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Master's Thesis

Responsibility of the Russian Federation and Its Entities for International Crimes Committed in Ukraine: A Legal Analysis of Accountability Efforts

Rusijos Federacijos ir jos subjektų atsakomybė už Tarptautiniai nusikaltimai, padaryti Ukrainoje: teisinė atskaitomybės pastangų analizė

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INTRODUCTION

Relevance of the problem: International conflicts always leave their mark on the world map, determining the course of history and influencing the fate of nations. International conflicts are conflicts and disagreements that arise between countries or international actors as a result of different interests, goals, territorial issues, religious, cultural or economic differences. These conflicts can lead to tension, hostility, and even war between countries, and their resolution always requires care, diplomatic skill, and joint efforts.

Any aggression by one country against another is a crime only if it is not dictated by objective and indisputable reasons. In this case, the world should have a system to prevent and punish this type of crime. Legal responsibility of states for international wrongful acts is the oldest institution of international law. This topic is one of the most important in international law, since the efficiency of the entire system of international law, strengthening of international peace and order directly depends on the quality of solving the problems related to it. And although the concept of international legal responsibility has its origins in ancient law, the question of the possibility of consistent application of this principle remains acute to this day.

In this paper, the author examines the preconditions, causes and consequences of the military aggression of the Russian Federation against Ukraine, comparing this conflict with others in which Russia was involved in one way or another, and also relying on international experience.

The objectives of the study are to determine the causes of the conflict and its consequences in the legal field for the Russian Federation and satellite countries, such as the Republic of Belarus, the involvement and responsibility of terrorist groups on the territory of Ukraine, the so-called “LPR” and “DPR”, as well as allied countries that are somehow helping Russia in waging this war.

Russia's actions, both since 2014 in relation to Ukraine and before that in relation to a number of post-Soviet countries, have been a rather controversial issue for quite some time. The international community, unfortunately, is proving the inability to establish a clear framework for the Russian Federation, which provokes more and more brazen and unjustified actions by the latter towards other states and territories within the Russian Federation itself.

In 2014, the Russian Federation annexed part of Ukraine's territory, supports terrorists in eastern Ukraine, and has taken Ukrainian citizens hostage on trumped-up charges.

The war in Ukraine is the largest armed conflict in Europe since World War II. For 3 years now, Russia has been committing war crimes, waging a war of aggression and undermining the foundation of diplomatic society in my country. Tens of thousands of victims and hundreds of thousands of wounded among the civilian population, perhaps even hundreds of thousands of victims and several times more wounded among the military defending Ukraine, in addition to more than half a million killed among the Russian occupiers and who knows how many times more wounded and missing. Every day Russia spends millions of dollars on the war, firing missiles, unmanned aerial vehicles, using land and sea equipment to occupy as much of my country's territory as possible, hiding behind absurd narratives about Nazis, primordial Russian territories, and many other nonsense that do not stand up to any criticism in the international community.

Nevertheless, for many people, including many Ukrainians, the war began only on February 24, 2022, at 4 a.m., although in fact, Russia has been waging a so-called hybrid war against Ukraine since 2014.

In February 2014, Russia's armed aggression against Ukraine began. The Russian Federation, in violation of the norms and principles of international law, bilateral and multilateral agreements, annexed the Autonomous Republic of Crimea and occupied certain areas of Donetsk and Luhansk regions. Such actions constitute a grave crime against the international community, which entails the international legal responsibility of the Russian Federation as a state and the international criminal responsibility of its top leadership, and although some economic sanctions were imposed on Russia after the annexation of the peninsula, this was obviously not enough to

deter the aggression of the Russian Federation, let alone restore the territorial integrity of Ukraine. On February 24, 2022, Russia launched a full-scale invasion of Ukraine, which it calls a "special operation." The military campaign began after a prolonged build-up of Russian troops since November 2021 along Ukraine's border with Russia and Belarus and the recognition by Russian authorities on February 21, 2022, of the terrorist entities on the territory of Ukraine - the so-called "DPR" and "LPR" - as state entities. From the first day of the invasion, Russia has been violating the rules of war and committing war crimes on a massive scale.

For most Ukrainian citizens, including me and my family, Russia's attack came as a shock. However, the Russian-Ukrainian confrontation has deep historical roots. The history of relations between the Ukrainian and Russian peoples is a chronicle of wars, Ukrainian liberation uprisings, and a consistent policy of Russification and assimilation of Ukrainians. It is time to realize that Russia is a constant challenge to Ukraine, to which an adequate response should be continuously found, forming a Ukrainian national identity as a factor of national security. And this will continue until the world is liberated from the Russian Empire and nation-states that respect the rules of civilized coexistence emerge in its place. The test of the "Russian world" will be the most difficult exam that Ukraine must pass in order to fully acquire the state sovereignty proclaimed in 1991.

Today, the international community must unite around Ukraine, help it pass this test of being a "sworn friend" so that it can join the European family of democratic, free and civilized states. Experience has shown that history is quite cyclical, and as soon as dictators like Putin, Hitler and an endless list of other crazy people gain full power, they start playing colonial wars, believing that "whoever is stronger is right," which is absurd in the 21st century. Nevertheless, the world must draw conclusions and stop the madness of the Russian takeover, materially support Ukraine with money, weapons and diplomacy, forgetting about the concept of "escalation of the conflict", because for my country there is no such thing anymore, all the weapons imaginable have already been used in the fighting. The world must realize that the problem is that Putin, or anyone in his place, is a simple criminal who was allowed to commit crimes because of the indifference of the "world's policemen."

PART I: PART I: Theoretical Foundations of International Responsibility for Crimes

1.1. Chapter I: The Concept of International Crimes

1.1.1. Definition and classification of international crimes

On the one hand, the modern development of international relations is characterized by active communications, joint scientific and technical developments and cooperation between representatives of different states, which is facilitated by the disappearance of borders between them as a consequence and a feature of the formation and development of a new environment for communication between subjects.

On the other hand, the modern world has not gotten rid of such negative characteristics of international relations as conflicts between states, improvement of weapons, and hybrid wars.

In today's environment, the problems of organized crime, crimes whose consequences affect not one but several states at once, the transnational nature of crimes, and crimes committed within the framework of state policy can only be solved through joint efforts of states.

Ukraine is currently involved in an armed conflict. Therefore, the issue of forming concepts and delimitation of crimes covered by the subject matter of International Criminal Law (hereinafter - ICL) is relevant and necessary to resolve.

As of today, the modern legal doctrine of ICC does not have a unified approach to the terminology used and the formation of definitions of these types of crimes. V. P. Panov generally believes that the terms "crimes of an international nature" and "international criminal offenses" are synonymous and characterizes these crimes as those that are not directly related to the criminal activities of a particular state, but encroach simultaneously on national and international law and order, on peaceful cooperation of states in the field of economy, culture, trade, human rights and freedoms, interests of legal entities and pose a public danger to many states [1, p. 307]. However, this is only one of many opinions.

The analysis of legal acts indicates the allocation of crimes covered by the jurisdiction of the International Criminal Court (hereinafter - ICC), the basis of which is primarily the Rome Statute (hereinafter - RS ICC). Along with this category, there are also a number of crimes that affect the interests of several countries, threaten the world order, but are not covered by the jurisdiction of the Court. On this basis, ILC scholarship distinguishes between international crimes and crimes of an international character. For example, G. V. Ihnatenko distinguishes two areas of crime development: international crimes - actions of persons who implement the criminal policy of the state, as if personifying the international crimes of the state; and crimes of an international nature - actions that encroach on the interests of several states and therefore also pose an international danger, but are committed by persons (groups of persons) outside the policy of any state, in order to achieve their own illegal goals [2, p. 615] by violating the rights and interests of a person or groups of people [2, p. 700].

I support the position that an international crime is a grave international unlawful act that encroaches on the foundations of the existence of states, undermines the general principles of international law, and threatens international peace and security. In recent years, the United Nations has been increasing its attention to transitional justice and the rule of law in conflict and post-conflict societies, which are a response to human rights violations during armed conflicts [3, p. 152]. The UN International Law Commission has indicated that international crimes are serious or significant, occur on a massive or widespread scale, or have such a planned or systematic basis that they pose a threat to international peace and security [4, p. 43]. It is important that international crimes are recognized as the most serious crimes in the world [5, p. 228]. This is manifested in the severity of punishment and in the creation of a special institution that, on the principle of complementarity, investigates and punishes criminals who have committed genocide, crimes against humanity or war crimes [6, p.163]. International crimes are generally heterogeneous in nature and content [7, p.420]. These are acts provided for by international agreements (conventions) that do not constitute crimes against humanity, war crimes, genocide and aggression, but encroach on normal relations between states. Such crimes harm peaceful cooperation [1, p. 307], since they are committed on the territory of several states, or their accomplices are foreigners, or the consequences of the crime manifest themselves outside the states in which they were committed [7, p. 420].

If we compare the above definitions, we can distinguish the differences that will be the criteria for distinguishing international crimes from crimes of an international nature. Firstly, crimes of an international nature are committed on the initiative of the subjects of their commission, in order to realize private interests. Damage to international relations is caused only insofar as it is necessary to achieve the overall criminal result. “In essence, these are transnational crimes” - recognize I. P. Blishchenko and I. V. Fisenko [8, p. 37-38].

Secondly, the grounds for liability are different. Y. V. Truntsevskyi notes that liability for crimes of an international nature is incurred under international agreements (sometimes of a regional nature) and national legislation [8, pp. 40-41]. In distinguishing between crimes of an international nature and international crimes, E. L. Streltsov emphasizes that conventionality means the existence of an international agreement to establish the criminality and punishability of a particular act. At the same time, a State party to an agreement to combat such crimes must transform the norms of a particular convention into its criminal law” [7, p. 420].

Thirdly, we pay attention to the object of the crime. Unlike international crimes, the object of which, according to I. P. Blishchenko and I. V. Fysenko, - international relations, vital interests of mankind - are regulated by international law, the direct object of international crimes has a general criminal nature in the content of domestic law [8, pp. 37-38]. Regarding crimes of an international nature, E. L. Streltsov notes: “In general, these crimes are not directly related to the criminal activity of a particular state... But at the same time, they encroach on international and national law and order, on peaceful cooperation of states in the field of economy, trade, human rights and freedoms, interests of legal entities... By their legal nature, these crimes, unlike international crimes, are quite “ordinary”, but they have a “foreign element” [7, p. 420].

Fourthly, the State bears international legal responsibility for the commission of an international crime, and an individual bears criminal responsibility. For crimes of an international nature, only the subjects of their commission are liable. It should be noted that crimes of an international nature entail individual liability of offenders within the national jurisdiction. International crimes entail the responsibility of the state as a subject of international law and individual criminal liability of perpetrators, which occurs within the framework of international and, in some cases, domestic national jurisdiction [9, p. 364-365]. International crimes and crimes of an international nature are categories included in the subject matter of ICC, with significant differences. An international crime is a culpable act that encroaches on international security, world order and its individual spheres, recognized as a result of the coordination of the wills of sovereign states as unlawful and subject to criminal punishment. Crimes of an international nature are culpable acts that are committed outside the context of a particular state policy and encroach, in addition to the domestic legal order, on the international legal order, posing a danger to at least two states.

Crimes of an international nature entail personal criminal liability under national jurisdiction, provided that national law is adapted to international law based on the implementation of the provisions of a universal international treaty that defines certain acts as crimes. Conventions establishing liability for international crimes apply exclusively to states that have acceded to these conventions. This means that, unlike international crimes, liability for which is established by acts of international law peremptorily (regardless of whether the state has acceded to the convention or implemented it in domestic law), liability for international crimes is based on international treaties concluded voluntarily (dispositivity means that if a country has not acceded to a convention, the requirements of such an international treaty do not apply to that state)

1.1.2. Crimes of aggression, war crimes, crimes against humanity, and genocide

Most scholars believe that the concept of “war crime” arose in the second half of the nineteenth century, when the Geneva Convention of 1864 for the Amelioration of the Condition of Wounded and Sick Soldiers in Armed Forces and a number of other documents regulating the conduct of hostilities were adopted. However, the first restrictions on the methods and means of armed conflict were established in the third millennium BC in Egypt.

Other nations also had such restrictions, for example, the Mahabharata and the laws of Manu prohibited soldiers from killing helpless enemies and those who surrendered. After recovery, wounded prisoners of war were sent back to their homeland. Sun Tzu mentions the existence of similar rules in ancient China. [10, p. 102] In ancient Greece, such rules had the force of law. Subsequently, they were embodied in the so-called laws of chivalry. War crimes are also mentioned in the Lieber Code of 1863, but this term has not yet been used. [11, p. 14-18] The term “war crime” itself appeared only in 1945 in Art. 6 of the Statute of the International Military Tribunal in Nuremberg, which stated that violations of the laws and customs of war, including murder, ill-treatment or deportation of civilians in occupied territories, murder or ill-treatment of prisoners of war, killing of hostages, theft of public or private property, wanton destruction of settlements not caused by military necessity, should be considered as such.

The Geneva Conventions of 1949, which codified international humanitarian law after World War II, among other things, contain the first-ever list of war crimes, which were understood as serious violations of the Conventions, taking into account the specifics of the relations regulated by each of them. Moreover, each of the four Geneva Conventions of 1949 provides its own list of serious violations, creating a unified system.

The following actions are included: intentional murder; torture and inhumane treatment, including biological experiments; intentionally inflicting severe suffering or serious injury; causing harm to health; unlawful destruction and appropriation of property, unless necessitated by military necessity; coercing a civilian or prisoner of war to serve in the armed forces of the enemy state; deprivation of the right to a fair trial; unlawful deportation and transfer of protected civilians; unlawful arrest of protected civilians; taking hostages.

This list was significantly expanded by Additional Protocol I of 1977, which included the following serious violations: conducting certain medical experiments; transforming the civilian population, individual civilians, or demilitarized and safe zones into objects of attack; carrying out indiscriminate attacks affecting the civilian population or civilian objects when it is known that such attacks will result in a large number of deaths and injuries among civilians; perfidious use of the emblems of the Red Cross, Red Crescent, and other protective and distinctive signs; transferring part of the occupying state's own civilian population into the occupied territory or deporting or transferring all or part of the population of the occupied territory; unjustified delay in the repatriation of prisoners of war or civilians; apartheid; attacks on historical monuments; and several others.

Certain elements of war crimes are outlined in a number of other documents. They are contained in Article 28 of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954, and Article 5 of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques of 1976. It is also important to highlight the founding documents of international criminal justice bodies, particularly the Statutes of international and mixed ad hoc military and criminal tribunals, as well as the Rome Statute of the International Criminal Court , among others.

Approximately one hundred distinct elements of crimes can be considered war crimes. However, all of them are characterized by a certain set of features that are inherent to each element individually and to the group as a whole. Currently, five such features can be identified: 1) The actions that constitute the objective side of war crimes are committed during an armed conflict and are related to it. This feature combines two aspects. Firstly, it characterizes the situation in which the crime is committed. It can only be committed during an armed conflict, as it is known that actions that are considered war crimes during an armed conflict will be classified differently in peacetime (for example, as crimes against humanity). In this regard, the nature of the armed conflict (international or non-international) is not fundamentally significant. However, many states maintain the position that non-international armed conflicts fall exclusively under their internal jurisdiction. [12] .

In addition, the list of actions considered war crimes here is significantly shorter. Additional Protocol II of 1977, the provisions of which primarily regulate the actions of the parties during such conflicts, does not contain any norms defining the criminal responsibility of individuals. [13, p. 325] , and the definition of war crimes, as established in customary international law, turns out to be far less clear here than in the case of an international conflict. However, most scholars advocate for an expanded interpretation of war crimes and propose including violations of humanitarian law committed during non-international armed conflicts. This position has been supported by the International Law Commission and the UN. [14, c. 294-296]. The Statute of the International Criminal Tribunal for the former Yugoslavia establishes responsibility for "serious violations of common Article 3 of the Geneva Conventions," as well as other norms aimed at protecting victims of armed conflicts and fundamental rules concerning the means and methods of warfare.

The Tribunal considers a violation serious if it causes severe consequences for its victims and violates norms that protect the most important values. Thus, the crime must include actions directed against life and health (murder, cruel treatment, torture, infliction of bodily harm, corporal punishment, rape, coercion into prostitution), mass killings, hostage-taking, collective punishment, robbery, and a number of other actions. [15, p. 96-99]

This list, although considerably shorter than the list of serious violations (of the Conventions and Protocol I) and other war crimes in international conflicts, still encompasses the main crimes committed during non-international conflicts. The Statute of the International Criminal Tribunal for Rwanda includes in its list of war crimes serious violations of common Article 3 of the Conventions and serious violations of Protocol II. Similar provisions are found in the Statute of the International Criminal Court, which enumerates war crimes that can be committed during non-international armed conflicts.

These include serious violations of common Article 3 (attacks on life and physical integrity, attacks on human dignity, hostage-taking, and mass killings) as well as more than ten serious violations of the laws and customs of war (causing bodily harm; attacks against civilians, plunder, rape). However, it should be noted that the application of norms regarding war crimes committed during non-international armed conflicts is currently significantly hindered by the fact that states do not recognize the existence of such a conflict.

Secondly, such crimes must always be linked to an armed conflict. Thus, actions that qualify as war crimes must be committed as an "act of war"; otherwise, they will constitute ordinary criminal offenses. The commission of acts that are considered serious violations of international humanitarian law. [16]. This characteristic unites three elements.

Firstly, the act must constitute a gross violation of the norms of international humanitarian law, namely: the Geneva Conventions of 1949, their Additional Protocols of 1977, the Hague Conventions of 1899 and 1907, the Hague Convention of 1954, the Protocol for the Protection of Cultural Property in the Event of Armed Conflict of 1954, the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques of 1976, and a number of other documents in the field of international humanitarian law, as well as gross violations of customary norms of international humanitarian law. Currently, there are about a hundred separate types of crimes that are considered war crimes. Given this number, their analysis will not be conducted in this article.

Secondly, such actions must infringe upon the most important principles of international humanitarian law, meaning they are regarded as serious violations of the norms of this field. As stated in the decision of the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia, the violation must be serious, meaning it violates a norm that provides protection for the most important values, and its consequences must be tragic for the victim. For example, a combatant appropriating a loaf of bread belonging to a civilian in occupied territory constitutes a violation of Article 46 of the Hague Regulations concerning the Laws and Customs of War on Land, but it is not considered a serious violation of the norms of international humanitarian law.

Thirdly, such actions are considered war crimes regardless of their consequences. In general, it should be said that most war crimes involve causing death, injury, destruction or illegal seizure of property. However, such actions should not always lead to the specified consequences. So, in particular, the Elements of Crimes proceed from the fact that an attack on protected persons or conducting medical experiments on them will be a war crime, regardless of their consequences [17 p. 130, 233]

Such actions are usually committed by combatants or persons who can give them orders. The norms of international humanitarian law aim to regulate relations between states in order to protect the victims of war as much as possible. Thus, the implementation of their prescriptions is entrusted by the state to its armed forces and the formations equated to them, resistance movements, the population of the unoccupied territory, which spontaneously takes up arms when the enemy approaches, partisans, etc. It is considered that such persons received from the state the right to wage armed struggle and in this case act as representatives of the state [18 p.7].

It is the combatants who have the direct duty to implement the norms of international humanitarian law, since only they have the legal right to conduct military operations. This provision derives from the very concept of combatants, one of the characteristics of which is the obligation to observe the laws and customs of warfare. At the same time, it should be taken into account that the concept of "combatant" in this case also includes participants in armed conflicts of a non-international nature [19].

In addition to combatants, the obligation to comply with the norms of international humanitarian law rests with other persons who can give them direct orders. So, for example, according to the legislation of Ukraine, Russia, the USA and most other countries, the head of state is the commander-in-chief of the Armed Forces. It is his authority to declare war (with the subsequent approval of such a decision by the parliament). He carries out general management of

the Armed Forces, etc. Therefore, it is clear that he is also obliged to comply with the norms of international humanitarian law, and in case of their violation, he can be held accountable.

The same applies to other persons who are not members of the armed forces, but who, being civil servants, are empowered to issue orders to combatants. In the event that serious violations of humanitarian law are committed by persons who do not have the right to fight, then, depending on the gravity of the crime, they will bear criminal responsibility under national law in general, or criminal responsibility for violations of international law, but no longer for war crimes and, depending on the committed actions, for crimes against humanity, genocide or other crimes

However, quite often national acts interpret the list of subjects of war crimes in an expanded manner, including in their list civilians who commit crimes against combatants during armed conflicts. Such provisions are contained in the military statutes of Australia, Ecuador, and the United States.

The object of the encroachment is persons under the protection of international humanitarian law (or their rights). War is always a relationship between states (and other subjects of international law). The purpose of war is to destroy the military potential of the enemy state, its armed forces, equipment, and military facilities in order to achieve certain political goals.

The object of the attack cannot be persons and objects that are not military. That is why international humanitarian law introduces a special concept of "protected persons" to indicate whose interests it acts to protect. Protected persons are the most vulnerable and defenseless, their capture or destruction does not bring any military advantage, therefore such actions are considered war crimes. [20, p.113]

However, it is possible that the object of encroachment will be the principles of international humanitarian law, the violation of which does not pose a direct threat to protected persons and objects. These include humiliating treatment, forced labor, violation of the right to a fair trial, recruitment of children under the age of 15, mockery of the dead or graves.

These crimes are always committed intentionally or out of gross negligence. As stated in Art. 30 of the Statute of the International Criminal Court, crimes are committed "intentionally and knowingly". However, the specific form of guilt is still determined by each separate component of the crime

Having identified the characteristics inherent in war crimes, we can formulate their concepts. Thus, a war crime is considered to be an international crime that is committed intentionally or with gross negligence by a combatant and persons equated to them or in relation to them by a civilian during an armed conflict and consists in a massive and serious violation of the norms of international humanitarian law and encroaches on protected persons, their rights or the most important principles of international humanitarian law

Investigating war crimes, gathering evidence and bringing perpetrators to justice is an important part of achieving justice in war. That is why it is important to understand how international law defines crimes and how the investigation process proceeds.

War remains a common phenomenon in human development. It was only relatively recently condemned as an ineffective method of dispute settlement - in 1945. When the United Nations (UN) was created, it was decided that war was not a way to resolve disputes and prohibited it.

