



State and Personal Responsibility: War Crimes, Crimes of Aggression and Genocide in Ukraine

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Abstract: This article examines international crimes committed on the territory of Ukraine since February 24, 2022. Ukraine faces explicit acts of aggression, with a multitude of war crimes—including murder, sexual violence, and deliberate attacks on civilian property and infrastructure—being perpetrated within its borders. Additionally, there are indications of genocidal intent. Urgent attention is required to investigate the violations of international humanitarian law. Further, the article identifies the main causes of war crimes committed by the military: military errors or failures, the use of civilians as “human shields,” insufficient discipline, inadequate inculcation of legal norms related to international humanitarian law and Just War Theory within military ranks, and the use of targeted terror aimed at crushing the enemy’s will to resist. The author examines the interrelation of war crimes and information warfare in light of the importance of discerning truth amidst a sea of disinformation and cover-up. Finally, he explores national and international mechanisms for bringing perpetrators of crimes to justice, as well as seeking compensation for the damage they caused.

Keywords: Russo-Ukrainian war, war crimes, international crimes, genocide, crime of aggression.

Introduction

On February 24, 2022, the Russian Federation launched a full-scale military invasion of Ukraine. This armed conflict, ongoing since 2014, has acquired an open international character and has spread across most of Ukraine’s territory.

Ukraine’s eight most densely populated regions—Donetsk, Zaporizhzhia, Kyiv, Luhansk, Sumy, Kharkiv, Kherson, and Chernihiv—have become immediate

areas of hostilities. The rest of the country is regularly exposed to enemy air-strikes. After staged referenda, on September 30, 2022, Russia unilaterally declared the annexation of Donetsk, Kherson, Luhansk, and Zaporizhzhia oblasts, which, along with the Crimean Peninsula, amount to over 136 thousand square kilometers, equivalent to the combined territories of Bulgaria and North Macedonia. Currently, more than half of these territories and the people residing there are temporarily occupied.

The Russo-Ukrainian war stands as an unprecedented conflict in Europe since the end of World War Two, both in terms of the scale of hostilities and the intensity of the conflict between the warring parties. It is accompanied by widespread violations of human rights and immense suffering among the civilian population. The most severe offenses in this conflict include tens of thousands of military and other international crimes. The essential tasks ahead include documenting these crimes, ensuring their proper classification, conducting thorough investigations, prosecuting the perpetrators, and providing compensation for the victims. This responsibility falls not only on Ukraine but also on the entire civilized world community.

International Crimes: Legal Framework, Concept and Types

Although neither Russia nor Ukraine had formally declared war on each other until that time, the actual circumstances indicate its existence. Consequently, there is an international armed conflict in accordance with Article 2 of the 1949 Geneva Convention.

Legal relations in the context of international armed conflict are regulated by international humanitarian law (IHL), with the Geneva Conventions of August 12, 1949,¹ forming its basis, along with the two Additional Protocols of June 8, 1977.² IHL, alongside other relevant laws, plays a crucial role in ensuring the protection of civilians and their properties from harm in armed conflict zones, thereby mitigating the adverse impact of hostilities on innocent victims.³

¹ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949; Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949; Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949, United Nations, *Treaty Series* 75, no. 970-973 (1950), <https://treaties.un.org/doc/Publication/unts/Volume%2075/v75.pdf>.

² Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), United Nations, *Treaty Series* 1125, no. 17512-17513 (1979), <https://treaties.un.org/doc/publication/UNTS/Volume%201125/v1125.pdf>.

³ S.L. Kipsamu and Martin Otundo Richard, "International Humanitarian Law Is Not Only Poorly Implemented but in Need of Additional Enforcement Mechanisms," *SSRN Electronic Journal* (February 20, 2022), <https://ssrn.com/abstract=4039123>.

The branch of international criminal law (ICL) is closely linked to IHL and defines the list of violations of IHL that constitute international crimes and regulates states' cooperation in combating such crimes, including their detection, investigation, and prosecution. The norms of international criminal law are enshrined in the Rome Statute of the International Criminal Court, adopted on July 17, 1998 (RS).⁴ In addition, the jurisprudence of the International Criminal Court (ICC) and international tribunals, such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), serve as crucial sources of ICL. While other international, hybrid, and national courts do not treat ICTY or ICTR decisions as binding law, they often draw upon their findings on customary law, general principles of law, interpretations of treaty provisions, and reasoning when interpreting their own laws.⁵

International crimes are acts provided for by international criminal law that infringe on the entire international community and pose an increased danger to the existence of states and international relations. These crimes inflict harm on humanity, often involving coordinated violence that necessitates shared responsibility and punishment across national borders.⁶

The list of international crimes is defined by Article 5 RS, which includes: a) the crime of genocide, b) crimes against humanity, c) war crimes, and d) the crime of aggression. Each category of international crimes includes a more or less broad list of specific acts falling under the ICC jurisdiction.

National Legislation of Ukraine

While international crimes primarily affect the interests of individual states, the response to them heavily depends on national legislation. The regulation of this domain by Ukrainian law can be examined through three interconnected aspects: international legal norms, criminal law, and criminal procedure.

International-Legal Aspect

An aspect of international legal regulations concerning Ukraine is that while it signed the Rome Statute (RS) on January 20, 2000, it did not ratify it. However, following the signing of the Association Agreement with the EU in 2014, ratification of the RS became one of its direct international obligations. The Parliamentary Assembly of the Council of Europe (PACE) has urged Ukraine to ratify and

⁴ United Nations, "Rome Statute of the International Criminal Court, 17 July 1998," *Treaty Series* 2187, no. 38544 (2004), <https://treaties.un.org/doc/publication/unts/volume%202187/v2187.pdf>.

