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RUSSIA IGNORES WAR RULES

Many years ago, the international community decided to stop large scale death of civilians during the wars and armed conflicts. The rules of war were created, and they forbid killing of civilians, the infliction of harm and torture on the prisoners and using lethal weapons against civilian settlements. The rules of war are stated in international treaties: the Geneva Conventions, the Rome Statute and other international laws and agreements.

Russian aggression against Ukraine began in 2014 with a special operation to annex Crimea. It was for the first time since the end of the Second World War. The occupation of Crimea and parts of Donbas continues. It is an international armed conflict between two sides – the Russian Federation as the aggressor and Ukraine as the victim. As militants supported by Russia are also involved, the International Criminal Court (ICC) prosecutors speak of a simultaneous international and non-international armed conflict in Donbas. However, it does not mean any “civil war”. It corresponds to the context of international criminal law and allows a wider range of those involved to be brought to justice in the future. Russia’s war crimes in Ukraine include killing civilians, rape, taking hostages, torture, bombing homes and civilian infrastructure, and much more. These rules are now being violated by Russian soldiers sent to Ukraine by their dictator Putin to bomb, to destroy, to commit mass murder. War crimes represent absolute evil. They include excessive brutality in wartime when peaceful civilians and civilian infrastructure are attacked and destroyed, and when women and children are killed. Weapons and ammunition are used to kill civilians on a large scale. The Russian Federation and its war criminals will bear the most serious responsibility to the evil they have committed. Ukraine carefully documents every crime and every atrocity. Everyone responsible for such crimes will be prosecuted. Ukrainians and those people who support them all over the world will never forget nor forgive. The statistics says that 11,756 civilians are injured, 7,199 peaceful people are killed, 18,955 victims are among Ukrainians, 69,345 war crimes are registered, 461 children died, 120,000 civilian buildings were destroyed (13.02.2023). Data is regularly updated [1]. Ukrainian army fulfills all the necessary norms and principles of the Geneva Conventions from the first days of hostile attacks while Russia ignores them and there is enough evidence to numerous facts of violations of the rules and customs of war by the Russian invaders. One of the characteristics of European countries is the implementation of international humanitarian law. It was stated by the spokesman of the Ministry of Defense Oleksandr Motuzianyk at the briefing on “Operational situation at the front” that “Russia’s war against Ukraine showed the whole world the tangible difference between the Armed Forces of Ukraine as the army of a democratic state and the occupying horde of the Russian Federation” [2].

The development of international law over the past decades provides a lot of legal tools for successfully resisting the Kremlin's hybrid war against Ukraine. It is necessary to consider the existence of two main factors – the political will of the given state and the preparation of the justice system for this process.

International crimes are crimes against humanity, and they are referred to the most serious violation of international law. Responsibility for international crimes derives directly from the norms of international law, and not only from the national criminal law of any state. International treaty law, conventions such as the prevention and punishment of crimes of genocide, the Geneva Conventions or customary law (crimes against humanity still do not have their own international convention).

There were attempts to prosecute individuals for violations of international law (an unsuccessful attempt to prosecute the last German emperor, Wilhelm II) and after the Second World War an international military tribunal – Nuremberg Trials to prosecute the criminals of the Third Reich.

There were three international crimes within the jurisdiction of the Nuremberg Tribunal: crimes against peace; war crimes; crimes against humanity. There was no separate category of genocide despite the crimes of the Holocaust (genocide was considered part of crimes against humanity).

The International Criminal Court in the Hague (ICC), which has been in operation since July 1, 2002, considers four types of international crimes: genocide, crimes against humanity, war crimes, and the crime of aggression (as of July 17, 2018).

As the last type of international crime, Russia's invasion of Ukraine, was not defined, it would be very difficult to emphasize the responsibility of a specific individual – the president of the Russian Federation.

The Rome Statute states that for the first time the UN Security Council must recognize an act of aggression based on its own resolution to speak of criminal responsibility for the crime. Considering that the Russian Federation remains a permanent member of the UN Security Council, which has the right to veto, recognition of an act of aggression based on the resolution of this body is practically impossible.

Responsibility based on international law has a dual structure: the responsibility of the state as a subject of international law and the responsibility of specific individuals for their actions based on international criminal law. These two types of liability exist separately but may applied to the same situation.

The International Criminal Court in the Hague operates permanently, but there are examples of special international tribunals created by the UN Security Council for the former Yugoslavia and Rwanda (both have already completed their work).

There is also a separate type of so-called "hybrid" tribunals, where international jurisdiction is linked to the jurisdiction of a specific state (special tribunal for Sierra Leone, Cambodia, East Timor).

When the question of responsibility arose after Malaysia Airlines flight MH17 was shot down over Ukraine by a Russian-made surface-to-air missile, fired by Moscow-backed separatists, Ukraine tried to advance its own idea of creating a hybrid tribunal. However, the idea could not be implemented because Russia is a permanent member of the UN Security Council. The act of aggression caused many other crimes to be committed, including crimes against humanity and war crimes. Ukraine is still not a party to the Rome Statute, but because of a special resolution of the Verkhovna Rada, it appealed to the ICC for help in investigating these crimes. Legal measures and court proceedings taken by Ukraine in relation to Russian aggression aimed at confirming the responsibility of Russia as a subject of international law (proceedings at the International Criminal Court, the International Court of Justice of the United Nations, the International Maritime Tribunal in Hamburg, the European Court of Human

Rights) and regarding the responsibility of natural persons (ICC, proceedings based on national Ukrainian law).

The decision of international courts has different meanings: normative (definition of responsibility, possible compensation); non-normative (measures to counter Russian propaganda and disinformation), since the verdict of the international court is much more important than the statements of politicians; political and legal (the aggressor cannot dictate the terms of the reintegration of Crimea and Donbas, be the mediator of this process). The main obstacles in the legislation of Ukraine for successful criminal proceedings regarding international crimes are: the Ukrainian criminal code is not adapted to the constructions of international criminal law, which causes problems for Ukrainian prosecutors in the correct classification of international crimes (war crimes can be classified as terrorism); lack of experience working with international crimes before 2014; lack of ratification of the Rome Statute, lack of amendments to other laws regarding the implementation of norms of international criminal and humanitarian law, which prevents prosecution of those guilty of war crimes and crimes against humanity; confusion in the decisions of the Ukrainian court, which does not help to create a clear picture of Ukraine's efforts to counter Russian aggression.

The recent adoption by the Verkhovna Rada of Ukraine in the first reading of the draft law "On Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of International Criminal and Humanitarian Law" (No. 2689) is an extremely important step for harmonizing Ukrainian criminal law with international criminal law. Prosecutors will have the opportunity to investigate crimes according to their real qualifications, without being forced to artificially adapt the Criminal Code to reality. Criminal liability for violation of the laws and customs of war is established by Article 438 of the Criminal Code of Ukraine. This article establishes punishments for the cruel treatment of prisoners of war or the civilian population, the deportation of the civilian population for forced labour, the use of means of warfare prohibited by international law, other violations of the laws and customs of war provided for by international treaties, the binding consent of which has been granted by the Verkhovna Rada of Ukraine, as well as ordering to perform such actions [3]. It is worth considering the work of such bodies as the Representation of the President of Ukraine in the Autonomous Republic of Crimea, on the creation of a general convention of justice and transitional justice to overcome the consequences of the armed conflict in Donbas (and in Crimea) with the involvement of expert non-governmental organizations, such as the Ukrainian Helsinki Human Rights Union.

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