1.2 Chapter II: International Legal Responsibility of States

1.2.1. Concept and specifics of the international legal responsibility of states

Legal responsibility of states for international illegal acts is the oldest institution of international law. This topic is one of the most important in international law, since the effectiveness of the entire system of international law, the strengthening of international peace and law and order directly depends on the quality of solving problems related to it. And, although the concept of international legal responsibility has its origins in ancient law, the question of the possibility of consistent application of this principle remains acute to this day. [21, p. 323]

The concept of legal responsibility of states for internationally illegal acts was developed in antiquity, more precisely - in the 4th century BC.

In modern international law, the application of the institution of international legal responsibility dates back to 1920, when the Charter of the League of Nations indicated the possibility of imposing sanctions against countries that violated their international legal obligations.

But the issue of international legal responsibility was fully developed after the Second World War, when humanity realized the extent of the damage caused by the fascist states and theirs. In 1945, the issue of combating internationally illegal acts was reflected in the UN Charter (Chapter VII "Actions in relation to threats to peace, breaches of peace and acts of aggression").

Attempts to codify the norms of international legal responsibility of states were made by legal scholars, non-governmental and intergovernmental organizations. However, none of them led to the emergence of a universal international convention at this time. The modern concept of international legal responsibility evolved from the responsibility of states for damages caused to foreign persons. Therefore, initially the codifiers paid the main attention to material responsibility for damage caused to the person and property of foreign citizens and foreign capital. [22, p. 113-120]

Since the second half of the 20th century, the responsibility of states for aggression, war crimes, apartheid policy, and genocide began to be recognized. The nature of the applied measures of responsibility and the forms of its implementation are changing. Then there are changes in the circle of subjects - the responsibility of international organizations and individuals appears. With the expansion of technical and scientific capabilities, the absolute responsibility of states for damage caused as a result of legitimate activities appears. In 1956, the UN General Assembly referred to the International Law Commission the issue of codification of norms of international legal responsibility of states.

Subsequently, the General Assembly adopted on this issue the resolution "Responsibility of states for international legal acts" A/56/83 dated December 12, 2001. [23]

In addition, a number of conventions were adopted from this problem:

• "On the prevention of genocide and punishment for it" (1948);

• "On compensation for damage caused by a foreign aircraft to third parties on the ground" (1952);

• "On international responsibility for damage caused by space objects" (1972);

• "On civil liability for nuclear damage" (1995);

• "On additional compensation for nuclear damage" (1998).

Issues related to the international legal responsibility of states are also resolved in court. Thus, in 1949, the International Court of Justice of the United Nations issued a decision in the case of the loss of life and damage caused by the detonation of mines on British warships passing through Albanian waters in the Corfu Strait.

Also, in 2008, the UN General Assembly adopted resolution A/63/10 "International legal responsibility of international organizations" [24].

The law of international responsibility is a branch of international law, the principles and norms of which determine for the subjects of international law the legal consequences of internationally illegal acts, as well as the infliction of damage as a result of activities not prohibited by international law.

This definition reflects the existence of two sub-branches of the law of international responsibility:

- responsibility for illegal actions;
- liability for damage resulting from activities not prohibited by international law.

By their legal nature, these types of responsibility are fundamentally different, they are regulated by different sets of norms, and the content and forms in which they can manifest themselves are also different.The sub-field of liability for illegal actions consists of three main parts:

- general part,
- responsibility of states,

- responsibility of international organizations.

Objectives of the law of international responsibility:

a) restrain a potential offender (preventive function);

b) encourage the offender to fulfill his duties properly (function of ensuring law and order);

c) provide the victim with compensation for material and moral damage caused (compensation function);

d) to influence the future behavior of subjects in the interests of conscientious fulfillment of their obligations (prevention and maintenance of law and order).

There are two different types of liability. Negative liability arises from an offense and is delictual. The law of international responsibility is dedicated to this type. The second type is positive responsibility, which means the obligation to take the necessary measures to achieve the goal, and this obligation arises from international law. For example, according to the UN Charter, the Security Council bears "primary responsibility for maintaining international peace and security" (Article 24).

International legal responsibility is the legal consequences arising for the subject of international law as a result of his violation of an international legal obligation, or the legal obligation of the offending subject to eliminate the consequences of damage caused to another subject of international law in as a result of the committed international legal delict.

The basis of this branch of international law is the principle of international responsibility: any internationally illegal act of a subject of international law entails his international responsibility.

The purpose of international legal responsibility is to predict the appropriate result, namely: exclusion of the possibility of the state committing new offenses; influencing other states, encouraging them to voluntarily comply with international obligations.

The functions of international legal responsibility are one or another direction of measures carried out within the framework of international responsibility. At the same time, the functions of international legal responsibility have a twofold meaning:

1 - restorative (reparative - is a means of restoring violated social relations of the international legal order by peaceful means);

2 - repressive (punitive - military actions).

The content of international legal responsibility consists in condemning the offender and in the obligation of the offender to bear the adverse consequences of the offense.

Subjects of the law of international responsibility are subjects of international law: states, international governmental organizations, and peoples and nations fighting for the creation of a state. (Resolution A/56/83, Article 10: "2. The behavior of an insurgent or other movement that succeeds in creating a new state on part of the territory of an already existing state or on any territory under its control is considered as an act of this new state under international law "The elements of an internationally illegal act are:

a) behavior that, according to international law, is assigned to a given subject of international law, that is, it is considered to have been committed by him (subjective element);

b) behavior that constitutes a violation by this subject of an obligation imposed on him under international law (objective element).

The qualification of an act as internationally illegal is carried out on the basis of international law. Such qualification is not affected by the fact that the act is considered lawful according to the internal law of the state or the rules of an international organization or is contrary to them.

The international legal grounds for responsibility for international offenses are a set of legally binding prescriptions, international legal acts, on the basis of which a certain variant of the subject's behavior qualifies as an international offense.

The sources of legal grounds for international legal responsibility are any international legal acts, the prescriptions of which fix the rules of conduct binding on states.

When considering the grounds of responsibility, one should proceed from two groups of questions:

1 – on the basis of which the subject of the MP can bear international legal responsibility;

2 – for what the subject of the MP can bear this responsibility.

Based on this, legal (normative) are distinguished; factual; procedural grounds of responsibility, between which there is a close relationship. [25, p. 12-18.]

Legal bases of responsibility include only legally valid international obligations established in valid international legal acts. In particular, the legal bases of responsibility are: - an international agreement (valid agreements that have legal effect); - international order (a special form and means that secures the recognition of a certain way of behavior of the subject of the IP as a legally binding rule of mutual relations); - decisions of international courts and organizations (establish the rights and obligations of the parties); - unilateral international legal acts (declarations, declarations of notes through which the subject of the MP defines specific rules or the line of his behavior in the field of interstate relations and undertakes relevant international obligations).

The actual basis of international legal responsibility is the international offense itself, that is, the act (action or inaction) of the subject of international law (its bodies or officials) that violates international legal obligations.

Procedural grounds of international responsibility are understood as the procedure for consideration of criminal cases and the procedure for bringing guilty subjects to justice. In some landings, such a procedural procedure is regulated in detail and established in international legal acts, in others - its choice is left to the discretion of the body that applies measures of responsibility.

1.2.2. Responsibility of the state for the actions of its subjects and allies

The basis of international law is the coordination of the will of its subjects, in particular sovereign states. International responsibility is based on this, which distinguishes it from other types of responsibility, such as civil or criminal. A state cannot interact with other subjects of international law without observing certain rules of conduct and without being responsible for its actions within the framework of such interaction, as this would mean the absence of restrictions or means of control at the international level.

In the conditions of globalization and the growth of international conflicts, the question of the responsibility of states for the actions of other countries under their influence is becoming more and more relevant. International law defines clear limits of responsibility of states for the actions of entities that directly or indirectly act under their control or with their support. This section analyzes the foundations of international responsibility of states, their role in facilitating or inciting the commission of international crimes, and also considers specific cases from modern international practice. [25, p. 76-81]

The international responsibility of the state is one of the key institutions of international law, which regulates the consequences of a state's violation of its international obligations. According to international law, every state is obliged to respect the rights and obligations stipulated by international agreements, treaties and other sources of law.

State responsibility may arise in the following cases:

• Violation of international law (for example, aggression, occupation, violation of human rights).

• Failure to pay due attention to the actions of subjects under the control or significant influence of the state, if such actions caused an international crime.

• Supporting the actions of another state, which lead to the violation of international norms.

Types of international responsibility

States can bear several types of responsibility depending on the degree of their participation in international crimes:

• Direct responsibility: A state bears direct responsibility for its actions if it directly participates in the commission of an international crime or violation of international law. This may include aggression, genocide, war crimes, terrorism and other serious violations.

• Vicarious responsibility: A state may bear vicarious responsibility if it aids, abets or provides support to another state or entity that commits international crimes. This may include the provision of financial aid, weapons, military resources or diplomatic support.

• Joint responsibility: If several states act jointly or coordinate their actions to commit international crimes, they may bear joint responsibility for the consequences of such actions.International law provides for several grounds on the basis of which a state may be recognized as responsible for the actions of another state under its influence:

• Systematic assistance: If a state systematically provides military, economic or diplomatic support to another state that leads to the commission of international crimes, it can be held responsible for these actions.

• Lack of measures to prevent crimes: If a state has the ability to prevent international crimes committed by another state under its influence, but does not take the necessary measures, it can be held accountable.

• Incitement and coordination: A state that incites another state to commit crimes or coordinates actions can be held responsible for those crimes.

The main sources governing the issue of state responsibility for international crimes are:

• UN Charter: The UN Charter establishes fundamental principles of international law, including the prohibition of aggression, the obligation to respect the sovereignty of other states and human rights. States violating these principles can be held accountable.

• International conventions and treaties: There are a number of international conventions that provide for the responsibility of states for specific types of international crimes. For example, the Convention on the Prevention and Punishment of the Crime of Genocide (1948) defines the responsibility of states to prevent genocide and punish the perpetrators.• Draft articles on the responsibility of states for internationally wrongful acts: This document, developed by the International Commission on Human Rights, establishes the basic principles of the responsibility of states, including the issue of responsibility for the actions of other subjects under their control or influence.

Let's consider the key decisions of international courts that established the principles of state responsibility:

• Cases against Serbia and Montenegro at the International Court of Justice of the United Nations: This precedent is of great importance for the understanding of the international responsibility of states for genocide and war crimes. In the Bosnia and Herzegovina case, the International Court of Justice found Serbia responsible for failing to prevent the genocide, although it did not find it directly guilty of committing it.

• Cases at the International Criminal Court: The ICC deals with cases of individual responsibility, but its decisions also affect the understanding of state responsibility, especially in cases where the actions of high-ranking officials confirm systematic state support for international crimes.

One of the most vivid examples of modern international practice is undoubtedly the conflict in Ukraine, which began in 2014. The Russian Federation has been accused of providing military and financial support to separatist groups in eastern Ukraine, leading to serious violations of international law, including war crimes and crimes against humanity. [27, c. 11-20]

Ukraine submitted a number of lawsuits to international courts, in particular to the International Court of Justice of the United Nations, accusing Russia of violating the Convention on Combating the Financing of Terrorism and the Convention on the Elimination of All Forms of Racial Discrimination. Consideration of these cases is important for establishing the international legal responsibility of the state for supporting crimes committed by other subjects.

And even if we do not refer to this case, the international community is not the first to face similar circumstances.

Thus, Saudi Arabia and its allies in the war in Yemen have been accused of serious violations of international humanitarian law, including airstrikes on civilian objects, blockade of humanitarian aid and other actions that can be qualified as war crimes. In this context, the question

of the responsibility of the Western countries that supply Saudi Arabia with weapons used in the conflict is also considered.

Iran has repeatedly been accused of supporting various terrorist organizations in the Middle East, including Hezbollah in Lebanon and Hamas in Palestine. This support includes financial, military and political assistance that the international community believes facilitates the commission of international crimes such as terrorism, war crimes and crimes against humanity.

International courts and the governments of some countries, including the United States, have considered holding Iran accountable for these actions.The precedents dealing with liability for providing assistance to terrorist organizations once again highlight the complexity of the issue, as it is important to prove a direct link between the support and specific crimes.

One of the key aspects of the issue of international responsibility is the interaction of states with non-state actors, such as terrorist organizations, separatist groups or other illegal armed groups. States can support these groups by providing them with resources, training or sanctuary, which in turn facilitates the commission of international crimes.

There are several scenarios in which states can be held responsible for the actions of non-state actors:

• Delegation of powers: A state can delegate part of its sovereign functions to non-state actors acting on its behalf or in its interests. If these subjects commit international crimes, the state can be held accountable.

• Covert support: A state may covertly support non-state actors by providing them with weapons, finance or intelligence. In cases where such support leads to the commission of crimes, international courts can consider the question of state responsibility.

• Indirect encouragement: Even if a state is not directly involved in the commission of crimes, it may be liable if its policies or rhetoric create the conditions for or encourage such crimes.

Political obstacles

One of the main problems in the process of holding states to account is political obstacles.States often have significant diplomatic and political influence, which allows them to avoid sanctions or other measures from the international community. For example, the permanent members of the UN Security Council have veto power, which they can use to block decisions directed against them or their allies. This creates serious obstacles to achieving justice in international law.

In addition, some states use their economic or military power to exert pressure on other countries or international organizations, preventing the investigation and prosecution of international crimes. In such a situation, other states may refrain from active action due to the fear of escalation of the conflict or the loss of important economic and political ties.

Legal complications

Legal aspects are also a significant challenge in the process of holding states accountable for the actions of other countries or non-state actors. International law, despite its development, remains complex and ambiguous in determining the responsibility of states for indirect actions. For example, it is difficult to prove a direct connection between the state and the actions of non-state actors who may act with its support, but formally remain independent.

In addition, the issue of sovereignty remains important in international law. Many states insist on their right to sovereignty and non-interference in internal affairs, which makes it difficult to hold them accountable for actions that occur within their jurisdiction or under their indirect influence.

The imperfection of international institutions

Institutional limitations of international organizations such as the UN or the International Criminal Court (ICC) also complicate the process of holding states accountable. The ICC, for example, has limited jurisdiction and often faces non-cooperation from states that are not parties to the Rome Statute. This limits its ability to investigate and prosecute persons who commit international crimes.

There is also the problem of the lack of universal jurisdiction in international courts, which means that some states can escape responsibility if they do not accept the jurisdiction of a particular court. In addition, the procedures for consideration of cases in international courts are often long and complex, which can lead to the prolongation of processes and, as a result, to the loss of the effectiveness of international justice. [28, p. 240-246]

Social and economic factors

Social and economic factors also influence the process of holding states accountable. States under international pressure may face internal economic and social crises, which complicates their ability to fulfill international obligations. In some cases, economic sanctions imposed on a state for supporting international crimes can increase the suffering of the population, which causes a negative reaction to international actions.

In addition, cultural differences and uneven economic development can affect the perception of international law and its application in different regions. States with different cultural and political traditions may interpret international norms differently, which leads to conflicts in their application.

Despite the challenges, international law continues to develop, and new mechanisms are emerging aimed at increasing the responsibility of states for international crimes. An important role in this process is played by the expansion of the jurisdiction of international courts, the development of new international treaties and the strengthening of sanctions mechanisms.

Prospects include increased cooperation between states and international organizations, which will contribute to more effective prosecution of international crimes. An important step is also the development of the concept of universal jurisdiction, which allows national courts to consider cases of international crimes regardless of the place of their commission.

In addition, the importance of international and regional organizations in maintaining law and order and preventing crimes is growing.For example, the efforts of the UN, the EU and the African Union to resolve conflicts and promote human rights demonstrate that the international community has the potential to respond more effectively to international crimes and hold states accountable.

In general, the problem of the responsibility of states for the actions of other countries that are under their influence and commit international crimes is complex and multifaceted. Despite numerous challenges, international law continues to develop, and new mechanisms and approaches are emerging aimed at ensuring justice and compliance with international norms. The effectiveness of these efforts will depend on further political will, development of the legal framework and cooperation between states and international organizations.

2. PART II: The Russian Federation and its subjects as subjects of international legal responsibility

2.1. Chapter I: Analysis of international crimes committed in Ukraine

The war in eastern Ukraine, which began in 2014, has led to a number of grave international crimes/ These include mass killings, harm to civilians, sexual violence, forced displacement and other forms of systematic cruelty. The international community has been active in responding to international crimes in Ukraine, including by imposing sanctions and supporting international investigative mechanisms. However, the issues of bringing perpetrators to justice and ensuring fair trials remain relevant today.

Thus, the participants of the General Meeting of the NAPS of Ukraine note that as a result of the military and information aggression of the Russian Federation against Ukraine, a situation has arisen where human rights and the rights of the child, enshrined in international and domestic legal documents, are grossly violated in the temporarily occupied territory: The Universal Declaration of Human Rights (1948), the Declaration of the Rights of the Child (1959), the International Covenant on Civil and Political Rights (1966), the UN Convention on the Rights of the Child (1989), the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the Constitution of Ukraine (1996), the Law of Ukraine "On Protection of Childhood" (2001), etc. [29, c. 7].

In cases of international crimes in Ukraine, a significant number of international legal and regulatory instruments covering international law and human rights are violated. These international legal and regulatory instruments establish the obligations of states to the international community to prevent and suppress international crimes and to bring to justice those responsible for such crimes. Violation of these norms entails serious international consequences, including the possibility of international prosecution and sanctions.

All of these acts are also recognised as crimes under Ukrainian criminal law and should be primarily investigated by domestic law enforcement agencies and reviewed by our courts [30, p. 9].

It was important for Ukraine to ratify the Rome Statute because it defines crimes against humanity and ratification will allow for the prosecution of perpetrators of these crimes, ensuring justice and the inviolability of victims' rights. Ratification of this document will also strengthen Ukraine's status in the international community and demonstrate its commitment to international human rights standards and international humanitarian law. The ratification of the Rome Statute will help ensure the rights and safety of Ukrainian citizens, as it will provide an opportunity to prosecute those who have committed crimes against humanity. This international legal act also takes into account the rights and protection of military personnel during conflicts, which is important for Ukraine in view of the active military operations on our territory.

Crimes against humanity committed in Ukraine since 2014 to the present day have become an object of interest and recording by observers of the Organisation for Security and Co-operation in Europe (OSCE) as an important international mechanism for monitoring and documenting events in the region. It should be noted that the OSCE has played a significant role in monitoring the development of the situation, identifying possible violations and humanitarian problems related to crimes against humanity on the territory of Ukraine, in particular in the ATO and SAF areas.

As a result, the OSCE has released a report on violations of international humanitarian and human rights law and crimes against humanity committed in Ukraine since 24 February 2022, and the OSCE mission was not asked to investigate the legality of the Russian invasion itself. Nevertheless, the report categorically states that Russia is the aggressor and is therefore responsible for all human suffering in Ukraine, regardless of whether it is the result of violations of international humanitarian law or not [31].

The report refers to publicly available information that is generally known to all. The experts were unable to travel to Ukraine, and Russia refused to cooperate with them. However, despite the fact that the circumstances did not allow the OSCE mission to present much new evidence, the report is impressive in its consolidation of the available facts and their subsequent legal analysis.

Since the beginning of 2014, an armed conflict between Ukrainian forces and Russian-backed armed groups has been ongoing in eastern Ukraine, which later escalated into a full-scale invasion of Ukraine. During this war, massacres, fires, destruction of infrastructure and massive human rights violations, including the use of civilians as human shields, sexual violence and rape, were recorded. These events require detailed investigation and condemnation by the international community.

During the war, cases of sexual violence and rape were documented, which were horrific manifestations of physical and psychological abuse. Victims included both women and men, and these terrible events resulted in serious trauma and tragic consequences for the survivors. Sexual violence and rape in wartime are violations of human rights and international humanitarian law. They cause irreversible harm to victims and require the prosecution and punishment of perpetrators. These crimes are regarded as serious violations of international law and are the focus of international efforts to bring perpetrators to justice.

During the war in Ukraine, starting in 2014 and continuing to the present day, there has been a massive resettlement of the population and forced eviction of residents from their homes in the temporarily occupied territories. This is a result of hostilities, as well as repression and persecution. Civilians, including women, children and the elderly, have been forced to flee their homes, leaving behind their belongings and facing uncertainty and danger.

Forced deportations and displacement of the population violate the principle of non-interference with residence and the principle of protection of civilians in times of conflict. These actions are a

violation of international norms. Since the beginning of Russia's full-scale invasion of Ukraine, a significant number of crimes against Ukrainians have been recorded. Thus, according to the Prosecutor General's Office of Ukraine, as of the end of February 2023, more than 68,000 crimes by the Russian military and 952 cases of use of prohibited means of warfare have been registered. In total, more than 2,600 war crimes against children have been registered, including their deaths or injuries, armed attacks on institutions and facilities for children, as well as cases of forced deportation or abduction. In Kherson region, more than 11,000 war crimes are being investigated [32]. Most of these crimes are crimes against humanity.

The UN Independent Commission of Inquiry has confirmed that Russia committed crimes against humanity in Ukraine, and has published a report on the investigation of violations of international law during the full-scale war in Ukraine, which concluded that a number of Russia's actions can be qualified as crimes against humanity. These crimes include attacks on civilians and energy infrastructure, intentional killings, unlawful deprivation of liberty, torture, rape and other sexual violence, as well as the illegal transfer and deportation of children. The evidence collected by the Commission shows that in the territories under the control of the Russian Federation, the Russian authorities committed intentional killings of civilians and people who did not take part in the hostilities.

In addition, Russian troops carried out indiscriminate and disproportionate attacks with explosive weapons in populated areas, clearly ignoring the possible harm and suffering to the civilian population [33]. In addition, the Commission concluded in its report that the attacks on Ukrainian energy infrastructure and torture bear the hallmarks of crimes against humanity committed by the Russian authorities.

Crimes against humanity can only be committed against civilians. Unlike war crimes, the context of an armed conflict is not important for them. The systematic and widespread nature of the attacks against the civilian population must be established. Systematic means that the attacks are carried out mainly according to the same scheme, and large-scale means that the attacks are directed against at least hundreds of thousands of people and are carried out on large areas of the state [34]. On 4 March 2022, the Declaration on the Establishment of a Special Tribunal for the Punishment of the Crime of Aggression against Ukraine was proclaimed, and personal prosecution of the top leadership of the Russian Federation is considered the most effective and fastest tool, as it summarises all other serious violations of international humanitarian and criminal law, as well as gross violations of human rights [35].