⁵ "What is International Criminal Law?" (part of the OSCE-ODIHR/ICTY/UNICRI Project "Supporting the Transfer of Knowledge and Materials of War Crimes Cases from the ICTY to National Jurisdictions"), 13, <https://iici.global/0.5.1/wp-content/uploads/2018/03/icls-training-materials-sec-2-what-is-intl-law2.pdf>.

⁶ Alejandro Chehtman, "War Crimes: A Brief Road Map for Philosophical Inquiry," *Criminal Law and Philosophy* 12 (2018): 267-270, 267, <https://doi.org/10.1007/s11572-017-9419-8>.

implement the RS in several resolutions, including Resolution No. 2198 (2018) on the “Humanitarian consequences of the war in Ukraine.”⁷

Ukraine’s reluctance to ratify the Rome Statute can be attributed to political reasons, including the apprehension among senior officials about being held accountable for decisions that may have contributed to mass casualties. There is also a fear of bringing the Ukrainian military to responsibility in connection with the implementation of the anti-terrorist operation. Additionally, there is concern about potential claims against Ukraine at the International Criminal Court (ICC) by the Russian Federation.⁸ These concerns persist even after the onset of the Russo-Ukrainian war. For instance, in May 2022, Andrii Smirnov, Deputy Head of the Office of the President of Ukraine, suggested postponing Ukraine’s ratification of the RS until victory in the war. He cited the threat posed by numerous accusations from the aggressor country regarding alleged Ukrainian war crimes, which the ICC would be obligated to evaluate.⁹

Simultaneously, Ukraine took advantage of Part 3 of Article 12 of the Rome Statute (RS), acknowledging the jurisdiction of the RS without formal ratification. This was accomplished through two statements issued by the Ministry of Foreign Affairs, filed on April 17, 2014, pertaining to crimes against humanity committed by high state officials during peaceful protests between November 21, 2013 and February 22, 2014, and on September 8, 2015, regarding crimes against humanity and war crimes committed on Ukrainian territory by top officials of the Russian Federation and leaders of terrorist organizations such as the “Donetsk People’s Republic (DPR)” and “Lugansk People’s Republic (LPR).”

Despite the lack of ratification of the Rome Statute, Ukraine possesses a sufficient international legal basis to hold representatives of the Russian side accountable for committing international crimes on its territory through the International Criminal Court (ICC) and, at the same time, preventing the application of such a mechanism to representatives of the Ukrainian side.

Criminal Law Aspect

Criminal law in Ukraine is regulated through the Criminal Code of Ukraine (CCU),¹⁰ which addresses international crimes within Section XX, titled “Criminal

⁷ Parliamentary Assembly of the Council of Europe, “Resolution 2198 (2018) – Humanitarian Consequences of the War in Ukraine,” text adopted by the Assembly on January 23, 2018, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24432>.

⁸ N. Bodnar, “The Problem of Ratification of the Rome Statute of the International Criminal Court in the Light of the European Choice of Ukraine,” *European and Comparative Law Journal*, no. 8 (2018): 79-96, 89. – in Ukrainian

⁹ “The OP Told When Ukraine Might Ratify the Rome Statute,” *Ukrinform*, May 26, 2022, accessed June 29, 2022, <https://www.ukrinform.ru/rubric-society/3492341-v-op-rasskazali-kogda-ukraina-mozet-ratificirovat-rimskij-statut.html>. – in Russian

¹⁰ “Criminal Code of Ukraine, on April 5, 2001,” no. 2341-III, <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

Offenses against the Peace, Security of Mankind and the International Legal Order.”

It is worth noting that the regulation of international crimes in the CCU presents several challenges, for example:

- The CCU lacks provisions for universal jurisdiction and thus limits the possibility of prosecuting individuals responsible for committing international crimes solely within Ukrainian jurisdiction;
- The CCU does not include provisions regulating crimes against humanity as outlined in Article 7 of the Rome Statute;
- The *corpus delicti* of the crime of genocide under the CCU does not fully comply with Article 6 of the Rome Statute. While the wording is generally the same, there is a difference in terminology: whereas Article 6 of the RS mentions “serious bodily injury or mental disorder,” Article 442 “Genocide” of the CCU uses the concept “grievous bodily injury”;
- The *corpus delicti* of the crime of aggression under the CCU does not correspond to Article 8 bis of the Rome Statute. The CCU lacks provisions for a special subject responsible for committing this crime – namely, individuals capable of actually exercising control over the political or military actions of the state or directing them. Consequently, the responsibility for such actions in Ukraine may fall upon ordinary performers, including military personnel. Also, Article 437 of the CCU does not encompass the concept of an “act of aggression” or the actions that constitute it;
- The wording of war crimes under the CCU¹¹ is overly general and lacks differentiation in responsibility for their commission. Article 438 of the CCU does not fully align with the provisions of the Rome Statute, as Article 8 of the Rome Statute outlines 34 war crimes, along with an additional 16 war crimes in the event of a non-international armed conflict;
- The CCU does not include provisions for holding commanders accountable for war crimes as defined by Article 28 of the Rome Statute. Under the CCU, commanders are only held responsible for issuing orders to commit crimes as outlined in Article 438 of the CCU;

¹¹ Article 438 “Violation of the laws and customs of war” of the Criminal Code is devoted to war crimes. It provides for criminal liability for: 1) ill-treatment of prisoners of war or the civilian population; 2) involvement of the civilian population in forced labor; 3) looting of national values in the occupied territory; 4) the use of means of warfare prohibited by international law; 5) other violations of the laws and customs of war, provided for by international treaties, consent to be bound by which is provided by the Verkhovna Rada of Ukraine; 6) issuing an order to perform such actions. Separately, this article regulates liability for any of these acts associated with premeditated murder. In addition, Section XX of the Criminal Code provides for liability for the use of weapons of mass destruction (Article 439) and crimes against persons and institutions with international protection (Article 444), although these crimes are covered by Article 438.

