

Criminal Responsibility Arising From Medical-Biological Interventions in War Crimes and Its Obstacles
(With an Emphasis on the Statute of the International Criminal Court)
(Original Research)

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Extended Abstract

1. Introduction: Specialists in biological and medical sciences always play an effective role in the physical and mental healing of patients. However, some biologists abuse this expertise and use patients as test subjects to advance their erroneous scientific goals. Biological-medical war crimes committed by Specialists are one of the abuses that have the goals of their respective governments to win the war or achieve scientific advances. After the holding of the Nuremberg and Tokyo International Tribunals, the performance of medical staff were to be investigated for the first time without the legal elements of the said crimes being criminalized.

2. Research gap and objective: After the drafting of the Statute of the International Criminal Court, war crimes are criminalized as one of the most important international crimes. However, war crimes that can be carried out by Specialists in biological and medical sciences are not specifically taken into account. When looking at the possibility of connection between war crimes and medical interventions, the importance of paying attention to this type of crime becomes apparent. Medical procedures are, in their general sense, carried out with the approach of examination, treatment and with preventive, diagnostic, therapeutic or rehabilitation purposes; thus there is an element of trust involved by the patients (or here, victims). In this regard, some examples of war crimes have been criminalized in the Statute of the

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International Criminal Court as violation of the right to health, such as physical defects, scientific and biological experiments with human samples, forced sterilization and forced pregnancy through medical interventions which can be committed by Specialists in medical sciences. However, there are some cases of violation of the right to health of people which have not been foreseen in the Statute such as intentional abortion, refusal of medical care, mercy killing, organ transplantation without authorization, and so on. This lacuna causes the perpetrators to escape justice, and to not be punished. Thus, the question is raised that can the actions contrary to legal requirements by the medical staff be considered as an example of a war crime? What are its constituent elements and what factors can prevent perpetrators from being punished in international law?

3. Methodology: In this research, the descriptive and analytical methods have been used to answer the questions raised above.

4. Key Findings: To address the existing problems, the Statute must also be changed to correspond to the conduct of war and the customs of nations, as one of the sources of the conventional law of war is "the general principles of the laws, customs and habits of nations". In order to implement this change, a customary rule must emerge in the performance of international actors and States should use it as a customary rule in their future relations or acknowledge it in their documents and treaties. However, by taking a logical interpretation of part (2) and (3) part (a) of paragraph 2 of article 8 of the statute and the definitions of "torture or inhumane treatment" and "causing severe suffering or physical damage to the body or People's health", some of the mentioned medical interventions in the form of inhumane behavior or causing suffering and severe damage to people's health can be prosecuted as war crimes. Thus, by verifying the intent, knowledge and causal relationship between the criminal act and the aforementioned results, the criminal responsibility of medical staff in the process of armed conflicts can be proven according to Article 25(3) of the Statute. Of course, it should be noted that defendants can use substantive defenses such as obeying the orders of superiors, mistake, duress, state of necessity and consent of the patient. But the defenses advanced by the medical staff are generally not accepted, because ordering an unwarranted medical procedure and testing without the patient's consent is always considered illegal and against the principles of medical ethics, and having scientific expertise and commitment to medical ethics does not make it possible for doctors to use the defense of ignorance or mistake. The defense of consent is also not accepted due to the indiscernibility of the limit between the patient's consent and their informed consent and the specialization of the medical personnel. Only if the doctors can prove that their life is threatened due to the duress of the superior they

can use the combination of coercion defense and obedience to the superior's order to reduce their criminal liability.

5. Contribution to Field: The inapplicability of these defenses (except in rare cases) makes the importance of the issue and the necessity of consistent criminalization in the domestic laws is even more clear in international law. Therefore, this article seeks to inform the community of nations about the importance of the mentioned crimes and the necessity of international rules in this area by explaining the range of examples of war crimes in the context of medical and biological interventions.

6. Conclusion: Considering the defect in the criminalization of medical-biological interventions during armed conflicts and the development of illegal actions in parallels to medical advances, it is necessary to criminalize the actions related to medical and biological interventions. However, currently, in order to prevent the perpetrators from escaping punishment, with a logical interpretation of some articles of the Rome Statute, it is possible to punish many medical and biological interventions in the field of war crimes. The defenses of the perpetrators of this category of crimes in the form of obedience to superiors' orders, mistakes, duress, state of necessity and patient's consent due to passing the necessary specialized rounds and the obligations of the medical staff to maintain basic human rights are generally not accepted.

Keywords

Biological, Physician, War Crime, Responsibility, Criminal

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