Hugh Williamson, Director of Europe and Central Asia at the international human rights organisation Human Rights Watch (HRW), said that the cases they documented constitute unspeakable, deliberate cruelty and violence against the civilian population of Ukraine. Rape, murder and other violent acts against people in the custody of Russian troops should be investigated as crimes against humanity [36].

According to Komissarchuk Y.A. and Cherevko V.V., the main task of law enforcement agencies is to collect evidence and any information about crimes committed by the Russian military. Of course, information about crimes does not always make it to the Internet. In the territories under occupation, such information is quite hidden. However, documentation will in any case be insufficiently effective if there is no testimony from the victims.

One of the tools for collecting information is OSINT (Open-Source Intelligence) methods, which include collecting information from open sources, communicating with victims, video recording of testimonies and interviews of victims (for example, the activities of the Euromaidan SOS NGO)" [37, p. 451]. Lee W.H., Yoon M.W. and Park J.S. note that OSINT is the most basic method of information gathering, which is a form of data collection through open sources (Internet, broadcast, paper, etc.) and their processing [38]. The OSINT method has been really effective in collecting information about crimes against humanity in Ukraine since 2014 and to this day.

This method is useful in the context of detecting and documenting crimes, as it provides access to a large number of sources, this method allows the use of a large number of open sources of information, such as media, social networks, public reports, documents and reports of international organisations, which allows for the collection of diverse and reliable information. OSINT provides near

real-time information, which is important for detecting and responding to emergencies and crimes against humanity.

Since the war in Ukraine since 2014 has involved a large number of events and facts, the OSINT method helps in analysing large amounts of data and identifying connections and patterns.

Information gathering through OSINT can be conducted anonymously, which is important for the safety of those investigating these crimes. An important advantage of OSINT is that the information is usually publicly available and can be used in international trials and documentation of crimes. The development of a new methodology for the study of crimes against humanity in Ukraine is important. Crimes against humanity are often complex and large-scale events that require in-depth understanding and analysis.

Researching and investigating crimes against humanity will help identify the factors that led to these crimes and develop strategies to prevent them in the future. Crimes against humanity have an international dimension, and their study is important for establishing accountability before international courts and organisations. Detailed research also provides more information about the nature, scope and context of crimes, which is important for understanding and addressing these issues. All these aspects indicate that the development of new methodologies for researching crimes against humanity in Ukraine is important for ensuring justice, protecting human rights and preventing similar crimes in the future, especially in the context of a full-scale war in Ukraine.

2.1.1. The role of the military and political leadership of the Russian Federation in the commission of crimes

The imperial ambitions of the Russian authorities have long been no longer a secret, and this is particularly well understood by Russia's geographical neighbours and the states that were once part of the USSR. As already mentioned, Russia's military and political leadership, consisting of the vast majority of elderly people who apparently still cannot reflect on the collapse of the USSR, believe that as the main legal entity, Russia has the right to hegemony in the post-Soviet space and does not consider it necessary to conduct dialogues on an equal footing with the states that make up this space. [39]

Thus, the most recent wars in the memory, apart from the current one, are undoubtedly the wars in Georgia and Chechnya. Russia protests by calling them civil wars and the fight against terrorism because the word war is perceived quite negatively by people in general, and even more so by Russian citizens, because a large part of the ideology of the Russian Federation is based on the fact that they, as the rightful owners of the USSR, are the winners of World War II, which gives endless reasons for the pride of the population, but still does not allow for an openly militaristic policy. Although, over the past couple of years, many masks have been removed and some high-ranking officials in the Russian government are increasingly pushing the narrative that it is necessary to take up arms because Russia is surrounded by enemies. [40]

The military conflicts in Georgia (2008) and Chechnya (1994-2009) have become significant events in Russia's post-Soviet history. The responsibility of the Russian military and political leadership for the outbreak of these wars is an important issue that is considered in the context of international law and human rights violations. Russia's involvement in these wars has both domestic and international consequences.

The first Chechen war (1994-1996) was triggered by Chechnya's desire for independence, which was met with a harsh reaction from the Russian leadership. The responsibility for the escalation of the conflict lies with then-President Boris Yeltsin and the government, who decided to use military force to resolve the issue of the republic's independence. After the war ended with the signing of the Khasavyurt Agreements, the situation remained unstable.

The second Chechen war (1999-2009) began against a backdrop of Islamic extremism and bombings in Russian cities, for which Chechen militants were blamed. President Vladimir Putin supported tough measures that contributed to his political rise. In this conflict, Russia has made extensive use of military force, which has led to numerous human rights violations, confirmed by

reports from human rights organisations. Amnesty International and Human Rights Watch reported mass killings of civilians and other crimes committed by the Russian military.

The conflict in Georgia in 2008 began with an attempt by the Georgian army to regain control of South Ossetia. Russia used this as a pretext for military intervention, justifying its actions by the need to protect the civilian population of Ossetia. However, many international organisations and states regarded these actions as aggression against a sovereign state. According to the Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, Russia violated international norms, which led to international condemnation. [41, 42]

Russia's military and political leadership is responsible for the conflicts in Chechnya and Georgia, which have resulted in significant human losses and human rights violations. International organisations have repeatedly condemned the actions of the Russian Federation, pointing to violations of international law. These wars demonstrated the dangers of military interventions and had serious consequences for Russia's international reputation.

Russia's military and political elite still live in the past and consider all post-Soviet territories to be Russia's property.

As a result, the wars in Chechnya and Georgia have become a clear indication of Russia's imperial ambitions and its desire to maintain control over the post-Soviet space. The military and political leadership of the Russian Federation, acting on the basis of old geopolitical doctrines, has repeatedly shown its readiness to use force as a tool to achieve its foreign policy goals. The conflicts in Chechnya and Georgia were accompanied by numerous human rights violations, humanitarian disasters and serious international consequences for Russia's reputation.

Russia, positioning itself as the successor to the USSR, is trying to reassert its influence over the former Soviet republics, and its military campaigns exemplify imperial policies aimed at maintaining hegemony. Despite justifying its actions by fighting terrorism and protecting civilians, Russia has frequently violated international norms and human rights, as confirmed by numerous international investigations and reports.

In general, these conflicts have demonstrated the danger of expansionist ambitions for international stability. The Russian leadership continues to use military force as the main method of conflict resolution, which undermines the principles of peaceful coexistence and mutual respect in the international arena. [43]

2.1.2 Legal assessment of the actions of the Russian Federation's subjects

The Russian-Ukrainian War (2014-2022) (alternatively referred to as the Armed Aggression of the Russian Federation against Ukraine, the War for Independence of Ukraine, the Russian Federation's aggressive war against Ukraine, etc., hereinafter referred to as the Russian-Ukrainian War) is the use by the Russian Federation (hereinafter referred to as the RF) of its Armed Forces, the Federal Security Service of the RF, the National Guard of the RF, forces of private military companies, and forces of paramilitary corps of the temporarily occupied territories of Ukraine in Donbas and Luhansk (certain districts of Donetsk and Luhansk oblasts, the self-proclaimed Donetsk People's Republic (DPR) and Luhansk People's Republic (LPR)), and since 24 February 2022, the armed forces of the self-proclaimed Republic of Abkhazia and the Republic of South Ossetia (State of Alania) against the sovereignty, territorial integrity and inviolability of Ukraine, against the economic and information security of Ukraine, and against the fundamental rights and freedoms of Ukrainian citizens.

Russia's use of its forces against Ukraine is both direct and indirect, both recognised by Russia and not officially recognised by it, and is accompanied by the occupation of large areas of Ukraine, large-scale human casualties, including genocide of civilians, military, technical and economic losses, negative environmental consequences, as well as assistance to Ukraine from many countries, sanctions and isolation of the Russian Federation. The Russian invasion of the Autonomous Republic of Crimea (hereinafter - ARC) since February 2014, followed by the complete occupation of the ARC; the war in eastern Ukraine since late March-April 2014; and the Russian invasion of Ukraine on 24 February 2022 are also components of the Russian-Ukrainian war since 2014.

Against the backdrop of these events, Russia's aggression against Ukraine began around 20 February 2014, first with the Russian invasion of the Autonomous Republic of Crimea, its support for separatist sentiment in eastern and southern Ukraine, and later with the organisation of militants and terrorist acts.

The invasion of the ARC was announced by the State Duma of the Russian Federation (hereinafter - the Duma) as the representative legislative body of the Russian Federation, the lower house of the

Parliament - the Federal Assembly of the Russian Federation in accordance with Article 95 of the Constitution of the Russian Federation, as well as directly by the President of the Russian Federation Vladimir Putin. In accordance with the Constitution of the Russian Federation, the political regime and activities of the State Duma, the President of the Russian Federation, and other state structures can be described as democratic, with a mixed republic with elements of presidential and parliamentary rule.

However, the actual activities of the Russian Federation's bodies and officials indicate their anti-democratic nature.

Thus, on 1 March 2014, the self-proclaimed "Head of the Council of Ministers of the ARC" S. Aksyonov appealed to Russian President V. Putin to help "ensure peace and tranquillity" in Crimea. In response, on the same day, the President of the Russian Federation sent a proposal to the Federation Council to bring Russian troops into Ukrainian Crimea. On 1 March 2014, at 17:20, both chambers of the State Duma voted in favour of bringing Russian troops into the territory of Ukraine, and in the ARC, in particular, on 20 March 2014, the State Duma voted to ratify the Agreement on the Annexation of Crimea, which was signed on 18 March 2014 by Russian President Vladimir Putin and representatives of the self-proclaimed Republic of Crimea. The only one out of 450 members of the State Duma who voted against the annexation was State Duma deputy I. V. Ponomarev.

From the point of view of the international community, the State Duma of the Russian Federation, as the legislative body of this state, authorised the deployment of Russian troops into the territory of Ukraine, as well as the ratification of the Agreement on the annexation of Crimea, is a gross violation of international law. This violent annexation of the ARC is not recognised by the international community. In particular, Ukraine was supported by the UN, the Council of Europe, the OSCE PA, and it also contradicts the decision of the Venice Commission, while the Russian authorities interpret it as "the return of Crimea to Russia." [44, 45, 46]

Paragraph 158 of the Report on the Preliminary Investigation (2016) of 14 November 2016 of the International Criminal Court (hereinafter - the ICC) in The Hague states that the situation in Crimea and Sevastopol amounts to an international armed conflict between Ukraine and the Russian Federation. This international armed conflict began no later than 26 February, when the Russian Federation used the personnel of its armed forces to gain control over parts of the territory of Ukraine without the consent of the Government of Ukraine. [26]

Thus, the ICC has effectively recognised the Russian Federation as an aggressor state that has occupied part of the territory of Ukraine. The document states the existence of an armed conflict between Russia and Ukraine and records numerous criminal offences (crimes) committed in the Autonomous Republic of Crimea and eastern Ukraine since the end of February 2014. The Russian Federation refused to ratify the Rome Statute of the ICC in The Hague, which had been pending for 16 years. Russian President Vladimir Putin signed a decree "On the intention of the Russian Federation not to become a party to the Rome Statute of the International Criminal Court." Russia signed the statute in 2000 but has not ratified it. Ukraine made a declaration of one-time recognition of the ICC's jurisdiction from 21 November 2013 to 22 February 2014, and in 2015 extended this provision indefinitely, so potentially any person who participated in the events in Ukraine on both sides could be subject to the ICC's jurisdiction. Russian researchers believe that if the Russian Federation had recognised the jurisdiction of the ICC, Russians could have been indicted after the investigation, but now this has become impossible [47].

Ukraine also adopted a number of legal acts aimed at preventing violations of the rights and freedoms of citizens in the temporarily occupied territory of Ukraine. In particular, the resolution of the Verkhovna Rada of the ARC "On holding a general Crimean referendum" of 6 March 2014 was

declared inconsistent with the Constitution of Ukraine (unconstitutional), according to the decision of the Constitutional Court of Ukraine in the case of holding a local referendum in the ARC of 14 March 2014 [48].

The Declaration of Independence of the Autonomous Republic of Crimea and the city of Sevastopol was declared inconsistent with the Constitution of Ukraine (unconstitutional), according to the decision of the Constitutional Court of Ukraine of 20 March 2014. The anti-democratic nature of the Russian Federation's actions in the ARC is also evidenced by the ban on the activities of the Mejlis of the Crimean Tatar people, a representative body of the Crimean Tatars similar to the parliament. After the annexation of the ARC by the Russian Federation, the Mejlis and the Crimean Tatars have been subjected to repression. On 26 April 2016, the Russian-controlled Supreme Court of Crimea banned the activities of the Mejlis. The international community protested against these actions of the Russian Federation. The defence of the Mejlis filed an appeal to the Supreme Court of the Russian Federation. However, on 29 September 2016, the Supreme Court of the Russian Federation confirmed the ban of the Mejlis [49].

The annexation of the ARC raises the international issue of non-recognition of the legitimacy of the State Duma elections held on 18 September 2016 and 10 March 2020, as well as other elections held in the Russian Federation. The fact is that these elections to the State Duma of the Russian Federation, among other things, took place in the ARC as a territory of the Russian Federation, which is recognised by the international community as the temporarily occupied territory of Ukraine by the Russian Federation.

The PACE, such states as the USA, Estonia, Lithuania, Romania, Sweden, Denmark, Canada, France, Germany, Japan, as well as the UN, the EU and other intergovernmental organisations have declared their non-recognition of the results in one form or another. This position has serious legal consequences for the Russian Federation, as the legitimacy of Russian state structures and officials, and their subsequent decisions, is questioned or not directly recognised by many international organisations and states.

An integral part of the Russian-Ukrainian war, as well as the continuation of the occupation of the Autonomous Republic of Crimea, was the War in Eastern Ukraine, an armed conflict between illegal armed groups and militants of the DPR and LPR organised and controlled from Russia, with the support of regular Russian military units, and Ukrainian law enforcement agencies with the involvement of the Armed Forces of Ukraine.

The war in eastern Ukraine was local in geographical terms and covered parts of Donetsk and Luhansk regions of Ukraine, which, according to Article 133 of the Constitution of Ukraine, are part of Ukraine and are its integral part. The conflict began in mid-April 2014, when armed groups of pro-Russian citizens of both Ukraine and the Russian Federation began to seize administrative buildings (state administrations, local governments) and police stations in the cities of Sloviansk, Kramatorsk, Artemivsk (now Bakhmut) and other cities. The Ukrainian authorities responded by launching an anti-terrorist operation involving the Armed Forces of Ukraine (since 30 April 2018, it has been transformed into the Joint Forces Operation).

In particular, the Decree of the President of Ukraine of 14 April 2014 enacted the decision of the National Security and Defence Council of Ukraine of 13 April 2014 "On urgent measures to overcome the terrorist threat and preserve the territorial integrity of Ukraine" (secret). [50, p. 745]

On 16 September 2014, the Law of Ukraine "On the Special Procedure for Local Self-Government in Certain Districts of Donetsk and Luhansk Regions" was adopted, which temporarily (initially for three years) introduced a special procedure for local self-government in certain districts of Donetsk and Luhansk regions, which included districts, cities, towns, and villages, as determined by the decision of the Verkhovna Rada of Ukraine. This period was subsequently extended several times, and according to the latest amendments introduced by the Law of Ukraine of 2 December 2021, the special procedure was introduced until December 2022 inclusive. The districts, cities, towns and villages of Donetsk and Luhansk oblasts where the special procedure for local self-government was introduced and where elections were to be held were defined in a resolution of the Verkhovna Rada of Ukraine dated 17 March 2015

Along with other provisions, Article 4 of this Law guaranteed, in accordance with the provisions of the Law of Ukraine "On the Principles of State Language Policy" of 3 July 2012 (as of today, this Law of Ukraine has lost its force as not complying with the Constitution of Ukraine (unconstitutional), according to the decision of the Constitutional Court of Ukraine of 28 February 2018), the right of linguistic self-determination of each resident in these areas regarding the language, free use of the Russian language and similar provisions. In the Resolution on the Appeal to the UN, the European Parliament, the Parliamentary Assembly of the Council of Europe and other international organisations, national parliaments of the world on the recognition of the Russian Federation as an aggressor state, the Verkhovna Rada of Ukraine noted that Ukraine remains the object of military aggression by the Russian Federation, which it carries out, inter alia, through support and provision of large-scale terrorist attacks

The Resolution of the Verkhovna Rada of Ukraine "On the Statement of the Verkhovna Rada of Ukraine "On Ukraine's Recognition of the Jurisdiction of the International Criminal Court over Crimes against Humanity and War Crimes Committed by Senior Officials of the Russian Federation and Leaders of the DPR and LPR Terrorist Organisations, which led to particularly grave consequences and mass murder of Ukrainian citizens" of 4 February 2015, it is stated that these actions contain signs of grave and especially grave crimes against humanity and war crimes that fall under the jurisdiction of the ICC. Therefore, the Verkhovna Rada of Ukraine recognised the jurisdiction of the ICC over the above crimes committed by senior officials of the Russian Federation and the leaders of the DPR and LPR, which led to particularly grave consequences and mass killings of Ukrainian citizens since 20 February 2014

Experts believed that by declaring Russia the aggressor and starting the procedure for recognising the DPR and LPR as terrorist organisations, the Verkhovna Rada of Ukraine was taking steps towards creating a more adequate legal framework [51].

The official position of the Russian Federation on the DPR and LPR was as follows: there are no regular military formations on the territory of Ukraine, and only individual volunteers from the Russian Federation are involved. However, even in the case of Russia's official non-recognition of the facts of assistance to the DPR and LPR terrorist organisations, the mechanism of responsibility for crimes against humanity in the national legislation of Ukraine should be applied on the principle of ultra vires of its bodies

In particular, Art. 359 of the Criminal Code of the Russian Federation provides for criminal liability for mercenarism, namely for recruiting, training, financing or otherwise providing material support to a mercenary, as well as for his or her use in an armed conflict or hostilities [52].

The UN General Assembly Resolution "Responsibility of States for Internationally Wrongful Acts" 56/589 of 12 December 2001 (Article 7) provides for the case of "unauthorised acts or acts ultra vires of State organs or entities". This article stipulates that the behaviour of a state body or entity authorised to exercise elements of state power and acting in its official capacity is the behaviour of the state, even if the body or entity exceeded its powers or violated instructions.

It is also worth noting that according to Part 2 of Article 1 of the Law of Ukraine "On Sanctions" of 14 August 2014, sanctions may be imposed by Ukraine against a foreign state, a foreign legal entity, a legal entity controlled by a foreign legal entity or a non-resident individual, foreigners, stateless persons, as well as entities engaged in terrorist activities

Thus, these sanctions apply to the Russian Federation, but not only to it. This is understandable, as the aggressor will always have its own aiders and abettors. For example, Ukraine has officially declared that it recognises the DPR as a terrorist organisation, but the Republic of South Ossetia (which was part of Georgia and is considered by official Georgia to be a temporarily occupied territory), which is equally unrecognised by the international community, has recognised the DPR as an independent state [53].

Thus, as such actions by the unrecognised Republic of South Ossetia are a violation of international law, the Law of Ukraine "On Sanctions" applies to such territories.

The last stage of the Russian-Ukrainian war to date is the Russian invasion of Ukraine in 2022. The stage itself began after a prolonged build-up of Russian troops starting in November 2021 along

Ukraine's border with Russia and Belarus, as well as Russia's recognition of the independence of the DPR and LPR on 21 February 2022. Ukraine's response to the Russian leadership's recognition of the independence of the self-proclaimed entities and the decision to deploy units of the Russian Armed Forces on their territory was the introduction of a state of emergency in certain regions of Ukraine by the Decree of the President of Ukraine of 23 February 2022 and its approval by the Law of Ukraine of 23 February 2022, followed by the introduction of martial law throughout Ukraine a day later. [54]

The Russian invasion of Ukraine began at approximately 03:40 a.m. on 24 February 2022. By a Decree of the President of Ukraine dated 24 February 2022, martial law was introduced in Ukraine from 05.30 a.m. on 24 February 2022 for an initial period of 30 days (later extended). This decree was approved by the Law of Ukraine dated 24 February 2022

Since the first day of the Russian-Ukrainian war, Russia and its soldiers have been violating internationally recognised rules of warfare and committing iternational crimes on a massive scale.

In its Resolution of 2 March 2022, the UN General Assembly recognised the invasion as Russian aggression against Ukraine, condemned the Russian invasion and demanded that Russia immediately cease the use of force against Ukraine [55].

Russia described its invasion as a "special military operation", but it was nothing more than a use of force in accordance with international law. This characterisation can be confirmed by Russia's own letter to the UN Secretary-General sent on the day of the invasion. [56]

It referred to "measures taken in accordance with Article 51 of the Charter of the United Nations in the exercise of the right of self-defence". The letter took the unusual form of simply attaching the text of President Putin's speech to the Russian people on the same day (the "Putin speech"). Putin's speech was also later attached to a Russian document sent to the International Court of Justice (ICJ) in an attempt to deny the Court's jurisdiction over the case brought by Ukraine on 26 February 2022. Thus, the speech can be seen as a central argument in favour of Russia's legal justification." [57]

Despite the lack of legal clarity, given the context of the public speech, Putin's speech primarily justified Russia's use of force on the basis of the right to individual and collective self-defence. Referring to the eastward expansion of the North Atlantic Treaty Organisation (NATO), the speech claimed that there was a "real threat" to Russia's interests and its "very existence". This was followed by a statement that "there is no other way to defend Russia", suggesting that this was an exercise of the right to individual self-defence.

At the same time, the speech referred to the "genocide" that allegedly took place in the Donbas region of eastern Ukraine, to calls for help from the two "people's republics of Donbas" and to the Treaties of Friendship, Cooperation and Mutual Assistance that Russia had concluded with both "republics". These explanations allegedly justified Russia's decision to conduct a special military operation "in accordance with Article 51... of the Charter of the United Nations", clearly referring to the right of collective self-defence.

However, Russia cannot invoke the right of individual self-defence in the absence of an armed attack *on Russia*. Even if we accept the doctrine of pre-emptive self-defence against an imminent armed attack, it cannot be said that such a threat to *Russia* existed at the time. [58, p. 20]

With regard to the right to collective self-defence, Russia's justification for the use of force against Ukraine referred to requests from the two Donbas 'republics'. This appears to have followed the 1986 *Nicaragua* judgement of the INTERNATIONAL COURT OF JUSTICE, which stated that "there is no rule in customary international law...authorising collective self-defence in the absence of a request from a *State* which considers itself the victim of an armed attack." [59, p. 105, para. 199]

However, such a request must come from a sovereign state. In the same judgment, THE INTERNATIONAL COURT OF JUSTICE also stated that "[the principle of non-intervention] would certainly lose its effectiveness as a principle of law if intervention were justified by a mere request for assistance made by *an opposition group* in another State" [60, Article 126, para. 246]. This statement was made in the context of the principle of non-intervention, but it appears to be equally or *a fortiori* applicable to the case of collective self-defence.