- The Criminal Code of Ukraine includes privileged elements of certain war crimes for Ukrainian military personnel within Section XIX, titled “Criminal Offenses against the Established Procedure for Military Service (Military Criminal Offenses).” This section specifically addresses crimes committed by Ukrainian military personnel and primarily encompasses military disciplinary offenses, commonly referred to as “military crimes, not “war crimes.” However, it also includes certain war crimes, such as violence against the population in the area of military operations (Article 433), mistreatment of prisoners of war (Article 434), and illegal use and abuse of symbols of the Red Cross, Red Crescent, and Red Crystal (Article 435). Consequently, Ukrainian servicemen are subject to criminal liability for such acts under special articles of the CCU, which impose sanctions that are often more lenient than those under Article 438 of the CCU.¹²

Attempts were made to amend the CCU with the aim of overcoming these problems. On December 27, 2019, the Cabinet of Ministers of Ukraine submitted to the Verkhovna Rada of Ukraine Draft Law No. 2689 “On Amendments to Certain Legislative Acts of Ukraine on the Implementation of the Norms of International Criminal and Humanitarian Law.”¹³ This draft was approved by experts and adopted by Parliament on May 20, 2021. However, it was not signed by the President of Ukraine and, therefore, never entered into force. Subsequently, after the outbreak of war, on April 15, 2022, the Cabinet of Ministers of Ukraine submitted to the Verkhovna Rada Draft Law No. 7290,¹⁴ addressing similar issues. Parliament is currently considering this draft. However, compared to Draft Law No. 2689, Draft Law No. 7290 has several shortcomings and does not fully comply with the Rome Statute. Furthermore, the application of new norms may raise concerns regarding their retroactive effect, which is prohibited by Article 58 of the Constitution of Ukraine and Article 5 of the CCU.

¹² For example, war crimes such as violence, illegal destruction of property, and illegal seizure of property under the pretext of military necessity, committed against the population in the area of military operations, are punishable under Art. 433 of the Criminal Code with imprisonment for a term of three to eight years. Mistreatment of prisoners of war, under Art. 434 of the Criminal Code, carries a maximum penalty of three years in prison. However, if these acts are qualified under Art. 438 of the Criminal Code as violations of the laws and customs of war, the punishment increases to imprisonment for a term of eight to 12 years.

¹³ “Draft Law on Amendments to Certain Legislative Acts of Ukraine on the Implementation of International Criminal and Humanitarian Law of December 27, 2019,” no. 2689, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67804.

¹⁴ “Draft Law on Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine of April 15, 2022,” no. 7290, <https://itd.rada.gov.ua/billInfo/Bills/Card/39449>.

Criminal-Procedural Aspect

The Criminal Procedural Code of Ukraine (CPCU)¹⁵ regulates the criminal procedures. CPCU, until 2022, did not incorporate specific rules regarding international crimes aside from referring them to the jurisdiction of the Security Service of Ukraine (SSU). However, in anticipation of prosecuting perpetrators through supranational mechanisms, Section IX-2, titled “Peculiarities of Cooperation with the International Criminal Court,” was added to the CPCU on May 3, 2022.

It is important to note that the cooperation provided for in Section IX-2 of the CPCU pertains exclusively to the jurisdiction of the ICC concerning individuals who, at the time of the crime, acted with the intent of committing armed aggression against Ukraine. Consequently, the Ukrainian legislature intentionally excluded the possibility of cooperation with the ICC regarding international crimes committed by representatives of the Ukrainian side.

War Crimes on the Territory of Ukraine

According to official data from the Prosecutor General’s Office (PGO), as of the beginning of July 2022, 20,012 crimes were recorded under Article 438, “Violation of the Laws and Customs of War” of the Criminal Code of Ukraine. Among these, 3,638 were related to premeditated murder.¹⁶

From February 24 to July 12, 2022, the Office of the UN High Commissioner for Human Rights (OHCHR) documented 11,544 civilian casualties in Ukraine, comprising 5,024 fatalities and 6,520 injuries. The majority of these casualties resulted from the use of explosive weapons with wide-area effects, such as shelling from heavy artillery, multiple launch rocket systems, and missile and air strikes. OHCHR acknowledges that the actual figures could be significantly higher due to delays in receiving information from certain locations with intense hostilities and the pending verification of many reports.¹⁷

Even based on limited official data, Ukraine confronts a wide array of war crimes. For instance, the Ministry of Culture and Information Policy of Ukraine has documented 417 instances of Russian war crimes against Ukrainian cultural heritage.¹⁸ According to the Ministry of Education and Science of Ukraine, as of July 10, 2022, a total of 2,116 educational institutions have been subjected to

¹⁵ “Criminal Procedure Code of Ukraine of April 13, 2012,” no. 4651-VI, <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

¹⁶ Office of the Prosecutor General, “About Registered Criminal Offenses and the Results of Their Pre-Trial Investigation: Unified Report on Criminal Offenses by State for June 2022,” <https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennyata-rezultati-yih-dosudovogo-rozsliduvannya-2>.

¹⁷ UN, Office of the High Commissioner for Human Rights, “Ukraine: Civilian Casualty Update,” July 12, 2022, <https://www.ohchr.org/en/news/2022/07/ukraine-civilian-casualty-update-12-july-2022>.

