. (January 2005). Retrieved from <https://www.refworld.org/cases/ICTY/48ad42092.html>.

⁶ Trial Judgement of the Special Court for Sierra Leone in the Case No. SCSL-04-14-T “The Prosecutor v. Moinina Fofana, Allieu Kondewa”. (2007, August). Retrieved from <https://www.refworld.org/jurisprudence/caselaw/scsl/2007/en/91923>.

judgement¹. Here, the appropriation of civilian property, like 22 tonnes of mineral fertilisers and a tractor-trailer, was considered unlawful as it lacked any justification of military necessity and served no military purpose. The GC² explicitly states that the large-scale destruction and appropriation of property not justified by military necessity and carried out unlawfully and purposelessly constitute a grave violation. The negotiations for these conventions rejected military necessity as a justification for looting, emphasising that necessary exceptions are already included in regulations such as the Hague Regulations.

To summarise, in international law, military necessity is a principle that allows certain actions during armed conflict to achieve a legitimate military objective, provided they follow international humanitarian law. However, military necessity cannot justify looting of property unless explicitly permitted by law. Courts have consistently ruled that actions motivated by personal gain or without a clear, urgent military necessity are not protected under this principle. Military necessity cannot be an independent and separate justification for looting, primarily because military necessity cannot act as a justification for infringement, unless the term “military necessity” is clearly specified as an exception (e.g., military necessity was already considered when creating exceptions contained in the HC³). This does not apply to looting, which is prohibited in absolute terms. Therewith, in the GC⁴, Article 147 directly establishes that “large-scale destruction and appropriation of property, not justified by military necessity, and committed illegally and purposelessly, constitutes a grave violation of the Convention”, and, therefore, of international humanitarian law as a whole.

Customary norms of the IHL prohibit the destruction and seizure of enemy property in the absence of urgent military necessity (norm 50) (Henckaerts & Doswald-Beck, 2005). It means that the destruction and seizure of the enemy’s property is allowed in the presence of an urgent military necessity. At the same time, as a condition of admissibility or inadmissibility of destruction and seizure of the enemy property, urgent military necessity is a subjective and unprovable concept. It is unclear what exactly is the criterion in practice: that the military necessity is exactly urgent; that only by destroying/capturing the enemy’s property can such an urgent military necessity be met.

Continuing the already mentioned argument that “urgent military necessity” is a subjective concept, it is relevant to add that such formulations set a wide field for potential abuses by the adversary, especially if such an adversary is an aggressor who started military operations. There is no clear disambiguation between the presence of an urgent military necessity and absence thereof. That is, for an adversary who has already committed acts of aggression, i.e., violated the norms of international law, nothing prevents them from destroying or seizing (confiscating) private property and claiming that this was required by urgent military necessity, the criteria of which are blurred and evaluative.

It would be advisable to develop a separate law regulating the looting during armed conflict, defining the types of property that can be seized and the conditions for such seizure; such law should also clarify the terms “military necessity” and “gravity of the violation” based on international practices, which would standardise approaches to the assessment of crimes and promote unification of judicial practice. It would also be advisable to implement international norms into national legislation, which would ensure that Ukrainian laws follow international standards and promote effective investigation of crimes.

To conclude, a separate law should be drafted and adopted to regulate the looting during armed conflict in Ukraine. This law should specify the types of property that can be appropriated, the conditions for doing so, and how to assess military necessity. It should also update internal military regulations to prohibit the appropriation of personal belongings (e.g., jewellery, money, electronics), as this is not justified by military necessity. Property seizures must be directly related to concrete military objectives, such as protecting military units or providing essential supplies. Any appropriation that does not directly contribute directly to military operations should be considered unlawful looting.

■ Conclusions

The study identified significant differences in approaches to the criminalisation of looting in Ukraine, Bosnia and Herzegovina, Sierra Leone, and within the framework of international law. The analysis of judgements and international treaties revealed discrepancies in the interpretation of concepts such as

¹ Verdict of the Chernihiv District Court of the Chernihiv Region in Case No. 748/855/23, Proceedings No. 1-кп/748/117/23. (2023, September). Retrieved from <https://reyestr.court.gov.ua/Review/113458684>.

² Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War. (1949, August). Retrieved from <https://www.legal-tools.org/doc/d5e260/>.

³ Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land. Second International Peace Conference, The Hague. (1907, October). Retrieved from <https://www.refworld.org/legal/agreements/hague/1907/en/31788>.

⁴ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War. (1949, August). Retrieved from <https://www.legal-tools.org/doc/d5e260/>.

“military necessity”, “spoils of war”, and “gravity of the violation”. The primary challenge for Ukraine is the absence of clear criteria for assessing the “gravity of the violation” and “military necessity”, which creates risks for abuse and complicates the legal regulation of these issues. The findings highlight tendencies to use the term “military necessity” to justify unlawful actions, particularly in the context of armed conflicts.

The interpretation of the findings suggests that existing gaps in Ukrainian legislation may lead to difficulties in ensuring justice and the efficiency of legal proceedings. For example, the lack of a clear definition of “spoils of war” and distinct approaches to this concept across countries complicate the application of uniform international law standards. The identified patterns, such as the mass and systemic nature of looting, suggest that this crime has a substantial impact on the victims and communities affected by armed conflicts. In Ukraine, for instance, a substantial portion of looted property accounts for agricultural products, which differs from other countries like Bosnia and Herzegovina, where looted items are primarily valuables and jewellery.

The significance of the results for the academic community lies in the contribution of this study to highlighting the need for harmonisation of Ukrain-

ian legislation with international standards. Establishing clear legal definitions and standards for evaluating looting crimes will facilitate the unification of judicial practices and improve accountability for these offences. Developing a separate law to regulate looting during armed conflicts would be a crucial step in improving Ukraine’s legal system. This law should clearly define the types of property that can be seized, the conditions under which such seizure is justified, and how to assess military necessity. The intricacies of such legislation should be the subject of further research in this area.

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■ Conflict of Interest

The author of this study declares no conflict of interest.

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Криміналізація мародерства під час війни: міжнародний та національний досвід

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■ **Анотація.** Актуальність теми дослідження зумовлена збільшенням кількості випадків мародерства під час збройних конфліктів, що потребує вдосконалення правових механізмів криміналізації цього злочину. Попри те, що мародерство визнано воєнним злочином на міжнародному рівні, наявні істотні відмінності в підходах до його криміналізації та визначення відповідальності за такі дії в національних правових системах. Це створює ризики щодо неоднозначного тлумачення правових норм у судовій практиці й ускладнює забезпечення правосуддя. Метою дослідження був аналіз світового й національного досвіду щодо криміналізації мародерства під час збройних конфліктів на прикладі Боснії і Герцеговини, Сьєрра-Леоне та України, а також формулювання рекомендацій щодо вдосконалення національного законодавства України за цим напрямом. У статті використано методи порівняльно-правового аналізу, формально-юридичного аналізу й аналізу судової практики. Здійснено порівняння кримінально-правових норм і підходів різних країн стосовно притягнення до відповідальності за мародерство, зокрема щодо понять «військова необхідність» і «воєнна здобич». Результати дослідження засвідчили, що відсутність чітких правових визначень і критеріїв оцінювання «військової необхідності» та «серйозності порушення» ускладнює притягнення до відповідальності за цей злочин і створює ризики зловживань. Виявлено суттєві відмінності в підходах до криміналізації мародерства, зокрема у визначенні обсягу й умов відповідальності. Практична цінність дослідження полягає в рекомендаціях щодо гармонізації українського законодавства з міжнародними стандартами. Запропоновано розробити окремий закон, який має визначати механізми криміналізації мародерства під час збройних конфліктів, встановлювати чіткі критерії для оцінювання військової необхідності й уніфікувати підходи до судової практики. Це сприятиме підвищенню ефективності розслідування та притягнення до відповідальності за цей вид воєнних злочинів, а також зміцненню правової бази України в умовах збройних конфліктів

■ **Ключові слова:** правосуддя; військові трофеї; військова необхідність; серйозність порушення; правове регулювання