This condition of statehood is also important in relation to the requirement of armed attack in self-defence. In its 2004 advisory opinion in the *Israeli Wall* case (although it was a case of individual

self-defence), the ICJ stated that "Article 51 of the [UN] Charter thus recognises the existence of an inherent right of self-defence in the event of an armed attack *by one State against another State*") [61, Art. 194, para. 139]. Therefore, the initially attacked entity must be a "state".

However, the statehood of the two 'republics' of Donbas is in question. The two 'republics', as Russian proxy states, have not fulfilled all the requirements for a state under international law, as set out in Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States. The fact that Russia is virtually the only country that has recognised the two 'republics' as independent states provides further strong evidence that they have not achieved statehood. Indeed, Resolution ES-11/1 of the emergency special session of the UN General Assembly of 2 March 2022 "condemns" Russia's recognition of the two "republics" as a "violation of the territorial integrity and sovereignty of Ukraine" and "demands" that Russia "immediately and unconditionally revoke the decision concerning the status of ... Donetsk and Luhansk regions of Ukraine." [62]

Russia only recognised the two 'republics' as sovereign states on 21 February 2022, three days before the invasion of Ukraine, and Putin's speech cited the 'genocide' in Donbas as the main reason for the recognition. This statement, along with the subsequent reference to the right to self-determination in the speech, suggests that President Putin may have been referring to the so-called "penal separation", the right to external self-determination, when a people are blocked from meaningfully exercising their right to self-determination within the country. [63, pp. 38-42]

In order for an entity within an existing state to become an independent state under international law, it must be in circumstances where it can legitimately exercise the right to external self-determination. However, it is unclear whether correctional secession has been established as such a right under international law, as declared by the Supreme Court of Canada in the 1998 Quebec Secession case. In the Court's view, while the right to exercise external self-determination for colonial peoples, as well as peoples under foreign subjugation, domination or exploitation, is indisputable, it "remains unclear" whether penal separation reflects an actual established standard of international law. [64, pp 1372-1373]

With regard to the situation in Donbas, neither the Organisation for Security and Cooperation in Europe (OSCE) nor the Office of the United Nations High Commissioner for Human Rights (OHCHR) has reported that the Donbas region has faced circumstances that have prevented its peoples from meaningfully exercising internal self-determination. The International COURT OF JUSTICE, in its ruling on provisional measures in the case of "*Genocide Prosecution (Ukraine v. Russian Federation)"* in March 2022, also stated that "the Court has no evidence to support the allegation of the Russian Federation that genocide was committed on the territory of Ukraine." [65, para. 59]

It is true, as the Canadian court stated, that "an unlawful act may eventually acquire legal status if... it is recognised internationally". [66] However, as noted above, the number of recognitions of the two 'republics' as independent states is not such that their secession could be legalised. Thus, their recognition by Russia, which was legally dubious, should be seen primarily as a springboard undertaken by Russia to justify its military intervention in response to requests for assistance from the 'republics'. This seems particularly plausible when one considers the date of the recognition (three days before the invasion). Thus, Russia's justification for the use of force in collective self-defence, citing *the request of* the two 'republics' against which *an armed attack* allegedly took place, cannot be sustained.

In this regard, a "request" for assistance from another state may be (i) one of the requirements for the legitimate exercise of the right to collective self-defence or (ii) used as an independent justification for the use of force as such. [67, arts. 2-4]. Although the two concepts can be conceptually separated, in practice it can be more difficult to distinguish, especially when the use of force is limited exclusively to the territory of the requesting state.

The Security Council is the main UN body that should respond to situations involving the use of force. However, the current situation involves the use of force by Russia, a permanent member of the Security Council with a veto. On 25 February 2022, the Security Council failed to adopt a resolution condemning Russia (co-sponsored by 82 states) due to a veto by Russia (11 in favour, 1 against [Russia] and 3 abstentions [China, India, UAE]). [68, Article 6]. Then, on 27 February, the Security Council adopted Resolution 2623 (2022) (co-sponsored by Albania and the United States) on the basis of

Resolution 1950 "Uniting for Peace" with the same voting result, but without Russia's blocking power in the form of a negative vote [69], and decided to hold an emergency special session of the UN General Assembly. Despite the procedure explicitly provided for in the 1950 resolution, the eleventh emergency special session was convened while the General Assembly was apparently "in session". The Security Council may have intended this procedural deviation to make it clear that this was an "emergency" situation.

As for the veto, Russia probably should have abstained from voting at all, as it was a party to the dispute. This calls into question the legitimacy of the veto itself. Article 27 (3) of the UN Charter states that "in decisions under Chapter VI and Article 52, paragraph 3, a party to a dispute shall abstain from voting". This mandatory abstention applies only to decisions on the peaceful settlement of disputes, not to enforcement actions under Chapter VII.

In any case, on 2 March 2022, resolution ES-11/1 (co-sponsored by 96 countries), almost identical in content to the one rejected by the Security Council, was adopted by the General Assembly with 141 votes in favour (this time including THE UAE) and 5 against (Russia, Belarus, North Korea, Eritrea and Syria), with 35 abstentions (including China and India). In the resolution, the General Assembly:

- (i) "Condemn in the strongest terms the aggression of the Russian Federation against Ukraine in violation of Article 2(4) of the Charter of the [United Nations]" (para. 2);
- (ii) "demand that the Russian Federation immediately cease the use of force against Ukraine..." (paragraph 3); and
- iii "demanded that the Russian Federation immediately, fully and unconditionally withdraw all its military forces from the territory of Ukraine within its internationally recognised borders" (paragraph 4).

Subsequently, between 23 and 27 September 2022, Russia held so-called "referendums" in the Donetsk and Luhansk "people's republics", as well as in Zaporizhzhia and Kherson regions (the latter two did not declare independence and did not receive state recognition) and signed "agreements" on the annexation of the four "republics" and regions on 30 September. All the procedures for the annexation were completed on 5 October, but the date of annexation was set for 30 September. [70]

Dapo Akande argues that "where an occupation follows an unlawful armed attack, the occupation is a continuing armed attack, and the attacked State does not lose its right to self-defence simply because of the passage of time". [On the other hand, Tom Ruys argues that the combined effect of the immediacy requirement (as part of the necessity of self-defence) and the principle of non-use of force for the settlement of territorial disputes is that "a State cannot invoke the right of self-defence to recover occupied land if the territory has been peacefully administered by another State for a long period of time". [71, art. 1294]

The fundamental difference between them lies in their approach to the notion of a "continuing armed attack", especially after a considerable time has elapsed since the initial attack. Contrary to its appearance, Akande's statement above does not ignore the requirement of necessity for self-defence; he argues that if an armed attack results in the occupation of territory, it is ongoing, and that the passage of time "may in fact mean that the use of force in self-defence is necessary".

However, the counter-argument that "without a time limit, self-defence would authorise armed attacks for countless previous acts of aggression and conquest" seems to have merit. At the same time, Ruys does not completely exclude the possibility of using force in self-defence after the time between an armed attack and an attempted response: his argument is that the victim state ultimately loses its right to self-defence "if it does not act within *a reasonable* time and after the new status quo has materialised." [72, p 292]

2.2. Chapter II: Mechanisms of accountability

2.2.1. Existing international accountability mechanisms

The International Law Commission has defined international responsibility as "all forms of legal relations which may arise in international law in connection with a wrong committed by a State, whether those relations are confined to those between the State which committed the wrongful act and

the State directly affected, or they also extend to other subjects of international law, and regardless of whether these relations are limited to the obligation of the guilty State to restore the right of the injured State and to compensate for the damage caused, include the possibility of the injured State itself and other subjects to apply to the guilty State any sanctions provided for by international law" [73, p. 204].

Scholars identify the following objectives of international legal responsibility: to deter a potential offender from committing an offence; to encourage the offender to properly fulfil its obligations; to provide the victim with compensation for material or moral damage; to influence the future behaviour of the parties in order to fulfil their obligations in good faith. The International Law Commission, based on a generalisation of the theory and customary norms, defined the following principles of international legal responsibility: responsibility for any international legal acts of the State; determination of the subjects of such acts; determination of the conditions for the existence of international legal acts; non-application of domestic law to determine the existence of such acts [74, p. 312].

International legal responsibility arises only if there are grounds for international legal responsibility. The interpretation of an international legal offence is contained in the Draft Articles on State Responsibility for Internationally Wrongful Acts adopted by the UN International Law Commission. Art. 1 states that "any wrongful act of a State entails the international responsibility of that State".

According to Art. 2, an internationally wrongful act occurs in the following cases:

a) conduct, whether act or omission, is attributable to a state under international law;

b) this conduct is a violation of the state's international obligation.

According to Article 3 of the Draft, a state act may be qualified as internationally wrongful only on the basis of international law. Such qualification cannot be affected by the qualification of the same act as lawful under domestic law [75].

The following are necessary for bringing to international legal responsibility:

1) there must be an international legal obligation between the two states;

2) there must be an act or omission in breach of the obligation attributable to the responsible State;

3) the consequence of this action is loss or damage [76, p. 542].

Pursuant to Article 4 of the UN General Assembly Resolution on the Responsibility of States for Internationally Wrongful Acts, the acts of any organ of a State shall be regarded as acts of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, regardless of the position it occupies in the system of the State and regardless of whether it is a central authority or an administrative-territorial unit of the State.

According to Article 11, the conduct of an insurgent movement that becomes the new government of a State shall be considered an act of that State under international law. The conduct of a movement, insurgent or otherwise, which succeeds in establishing a new state on part of the territory of an existing state or on any territory under its administration is considered an act of that new state under international law. Conduct not attributable to a state under the preceding articles is considered an act of that state under international law to the extent that the state recognises and accepts that conduct as its own [77].

As noted by V.I. Lisovsky, the state is most often responsible for the actions or omissions of its executive bodies: ministries and departments, army and police units, border and special services, down to the lowest level of executive power. The state cannot evade responsibility by referring to the fact that, according to domestic law, these actions do not need to be taken or should be taken in a different way.

International responsibility of states is one of the principles of modern international law; it is the legal consequences that arise for a subject of international law as a result of an international offence committed by it, which oblige it to repair the damage caused to other subjects of international law. Responsibility in international law gives rise to the right of the injured party to satisfy its violated interests, including the imposition of sanctions against the offending state. The problem of liability in international law is directly related to the functioning of international law and the strengthening of international peace and order. This is one of the oldest institutions of international law, but despite its constant practical application and improvement, the legal norms of this institution are not codified, so

it is based, as a rule, on the application of customary norms developed on the basis of precedents and court decisions [74, p.344].

One of the most pressing problems of bringing to international legal responsibility is the issue of holding states accountable for aggression without a decision of the UN Security Council. The UN Security Council consists of 5 permanent members: China, France, Russia, the United Kingdom, and the United States. These states can block decisions regarding themselves or issues that affect their interests. According to paras. 2-3 of Art. 27 of the UN Charter, decisions of the UN Security Council on non-procedural issues are considered adopted when they are supported by the votes of nine out of fifteen members of the Council, including the votes of all permanent members of the Council that coincide [75].

They discussed a proposal by France, which a year ago put forward an initiative to oblige permanent members of the Security Council to voluntarily abstain from using the veto to block actions aimed at preventing violence or stopping violence. Russia stated that it did not agree with the demand to change the veto procedure. Experts noted that the veto mechanism should be preserved, and that France's actions are opportunistic and could set a dangerous precedent [76].

It was as a result of the Russian Federation's veto on 15 March 2014. the Security Council did not take measures to prevent the violation of the territorial integrity of Ukraine [77, p. 941].

In the context of this study, it is important for us to determine the possibilities of bringing Russia and its aiding states to justice. Putting aside unrecognised territorial entities, in addition to the Russian Federation, Belarus and Iran should be held accountable for crimes committed on the territory of Ukraine. Although as of autumn 2024, Belarus is not actually involved in the war, in 2022 it provided its territory to Russian troops, who later almost occupied the capital of Ukraine and committed numerous war crimes, including the most famous one in Bucha. According to Andriy Nebytov, the head of the Criminal Police of Ukraine, 422 bodies of murdered people were found after the city was de-occupied, many of them blindfolded. In total, the number of war crimes in the Kyiv region alone is more than 23,000, and the relevant documents have been drawn up. All these horrors would not have happened if Russian troops had not entered Kyiv region from the territory of Belarus. It is also important to note that, in addition to manpower, missiles were regularly launched from Belarusian territory in 2022-23, as well as combat sorties by Russian aircraft to strike Ukrainian ground targets.

As for Iran, for some time it was difficult to prove any involvement in the war, but since the end of 2022, the shelling of Ukrainian cities by Iranian-origin Shahed-136 combat drones has been increasingly recorded. They are in service exclusively with Iran, and therefore it has become simply unrealistic to evade the question or, moreover, to deny the cooperation between Iran and Russia on the world stage.

We can also mention China and North Korea. As for China, frankly speaking, there are very serious doubts about bringing the latter to justice, as Russia's cooperation with China is unproven and characterised by more speculation, which is multiplied by Putin's personal friendly relations with Xi Jinping. Nevertheless, China has not officially condemned the war against Ukraine and for some time did not support all the sanctions imposed on Russia, some of which have not been imposed yet, not least because it helps to circumvent bans on certain goods from the "Western world".

As for North Korea, the friendly relations between the governments of the two countries have never been a secret, but as of the end of October 2024, both Ukrainian and Western intelligence agencies support the presence of the Korean armed forces in Russia, where, according to various sources, they are preparing to participate in a war, either on the territory of Ukraine or for a counter-offensive by Russian troops in the Kursk and Belgorod regions, which were partially occupied by the Armed Forces of Ukraine in August this year. If the participation of North Korea's regular armed forces in the war is proven, it will become a full-fledged party to the conflict and will have to bear full responsibility for its actions.

Nevertheless, the main responsibility undoubtedly lies with Russia.

Since the beginning of the full-scale military invasion of Ukraine by the aggressor country, the Ukrainian legal community has launched an information campaign calling for the ratification of the Rome Statute and discussion of the mechanism of bringing the aggressor country to justice for the most

serious international crimes committed in Ukraine. The scale and gravity of the crimes committed by the Russian Federation are unprecedented in the history of Ukraine, and the entire national law enforcement and judicial system is facing a difficult task of collecting evidence and investigating the most serious international crimes against the Ukrainian people.

It should be recalled that the issue of ratification of the Rome Statute has been relevant for more than 20 years, namely since 20 January 2000, when Ukraine signed this international agreement. At that time, Ukraine was not ready to join the international criminal justice system, as there were many issues related to the implementation of the Rome Statute in the national legal system of Ukraine. Already on 11 July 2001, a controversial opinion was issued by the Constitutional Court of Ukraine, which ruled that the Rome Statute did not comply with the Constitution of Ukraine on only one point. [78]

The Rome Statute provides for the possibility that, without ratification, a state may recognise the jurisdiction of the ICC in certain cases by submitting a declaration to that effect. Such a mechanism, where, on the one hand, a state has not ratified the Rome Statute, but has adopted a separate declaration in its content, can be considered as "limited ratification" in terms of recognising the jurisdiction of the ICC. In 2014-2015. Ukraine, not having become a full party to the Rome Statute, used the relevant mechanism, applied to the ICC in the ad hoc mode (for a specific case) and filed applications for recognition of the ICC's jurisdiction under Article 7 on crimes against humanity and Article 8 on war crimes committed in the territory of Ukraine by senior officials of the aggressor country and leaders of the "DPR" and "LPR" terrorist organisations starting from 20 February 2014 and without a deadline. Thus, Ukraine has used the special procedure for recognising the jurisdiction of the ICC for states that have not acceded to the Rome Statute but wish to have the ICC investigate international crimes committed on their territory.

According to the Rome Statute, if a state submits such applications, it recognises the jurisdiction of the ICC and undertakes to cooperate and comply with any decisions, but does not enjoy all the organisational and procedural rights of a full-fledged state party to the Rome Statute. Ukraine's ad hoc acceptance of the ICC's jurisdiction in accordance with Article 12(3) of the Rome Statute gives the ICC jurisdiction over war crimes, crimes against humanity and the crime of genocide. The ICC Prosecutor has already initiated an investigation into these crimes.

Following the outbreak of Russia's full-scale military invasion of Ukraine in March 2022, ICC Prosecutor Kareem Khan launched an investigation into international crimes, including war crimes and crimes against humanity, committed by Russia on the territory of Ukraine. The ICC Prosecutor's investigation concerns both events that have taken place since the beginning of Russia's full-scale military invasion of Ukraine and events from 2014 to 2022.

As Ukraine has not ratified the Rome Statute, the ICC Prosecutor had to obtain permission to proceed to the investigative stage, which complicates the process. It was only thanks to the support of the States Parties to the Rome Statute and their decision to refer the case immediately for investigation that Ukraine managed to avoid this procedure. It was the unprecedented number of applications to the ICC by States Parties that allowed Ukraine to initiate an investigation under the procedure in the absence of ratification of the Rome Statute. However, the investigation initiated by the ICC Prosecutor does not involve the investigation of the crime of aggression against Ukraine. The ICC should be seen as a very powerful tool in the prosecution of bloody dictators, even if they are hiding in their own countries. In accordance with Article 89 of the Rome Statute, the ICC has the right to request the surrender of a person in respect of whom the ICC Prosecutor is conducting an investigation.

Such a request may be addressed to any state in whose territory the wanted person is or may potentially be located. If the ICC issues an arrest warrant for a person on charges of the most serious crimes committed on the territory of Ukraine, this will make him or her, at a minimum, non-refoulement. He would be arrested, as required by the Rome Statute (Article 58), if he travelled to one of the 123 member states of the ICC. The jurisdiction of the ICC is binding even if the state on whose territory the crimes were committed or the state of which the accused is a citizen is not a party to the Rome Statute.

However, it should be noted that the ICC should not be seen as a universal mechanism for investigating, prosecuting and punishing the aggressor country. Ukraine should work more consistently and persistently to create a special mechanism to bring the aggressor country to justice for the most serious international crime - the crime of aggression.

The fact is that most people are talking about war crimes, which, together with the crime of genocide, crimes against humanity and the crime of aggression, are included in the list of international crimes. To prosecute all of them, except for the crime of aggression, the ICC operates, which has jurisdiction to investigate the crime of genocide, crimes against humanity and war crimes. However, it does not have jurisdiction to investigate the core crime, namely the crime of aggression against Ukraine.

It should be recalled that the crime of aggression, namely the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the UN Charter, was established by a UN General Assembly resolution back in 1974. Moreover, this resolution establishes an expanded list of actions that constitute aggression, which covers the actions of the aggressor country not only after a full-scale invasion, but also since 2014.

The crime of aggression was introduced into the ICC's jurisdiction in 2010 along with the so-called Kampala Amendments. However, the ICC's jurisdiction over the crime of aggression applies to those states that hypothetically committed such a crime one year after the ratification of the Rome Statute, but not earlier than 17 July 1998. It is clear that the aggressor country will not ratify the Rome Statute, but even if it does, the ICC will have the right to proceed one year after ratification. The Rome Statute provides that the ICC shall not exercise its jurisdiction over a crime of aggression committed by nationals or on the territory of a State not party to the Rome Statute (15-5) [80].

Therefore, the crime of aggression cannot be investigated by the ICC due to existing restrictions. If a country is not a state party to the ICC, it is excluded from its jurisdiction to investigate and prosecute crimes of aggression, regardless of whether it is a victim of aggression or an aggressor. An exception to this is a referral from the UN Security Council. Given that the aggressor country has the right to veto the decisions of the UN Security Council, such an appeal is almost impossible. In this case, the ICC will not have jurisdiction to investigate the crime of aggression against Ukraine.

As of today, none of the existing international judicial institutions (ICC, International Court of Justice, European Court of Human Rights) has jurisdiction to investigate and prosecute the crime of aggression against Ukraine. It was the inability of the international legal order system to respond to the most serious international crimes in the past that led to the establishment of international tribunals and special judicial bodies (Nuremberg, Tokyo, International Criminal Tribunals for the former Yugoslavia and Rwanda, and others).

Therefore, it is proposed to establish the JIT on the crime of aggression of the aggressor country against Ukraine, whose activities will be related to the investigation of the illegal invasion of the territory of Ukraine as a sovereign state by the aggressor country and aimed at bringing to justice the highest political and military leadership of the aggressor country, including Putin, the head of government, the Minister of Defence and the Minister of Foreign Affairs of the aggressor country. Without the right to prosecute these individuals, there is little point in establishing the ICC.

It is easier to prove the crime of aggression against Ukraine than, for example, the crime of genocide. The aggression against Ukraine is obvious. There is all the evidence in open sources that the aggression was carried out by the Russian Federation on Putin's instructions. There are discussions about the procedure and mechanism for establishing the JIT. The establishment of the ICC for the crime of aggression against Ukraine is possible:

1) with the support of the UN, when the establishment and operation of such an IMT comes from the entire international community, i.e. the IMT will be endowed with international jurisdiction. By means of a UN General Assembly resolution, where there is no blocking vote, the Government of Ukraine should sign an international agreement with the UN;

2) by signing a treaty between states that support Ukraine and want to join it, i.e. according to the so-called Nuremberg model, when a multilateral international treaty is signed between Ukraine and a number of other states. The main question is how many states should join in order to be considered international.

The establishment and operation of the ICTY should be based on the principles, standards and procedures provided for in the Rome Statute for the ICC. The ICTY should have jurisdiction to investigate and prosecute the highest political and military leadership of the aggressor country, and should investigate and convict the crime of aggression against Ukraine not only after 24 February 2022, but also since February 2014, in accordance with the definition of the crime of aggression as provided for in Article 8 bis of the Rome Statute.