¹⁸ “Russia Has Committed 417 War Crimes against the Cultural Heritage of Ukraine – MCIP,” *Ukrinform*, July 9, 2022, <https://www.ukrinform.ua/rubric-culture/3525116-rosia-skoila-417-voennih-zlociniv-proti-kulturnoi-spadsini-ukraini-mkip.html>. – in Ukrainian

bombing and shelling, with 216 of them completely destroyed.¹⁹ According to the Minister of Health of Ukraine, 628 healthcare institutions have been damaged during the war, with 118 of them deemed irreparable.²⁰ In particular, Russian airstrikes on residential buildings in Odesa (April 23), Kyiv (June 26), Mykolaiv (June 20), Sergiivka (July 1), Chasiv Yar (July 10), Kharkiv (July 11) resulted in mass casualties. Incidents include attacks on a maternity hospital and theater in Mariupol (March 9 and March 16), a station in Kramatorsk (April 8), a shopping center in Kremenchuk (June 27), and the center of Vinnytsia (July 14), among others. Many civilian casualties occurred due to indiscriminate artillery shelling by Russian troops in residential areas of Kharkiv, Chernihiv, Mariupol, Izium, Severodonetsk, Lysychansk, Popasna, and numerous other towns.

Information regarding the situation in the Russian-occupied territories of Ukraine is not comprehensive or objective. Ukrainian mass media frequently report on extrajudicial persecution of pro-Ukrainian activists by the occupiers, massacres of civilians, forced deportations to Russia, confiscation of property, and instances of sexual violence.²¹ However, verifying this information is challenging and cannot be accomplished until Ukrainian control over these territories is restored.

Common reasons for the commission of war crimes include:

Military errors or failures. One can speculate that the damage to protected objects from certain Russian strikes was due to their insufficient accuracy or countermeasures by Ukrainian air defenses. According to reports, the depletion of high-precision weapon stocks in Russia has led to the recent use of outdated Kh-22, Kh-55, Kh-59, and “Tochka-U” missiles for missile strikes, known for their inaccuracy and excessive power.²² The strikes on Serhiyivka and Kremenchuk, resulting in the deaths of dozens of civilians, were attributed to Kh-55 missiles. In these instances, deviations from the intended targets may have occurred.

Combat tactics. Many of the intense battles occur within urban areas, inevitably leading to casualties among the civilian population. The assaults by the Russian army on Mariupol, Popasna, Izium, Rubizhne, and Severodonetsk resulted in significant destruction of these towns, with fierce battles fought for control of

¹⁹ Ministry of Education and Science of Ukraine, “1900 Institutions Damaged, 216 Totally Destroyed,” July 10, 2022, <https://saveschools.in.ua/en/>.

²⁰ Ministry of Health of Ukraine, “Europe Will Participate in the Restoration of Destroyed Hospitals in Ukraine,” June 25, 2022, <https://moz.gov.ua/article/news/evropadoluchatimetsja-do-vidnovlennja-zrujnovanih-likaren-v-ukraini>. – in Ukrainian

²¹ “The Kremlin Turned the Military Crimes Committed by Russian Army Men in the Ukrainian Occupied Territories into a Weapon,” *Holos Ukrainy*, www.golos.com.ua/zviri. – in Ukrainian

²² Vladimir Datsenko, “Russia Is Increasingly Hitting Ukrainian Cities with Old, Inaccurate Missiles. How Many Are Left and Why Does Air Defense Not Provide Full Protection? Big Guide,” *Forbes*, July 6, 2022, <https://forbes.ua/ru/inside/rosiya-vse-bilshe-gatit-po-ukrainskikh-mistakh-starimi-netochnimi-raketami-skilli-ikh-zalishilos-ta-chomu-ppo-ne-dae-povnogo-zakhistu-velikiy-gayd-06072022-7020>. – in Russian

every house and street. The lack of early and complete evacuation exacerbates the number of victims. Even in cities distant from the front line, both sides actively exploit protected civilian facilities, such as kindergartens, schools, hospitals, museums, shops, and even temples, for housing soldiers or storing ammunition. Additionally, military equipment is often concealed under the cover of residential buildings, making them military targets. The use of civilian presence to shield certain points, areas, or armed forces from hostilities, a prevalent tactic in this war, constitutes a war crime under Article 8(2)(b)(xxiii) of the Rome Statute. Although such tactics do not justify other war crimes, they lay the groundwork for committing them.

Insufficient level of discipline and legal culture of service personnel. Committing war crimes, if not a result of deliberate policy, primarily depends on the intent of the perpetrator and the control exerted by their commander or superior. Consequently, some war crimes are committed due to low levels of discipline, ignorance of international humanitarian law (IHL), or a sense of permissiveness fostered by a lack of external oversight. Additionally, typical for war crimes is that each party denies the occurrence of such crimes by its representatives. This denial leads to the concealment of war crimes, thereby encouraging their future commission.

An attempt to intimidate the enemy. Despite the role of these factors, many war crimes are not limited to their direct impact. These include systematic indiscriminate shelling of residential areas, massacres of prisoners of war and civilians, and other violent acts without obvious military objectives. Thus, one can conclude that, in such cases, war crimes serve as a means of deliberate terror and suppression of the enemy's will to resist. President Volodymyr Zelenskyy has specifically described this as "Russian terror against peaceful Ukrainian towns."²³

War Crimes and Information War

Despite intermittent successes on the battlefield, Ukraine has a clear advantage in the information war against Russia. The significance of war crimes in this context lies in the following factors: 1) dehumanizing and demonizing the enemy; 2) rallying society in the face of a common external threat; 3) activating international assistance; 4) disrupting the enemy's plans for integrating occupied territories and their populations; and 5) rejecting diplomatic methods of conflict resolution.

²³ "Russian Terror, Armaments and Delayed War: Zelenskyy Addresses NATO Summit in Madrid," *Ukrainska Pravda*, June 29, 2022, <https://www.pravda.com.ua/eng/news/2022/06/29/7355371/>.

For example, on March 29, 2022, a meeting between Russia and Ukraine was held in Istanbul, which experts considered the most effective round of negotiations, raising cautious hopes for a peace agreement.²⁴ However, from April 1-3, 2022, numerous war crimes by Russian military personnel in Bucha, known as the “Bucha Massacre,” were discovered. These events elicited a negative reaction from the global community and significantly increased international support for Ukraine. Subsequent peace negotiations were effectively curtailed. In an interview on April 14, 2022, President Volodymyr Zelenskyy stated that “the atrocities apparently committed by Russian troops in Mariupol, and in the Kyiv suburbs of Bucha and Borodyanka, had further narrowed the possibility of peace talks with the Russians.”²⁵

Information about sexual crimes committed by Russian military personnel caused a wide resonance in the media. Ukraine’s Ombudsman, Lyudmila Denisova, stated that “Russia uses sexual violence as a tactic of warfare, systematically, everywhere, and with astonishing cruelty.” She frequently cited examples of sexual violence by Russian forces, committed with particular cruelty or in a perverted form, including against children and the elderly.²⁶ However, Denisova was later dismissed, partly due to focusing on the details of civilian rapes without proper evidence.²⁷ After her dismissal, Denisova explained: “I am convinced that information about the sexual crimes of the Russian occupiers is a weapon of Ukraine. The disclosure of these facts may influence the decision of certain countries to impose sanctions against Russia or provide weapons to Ukraine.”²⁸

Sexual violence by the Russian military likely occurred, but not on the scale or in the forms initially reported. According to Deputy Minister of Internal Affairs of Ukraine K. Pavlichenko, as of early July 2022, police had opened more than 20

²⁴ “Experts React: After Russia-Ukraine Talks in Istanbul, Is an End to War Imminent?” *Atlantic Council*, April 1, 2022, <https://www.atlanticcouncil.org/blogs/turkeysource/experts-react-after-russia-ukraine-talks-in-istanbul-is-an-end-to-war-imminent/>.

²⁵ Clive Myrie and Joel Gunter, “Ukraine’s President Zelensky to BBC: Blood Money Being Paid for Russian Oil,” *BBC*, April 14, 2022, <https://www.bbc.com/news/world-europe-61107725>.

²⁶ Vadim Rebrina, “The Occupiers Rape Children in the Kherson Region, Even Infants – Denisova,” *LIGA.net*, May 23, 2022, <https://news.liga.net/politics/news/okkupanty-nasiluyut-detey-v-hersonskoy-oblasti-daje-mladentsev-denisova>. – in Russian

²⁷ Igor Burdya, “Why Did the Rada Dismiss Ombudsman Denisova,” *DW*, June 1, 2022, <https://www.dw.com/ru/pochemu-verhovnaja-rada-otpravila-v-otstavku-ombudsmena-denisovu/a-61996650>. – in Russian

²⁸ Daria Demyanik, “The Ex-Ombudsman Explained Why She Told about the Rape of Babies by Russians,” *Glavcom*, June 3, 2022, <https://glavcom.ua/ru/news/eks-ombuds-men-obyasnila-zachem-rasskazyvala-ob-iznasilovanii-mladencev-rossiyanami-850403.html>. – in Russian

criminal proceedings for sexual crimes committed by Russians against Ukrainians.²⁹ Nonetheless, the issue of sexual crimes remains a significant tool in the information war, actively propagated by the media.

The logic of information warfare, which frames a military conflict as a confrontation between good and absolute evil, contributes to exaggerating the scale and severity of the enemy's crimes. Conversely, it hinders not only the objective investigation of war crimes committed by one's own side but also the acknowledgment of such crimes altogether. For example, at the end of March 2022, several videos appeared on social networks showing Ukrainian servicemen allegedly committing violence against Russian prisoners of war, including shooting them in the legs and killing the wounded. *The New York Times* published confirmation of one of these videos.³⁰ However, the Commander-in-Chief of the Armed Forces of Ukraine, Valery Zaluzhny, called these videos staged and stated that "service members of the Armed Forces of Ukraine and other legitimate military formations strictly adhere to the norms of international humanitarian law."³¹ To date, only two criminal proceedings have been registered in Ukraine under Article 434, "Bad Treatment of Prisoners of War," of the Criminal Code, and they have not yet yielded any results.³²

This is the reaction of the Ukrainian authorities to the shelling of cities occupied by Russia, such as Donetsk, Horlivka, Shakhtarsk, and others, resulting in the deaths of dozens of civilians. The Center for Combating Disinformation stated that Russian troops are shelling these Ukrainian cities under Russian control to attract military aid and create additional motivation for soldiers from the temporarily occupied territories of the Donetsk and Luhansk regions.³³

Some facts of human rights violations and the commission of war crimes in territories controlled by Ukraine are recorded in reports by international organizations. The UN Human Rights Monitoring Mission in Ukraine has documented 12 cases of possible enforced disappearances or abductions in territories controlled by the Ukrainian government, with reports indicating that seven of these

²⁹ "The Police Opened 20 Cases of Sexual Violence by the Russian Military," *Ukrinform*, July 4, 2022, www.ukrinform.ua/rubric-ato/3521575-policia-vidkri-la-20-provaden-zodo-seksualnogo-nasilstva-rosijskih-vijskovih.html. – in Ukrainian

³⁰ "Video Appears to Show Ukrainian troops Killing Captured Russian Soldiers," *The New York Times*, April 6, 2022, <https://www.nytimes.com/live/2022/04/06/world/ukraine-russia-war-news>.

³¹ Official telegram channel of the Commander-in-Chief of the Armed Forces of Ukraine "Holovnokomanduvach ZSU," <https://t.me/CinCAFU/28>.

³² Office of the Prosecutor General, "About Registered Criminal Offenses and the Results of Their Pre-Trial Investigation: Unified Report on Criminal Offenses by State for June 2022."