2.2.2. The role of the International Criminal Court in prosecuting those responsible for crimes in Ukraine

In 1998, at a diplomatic conference in Rome, 120 UN member states adopted the Rome Statute, which became the basis for the establishment of the ICC. The Statute entered into force on 1 July 2002, when it was ratified by 60 states. As of 2019, 122 states are parties to the Rome Statute of the ICC, including: 33 - African states, 18 - Asian states, 18 - Eastern European states, 28 - Latin American states, 25 - Western European states and other states. Given the complexity of the ICC's work, the number of cases referred to the Court and the number of verdicts is relatively small [81, p. 8]. The ICC became the first permanent criminal court. The ICC is not a part of the UN structure, but it can initiate cases upon the request of the UN Security Council. Ukraine took an active part in the preparation of the treaty and even signed it and acceded to the Agreement on the Privileges and Immunities of the ICC.

This has been prevented by the opinion of the Constitutional Court of Ukraine of 11 July 2001 No. 3-в/2001. The Constitutional Court believes that Article 1 of the Statute, while stating that the ICC is a permanent body empowered to exercise jurisdiction over persons responsible for the most serious crimes of international concern, at the same time emphasises that the Court is complementary to national criminal justice authorities. A similar provision is also contained in the tenth preambular paragraph of the Statute. Complementing the national system of justice, the nature of the ICC is specified in a number of other articles of the Statute, in particular, in Article 4(2), according to which the Court may exercise its functions and powers on the territory of any State Party, in Article 17(1)(a), according to which the Court accepts applications for admission to the Court. 17(1)(a), according to which the Court accepts cases not only at the request of a State Party, but also on its own initiative, when the State under whose jurisdiction a person suspected of having committed a crime under the Statute is "unwilling or unable to conduct an investigation or to initiate a prosecution in an appropriate manner".

Thus, the ICC complements the system of national jurisdiction. The possibility of such supplementation of the judicial system of Ukraine is not provided for in Chapter VIII "Justice" of the Constitution of Ukraine. This gives rise to the conclusion that the tenth paragraph of the preamble and Article 1 of the Statute are inconsistent with the provisions of Article 124(1) and (3) of the Constitution of Ukraine, and therefore Ukraine's accession to the Statute in accordance with Article 9(2) of the Constitution of Ukraine is possible only after the relevant amendments are made to it. The Court concluded that the Rome Statute of the ICC, signed on behalf of Ukraine on 20 January 2000 and submitted to the Verkhovna Rada of Ukraine for its binding nature, was inconsistent with the Constitution of Ukraine insofar as it relates to the provisions of the tenth paragraph of the preamble and Article 1 of the Statute, according to which "the International Criminal Court is complementary to national criminal justice authorities". Subsequently, Article 124 of the Constitution of Ukraine was amended to enable ratification. They entered into force on 30 June 2019. From this date, Ukraine may ratify the Rome Statute of the ICC and become a full state party to the ICC. At the same time, while not being a party to the ICC, Ukraine has twice recognised its jurisdiction ad hoc (for specific situations) by submitting special applications to the Court under Article 12(3) of the Statute. The first Application concerns crimes against humanity committed from 21 November 2013 to 22 February 2014 during the Revolution of Dignity and "crimes against humanity and war crimes committed by senior officials of the Russian Federation and leaders of the terrorist organisations 'DPR' and 'LPR' under Article 12(3) of the Rome Statute. The first application was filed on 17 April 2014, and the second - on 8 September 2015. The situation in Ukraine is currently under preliminary investigation. It is worth noting that the

Rome Statute of the ICC does not set a time limit for the preliminary investigation [82, para. 13]. In addition to gathering information relevant to the situation, the purpose of the preliminary investigation is to encourage states to conduct domestic investigations, which explains why this stage usually lasts for several years [82, para. 16].

Therefore, the ICC will have jurisdiction over these crimes regardless of the nationality of the perpetrators - they may be citizens of Ukraine, citizens of the aggressor state or any third states. In its reports on the preliminary examination of the situation in Ukraine for 2015-2018, the Office of the Prosecutor qualified the conflict in Crimea between Ukraine and the Russian Federation as an international armed conflict that began no later than 26 February 2014 and is still ongoing, as Crimea and Sevastopol are de facto occupied. With regard to the situation in eastern Ukraine, the Prosecutor of the Court preliminarily finds that as of 30 April 2014, the intensity of hostilities between Ukrainian government forces and armed elements in eastern Ukraine had reached a level that would allow for the application of international humanitarian law (hereinafter - IHL), and that the armed groups, including the so-called "DPR" and "LPR", were sufficiently organised to constitute a non-international armed conflict. The Office of the Prosecutor has also provided additional evidence indicating that direct military confrontation between the armed forces of the Russian Federation and Ukraine has been taking place since at least 14 July 2014. There is also an international armed conflict in eastern Ukraine. In addition, the Office of the Prosecutor continues to review allegations that the Russian Federation exercised and still exercises overall control over armed groups in eastern Ukraine to determine whether the armed conflict between the Armed Forces of Ukraine and non-governmental armed groups can be considered exclusively as an international armed conflict [81, p. 10].

In the 2018 Report, the Office of the Prosecutor [82] noted that among the alleged crimes committed in Crimea and Donbas are enforced disappearances, treacherous killings, torture, sexual and gender-based crimes, forced conscription into the armed forces of the occupying power, the use of child soldiers, violations of the right to a fair trial, illegal deprivation of liberty, seizure of property, destruction of civilian objects, etc. The Office of the ICC Prosecutor still considers the armed conflict to be international, a Ukraine-Russia conflict only since July 2014, but "continues to review allegations that the Russian Federation exercised and exercises overall control over armed groups in eastern Ukraine to determine whether the armed conflict between the Ukrainian armed forces and anti-government armed groups, which would otherwise be considered non-international, can be regarded as a substantively international conflict" since April 2014.

Currently, the Office of the Prosecutor is conducting a preliminary examination of the situation. This means that the Prosecutor has to determine whether there is sufficient evidence of crimes of sufficient gravity to fall within the jurisdiction of the ICC; whether national trials are underway in specific cases; and whether the opening of proceedings would serve the interests of justice and victims. If these questions are not answered in the affirmative, the ICC Prosecutor will not be able to proceed to the next stage - the investigation. The legal grounds for Ukraine's two applications to the ICC were Articles 7 and 8 of the Rome Statute of the ICC.

The above articles relate to crimes against humanity and war crimes. It is worth noting that on 13 September 2002, the Russian Federation signed the Rome Statute but did not ratify it. On 16 November 2016, the President of the Russian Federation adopted the Decree "On the intentions of the Russian Federation not to become a party to the Rome International Criminal Court". Regarding the prospects for further cooperation between Ukraine and the ICC, it is important to note that in order to fulfil its obligations under international law, on 02.06.2016, the Parliament of Ukraine adopted the Law "On Amendments to the Constitution of Ukraine (regarding justice)", according to which our state may recognise the jurisdiction of the ICC under the conditions set out in the Rome Statute. The Constitutional Court of Ukraine issued its opinion on 25 January 2016 that this provision complies with the Constitution of Ukraine.

At the same time, it should be noted that the current criminal and criminal procedure legislation of Ukraine does not fully comply with the requirements of the Rome Statute, in particular in terms of defining war crimes. Human rights organisations have repeatedly drawn attention to the inconsistency of Chapter XX of the Criminal Code of Ukraine (hereinafter - the CCU) "Crimes against peace, human

security and international law and order" with IHL and the Rome Statute. In particular, the CC does not provide for liability for crimes against humanity, and its provisions on aggression, war crimes and genocide do not fully meet the requirements of modern international criminal law.

The requirements of modern international criminal law are not met. The PACE also drew attention to the urgency of addressing this problem in Resolution No. 2112 (2016) "Humanitarian concerns regarding people captured during the war in Ukraine", according to which the PACE calls on the Ukrainian authorities "to harmonise its national legislation, including the Criminal Code and the Code of Criminal Procedure, with the provisions of international criminal law and, in particular, to include provisions on the status of a captured person and to define torture as a serious crime" [83].

At its meeting on 21 August 2024, the Verkhovna Rada of Ukraine adopted the Law of Ukraine on Ratification of the Rome Statute of the International Criminal Court and Amendments thereto, introduced by President of Ukraine Volodymyr Zelenskyy (Reg. No. 0285 of 15.08.2024). The document was supported by 281 Members of Parliament of Ukraine.

According to the Parliamentary Committee on Foreign Policy and Interparliamentary Cooperation, the importance of ratifying the Rome Statute of the International Criminal Court is due to the fact that the International Criminal Court is the main international legal instrument on the way to bringing Russian war criminals to justice.

In addition, the ratification of the Rome Statute is conditioned by Ukraine's obligations under Article 8 of the Association Agreement between Ukraine and the European Union, and also relates to human and civil rights, freedoms and obligations, and the implementation of cooperation in the field of international justice and its implementation.

The Rome Statute defines the jurisdiction of the International Criminal Court over the crime of genocide, crimes against humanity, war crimes, as well as the relevant substantive definition of these crimes, their interpretation, procedures for their investigation and administration of international justice.

By ratifying the Rome Statute, the founding document of this unique international judicial body, Ukraine becomes a full-fledged member with all the rights and obligations and at the same time demonstrates its commitment to international law and international justice to the world.

After the entry into force of the Rome Statute of the International Criminal Court and amendments thereto for Ukraine, Ukraine will become the 125th state party to the International Criminal Court and will acquire full membership in the International Criminal Court and will participate in the work of the Assembly of States Parties to the Rome Statute, will be able to submit candidates for the election of judges and prosecutors of the International Criminal Court. [84].

Membership in the Rome Statute will help prevent and deter the commission of particularly serious crimes in the future. Ukraine will be able to effectively cooperate with this international institution, which will help ensure that those responsible for particularly serious crimes that are of concern to the international community are punished.

2.2.3. National investigations of international crimes in Ukraine and other states

As is well known, international human rights law continues to apply during armed conflicts. Regardless of its nature, an investigation must be effective. The term "effective" is used to describe a process that is proper and conducted in good faith, using all possible means to achieve its purpose [85]. In order for an investigation to be "effective", it must meet several basic requirements set out in the ECtHR case law under Articles 2 and 3 of the ECHR - thoroughness, promptness and independence - and the materials and findings of the investigation must be made available to the victims' relatives, unless this would seriously prejudice the effectiveness of the investigation [86, pp. 121-123]. An effective investigation can determine whether an offence has occurred, identify individual and systemic factors that led to or contributed to the offence, and lay the groundwork for remedial action. The effectiveness should be assessed on the basis of all the factual circumstances of the case and taking into account the practical realities of investigative activities [87, p. 147].

The relevant provisions of the Geneva Conventions and Additional Protocol I provide little guidance on the nature and depth of war crimes investigations. At the same time, investigative standards

are given detailed attention at the international level, both in IHL and under the IHRL. Thus, within the framework of the UN and other human rights mechanisms, recommendations have been developed for the investigation of, inter alia, extrajudicial executions, torture, deaths in custody, sexual violence and enforced disappearances. Some of these documents were not developed specifically for situations of armed conflict, but provide useful guidance on how to conduct a thorough investigation in the event of potential violations. In turn, the ICRC14 and Global Right Compliance have developed methodologies and guidelines for the investigation and collection of evidence of international crimes, including war crimes. [88]

In addition, in May 2023, the Office of the Prosecutor General, together with leading national experts on IHL, developed standards for the investigation of war crimes, including a general part and a set of standards for a specific type of crime - illegal deprivation of liberty and torture. The issue of implementing the principles of effective investigation in the context of armed conflict has been repeatedly examined by the ECtHR, emphasising that there should be no fundamental difference between the general principles of effective investigation in peacetime and in armed conflict, and even in difficult security conditions, all reasonable measures should be taken to ensure an effective investigation. Based on international recommendations and the ECtHR case law, let us consider the main criteria for an effective investigation in more detail.

The Ukrainian system of prosecution (pre-trial investigation and trial) of international crimes consists of national authorities in the criminal justice system (pre-trial investigation bodies, prosecutors, courts of general jurisdiction) and other authorities (for example, the Ministry of Foreign Affairs in terms of work on a special tribunal for the crime of aggression). In addition, non-state actors such as NGOs, lawyers, human rights defenders, and journalists actively help to record international crimes and provide information about them. There is also an international dimension to this system, as we are talking about crimes against the peace and security of mankind, which affect not only Ukrainians but the entire international security architecture.

Therefore, the ICC, foreign jurisdictions within the framework of universal jurisdiction, and other mechanisms are also involved in the prosecution of international crimes committed in the context of the Russian-Ukrainian armed conflict. This section is dedicated to describing this infrastructure and the role of each of its actors in order to understand who is responsible for what, who investigates what, how and why the national law enforcement and justice system plays a key role. Currently, the national prosecution system in various forms deals with all types of crimes known under international criminal law, namely:

1) violations of the laws and customs of war (war crimes);

2) the crime of aggression (planning, preparation, initiation or execution, which is expressed in specific actions listed in UN General Assembly resolution 3314 (XXIX) "Definition of Aggression" of 14.12.1974);

3) the crime of genocide (characterised by the intention to exterminate one of the protected groups in whole or in part: national, racial, ethnic or religious).

The peculiarity of the national legislation, namely Chapter XX of the Criminal Code of Ukraine, is that the current version of the Code does not provide for such a crime as crimes against humanity, so the prosecution of this crime is carried out in cooperation with Ukraine's international partners. If we look at each of the international crimes in more detail, we have the following system (architecture) of prosecuting international crimes: Serious violations of IHL (war crimes) are investigated in accordance with national legislation, namely with the qualification of acts under Article 438 of the Criminal Code of Ukraine.

All war crimes are registered and investigated by law enforcement agencies (the Security Service of Ukraine, the National Police of Ukraine, the State Bureau of Investigation) and prosecutors (the Office of the Prosecutor General and regional prosecutor's offices). These law enforcement agencies have specialised units in which investigators spend full time working on international crimes, while the prosecution service has a Department for Combating Crimes Committed in the Context of Armed Conflict of the Office of the Prosecutor General and specialised units in nine regional prosecutor's offices with a total of over 200 staff. [89]

At the same time, the issue of jurisdiction over criminal offences against peace, human security and international law and order (Section XX of the Criminal Code of Ukraine), which is exclusively reserved for the SSU (Article 216(2) of the CPC of Ukraine), is controversial. In practice, pre-trial investigations of international crimes are carried out not only by SSU investigators, but also by the NPU and the SBI. There is a fear that evidence collected in "violation of the rules of jurisdiction" will be declared inadmissible in court in accordance with the case law that has developed in the interpretation of Articles 86 and 87 of the CPC of Ukraine.

Given the number of registered war crimes and the conditions of martial law, it is easy to assume that the SBU does not have the objective capacity to effectively investigate such a large-scale criminal offence, so the involvement of investigators from other pre-trial investigation bodies is justified. According to Yuriy Belousov, Head of the War Department of the Prosecutor General's Office, "in order to avoid similar issues in our case, so that the evidence collected by the National Police investigators is not declared inadmissible after a certain period of time, we always involve SBU investigators at the initial stage, as early as possible, who have been investigating the criminal proceedings for some time.

Then, for various reasons, we can transfer these criminal proceedings to other pre-trial investigation bodies. In this way, 'procedural purity' is maintained, because the SSU, as a proper pre-trial investigation body, must be present at the early stages" [91].

In practice, there are cases when the same victim is interrogated more than 5 times, causing psychological harm. At the same time, the professionalism of investigators and prosecutors has increased over the past year, in particular as a result of the issue being brought to the attention of the investigative system by specialised organisations, which has made efforts to avoid the recurrence of such situations. [92]

Trial under Article 438 of the Criminal Code of Ukraine (as well as other international crimes, except for crimes against humanity, which are not provided for by the current legislation) is conducted by courts of general jurisdiction - local courts. These are mostly judges who have received some training in the basics of international humanitarian and international criminal law, in particular by the National School of Judges of Ukraine. In some courts, by decision of the meeting of judges of the respective court, specialisation of judges to hear this category of cases was introduced in accordance with the procedure set out in part 2 of Article 18 of the Law of Ukraine "On the Judicial System and Status of Judges".

A 1995 report by Human Rights Watch on the limitations of war crimes prosecutions in Croatia, Bosnia and Serbia reiterated the importance of the ICTY's involvement, especially in cases against high-level officials. As noted in the report, the capacity of the local judiciary to prosecute war crimes does not meet international standards. According to Human Rights Watch, the judiciary was highly politicised and lacked independence, courts often failed to ensure due process rights, and authorities failed to prosecute members of their own forces. [93]

In turn, Ukrainian judges note that it is Ukrainian justice that should play a major role in restoring justice and bringing war criminals to justice, as Ukrainian judges will be able to consider such cases most effectively, quickly and efficiently. No one is better placed than a Ukrainian judge to understand all the details of a case, weigh up all the circumstances, and assess the events that took place on Ukrainian soil. Of course, international judicial bodies employ the highest level of specialists, but the slow pace of consideration of cases gives rise to doubts about the effectiveness and timeliness of trials. [94]

In addition, there are proposals to create a High Court of Ukraine for War Crimes (similar to the High Anti-Corruption Court), which would include international judges as advisers and which, for security reasons, may not be located in Ukraine. [95]

And as you know, "justice delayed is not justice", which is very applicable to this situation. At the same time, given the principle of complementarity in international law and Ukraine's acceptance of jurisdiction, proceedings against the military and political leadership are already being considered by the ICC. To this end, communication with the relevant authorities and institutions is carried out on a

daily basis - from information exchange to the involvement of ICC investigators in investigative and procedural actions in certain strategic proceedings, which are determined by agreement of both parties.

The first significant result of cooperation with the ICC was the issuance of arrest warrants for V. Putin (President of the Russian Federation) and M. Lvova-Belova (Presidential Commissioner for Children's Rights) on 17 March 2023 in connection with the illegal deportation and transfer of Ukrainian children from the occupied territories to the Russian Federation, which grossly violates IHL (a war crime). Namely, Art. 8(2)(a)(vii) (unlawful deportation or transfer or unlawful deprivation of liberty) and Art. 8(2)(b)(viii) (transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies or deportation or transfer of all or part of the population of the occupied territory within or outside that territory) of the Rome Statute of the ICC. V. Putin and M. Lvova-Belova are potentially guilty of committing criminal acts directly, jointly with others and/or through others (Article 25(3)(a) of the Rome Statute). In addition, V. Putin must be held responsible for failing to exercise proper control over civilian and military subordinates who "abducted" Ukrainian minors during the armed conflict (Article 28(b) of the Rome Statute). [96]

National legislation provides for liability for the crime of aggression - planning, preparation or unleashing of an aggressive war or military conflict, as well as participation in a conspiracy aimed at committing such actions (Article 437 of the Criminal Code of Ukraine). At the same time, this article contains a general subject of the crime, which resulted in erroneous judicial practice until 2022 of incriminating any Russian serviceman who crossed the border of Ukraine with weapons in his hands with this crime.

During the 5 years of aggression in Ukraine, from April 2014 to September 2019, 17 verdicts came into force on charges of preparing, unleashing and waging an aggressive war, according to the Unified State Register of Pre-Trial Investigations (USRPTI). In these proceedings, 24 people were convicted three of whom were acquitted. In other words, only 21 people were punished for the aggressive war during the five-year period. Among the convicts, about 25% are citizens of the Russian Federation, the rest are citizens of Ukraine, residents of Donetsk and Luhansk regions. [97]

All of these cases concern ordinary military personnel, not the military-political command (a special subject), as provided for in international criminal law, primarily Article 8(bis) of the Rome Statute of the ICC. Taking into account this discrepancy with the provisions of international criminal law, Ukraine focused on bringing the military and political leadership of the Russian Federation to justice for the crime of aggression. In practice, the main mechanism for prosecuting the crime of aggression will be the future Special Tribunal for the Crime of Aggression. The Ministry of Foreign Affairs is working on its creation (Ambassador-at-Large Anton Korynevych is responsible for this), which is developing a model of such a tribunal in cooperation with other states. Currently, the model most discussed by Ukraine is the creation of a Special Tribunal for the Crime of Aggression on the basis of an agreement between a number of countries (currently 37 countries have agreed to conclude such an agreement) and on the recommendation of the UN General Assembly to establish it.

As for the collection of evidence, investigators and prosecutors are already collecting evidence within the framework of the "main" proceedings on the crime of aggression (Article 437 of the Criminal Code of Ukraine), which will be submitted to the Special Tribunal. Although most of the evidence exists in digital form on the Internet - the intentions of the so-called "special military operation", the occupation and subsequent annexation of Ukrainian territories and other criminal acts recorded by the Russian military and political leadership itself - there is nevertheless military evidence obtained literally "on the battlefield". For example, captured command documents, radio intercepts of conversations with the command, testimonies obtained during the interrogation of captured commanders, etc.

The evidence of the guilt of the military and political leadership of the Russian Federation collected by Ukrainian investigators and prosecutors will be transferred to the Internation Centre, which will be a prerequisite for the preparation of charges and their subsequent presentation to these subjects within the framework of the Special Tribunal for the crime of aggression.

As mentioned above, Ukrainian legislation does not distinguish such a crime as crimes against humanity. However, it should be understood that the same evidence of international crimes can be used for different qualifications, so the collected evidence of war crimes under Article 438 of the Criminal

Code of Ukraine can be used by investigators and prosecutors of other countries within the framework of universal jurisdiction to prove crimes against humanity. For this purpose, the JIT has been documenting facts, collecting evidence, and investigating war crimes committed in Ukraine for a year. The Joint Investigation Team for Serious International Crimes in Ukraine includes Ukraine, Poland, Lithuania, Estonia, Latvia, Slovakia and Romania.

They investigate not only crimes against humanity but also other international crimes. It is important that the United States of America has recently joined this work, having adopted amendments to its criminal law (War Crimes Act) specifically for this purpose in December 2022. After that, on 18 February this year, US Secretary of State E. Blinken said that the United States considers the actions of the Russian armed forces and high-ranking officials as "crimes against humanity".

In addition, the United States provided a detailed list of intentions to deploy legal assistance to punish the Russian Federation for international crimes. One of the steps towards this was the signing of a Memorandum of Understanding between the US Department of Justice and the JIT member states in March 2023. The document was signed by US Attorney General Merrick Garland and the attorneys general of the JIT member states. Thus, the main cooperation in the prosecution of crimes against humanity today is with the United States through the JIT. [100]

In addition to Ukraine, a number of other countries have opened criminal proceedings for crimes committed by Russia during the war.

As of 2024, Estonia, Germany, Latvia, Lithuania, Norway, Poland, Slovakia, Spain, Sweden, Switzerland and Romania have announced their intention to launch universal war crimes investigations into the Russian invasion of Ukraine in 2022. French prosecutors have launched war crimes investigations under national jurisdiction in cases in which French citizens or residents were potential victims or suspects. French Justice Minister Eric Dupont-Morette has promised the ICC the full support of the European Union (EU) and, in particular, Eurojust, the EU's agency for cooperation in the fight against criminals.