³³ "Why Are the Russians Shelling Donetsk: The NSDC Gave Two Reasons," *Ukrinform*, June 14, 2022, www.ukrinform.ua/rubric-ato/3506751-naviso-rosiani-obstriluut-doneck-u-rnbo-nazvali-dvi-pricini.html.

individuals have since been released.³⁴ The OHCHR's report highlighted the possibility that the Ukrainian armed forces, albeit on a much smaller scale than the Russian forces, do not fully comply with International Humanitarian Law (IHL) in the eastern parts of the country. The report documented instances of military installations being placed near civilian objectives and the use of human shields by both sides of the conflict. Additionally, it drew attention to alarming reports of torture and ill-treatment by both parties, including against prisoners of war. The report also noted the detention of over a thousand individuals suspected of supporting Russian armed formations and their affiliates.³⁵ Such messages caused a negative reaction from the Ukrainian side. For example, the Head of the Office of the President of Ukraine, Andrii Yermak, noted that "putting the victim and the aggressor in the same row blurs responsibility and removes the focus from the main problem. ... The construction 'both sides commit crimes, only the second – less' is simply unacceptable."³⁶ It is obvious that such an approach does not contribute to the prevention of war crimes and their objective investigation.

Crime of Aggression

The crime of aggression committed by Russia against Ukraine is the most obvious. According to researchers, Russia's pretext under *Jus ad bellum* does not satisfy any recognized right for military presence or operation in a sovereign country. Therefore, Russia's attack on Ukraine is neither just nor legal.³⁷ Russia's actions since February 24, 2022, fully comply with the definition of "aggression" as the use of armed force by a state against the sovereignty, territorial integrity, or political independence of another state, or in any other way inconsistent with the UN Charter.³⁸ Resolution of the UN General Assembly No. A/ES-11/L.1 "Ag-

³⁴ Commissioner for Human Rights of Council of Europe, "Memorandum on the Human Rights Consequences of the War in Ukraine," Strasbourg, July 8, 2022, <https://rm.coe.int/memorandum-on-the-human-rights-consequences-of-the-war-in-ukraine/1680a72bd4>.

³⁵ UN High Commissioner for Human Rights Michelle Bachelet, "Presentation on Ukraine (Human Rights Council Res. 47/22) and Interim Report of the Secretary-General on the Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine (GA res. 76/179)," July 5, 2022, <https://www.ohchr.org/en/statements/2022/07/ukraine-high-commissioner-updates-human-rights-council>.

³⁶ Official telegram channel of the Head of the Office of the President of Ukraine, "Andrii Yermak," <https://t.me/ermaka2022/870>. – in Ukrainian

³⁷ Kudakwashe Mapako, "Recourse to Use of Force or Threat Thereof, Justification of An Illegal War: A Tale of the Ukraine-Russia War," *SSRN Electronic Journal* (June 9, 2022), <https://doi.org/10.2139/ssrn.4132649>.

³⁸ "Official Reports of the General Assembly, 29th session, Supplement No. 31," 181-182, <https://research.un.org/en/docs/ga/quick/regular/29>; "Definition of Aggression,

gression against Ukraine,” dated March 2, 2022, acknowledged the military aggression of the Russian Federation against Ukraine.³⁹ Therefore, Russia’s actions qualify under Article 8 bis of the Rome Statute as a crime of aggression.

According to the Prosecution General Office (PGO), as of July 10, 2022, there were 73 criminal proceedings under Article 437 of the Criminal Code of Ukraine (CCU), which pertains to the “Planning, preparing, unleashing and waging aggressive war.” The main case of the crime of aggression involves 624 suspects from among the top military-political leadership of the Russian Federation, including the President, ministers, deputies, military leadership, heads of law enforcement agencies, and others.⁴⁰

At the same time, bringing the perpetrators of the crime of aggression to justice is the most difficult task. Since the highest military-political leadership of Russia is responsible, this can only become possible if they are completely replaced and extradited to international judicial bodies.

Crime of Genocide

Genocide is considered the most severe international crime, and both sides in the conflict are attempting to leverage accusations of genocide for their own agendas. Prior to the invasion, on February 15, 2022, Russia accused Ukraine of committing genocide against the population in Donbas. In response, on April 14, 2022, the Verkhovna Rada of Ukraine recognized the actions of Russian troops in Ukraine as genocide against the Ukrainian people. Subsequently, various countries and political entities also recognized these actions as genocide: the Polish parliament on March 23, 2022; Estonia and Latvia on April 21; Canada on April 28; Lithuania on May 10; the Czech Republic on May 11; and Ireland on June 2. Additionally, world leaders such as US President Joe Biden, British Prime Minister Boris Johnson, Polish President Andrzej Duda, and others have labeled Russia’s actions on Ukrainian territory as genocide. Therefore, the issue of genocide in Ukraine has become heavily politicized.

According to the CPCU, as of July 10, 2022, there were ten criminal proceedings under Article 442, “Genocide” of the Criminal Code. Notices of suspicion were announced in three of them.⁴¹

The complexity of qualifying genocide lies in determining whether the victims belong to a protected group, such as Ukrainian nationality or an ethnic group.

United Nations General Assembly Resolution 3314 (XXIX),” <http://hrlibrary.umn.edu/instree/GAres3314.html>.

³⁹ UN General Assembly, “Aggression against Ukraine,” Resolution adopted by the General Assembly on March 2, 2022, A/RES/ES-11/1-EN, www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_res_es-11_1.pdf.

⁴⁰ Office of the Prosecutor General, “Crimes Committed in the Conditions of a Full-Scale Invasion of the Russian Federation,” <https://gp.gov.ua/>.

⁴¹ Office of the Prosecutor General, “About Registered Criminal Offenses and the Results of Their Pre-Trial Investigation: Unified Report on Criminal Offenses by State for June 2022.”

The qualification does not depend on the actual number of victims but rather on the intent to destroy the protected group as such. Therefore, the relevant actions should be considered within the context of a systematic pattern of behavior by the perpetrator towards members of the protected group. Thus, isolated killings or other acts committed against individual members of the group, which do not and could not create a threat to the group as a whole, do not constitute genocide. Qualifying an act as genocide requires establishing a clear pattern of repeated acts specifically directed against the group as a whole rather than against individuals who happen to be members of that group.

The example of genocide against Ukrainians often cited involves the events in Bucha and other towns in the Kyiv region, which were under the control of Russian troops. According to Ukrainian reports, at least 1,200 dead were found in these areas. The UN Human Rights Monitoring Mission in Ukraine has documented at least 300 cases related to these events.⁴² Experts also point to the destruction inflicted on Mariupol and credible reports of deportations of Ukrainian women and children to remote parts of Russia as evidence of genocidal acts. The evidence of genocidal intent to destroy Ukrainian identity is bolstered by statements from Russian President Vladimir Putin and his advisers, such as “There is no Ukraine” and assertions that Russians and Ukrainians “are one people.” Intercepted military communications preceding massacres also contribute to this evidence.⁴³

However, these arguments are not indisputable. The significant number of victims in Bucha, Mariupol, and other towns in Ukraine does not automatically signify total destruction, nor does it confirm that the destruction was specifically targeted against Ukrainians as a protected group. The transfer of a large number of Ukrainians (about 1.3 million people) to Russia, even if characterized by signs of deportation, does not constitute genocide. Statements by Russian officials justifying the military invasion, despite their tendentious nature, do not contain explicit calls for the destruction of Ukrainians as a national or ethnic group. Therefore, the presence of numerous war crimes alone does not provide sufficient grounds to classify them as genocide. Establishing the crime of genocide requires thorough investigation, which gets more complicated by the politicization of the issue.

Prosecution and Reparation

Bringing those responsible for committing international crimes in Ukraine to justice and securing reparation for the damage they have caused is a crucial task.

⁴² Commissioner for Human Rights of Council of Europe, “Memorandum on the Human Rights Consequences of the War in Ukraine.”

⁴³ Martin McKee, Amir Attaran, and Jutta Lindert, “How Can the International Community Respond to Evidence of Genocide in Ukraine?” *The Lancet Regional Health – Europe* 17, no. 100404 (June 2022), <https://doi.org/10.1016/j.lanepe.2022.100404>.

Two approaches—at the national and supranational levels—can be used in this regard.

The national level depends on the Ukrainian criminal justice system. Despite its shortcomings, the necessary legal framework to bring perpetrators to justice exists. Since the first days of the war in Ukraine, large-scale efforts have been organized to record and investigate war crimes. Authorities and public organizations have created over ten chatbots and portals to collect information about these crimes. The total number of criminal proceedings exceeds 23,000, indicating close attention from Ukrainian law enforcement agencies.

The pre-trial investigation of war crimes falls under the jurisdiction of the SSU (Part 2 of Art. 216 of the CPCU), a paramilitary special-purpose body responsible for state security and counterintelligence. This status of the SSU presents two main issues: first, it does not allow the allocation of sufficient resources to investigate the dramatically increased number of war crimes; second, it may raise doubts about the objectivity and impartiality of the investigations. Overall, the investigation results of war crimes are not impressive: out of 3,638 criminal proceedings for violations of the laws and customs of war related to premeditated murder, suspects were identified in only 21 cases (0.6%). For other war crimes, the situation is even worse, with only 85 suspicions out of 20,012 criminal proceedings, or 0.4%.⁴⁴

At the beginning of July 2022, six criminal proceedings on war crimes had been sent to court with indictments, resulting in notable convictions of Russian servicemen. For example, on May 23, 2022, V. Shishimarin was sentenced to life imprisonment for the murder of a civilian in the Sumy region.⁴⁵ On May 31, A. Bobikin and A. Ivanov were sentenced to 11.5 years in prison for shelling settlements in the Kharkiv region.⁴⁶ Additionally, M. Romanov was charged in absentia with rape and murder of civilians in Bucha.⁴⁷ Thus, Ukraine can realistically bring to justice at the national level only those Russian servicemen who are in its captivity. However, the conviction of prisoners of war carries the risk of similar retaliatory actions by the opposing side. For instance, on June 9, the court of the self-proclaimed “DPR” sentenced to death British citizens Sean Pinner and Aiden

⁴⁴ Office of the Prosecutor General, “About Registered Criminal Offenses and the Results of Their Pre-Trial Investigation: Unified Report on Criminal Offenses by State for June 2022.”

⁴⁵ Evgenia Nakonechna, “The First Russian Soldier Was Sentenced for a War Crime,” *DW*, May 23, 2022, <https://www.dw.com/uk/pershyi-vyrok-voiennomu-zlochytysiu-soldat-rf-shyshymarin-otrymav-dovichne/a-61901215>. – in Ukrainian

⁴⁶ “The Verdict Was Announced for Russian Military Personnel Oleksandr Bobykin and Oleksandr Ivanov,” *Mind*, May 31, 2022, <https://mind.ua/news/20242297-rosijskim-vijskovim-oleksandru-bobikinu-ta-oleksandru-ivanovu-ogolosili-virok>. – in Ukrainian

⁴⁷ “In Ukraine, the First Criminal Case of Rape during the War Was Sent to Court,” *Mind*, May 30, 2022, <https://mind.ua/news/20242254-v-ukrayini-napravleno-do-sudushu-kriminalnu-spravu-pro-zgvaltuvannya-pid-chas-vijni>. – in Ukrainian

Aslin, as well as Moroccan citizen Saadoun Brahim, who fought on Ukraine's side and were captured.⁴⁸

Compensation for damage caused by war crimes faces similar difficulties. The most common scenario involves an individual bringing a civil action against a state before a national court, alleging that the defendant state committed a flagrant violation of human rights and seeking damages. The realization of such an action can encounter two main obstacles:

- 1) If the defendant state is summoned before a national court of another state (the forum state), the action will confront the immunity from the jurisdiction of the foreign state;
- 2) If the defendant state is the forum state (i.e., if the action is lodged before a national court of the state allegedly the wrongdoer), the action will most likely face judicial abdication, known as the act of state doctrine.⁴⁹

Due to the weakness of national mechanisms for accountability, supranational (international) mechanisms play an important role. Researchers note that war crimes are increasingly being adjudicated in international courts and national courts with no territorial links to the crimes under the doctrine of universal jurisdiction. Such extraterritorial trials are justified by an interest in accountability that is not based on the location of the crimes or the nationalities of the perpetrators or victims.⁵⁰

There are two main scenarios for bringing the perpetrators of international crimes in Ukraine to justice: (1) with the help of the International Criminal Court (ICC) and (2) through a special tribunal.