Lithuania

In early March 2022, the Lithuanian General Prosecutor's Office launched a "pre-trial investigation into war crimes and crimes against humanity" of the Russian invasion of Ukraine in 2022. In early April, the General Prosecutor's Office announced that it would investigate the death of film director Mantas Kvedaravičius, who was killed during an attack by Russian troops near Mariupol while it was under siege, as part of a general investigation.

Lithuanian filmmaker Mantas Kvedaravičius travelled to Mariupol to shoot footage for the second part of his documentary Mariupol. Around the end of March 2022, he was captured by armed forces (allegedly Russian-backed soldiers) while helping to evacuate civilians from the besieged city. A few days later, he was found dead near the place of his arrest.

In April 2022, the Lithuanian authorities launched an investigation into the case. The European Centre for Constitutional and Human Rights (ECHR) supported Kvedaravičius' fiancée, Hanna Bilobrova, and her Lithuanian lawyer in collecting and analysing evidence, and provided legal expertise in the field of international criminal law.

Lithuanian Prosecutor General Nida Grunskene met with Eurojust President Ladislav Hamran in Vilnius on Monday to discuss the progress of the war crimes investigation in Ukraine, which is being conducted by a joint investigation team coordinated by the agency.

The meeting, which was also attended by Eurojust Vice President and Lithuanian National Member Margarita Sniutite-Daugelienė and her accompanying delegation, also discussed other initiatives of the Lithuanian General Prosecutor's Office, pre-trial investigations and cooperation, the General Prosecutor's Office said.

The Special Joint Investigation Team, initially consisting of representatives of the prosecutor's offices of Ukraine, Lithuania and Poland, began its work on 25 March 2022. Currently, the group includes representatives of seven countries, and for the first time, a prosecutor from the International Criminal Court is included in the group.

Lithuania's General Prosecutor's Office has launched a pre-trial investigation into the aggression, war crimes and crimes against humanity committed in Ukraine on 1 March 2022. About 300 witnesses

have been questioned, and more than seventy people have been recognised as victims, the prosecutor's office said.

A team of 40 prosecutors, police officers and employees of the Lithuanian Financial Crimes Investigation Service is working on this pre-trial investigation.

Lithuanian prosecutors, accompanied by other officials and experts, travelled to Ukraine twice to take part in procedural actions, record testimonies of victims and witnesses, and inspect the scene of the crime together with Ukrainian prosecutors and investigators.

The President of Eurojust, Ladislav Hamran, noted that Lithuania's role in Eurojust's activities is very important, adding that the current results would not have been achieved without joint work. Hamran's visit to Lithuania will last two days.

Sweden

On 5 April 2022, the Swedish Public Prosecutor's Office (SPA) announced that it had opened a preliminary investigation into what appear to be "grave war crimes" committed in Ukraine. The initial aims of the investigation included the collection of evidence in Sweden that could later be used in court proceedings in Sweden, another country exercising universal jurisdiction, or in an ICC investigation. SPA has called on survivors and witnesses to come forward.

On 6 March 2022, photojournalist Guillaume Bricquet was ambushed by Russian special forces. He was travelling from Kropyvnytskyi to Mykolaiv when his car, with Geneva licence plates and the words "PRESS" on both sides, was shot at twice from the driver's side and twice from the passenger's side. As a result of the attack, Bricke was wounded in the arms and head by shards of glass.

On 17 August 2022, the Ukrainian NGO Truth Hounds, with the support of Civitas Maxima, filed a complaint with the Swiss Office of the Attorney General (OAG).

On 26 March 2023, a spokesperson for the Prosecutor General confirmed in a press article that a war crimes investigation had been opened into the attack on Brique by an alleged Russian special forces officer and that further investigations would be carried out.

FRANCE

Armand Soldin, a French journalist and video coordinator for Agence France-Presse in Ukraine, was killed on 9 May 2023 at the age of 32 by a Grad rocket salvo in the Chasov Yar area near Bakhmut. Soldin was part of a group of five reporters accompanying Ukrainian soldiers on the most active frontline of the war. He was shot while lying on the ground trying to defend himself.

Pierre Zakrzewski, a French-Irish Fox News cameraman, was killed on 14 March 2023 in Horenka, northwest of the Ukrainian capital, after his car was attacked.

Frédéric Leclerc-Imhoff, a French journalist for BFMTV, was killed on 30 May 2023 while carrying out a humanitarian mission in the east of the country

On 10 May 2023, the National Prosecutor's Office opened a preliminary war crimes investigation into the Soldin case. Preliminary investigations have also been launched into the murders of Zakrzewski and Leclerc-Imhoff. It is reported that since the end of February 2022, the prosecutor has opened at least seven preliminary investigations into possible war crimes committed against French citizens in Ukraine, mainly in February and March 2022

2.2.4 Prospects for a special tribunal for Russian crimes in Ukraine

Since 2014, the confrontation between Russia and Ukraine has had the hallmarks of an international armed conflict. Russian politicians and those close to them have tried to present it as a civil armed conflict.

The Prosecutor's Office of the International Criminal Court (ICC) has established signs of an international armed conflict (IAC) in the confrontation between the Ukrainian military and the Russian armed forces in Donbas.

Thus, in the 2017 Preliminary Investigation Action Report (para. 94), ICC Prosecutor Fatou Bensouda states: "The Office of the Prosecutor ... has provided additional information indicating the existence of a direct military confrontation between the armed forces of the Russian Federation and Ukraine, which implies that, at the latest since 14 July 2014, an international armed conflict has been taking place in eastern Ukraine in parallel with a non-international armed conflict".

With regard to Crimea, which was occupied by the Russian Federation, according to the Elements of Crimes of the Rome Statute of the ICC, "the term international armed conflict includes armed occupation". In 2016, the Office of the Prosecutor of the ICC recognised the situation in Crimea as an occupation subject to the legal regime of the IAC (para. 88 of the 2016 Preliminary Investigation Report). The ICC found that since 26 February 2014, the Russian Federation has engaged armed forces personnel to establish control over part of the territory of Ukraine.

In 2020, the Office of the ICC Prosecutor completed a preliminary investigation into the events related to Russia's military aggression in the Situation in Ukraine case, but a full investigation was not opened.

On 24 February 2022, the President of the Russian Federation ordered Russian troops to launch a large-scale invasion of Ukraine. Although Russia has declared a special operation, under international law this is a continuation of the MCD. After all, the qualification of the situation under international law does not depend on the qualification of the situation under national law.

The ICC Prosecutor has been actively investigating the situation in Ukraine since the beginning of the large-scale invasion by the Russian Federation on the basis of the second application of the Government of Ukraine submitted pursuant to Article 12(3) of the Rome Statute, as well as applications of 39 States Parties. At the same time, the ICC is limited in its investigations to crimes against humanity and war crimes, as well as the crime of genocide. ICC Prosecutor Kareem A. A. Khan stated that, given that neither Ukraine nor the Russian Federation are states parties to the Rome Statute, the ICC cannot exercise jurisdiction over the alleged crime of aggression. In addition, the ICC can exercise jurisdiction over the crime of aggression only over acts committed after 17 July 2019, i.e. a year after the amendments to the Rome Statute on the definition of the crime of aggression entered into force, but not over the initial Russian aggression - since 2014.

These issues cannot be resolved by Ukraine within the national judicial system alone. The criminal law of Ukraine provides for liability for planning, preparing, starting and waging an aggressive war (Article 437 of the Criminal Code of Ukraine). It also provides for liability, including for foreigners, for international crimes such as genocide, violation of the laws and customs of war, use of weapons of mass destruction, and others. Almost 109,000 criminal proceedings are being investigated under Article 438 of the Criminal Code of Ukraine alone - violation of the rules and customs of war (according to the Office of the Prosecutor General as of 4 November 2023).

However, national courts (not only Ukrainian) may face significant legal difficulties due to ratione personae, a status-based immunity that applies to a small number of high-ranking state officials. Typically, these include the Head of State and Government and the Minister of Foreign Affairs.

Therefore, Ukraine is considering various international mechanisms to ensure proper investigation and prosecution of Russian criminals, in particular for the crime of aggression against Ukraine.

On 4 March 2022, the Minister of Foreign Affairs of Ukraine Dmytro Kuleba, with the support of the Royal Institute of International Affairs Chatham House and a group of lawyers, issued a statement on the establishment of a Special Tribunal to punish the crime of aggression against Ukraine. Judge of the European Court of Human Rights (ECHR) Nikolai Grnatovsky, who was involved in the preparation of this statement, compared it to the London Declaration of 1942, which laid the foundation for the Nuremberg Tribunal.

The MFA is using international tribunals to promote the idea of establishing this tribunal. In particular, Dmytro Kuleba called on partners to support the establishment of a special tribunal for the crime of Russian aggression against Ukraine at the OSCE Foreign Affairs Council meeting on 1 December 2022.

In September 2022, the President of Ukraine issued Decree No. 661/2022. Based on the Decree, a working group was set up to consider the establishment of a special international tribunal for the crime of aggression against Ukraine.

Not only the President and Government of Ukraine appealed to international organisations to stop Russian aggression and bring Russia to justice. On 28 February 2022, representatives of civil society signed an appeal to the UN demanding the establishment of "a special international tribunal for Russian

President Vladimir Putin and all Russian officials responsible for unleashing a war of aggression with the most severe consequences for the people of Ukraine, as well as to investigate previous acts of Russian aggression in Georgia and Moldova, the impunity for which has led to today's consequences."

Individual countries and international organisations, such as the Council of Europe, the Parliamentary Assembly of the Council of Europe (PACE) and others, support Ukraine on this path. Thus, in accordance with the adopted recommendation, PACE supported the holding of the 4th CoE Summit in Reykjavik on 16-17 May 2023 and recommended that the Committee of Ministers of the CoE prepare a Political Declaration and Action Plan for approval by the Heads of State and Government during the Summit. Among other things, the summit participants were invited to: condemn the aggression of the Russian Federation against Ukraine as a serious violation of international law and a threat to international peace and security; ensure the full responsibility of the Russian Federation for the aggression against Ukraine by supporting and leading the initiative to establish a special international criminal tribunal to investigate and prosecute the crime of aggression committed by the political and military leadership of the Russian Federation, and ensuring the leading role of the Council of Europe in its establishment and providing specific expert and technical assistance

Ukraine has received such support and it is extremely important.

The international experience of tribunals and special courts shows different ways of establishing such international judicial institutions.

There are different classifications of ad hoc tribunal models. The most common are the following types:

- based on the decision of the UN General Assembly - the General Assembly participated in the establishment of previous ad hoc tribunals, including the Extraordinary Chambers of the Courts of Cambodia, this process took place with the participation of the state concerned;
- a special tribunal modelled on the Nuremberg Tribunal, the International Military Tribunal for the Crimes of Germany, which operated under an agreement between the UK, the US, the USSR and France. Subsequently, these decisions were supported by 19 other countries of the anti-Hitler coalition. The Tokyo Tribunal followed this model. However, they were accused of the so-called victor's justice;
- created on a hybrid (internalised) model - based on national legislation with international elements. An example of such a court is the Special Court for Sierra Leone, which was established by the government of this country and the UN to prosecute persons responsible for serious crimes committed during the non-international armed conflict. The Special Court had concurrent jurisdiction with the national courts of Sierra Leone.

A statute was adopted for each tribunal, under which proceedings were conducted on the basis of international norms: Geneva Conventions, Rome Statute, etc.

Models of a special tribunal for the Russian Federation have been proposed by both national lawyers and officials, as well as foreign lawyers, including participants in international courts. James A. Goldston (formerly of the Office of the Prosecutor of the ICC) and Anna Khalfai have identified four possible options that Ukraine could use:

- on the basis of a UN General Assembly resolution calling either on the UN Secretary-General to conclude an agreement between the UN and Ukraine, or on a regional organisation, the European Union (EU) and/or the Council of Europe and Ukraine to conclude an agreement on the establishment of the tribunal *(General Assembly model);*
- by concluding an agreement between Ukraine and the European Union and/or the Council of Europe in the absence of a UNGA resolution *(fully regional model);*
- by concluding a multilateral agreement between Ukraine and other states *(multilateral model);*
- a national but internationalised Ukrainian court *(internationalised model).*

The well-known British lawyer Philip Sands, who worked at the International Court of Justice and the ECHR, rejected the possibility of establishing a tribunal on the basis of a UN Security Council resolution, taking into account precedents. There is a positive experience of the ICTY, which had a

mandate from the UN Security Council, as it was established on the basis of its Resolution 827. However, Russia, as a permanent member of the UN Security Council, has a veto power.

Philip Sands suggested two options for Ukraine:

- an agreement between Ukraine and an international organisation: UN, European Union, Council of Europe (following the example of Sierra Leone and Kosovo);
- an agreement between Ukraine and other countries willing to join (the Nuremberg model).

Each of these models has its own risks. Ukraine rejects the possibility of establishing an internationalised (hybrid) form of tribunal within the framework of Ukrainian legislation with subsequent recognition by other countries. Establishing such a tribunal as part of the Ukrainian judicial system would require amendments to the Constitution of Ukraine, which is impossible under martial law. Article 157 of the Basic Law states that "the Constitution of Ukraine may not be amended in a state of martial law or a state of emergency".

In addition, the creation of this form of tribunal carries a high risk that the crime of aggression will be equated with an interstate conflict between two countries only.

Former UK Prime Minister Gordon Brown and other international legal experts have called for a special tribunal, modelled on the Nuremberg tribunal, to be established by a group of supporting states. This approach would avoid the problems of constitutional amendments. However, a tribunal established by several states would not have the legitimacy of a tribunal established under the auspices of an international organisation.

Of course, the best option is the General Assembly model, but its implementation is problematic because the required number of countries does not currently have the votes to support the relevant decision. This is due to various reasons, including the priority of the interests of their own states over the defence of international principles of justice and peace.

Ambassador-at-Large of the Ministry of Foreign Affairs of Ukraine Anton Korynevych informed that as of August 2023, two models are being discussed that will form the basis for the Special Tribunal: the creation of a tribunal based on an agreement between Ukraine and the UN, which will be followed by a request to the UN General Assembly and the Secretary-General for an agreement on the establishment of such a tribunal, and an internationalised model.

"One of the compromises we are considering is the possibility of creating an 'internationalised tribunal', but not in Ukraine and not as part of the Ukrainian judicial system. This is necessary in order to find a way to establish the tribunal that is supported by all partners," said Andriy Smirnov, Deputy Head of the Presidential Office. An important condition is that the UN General Assembly subsequently supports such a tribunal in an internationally respected jurisdiction.

The crime of aggression is central to the crimes of armed conflict. It creates the preconditions for all other international crimes. At the same time, it is important that punishment is inevitable for other international crimes.

Numerous cases of torture, cruel and degrading treatment of prisoners of war and civilians in prisons under the control of the Russian Federation have been documented in Ukraine. In particular, the SBU collected evidence against the former head of the occupation "Volnovakha correctional colony" (better known as the Olenivska colony). According to the special service, from the beginning of the full-scale invasion of Russia and until the end of July 2022, the head of the colony organised the torture of more than 100 captured AFU soldiers, who were subjected to various forms of physical violence and psychological pressure, accompanied by constant threats of "slow" murder. Taking into account the analysis of the Aleksovski case will help bring a fair sentence to the head of the Olenivska colony and others.

One-third of the individuals investigated by the ICTY were accused of conflict-related sexual violence (CRSV). "Sexual violence is a weapon of war, a part of any war. Reporting on these crimes is extremely important during and after the war," says Feride Rushiti, head of the Kosovo Centre for the Rehabilitation of Torture Victims. In Kosovo, more than 20,000 Albanian women were raped during the 1998-1999 war. Unfortunately, the process of punishing the perpetrators has taken a long time: only one man was convicted of rape committed by the military during the war. And the main problem is the

identification of perpetrators and the availability of evidence for the courts, which must be taken into account when investigating such crimes by Russians in Ukraine.

Cases of SGBV, including rape, have also been reported in Ukraine. They are being investigated by the Ukrainian law enforcement system. The rationale for the resolution "On the Statement of the Verkhovna Rada of Ukraine 'On the Commitment of Genocide by the Russian Federation in Ukraine'" refers to the case of Prosecutor v. Akayesu in proving that Russians committed genocide. The arguments for proving genocide are the numerous cases of rape discovered in the cities of Bucha, Irpin, Mariupol, the towns of Borodyanka, Gostomel and many other settlements on the territory of Ukraine.

Given that the majority of those accused of such crimes are beyond the reach of Ukrainian justice, it is important to apply the experience of the Special Tribunal for Lebanon, which was able to try perpetrators in absentia.

The ICTY's experience shows that it is not only senior officials, such as Slobodan Milosevic, who have been indicted. The former Serbian president was investigated for almost five years on charges based on his personal responsibility for the war crimes:

- genocide and mass murder of Bosnian Muslims and Croats (execution of several thousand Muslims in Srebrenica in July 1995);
- the creation of concentration camps on the territory of Bosnia and the forced relocation of "non-Serbs";
- crimes against humanity and violations of the Geneva Conventions: persecution, murder, torture, and illegal detention;
- The shelling of Sarajevo and other destruction of settlements and historical monuments, appropriation of property, and attacks on civilians.

Who can sit in the dock if the international tribunal for the crimes of the Russian Federation is established? The above-mentioned appeal of civil society organisations to the UN lists the following persons: the top leadership of the Russian Federation, as well as all senators of the Council of the Federation of the Federal Assembly of the Russian Federation who formally gave consent to the President of the Russian Federation to use the armed forces of the Russian Federation outside the territory of the Russian Federation. However, given the experience of the ICTY, this list should be much longer.

In particular, the perpetrators and military commanders responsible for the massacres in Bucha, Irpin, Izyum, Mariupol and other towns and villages. They must be tried in court, as Yugoslav Army General Mile Mkršić was for the massacre known as the Vukovar Massacre. After exhumation, the bodies of 198 men and two women were recovered from a grave in Ovčara, who had been taken from the town to the Ovčara pig farm near Vukovar and shot with machine guns. Later, 200 bodies were found, and 61 people were reported missing. For this crime, Mile Mkršić was sentenced to 20 years in prison, and six other people were sentenced to 15 years

Since 2014, there has been an international armed conflict unleashed by the Russian Federation, which has resulted in massive violations of international law against Ukrainian military personnel and civilians.

Ukraine has not ratified the Rome Statute, but the Government has filed applications with the ICC, on the basis of which the Court has been investigating the case "The Situation in Ukraine". Following the large-scale invasion, the ICC Prosecutor has been conducting an active investigation, which does not cover the crime of aggression, as Ukraine and Russia are not parties to the Rome Statute.

In order to bring Russia to justice for the crime of aggression and other crimes, Ukraine is taking steps to establish a Special International Tribunal. Ukraine should use all opportunities, including the support of international organisations and individual countries, to establish an international court to ensure the inevitability of punishment for the aggressor.

The central task of the Special International Tribunal is to investigate and punish the crime of aggression. At the same time, the tribunal will investigate other international crimes committed in Ukraine.

Over the years of aggression, Russia has committed massive crimes. Similar crimes in other countries have been investigated and both guilty verdicts and acquittals have been handed down by

international tribunals. The experience of international tribunals should be studied and taken into account by Ukrainian law enforcement agencies to properly record crimes, which will make it impossible to avoid responsibility for their commission.

International figures and legal experts propose various options for establishing a tribunal for Ukraine. The government is considering two options to ensure legitimacy and the possibility of overcoming the personal immunity of the political leadership of the Russian Federation: on the basis of an agreement between Ukraine and the UN on the establishment of such a tribunal, and on the basis of an internationalised (hybrid) model that would not be part of the Ukrainian judicial system.

The Special International Tribunal has the ability to punish representatives of the leadership of third countries for complicity. This will ensure that in the future the accomplices of Russia's aggression against Ukraine, such as the leadership of Belarus, Iran, the DPRK, etc., will be punished.

Ukraine must comply with the laws and customs of war, investigate all cases of violations and ensure that the perpetrators are brought to justice under national law so that they can be brought before an international tribunal.

Currently, the issue of establishing a Special International Tribunal as soon as possible in accordance with international and Ukrainian law is a key task, given the experience of the ICTY, which was established before the end of the armed conflict. This will ensure that the Russian Federation is held accountable not only for the decision to aggress against Ukraine, but also for seeking to change the international order.

PART III: **Legal analysis and assessment of accountability efforts**

3.1. Chapter I: Current status of investigations and legal proceedings

3.1.1. Activities of international organisations and institutions

The United Nations (UN) has played a key role in international efforts to support Ukraine during the war. Since the outbreak of the conflict, the UN and its specialised agencies have been actively involved in providing humanitarian, legal and technical assistance, helping to protect civilians, document human rights violations and meet the basic needs of the victims. The UN's activities cover a wide range of initiatives, including human rights monitoring, support for refugees and internally displaced persons, food security and medical assistance. The UN, since its inception, has had to correct the mistakes made by the League of Nations, mistakes that led to the largest conflict in the world, the Second World War. In general, the purpose of the UN's existence is to be a kind of world policeman, rescuer and doctor. The world community, acting collectively, will be able to overcome both regional and global problems.

However, when analysing the UN's activities during the war years (not only 2022-2024, but since 2014), many have seen large gaps in the UN's principles that make it impossible for the organisation and its individual bodies to function properly.