The ICC is a permanent body empowered to investigate and try perpetrators of international crimes and complements the activities of national criminal justice authorities. Ukraine has partially recognized the jurisdiction of the ICC, and ICC Prosecutor Karim Khan has announced the initiation of an investigation into international crimes related to Russia's military invasion. An international group of investigators and prosecutors is working in Ukraine to document international crimes that may become the subject of consideration by the ICC.⁵¹ Therefore, we

⁴⁸ "In the 'DPR' Two Britons and a Moroccan Were 'Sentenced' to Death. They Fought in the Armed Forces," *BBC News Ukraine*, June 9, 2022, <https://www.bbc.com/ukrainian/features-61750643>. – in Ukrainian

⁴⁹ Francesco De Santis di Nicola, "Civil Actions for Damages Caused by War Crimes vs. State Immunity from Jurisdiction and the Political Act Doctrine: ECtHR, ICJ and Italian Courts," *International Comparative Jurisprudence* 2, no. 2 (December 2016): 107-121, 108, <https://doi.org/10.1016/j.icj.2017.02.002>.

⁵⁰ Margaret M. deGuzman, "Justifying Extraterritorial War Crimes Trials," *Criminal Law and Philosophy* 12 (2018): 289-308, 289, <https://doi.org/10.1007/s11572-017-9421-1>.

⁵¹ "Prosecutor of the International Criminal Court: We Have a Large Amount of Information about the Crimes of the Russian Federation in Ukraine and the Desire to Achieve Justice," *Interfax-Ukraine*, June 16, 2022, <https://interfax.com.ua/news/general/839506.html>. - in Ukrainian

can state that certain steps have been taken towards the implementation of this scenario of international jurisdiction.

However, there are many obstacles on this path, namely:

- *Duration of ICC Proceedings:* Cases in the ICC are considered for a long time;
- *Extradition Challenges:* The ICC cannot consider cases without the presence of the accused, creating a problem of extradition that cannot be resolved without the active assistance of Russia;
- *Limited Capacity:* As a complement to the national criminal justice system, the ICC will not be able to consider all cases of war crimes in Ukraine;
- *Jurisdictional Limitations:* The ICC is not authorized to bring the top Russian military-political leadership to justice for the crime of aggression, as the Russian Federation is not a party to the Rome Statute;
- *Limited Scope of Reparations:* ICC damages are limited to individual cases.

The creation of a special tribunal for international crimes committed by the Russian Federation in Ukraine appears more effective. Unlike the ICC, it would be established solely for this purpose and remain in effect until its objectives are achieved. The statute of this tribunal can regulate all aspects necessary for the effective administration of justice. A special tribunal (“Tribunal for Putin”) would be able to consider the crime of aggression committed by Russia and condemn its top political and military leadership, including in absentia. Additionally, according to its decision, the arrested assets of the Russian Federation may be confiscated and transferred to Ukraine to compensate for the harm caused by international crimes against its people.

The main problem in creating a special tribunal is its format. It is unlikely to be established under the UN, like the ICTY or the ICTR, because Russia, as a permanent member of the Security Council, would block any initiative to create it. Therefore, a more realistic scenario is that a special tribunal would be formed by countries loyal to Ukraine that act as geopolitical opponents of the Russian Federation. However, without the complete defeat of Russia in this war, such a tribunal format might raise doubts about the legitimacy of its decisions and deepen international contradictions instead of demonstrating unity and solidarity.

Conclusions

During the Russo-Ukrainian war, a large number of international crimes have been committed, ranging from the crime of aggression to various war crimes. It can be foreseen that as the conflict develops, the number of these crimes will increase.

The main causes of war crimes are military errors or failures, tactics of warfare involving civilian cover as “human shields,” and insufficient discipline and

legal culture in the field of International Humanitarian Law (IHL) among military personnel. In some cases, war crimes are used as a means of targeted terror to suppress the enemy's will to resist; however, they often achieve the opposite effect. War crimes also play a significant role in information warfare, rallying society in the face of a general external threat and activating international military and financial assistance. Yet, the logic of information warfare leads each side to refuse to recognize the war crimes committed by its representatives and to exaggerate the scale and severity of the enemy's war crimes. This hinders their objective and impartial investigation.

Bringing to justice the perpetrators of international crimes and redressing the damage they have caused is a major task, that can be approached through the national criminal justice system or supranational mechanisms. At the national level, Ukraine is actively working to document and investigate international crimes, but the effectiveness has been limited so far. The national justice system can realistically bring to justice only those in captivity. Additionally, the national mechanism has not been effective in holding representatives of the Ukrainian side accountable.

The ICC or a special tribunal can be instrumental at supranational level. The limited capacity of the ICC indicates the need for a special tribunal to hold the top Russian political and military leadership accountable for the crime of aggression and confiscate their seized assets. The proposed format, involving a coalition of leading democratic states, seems promising but could raise doubts about the legitimacy of its decisions and deepen international contradictions.

Thus, bringing perpetrators of war and other international crimes to justice largely remains the prerogative of the winner in the war and highlighta the need to improve international justice.

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