In 2014, the Russian Federation violated all the provisions of the UN Charter, which enshrine the basic principles of international law, the normative content of which is disclosed in the 1970 Declaration on Principles of International Law. First of all, it is about:

(a) the principle of non-use of force and non-threat of force, as provided for in Article 2, paragraph 4, according to which all Members of the United Nations shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations;

(b) the principle of settlement of international disputes by peaceful means, enshrined in Article 2(3) of the UN Charter, according to which all members of the Organisation shall settle their international disputes by peaceful means in such a manner as not to endanger international peace, security and justice. While claiming to Ukraine that the Russian-speaking population of Crimea was allegedly "harassed", Russia did nothing at all to resolve the relevant, albeit pretended, "problems" through negotiations; there were no international disputes over the state affiliation of the Crimean peninsula before its occupation and annexation by Russia;

(c) the principle of non-intervention in matters within the domestic jurisdiction of States, as provided for in Article 2(7) of the Charter, which prohibits intervention "in matters essentially within the domestic jurisdiction of any State". Russia has openly interfered in the relations between the central authorities of Ukraine and the authorities and population of Crimea. The same applies to the relations between the central government and the population of other occupied Ukrainian territories, as well as to relations between Ukraine and the EU and NATO;

(d) the principle of cooperation, as provided for in Article 1, paragraph 3, of the UN Charter, according to which the purpose of the Organisation is to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character. Prior to the occupation of Crimea and parts of Donetsk and Luhansk regions, the Russian Federation refused to cooperate on any issues of alleged concern to it. The same applies to the full-scale military invasion. Russia's aggression against Ukraine has made it impossible to cooperate in virtually all areas of bilateral interaction, the general provisions of which are contained in the 1997 Treaty of Friendship, Cooperation and Partnership;

(g) the principle of sovereign equality of States enshrined in Article 2(1) of the Charter ("The Organisation shall be based on the principle of sovereign equality of its members"). The occupation of the territory of a sovereign state, pressure on Ukraine to change its political system, and obstruction of our country's ability to pursue its own relations with other states and European and Euro-Atlantic integration are clear and gross violations of this provision;

(e) the principle of equality and self-determination of peoples (Article 1, paragraph 2), which was violated by the military occupation. However, violations of the UN Charter are not limited to these provisions.

Blocking the work of the UN Security Council, preventing it from making any decisions that would help restore the territorial integrity of Ukraine by using the veto, constitute a direct violation of Article 24, paragraph 1, on the primary responsibility of the UN Security Council for the maintenance of international peace and security, provisions on the investigation by the Security Council of a dispute or situation threatening the maintenance of peace and security (Articles 33-38), and Chapter VII on measures to address threats to the peace, breaches of the peace and acts of aggression.

The UN General Assembly resolution "Territorial integrity of Ukraine", adopted on 27 March 2014, was the first significant response of the international community to the beginning of the Russian Federation's armed aggression against Ukraine. Expressing its strong protest against Moscow's blatant violation of the fundamental principles and norms of international law, the UN General Assembly recognised the pseudo-referendum on the status of Crimea as illegal, and clearly reaffirmed Ukraine's sovereignty, political independence, unity and territorial integrity within its internationally recognised borders. However, despite the international community's non-recognition and condemnation of the annexation, the Kremlin has not only failed to end its temporary occupation of Crimea, but has been escalating the situation on the peninsula with particular boldness and exceptional cynicism. Since March 2014, Russia has launched an armed aggression against Ukraine in the territories of Donetsk and Luhansk regions, undermining the fundamental principles of international law that underpin modern international relations, global security and the international order. At the time, the resolution was supported by 100 countries, with 11 countries opposed and 58 abstentions [103].

However, in 2015, Russia seized the initiative from the UN. After Debaltseve, the so-called Minsk-2 agreements were signed under pressure from Western allies. On 17 February 2015, the UN Security Council unanimously adopted a resolution referring to these agreements at the request of Russia. This resolution significantly limited Ukraine's diplomatic options. It expressed concern over

the fighting in eastern Ukraine and the need to respect Ukraine's sovereignty and territorial integrity. The issue of Russian aggression was almost removed from the UN agenda.

In 2016-2021, the UN adopted annual resolutions on the human rights situation in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine). These resolutions were approved by a relative majority (62 to 70 votes in favour, 22 to 28 votes against, 55 to 83 countries abstained) and expressed concern that the Russian Federation was ignoring United Nations resolutions, condemned the temporary occupation by the Russian Federation of the part of the territory of Ukraine - the Autonomous Republic of Crimea and the city of Sevastopol, reaffirmed non-recognition of the annexation and the fact that the forcible seizure of Crimea is a violation of international law and that these territories must be returned. The Office of the United Nations High Commissioner for Human Rights, the Commissioner for Human Rights of the Council of Europe and the missions of the Office for Democratic Institutions and Human Rights and the High Commissioner on National Minorities of the Organisation for Security and Cooperation in Europe stated that human rights violations and abuses were taking place in the occupied Crimea and pointed to the deterioration of the overall human rights situation. Since 2014, the Russian authorities have used torture to obtain testimony in politically motivated trials. Serious violations and abuses have been documented, including extrajudicial killings, abductions, enforced disappearances, politically motivated persecution, discrimination, harassment, intimidation, and violence, including sexual violence [104].

The General Assembly has pointed out that no territorial acquisition or special benefit obtained as a result of aggression is or can be recognised as legal, reaffirming that the forcible takeover of Crimea is illegal and in violation of international law, and reaffirming also that the territories should be returned immediately, while welcoming Ukraine's commitment to international law as demonstrated by its efforts.

With the beginning of the escalation of Russian aggression in February 2022, the UN Security Council adopted Resolution 2623, which convened a special meeting of the General Assembly on Ukraine. As this was a procedural resolution, Russia, as a permanent member of the UN Security Council, was unable to use its veto in this case. Resolution 2623 was the 13th time that the 1950 Uniting for Peace resolution was used to convene an emergency session of the General Assembly. UN General Assembly Resolution S 11/1, adopted on 2 March 2022, condemned Russia's aggression. The resolution was co-sponsored by 96 states. The document expresses concern over Russia's invasion of Ukraine and demands the complete withdrawal of Russian troops and the cancellation of the decision to recognise the self-proclaimed Donetsk and Luhansk People's Republics. The resolution was adopted: 141 votes in favour, 5 against and 35 abstentions, with 12 countries not voting. Isolated at the UN General Assembly, Russia justified its "special military operation" in Ukraine and accused Kyiv of violence [105]. Ukraine's representative to the UN, Sergiy Kyslytsya, condemned Russia's actions as "war crimes" and called Putin's decision to increase nuclear readiness "madness". He warned: "If Ukraine does not survive, international peace will not survive. If Ukraine does not survive, the UN will not survive. ... If Ukraine does not survive, we cannot be surprised if democracy fails."[106] On 16 March 2023, the International Court of Justice ordered the Russian Federation to immediately withdraw its troops from the territory of Ukraine and cease hostilities. The next UN General Assembly Resolution ES 11/2 was adopted on 24 March 2022. It reaffirmed its previous commitments and those of the UN under its Charter and reiterated the demand that the Russian Federation withdraw from the recognised sovereign territory of Ukraine. It also expressed regret and grave concern, condemned the attack on civilians and infrastructure, demanded the full protection of civilians, including humanitarian personnel, journalists and those in vulnerable situations, and encouraged "continued negotiations". The resolution was adopted: 140 votes in favour, 5 against and 38 abstentions, with 10 countries not voting.

The Eleventh Emergency Special Session of the UN General Assembly dedicated to Russia's invasion of Ukraine resumed its work in autumn. On 12 October 2022, it supported a resolution on the non-recognition of pseudo-referendums in the Russian-occupied territories of Ukraine. The resolution was entitled "Territorial integrity of Ukraine. Defence of the principles of the UN Charter". 143 out of 193 member states voted in favour of the resolution, 35 abstained, and 5 voted against (Russia, Belarus, Syria, Nicaragua, North Korea). The resolution rejected any changes in the status of Ukrainian regions,

called on states, international organisations and UN agencies not to recognise any changes in the status of Ukrainian regions, and demanded that Russia immediately and unconditionally reverse its decisions on the status of Ukrainian regions and immediately, fully and unconditionally withdraw all its troops from the territory of Ukraine within its internationally recognised borders [107]. The vote on this particular resolution demonstrated a historic high of support for Ukraine's just struggle.

At the end of December 2022, Ukraine called on the United Nations to strip the Russian Federation of its status as a permanent member of the UN Security Council and expel it from the UN altogether. The Ministry of Foreign Affairs of Ukraine stressed that Russia had taken the seat of a permanent member of the Security Council bypassing the procedures set out in the UN Charter. This happened on the basis of a letter from the President of the RSFSR Boris Yeltsin to the UN Secretary-General. The current UN Charter (Article 23), which lists the permanent members of the Security Council, does not contain the words "Russian Federation". The Russian Federation has never undergone a legitimate membership procedure and occupies the seat of the USSR in the UN Security Council illegally. From a legal and political point of view, there can be only one conclusion: Russia is the usurper of the Soviet Union's seat in the Security Council. The Ukrainian Foreign Ministry's statement stressed that neither the agreement of a group of former Soviet countries nor the opinion of the UN Secretariat's legal adviser could replace the current Charter. This was an unprecedented case in the history of the UN when a country imposed its membership in the Organisation by a unilateral decision, and UN member states were deprived of the statutory right to express their position by voting.

At an extraordinary session on 23 February 2023, the UN General Assembly overwhelmingly approved a draft resolution containing the key provisions of the "peace formula" proposed by Ukraine in the autumn of 2022 - a ten-point plan to end the full-scale Russian invasion of Ukraine. The resolution was voted in favour by 141 UN member states, with 32 abstentions (including Iran, Kazakhstan and China) and seven countries opposed: Belarus, the DPRK, Eritrea, Mali, Nicaragua, Russia and Syria. Among other things, the document demanded that the Russian Federation "immediately, fully and unconditionally withdraw all its armed forces from the territory of Ukraine within its internationally recognised borders". It also called for the proper treatment of prisoners of war, full compliance with international humanitarian law, and an "immediate cessation of attacks on Ukraine's critical infrastructure". The resolution also called for "ensuring accountability for the most serious crimes under international law committed on the territory of Ukraine through proper, fair and independent investigations and prosecutions at the national or international level". The resolution also called on UN members to cooperate to address the global consequences of Russia's full-scale war against Ukraine. At the same time, the UN General Assembly rejected two amendments submitted by Belarus, which were intended to "dilute" the resolution. The first one condemned the statements of foreign leaders regarding the Minsk agreements, and the other called for an end to military aid to Ukraine. However, as you know, all UN General Assembly resolutions are advisory in nature. The only structure in the world - the UN Security Council - can make binding decisions against the aggressor. However, this is not possible because of the veto power that Russia regularly uses as a permanent member of the Security Council. In addition, Russia constantly initiates meetings of this body, in fact "spamming" it, putting on the agenda the use of warheads by the Ukrainian Armed Forces or the unjustified rise of a wave of Russophobia in the world.

Thus, the UN's activities to counter Russian aggression are controversial. The Security Council has proved its complete inability to act because of the veto of the aggressor, a permanent member of the Security Council. Russia demonstrably ignores the decisions of the International Court of Justice. When voting on relevant resolutions in the UN General Assembly, the majority of its members support the Ukrainian struggle and condemn the aggressor. An absolute minority openly sides with Russia. But quite a few countries abstain or do not vote at all. Among those who never vote are post-Soviet Azerbaijan and Turkmenistan. It is particularly unfortunate that Azerbaijan was declared a strategic partner of Ukraine in the 2020 National Security Strategy of Ukraine.

The countries that do not support Ukraine are in the minority, but unfortunately represent the majority of humanity (India, China, Vietnam, Iran, Kazakhstan, Sri Lanka, etc.). Their motives are different, but the main thing is their deliberate disregard for the UN Charter. To a large extent, the

current Ukrainian-Russian war is of an existential nature, determining the future of human civilisation. Will the values on which modern support for Ukraine is based be able to overcome selfishness, self-confidence, mercantilism, and disregard for international law on the part of the de facto lawyers of the "evil empire"? That is why it can be stated that the future of the United Nations is currently being hotly debated against the backdrop of today's political, economic and social challenges that require joint efforts of the international community and increase the expectations of countries from international organisations of this level.

Another organisation that operates in times of war is the Red Cross. The Red Cross continues to play an important role in mitigating the effects of the war in Ukraine. Despite significant challenges, the organisation has been able to save thousands of lives and provide support to millions of people. However, to remain effective, the Red Cross must address issues of access, funding and reputation. This requires greater coordination, transparency and neutrality.

To ensure long-term support for the victims, it is necessary to continue to develop humanitarian initiatives and engage the international community in their implementation.

The Red Cross is one of the largest and best-known humanitarian organisations in the world. Its mission is to help people affected by military conflicts, natural disasters, epidemics and other crises. Since the outbreak of full-scale war in Ukraine in February 2022, the Red Cross has become extremely important in supporting the population affected by the consequences of hostilities. However, in carrying out its mission, the organisation has faced a number of challenges, including access to the territories, resource constraints, and public criticism.

Main areas of assistance

Evacuation of the civilian population:

One of the key functions was to organise safe corridors for the evacuation of people from the areas of active hostilities. This was especially true for cities such as Mariupol, Kharkiv, Bakhmut, and Soledar.

Evacuation missions were conducted in cooperation with local authorities, the UN and other organisations.

Supply of humanitarian aid:

The organisation provided people with food packages, drinking water, medicines and other essentials.

Considerable attention was paid to supporting internally displaced persons who were forced to leave their homes.

Medical care:

The Red Cross provided mobile medical teams and supported hospitals in the frontline areas with medicines and equipment.

Psychological support was provided to victims, especially children and women.

Work with prisoners of war:

The International Committee of the Red Cross (ICRC) coordinated the monitoring of the conditions of detention of prisoners of war and the provision of their humanitarian needs.

Performance results

According to official reports, the Red Cross has helped millions of Ukrainians during the conflict. More than 100 regional aid centres have been deployed, and billions of dollars in humanitarian aid have been sent to support the victims

1. Restricted access to the occupied territories

Issue: Access to areas under occupation or controlled by active hostilities has been severely restricted. This has significantly hampered the delivery of humanitarian aid The main reason for this is the lack of security guarantees from the parties to the conflict

Public distrust

Issue: Some of the Ukrainian population expressed distrust of the Red Cross due to insufficiently transparent communication and a lack of timely response to some crises, including the siege of Mariupol. This resulted in a decline in the organisation's reputation among local communities and challenges in attracting volunteers.

Insufficient funding and logistics

The challenge: Despite significant international contributions, the scale of the conflict exceeded the financial and human resources of the Red Cross.

Impact: This has limited the ability to respond quickly to emergencies.

Politicisation of humanitarian activities

Issue: Red Cross involvement has sometimes been subject to political pressure, creating barriers to the independence of humanitarian work.

Example: Criticism of the ICRC's cooperation with Russia and the lack of a proper response to the detention of civilians in "filtration camps".

Ensuring transparency of operations:

Regularly publishing reports and communicating with the public can increase the credibility of an organisation.

Expanding cooperation with other organisations:

Closer coordination with government agencies, the UN, and local NGOs will help expand access to resources and territories.

Improving logistics:

Using modern technology to monitor and deliver aid even to hard-to-reach areas.

Protecting neutrality and independence:

Clearly defend humanitarian principles to the parties to the conflict

One of the key organisations that is in one way or another related to the war in Ukraine is the North Atlantic Treaty Organisation (NATO).

Ukraine's relations with NATO in the context of a full-scale Russian invasion are of paramount importance. The relevance of the study is due to the fact that Russia's aggression in Ukraine has significantly affected the state of global security. The world, and the North Atlantic Treaty Organisation in particular, is facing the challenge of rethinking the current international order. The need to strengthen North Atlantic strategic solidarity for peace has been put on the agenda.

On 4 April 1949, the North Atlantic Treaty was signed. In its preamble, NATO's founding members reaffirmed their determination to defend freedom, the common heritage of their peoples and their civilisation, based on the principles of democracy, individual liberty and the rule of law. These values are attractive to most countries in the North Atlantic region, which has allowed the Alliance to increase its membership from 12 to 31.

Full membership in the Alliance is directly in Ukraine's national interests, as NATO's political weight and military power can ensure its independence and territorial integrity better than the uncertain status of so-called "non-aligned" or "security guarantees" such as the Budapest Memorandum or the latest Kyiv Security Compact. The process of Ukraine's Euro-Atlantic integration is a logical continuation of its strategic course to establish the principles of democracy in the society. Ukraine's aspiration to be recognised as a European state is based on a common understanding and vision of social values with the Western world. The creation of civil society, development of democratic institutions, and ensuring human rights and freedoms are Ukraine's priority national interests (as repeatedly enshrined in its laws and regulations). Ukraine's membership in NATO will contribute to a number of important tasks. They are: joining the most powerful military and political alliance, which will increase the degree of security in the region, guarantee protection of Ukraine's national security in the most effective way, prevent new aggression from Russia; positively affect Ukraine's defence capability; bringing the Ukrainian military organisation in line with NATO standards; deepening Euro-Atlantic integration, which will allow Ukraine to more effectively protect its economic and political interests in Europe and in the world; as a result of intensification of relations with the European Union

Out of 31 NATO and 26 EU countries, 22 are members of both associations. Ukraine declared its desire to join the Alliance more than 20 years ago (NSDC decision of 23 May 2002), but the implementation of Euro-Atlantic aspirations has long been characterised by a lack of political will on both sides and certain imitations. Moreover, there were outright kickbacks: "non-aligned" status in 2010-2014 (which, by the way, did not prevent Russian aggression and occupation of Crimea and parts of Donetsk and Luhansk regions). The first Foreign Policy Strategy of Ukraine, approved in August

2021, states that on the path to Euro-Atlantic integration and full membership in NATO, the primary goals of Ukraine's foreign policy are: achieving compliance with NATO membership criteria through targeted and systematic implementation of a wide range of domestic reforms within the framework of annual national programmes under the auspices of the NATO-Ukraine Commission, effective use of all opportunities to develop cooperation with the Alliance, providing

It is worth recalling that following Russia's illegal annexation of Crimea and destabilisation of Eastern Ukraine in 2014. NATO was the only international organisation to take a firm stand in full support of Ukraine's sovereignty and territorial integrity within its internationally recognised borders. As a result of Russia's occupation of Crimea, NATO Allies decided in 2014 to suspend all practical civilian and military cooperation with Russia, but kept political and military channels of communication open.

In March-April 2022, due to ill-conceived and incompetent steps by some government officials, Ukrainian society had high expectations of NATO's capabilities. This threatened the positive perception of NATO among Ukrainians. Narratives about what NATO could not do (introduce a no-fly zone, send military contingents) were spread in the national and European media. The argument that Ukraine is not a NATO member and therefore cannot be covered by the North Atlantic Treaty was not accepted by many. This wave of information led a number of Ukrainian Euro-Atlantic experts to write a letter to NATO Headquarters asking them to pay attention to the problems of the Alliance's positioning in Ukraine and the lack of clear messages about Ukraine in the Alliance's public communication. The NATO-Ukraine Civic League, a consortium of NGOs, addressed the North Atlantic Council on the eve of the meeting of NATO leaders in March 2022. The appeal primarily expressed gratitude for the comprehensive political, material, military-technical and moral support provided by the Alliance, and especially by individual Allies, since the beginning of Russia's invasion of Ukraine. "Our country unreservedly defends the values enshrined in the preamble of the North Atlantic Treaty, namely, a civilisation based on the principles of democracy, individual freedom and the rule of law. These values are absolutely unacceptable to the modern evil empire. Ukraine is faithful to its Euro-Atlantic aspirations, which are enshrined in the Constitution." The statement called for disregarding some statements by Ukrainian authorities accusing NATO of inaction and inefficiency.

The NATO Madrid Summit in late June 2022 did not make a tangible breakthrough on Ukraine's path to membership in the Alliance. However, this was predictable given the situation. However, for Ukraine, the main task now is to counter Russian aggression. In this context, the summit was positive. The Alliance is ready to return to negotiations on the mechanism of Ukraine's accession to NATO after Kyiv's victory. The reason for this caution is the fear of a direct confrontation with Russia. The new Strategic Concept, which will be in force until 2030, recognises Russia as "the most significant and immediate threat to the security of Allies and to peace and stability in the Euro-Atlantic area". The document also mentions China for the first time: NATO identified its policy as a challenge to its interests, security and values [109]. In the final declaration, NATO countries reiterated their "unwavering support for Ukraine's independence, sovereignty and territorial integrity within its internationally recognised borders, including its territorial waters". They expressed "full support for Ukraine's inherent right to self-defence and to choose its own security measures".

At the end of September 2022, NATO condemned Russia's illegal attempt to annex four regions of Ukraine - Donetsk, Luhansk, Kherson and Zaporizhzhia. It was noted that this was the largest attempt to annex European territory by force since World War II. The fake referendums in these regions were designed in Moscow. They have no legitimacy by definition, and NATO does not recognise them. These lands are Ukraine and will always be Ukraine.

In a statement by NATO Foreign Ministers on 30 November 2022, it was noted that Russia's continued invasion of Ukraine threatens Euro-Atlantic peace, security and prosperity. Russia bears full responsibility for this war, a blatant violation of international law and the principles of the UN Charter. Russia's aggression, including its ongoing and lawless attacks on Ukraine's civilian and energy infrastructure, is depriving millions of Ukrainians of basic humanitarian services. It is damaging the global food supply and endangering the world's most vulnerable countries and peoples. Russia's unacceptable actions, including hybrid warfare, energy blackmail and irresponsible nuclear rhetoric,

undermine the rules-based international order. All perpetrators of war crimes, including conflict-related sexual violence, must be held accountable. Allies will assist Ukraine in repairing its energy infrastructure and protecting its people from missile attacks. We will continue to strengthen our partnership with Ukraine as it pursues its Euro-Atlantic aspirations. NATO Secretary General Jens Stoltenberg has consistently emphasised in his public speeches that we are all paying the price for Russia's war against Ukraine. However, NATO pays its price in money, while Ukrainians pay their price in blood. Therefore, it is in our security interests to support Ukraine. We need to remember what kind of war this is. Russia is the aggressor. Ukraine is the victim of aggression. And, of course, Ukraine has the right to defend itself, and NATO is helping Ukraine to exercise that right. However, although NATO is not a party to the conflict, the Alliance will continue to stand with Ukraine for as long as it takes.

On 30 September 2022, it was announced that Ukraine had submitted its application for NATO membership. It is worth recalling that the "application" for NATO membership has no legal significance. The procedure for joining NATO (unlike the EU) does not require an application at all. The procedure for joining the Alliance requires, first of all, consensus among the Allies and an invitation to the aspirant country. According to the Washington Treaty (Article 10), the Alliance itself initiates enlargement. It is important that the state at the political level seeks membership, and the Alliance is aware of this. It is worth noting that Kyiv turned to NATO at a time when the support for integration into the Alliance among Ukrainians reached 83%. However, there is no prohibition on taking such a symbolic step as Ukraine has taken. Ukraine submitted its own application virtually without consulting the Alliance. Accordingly, the reaction of the Allies was rather restrained.

The North Atlantic Alliance is primarily a political and military organisation. The political, or rather the values component, is of fundamental importance to its members. Some NATO countries believe that Ukraine does not meet the political criteria for membership, in particular with regard to the level of democracy. Most importantly, Ukraine's democratic and rule of law challenges remain and are even worsening. Our constant statements that Ukraine "already meets all NATO standards" are not actually true. Accordingly, the Alliance still has questions about the state of democracy in Ukraine. There are no such questions to the candidates Finland and Sweden, EU member states. However, some of the questions to Ukraine may be lifted if the EU fulfils the conditions for starting negotiations on EU membership.

Ukraine's accession to the organisation requires the support of all its members, i.e. 31 countries. On 3 June 2023, NATO Deputy Secretary General Mircea Geoană said that the allies did not have a consensus on Ukraine's accession. However, he stressed that Ukraine is now closer to the Alliance and Western democracies than ever. The NATO summit in Vilnius is expected to be the most important transformation of military doctrine in the last 50 years, as well as a "strong message" for Ukraine. In particular, it was planned to strengthen Kyiv's cooperation and introduce a NATO-Ukraine Council instead of the NATO-Ukraine Commission. In the context of the war, at the July NATO summit in Vilnius, the participants intend to offer Ukraine immediate assistance rather than membership right now. However, Ukraine's accession to NATO was supported by 20 countries of the North Atlantic Alliance.

Thus, over the past 30 years, the Russian factor has directly or indirectly played a leading role in Ukraine's Euro-Atlantic policy. The current war should put an end to this process. Upon its completion, Ukraine should be invited to join the Alliance and granted membership in an accelerated format, thus fulfilling one of Ukraine's foreign policy constitutional guidelines. Only full participation in the North Atlantic Treaty Organisation will guarantee Ukraine's independence and rid it of Russian encroachment. It is Ukraine's invitation to NATO that can stop a crazy and inadequate Russia. Finally, the Allies must stop being afraid of the Kremlin. The evil empire understands no other language but force. It is Ukraine that is now actively defending the common fundamental values of the Alliance. And the Allies can make a consensus decision on Ukraine, because by inviting it, they will strengthen their own and restore global security and prove that the words in the preamble of the North Atlantic Treaty are not just words. In fact, Ukraine is now at the epicentre of the struggle between Western and Moscow civilisations. Thus, Ukraine continues to move steadily towards Euro-Atlantic integration. It has all the

reasons for this - historical, mental, psychological and geopolitical. Russia's large-scale aggression against Ukraine proves that there is no reason to doubt the capabilities of the Alliance as the only real security organisation in the world. It is Ukraine's membership in the North Atlantic Treaty Organisation that could have prevented Russian invasion

Chapter II: Assessment of the effectiveness of legal mechanisms

3.2.1. Comperative analysis of previous precedents in international law

Throughout the existence of our civilisation, mankind has always developed technologies of mass destruction, expansion and the things that will destroy this mankind in parallel with the development of intellectual progress. In the context of the war in Ukraine, we can obviously see features that are characteristic of other armed conflicts throughout history.

Yes, history is cyclical, and what is happening in Ukraine has already happened in the world in one way or another. In order not to go too far, we should compare the Ukrainian-Russian war with the most recent events in people's memory. Such wars are, of course, the ongoing war in Syria, the war in Iraq, the wars in Georgia and Chechnya (which are the most illustrative, because it is Russia that is to blame for their existence in history), which have already been mentioned, as well as the Balkan wars, and, of course, the First and Second World Wars, which left the greatest mark on human history in all spheres, including the legal

The Balkan wars of the 1990s were a series of armed conflicts that arose after the collapse of the Socialist Federal Republic of Yugoslavia (SFRY). These wars were accompanied by ethnic cleansing, war crimes and genocide, and have left a significant impact on modern Europe. The SFRY consisted of six republics (Slovenia, Croatia, Bosnia and Herzegovina, Serbia, Montenegro, and Macedonia). In the late 1980s, national movements began to grow, and the economic crisis exacerbated tensions. Nationalist politicians, such as Slobodan Milosevic in Serbia, sought to maintain control of Yugoslavia, while other republics sought independence. The Balkans were home to different ethnic groups (Serbs, Croats, Bosnians, Albanians) and religious communities (Orthodox, Catholics, Muslims), which contributed to the escalation of conflicts. The weakening influence of the USSR after its collapse left Yugoslavia without support. Western countries were also divided in their support for the parties to the conflict.

Many politicians, analysts and journalists have recently tried to compare the tragic events of the 1990s in the former Yugoslavia with the current crisis in Ukraine. In the media, one often hears that "Russia is playing out the so-called Yugoslav scenario in Ukraine". Analogies are drawn and rejected between the one-page declaration of independence of Kosovo and Crimea.

The breakup of Yugoslavia was a complex process that took place under fundamentally different foreign policy conditions, says Jovan Teokarević, a lecturer at the Faculty of Political Science at the University of Belgrade.

He believes that the collapse of the former Yugoslavia was caused by many years of internal crisis and conflicts, which, under the influence of external factors such as changes in the geopolitical environment and the fall of the Iron Curtain, only accelerated the collapse of the Yugoslav federation. Mr Teokarevic says that it is more appropriate to compare the crisis in Ukraine with the events in Kosovo, as in both cases, a part of the country's territory was seceded from one country. However, the researcher believes that there are many more differences than similarities.

"In the case of Kosovo, the crisis before its secession lasted for several years, even several decades. The ethnic conflict in Kosovo, in particular in its last phase in 1998-99, escalated into a massive violation of human rights, even more so into an attempt to commit genocide against the Albanian population. This did not happen in Crimea at all," the analyst noted. - "Even the change of government in Kyiv did not lead to widespread violations of the rights of the Russian population in Ukraine.

The second difference that Professor Teokarevic points out is that after the NATO intervention against the then Yugoslavia, long and very difficult negotiations began on the institutional possibilities for Kosovo's secession.

"Nothing like that happened in Crimea. Kosovo's secession was facilitated not by one state, but by a large number of countries. In the case of Crimea, there were no negotiations with the help of international mediation," a political science professor from Belgrade told BBC Ukraine.

When asked whether the experience of the Yugoslav crisis and the means of its resolution could be useful for resolving the crisis in Ukraine, all of the interlocutors of BBC Ukraine - despite differences in their assessments of the relevance of analogies with the former Yugoslavia - unanimously assert that the priority tasks for Ukraine are to end the armed conflict and start a dialogue.

Berisavljevic, a former Yugoslav politician, believes that the crisis has deepened divisions within Ukrainian society, and it is now hard to imagine, at least from the perspective of Belgrade, that Ukraine will retain its current status as a unitary state. He believes that extreme nationalist forces in Ukraine need to be "pacified", while at the same time developing Ukraine as a European state and building a European way of life and civil society.

Mr Berisavljevic, who worked as a diplomat during the Cold War, also believes that Kyiv should be cautious about US interests in this part of Europe, particularly given Russia's interests.

Professor Teokarevic also believes that looking at the Ukrainian crisis through the prism of the 1990s conflict resolution in the Balkans, the first and foremost thing to do is to stop the fighting. The Serbian political science professor believes that there is no need to try to solve the issues of institutional and constitutional reform immediately. In his opinion, there is no need to rush into these issues, but to think things through and prepare them well, involving all domestic political actors and representatives of the international community.

Mr Teokarevic believes that the crisis in Ukraine could end in a similar way to Bosnia and Herzegovina. After the secession of Crimea, the "secessionist stage" of the crisis is over, he said, and "mainland" Ukraine may be in some way "divided" into two parts - the western part, which is more integrated with Europe and under Kyiv's control, and the eastern part, which will have a greater degree of autonomy, similar to the case of Republika Srpska in Bosnia and Herzegovina.

Teokarevic believes that the eastern part of Ukraine will remain under Russia's long and strong influence. Much greater than Belgrade's influence on Republika Srpska in Bosnia and Herzegovina.

Mr Ramach believes that Milosevic was a regional leader, while Putin has nuclear weapons in his hands. Russia is still a great power, and it threatens the security not only of Ukraine, but of the whole of Europe and the world. The only way to resolve such crises, the Serbian journalist believes, is through dialogue between those parties who want to engage in it and seek to understand each other, guided by arguments rather than force.

Many Serbian analysts also note that the consequences of the Ukrainian crisis are being felt in the republics of the former Yugoslavia. Although not a member of the EU, Montenegro's authorities supported Brussels' sanctions against Russia, while Moscow openly exerts diplomatic pressure on Podgorica not to join NATO.

In Bosnia and Herzegovina, the influential political leader of ethnic Serbs, Milorad Dodik, is increasingly talking about a referendum on "increasing the independence" of Republika Srpska. Meanwhile, Patriarch Irinej of the Serbian Orthodox Church, immediately after Russia's annexation of Crimea, called for the separation of Republika Srpska from Bosnia and Herzegovina, annexing this Serbian region to Serbia.

Unlike Montenegro, Serbia, which declares itself a traditional ally of Moscow, did not support the imposition of sanctions against Russia.

However, Belgrade remains restrained on the annexation of Crimea, given Kosovo and its own desire to join the EU.

Today, the war in Ukraine can only be compared to the Second World War in terms of its scale, so it is obvious that not only in 2022, but also in 2014 there were comparisons with those terrible events.

Since 2014, from the very beginning, Russia's armed aggression against Ukraine has often been viewed in the Western world through the prism of World War II. Comparisons of Russian President Vladimir Putin with Nazi Fuhrer A. Hitler, the occupation of Crimea with the Anschluss of Austria [110], the aggressive policy of the modern Russian Federation - with the similar course of the Third Reich. The most active and scientifically substantiated such historical parallels between today's Russia

and National Socialist Germany are made by the American historian T. Snyder [111-112]. In this way, he tries to draw the attention of politicians and the public to the serious threat posed by Russia to the entire world order, not just the Ukrainian state. The researcher exposes Russian propaganda messages using analogies and metaphors from World War II. With the beginning of Russia's full-scale war against Ukraine in February 2022, such historical parallels have become even more diverse. For example, the German historian H. Streit2 compared the failure of Putin's "special operation" in Ukraine in the spring of 2022 with the USSR's "Winter War" against Finland, and the desperate resistance of Ukrainians with the resistance of the Finnish population; the expulsion of the "country of the Soviets" from the League of Nations with Russia's international isolation in our time [112].

In Ukrainian political discourse, parallels with the Second World War began to be used in 2004 during the Orange Revolution. Among Ukrainian bloggers, political analysts, and journalists, it has become commonplace to synonymise the names of Russian politicians and propagandists with Nazi criminals: Putin - Hitler, Lavrov - Ribbentrop, Zakharova, Simonyan, Solovyov - Goebbels. Destroyed Ukrainian cities are compared to the tragic fate of cities in the Second World War: the defence of Mariupol to the siege of Leningrad, the battles for Bakhmut and Avdiivka to the Battle of Stalingrad, etc. Social media periodically features posts comparing photos of cities bombed by the Germans and the current destruction caused by the Russian army. 3.L. Yakubova presents her own version of the comparison between the society of today's Russia and the Nazi Reich in her book 2023: "The Führer and the German people or the national leader and the 'Russian world' are the essence of a part of a common being and a common historical destiny / mission. The Führer/leader sets the geopolitical agenda. In return, the people are required to be "sacrificial and submissive" (in this case, the positions are almost literally the same). In such a system, it is not just a people, but a people with certain exceptional attitudes and characteristics: "German race" (deutsche Rasse), Heidegger's "German essence" (deutsche Wesen), the Russian "god-people" (Ilyina, Dugina) and "Russian political culture" (Surkova)" [113, p. 318].

At first glance, such systematic appeals to the events of the Second World War seem somewhat far-fetched and exaggerated. But in fact, such optics are not accidental. That war lasted for four years, with huge losses, on the territory of the whole of Ukraine. Verbally, visually, and mentally, this memory remains present among politicians, scholars, and ordinary citizens alike. During interviews with contemporary witnesses of the Russian occupation, one can often hear emotional comparisons between the Russian army and the Wehrmacht [114, pp. 25-42]. The murder of former victims of Nazism (the death of B. Romanchenko, a prisoner of the Buchenwald concentration camp in Kharkiv during Russian strikes on Kharkiv 4), the shelling of the territory of the Babyn Yar National Historical and Memorial Reserve in Kyiv, the destruction of the monument to the murdered Jews in Drobytsky Yar - these and other similar facts are themselves reminiscent of the Holocaust. The revelations of the crimes of the Russian army in Mariupol, Bucha, Hostomel, Irpin, and Izium have particularly intensified the discussion of genocide and comparisons with the murder of Jews in World War II.5The international legal assessment of the mass killings of civilians in Ukraine by Russian troops under the classification of genocide (a definition that entered the international legal field in 1948 under the influence of the events of World War II) is also being updated in the context of demands for the punishment of Russian war criminals [115, pp. 19-20].

The fact that historical narratives about the Second World War are so actively used today can also be explained by the reaction to Moscow's aggressive propaganda. After all, the Kremlin uses the terms and analogies of the Second World War in its foreign and domestic policies, in its struggle first against the democratic pro-European movement in Ukraine, and later in its efforts to destroy the Ukrainian state. Since 2004, Russian propagandists have been calling supporters of Viktor Yushchenko and participants in the Orange Revolution "fascists" / "nashists". The Russian media portrayed the activists of the "Revolution of Dignity" of 2013-2014 as "Nazis" and "fascists". On 24 February 2022, V. Putin, announcing the objectives of the so-called "special military operation", spoke of the "demilitarisation and denazification" of Ukraine, describing the upcoming war as a global struggle in the tradition of Stalin's "Great Patriotic War" against the "hostile West" and the "Ukrainian fascism" it supported 9.The cult of the "Great Patriotic War" and the "Great Victory" over Nazism has also become

one of the central components of the concept of the "Russian world" ("russkiy mir"), Russia's claims to be a global geopolitical player and Moscow's dominance in the post-Soviet space. For Russia, the consequences of the Second World War and its claims to the exceptional role of the USSR and Russians in the victory mean, among other things, that the word "fascism" can be used as a language of hatred against those whom it has chosen as its enemy.As it turned out, it is extremely difficult to counter the myths of the "Great Patriotic War" and the "Great Victory". Harvard University professor S. Plohyi, in a conversation with journalist and political scientist V. Portnikov [116], explains this by the fact that Russia has created a single attractive narrative about the Second World War that unites society. The Russian narrative proved to be extremely flexible in the sense that people could associate themselves with the victory over Nazism without necessarily associating themselves with communism or Stalin.In our country, the topic of the Second World War has become one of the main points of contention and debate in society, one of the points of division, which Russia has constantly tried to activate. In post-Soviet Ukraine, the Soviet myth of the Great Patriotic War was partially incorporated into the Ukrainian model of the national past, which was ambivalent. On the one hand, the society rehabilitated the victims of the Holocaust and Stalinism, the OUN and UPA leaders, while on the other hand, the traditions of commemorating Victory Day and other Soviet dates related to the war continued to be preserved. The use of this topic in Russian anti-Ukrainian propaganda, and after 2013 in the "hybrid war", forced Ukrainian researchers and intellectuals to intensively seek ways to disassociate themselves from the Soviet/Russian myth

The main point of the comparison with the Second World War is that it was after this war that the famous Nuremberg Military Tribunal took place, which took place between 1945 and 1946 and tried Nazi criminals who acted during the Second World War. The goal is to create a similar tribunal for the Russian military and political leadership, as well as the leadership of states that directly or indirectly helped Russia commit crimes in this war.

The modern world is characterised by a multiplicity of discourses, communication fields and instruments of influence. The concepts of power and war are less linear than before and involve many spheres: economics, diplomacy, cultural influence, energy and information. Putin's Russia is constructing its own internal narrative as an overcoming of the "humiliation" of the 1990s and a response to the "aggression" of the Western world during the collapse of the USSR and after the end of the Cold War. Therefore, it sees its task today as launching a "counterstrike" against Western civilisation and re-conquering the lost zones of influence. In doing so, it uses the achievements of democratic societies, such as the values of multiplicity, diversity, freedom and democracy, as well as information and technological tools of Western origin. However, it uses them for opposite purposes. Instead of diversity and multiplicity of freedoms and opportunities, the Kremlin develops diversity and multiplicity of instruments of influence, power and domination. In fact, the ideological agenda in Germany after Hitler's rise to power was similar.

A legal analysis of military conflicts is essential for understanding international law, the obligations of states and the mechanisms for punishing aggressors. This section compares the Second World War and the Russian-Ukrainian war in terms of violations of international law, definitions of aggression, war crimes and accountability mechanisms. The Second World War began with Germany's aggression against Poland on 1 September 1939. This act was classified as direct aggression under the Charter of the League of Nations and later, during the Nuremberg Trials, was condemned as a crime against peace. Russia's aggression against Ukraine in 2014 with the annexation of Crimea and subsequent invasion in 2022 violated the basic principles of the UN Charter. The UN General Assembly Resolution (ES-11/1) recognised Russia's actions as an act of aggression that violates the sovereignty and territorial integrity of Ukraine. During the Second World War, numerous war crimes were committed, including genocide, deportations, and mass killings of civilians, in violation of the Hague Conventions of 1899 and 1907, as well as the Geneva Convention of 1929.

During the Russian-Ukrainian war, numerous violations of IHL were recorded: shelling of civilian objects, deportation of Ukrainian citizens, torture of prisoners, which violates the Geneva Conventions of 1949 and their Additional Protocols. After the Second World War, the International Military Tribunal in Nuremberg was established, which convicted the main war criminals of Nazi

Germany. This process laid the foundations for the further development of international criminal law. In the context of the Russian-Ukrainian war, the International Criminal Court (ICC) has launched an investigation into war crimes and crimes against humanity. The creation of a special tribunal to investigate the crime of Russian aggression is also being initiated. A comparative analysis of the Second World War and the Russian-Ukrainian war demonstrates the stability of international legal principles and the need to comply with them. Both conflicts show that aggression and war crimes require inevitable punishment to ensure justice and international peace.

3.2.2. **Recommendations for improving legal approaches to bringing the Russian Federation and its structures to justice**

Common history has been a key factor in determining interstate relations between Ukraine and the Russian Federation (hereinafter referred to as the RF) throughout the post-Soviet period. However, this influence is now generally considered to be mostly negative, despite constant references to such categories as "fraternal peoples", "common traditions", and "historical ties".

It can be said that after the collapse of the USSR and the loss of the status of "first among equals" within the global superpower, Russia has not been able to get rid of its imperial intentions and revanchist style of thinking. Accordingly, today its policy has taken a new, unexpected course for the civilised world - to destroy the Ukrainian people using all available means of a totalitarian regime. As a result, since 24 February 2022, more than 30,000 Ukrainian civilians have been killed in Russia's armed attack, and more than 7 million people have become refugees. In view of this, we believe that today international crimes are at the top of the list of socially dangerous acts that can encroach on the priority interests of a democratic community - peace and security of a sovereign state. As history shows, the consequences of the First and Second World Wars led to the destruction of more than 100 million people, including soldiers and civilians, and therefore the international community increasingly considered the idea of forming a supranational judicial institution whose main function would be to bring perpetrators to justice for committing the most serious crimes against peace and humanity [117, p.316].

An alternative response to this request was the establishment of the Nuremberg (1945) and Tokyo (1946) tribunals. However, while these tribunals ceased their activities immediately after the verdict of guilty, the International Criminal Court (hereinafter - the ICC), which began its work in 2002, operates on a permanent basis. It would seem that the prospect of Ukraine's cooperation with the ICC could provide a unique opportunity to bring Russia's top leadership to justice, but here, too, the international community faces a number of unforeseen legal problems.

Given that the armed aggression of the Russian Federation has been ongoing in Ukraine since 2014, it can be argued that the problem of bringing perpetrators to criminal responsibility for the most serious international crimes has already become the subject of active discussion in the scientific circles of our country. Thus, Topolevskyi R.B., Sukhoverskyi M.Y. and Stratii O.V. consider in detail the legal nature of the ICC [118, pp. 277-280]. Volynets R.A., Kaminska N.V. and Shcherban Y.V. focus on the problem of implementation of the provisions of the Rome Statute - an international treaty governing the activities of the ICC [119, p. 21].

At the same time, while paying tribute to the researchers' achievements, we note that the issue of establishing a Special International Tribunal to prosecute the top leadership of the Russian Federation remains unexplored, and therefore needs to be rethought, taking into account Ukraine's current experience.

The Russian Federation has long been committing the crime of aggression against neighbouring states, over which it has been trying to regain control since the days of the Russian Empire and the USSR. It has not yet been held accountable for the crimes committed as a result of the armed conflicts in Moldova and Georgia. Ukraine's resistance to Russian aggression makes a significant contribution to the development of international law, as the Russian leadership may for the first time be held internationally criminally liable for its actions.

Currently, there is no mechanism to bring to justice the senior leadership of the Russian Federation for the crime of aggression, as well as the leadership of Belarus, which made its territory

available to the Russian Federation for military operations and otherwise facilitated the commission of acts of aggression by the Russian Federation. The International Criminal Court is not empowered to prosecute the leadership of these states for the crime of aggression, and international law does not provide an unambiguous answer as to how and by whom the accountability mechanism should be established due to the highly politicised development of ways to respond to the crime of aggression.

The scale of the new stage of Russian aggression in 2022 and the courageous resistance of Ukrainian soldiers have triggered a thorough international discussion on such a mechanism. The creation of an international mechanism through the establishment of a separate institution or a national mechanism based on the Ukrainian justice system with international elements is being discussed, for which many different instruments are proposed, none of which is ideal, and the list is hardly exhaustive. [126]

At present, the key issue that is being evaluated in relation to this or that instrument for creating the mechanism is procedural in nature and concerns the removal of absolute personal immunity of the military and political leadership of the Russian Federation and Belarus. We are talking about the President, the Prime Minister and the Minister of Foreign Affairs (hereafter, we will talk about the immunity of only these three officials, the "troika"), but this list could potentially be expanded depending on the position in the state. Immunity makes criminal prosecution for international crimes impossible, although it does not formally exempt from liability (it can be investigated, but not prosecuted).

The discussion of the potential mechanism suggests one hypothetical ground on which a Ukrainian court could legitimately exercise its jurisdiction. The point is that the fact of self-defence of one state may exclude the illegality of a wide range of measures to counter the attacking state. An example of this is the armed repulsion of a military attack by another state, since under normal circumstances the use of force is considered a crime of aggression. The UN International Law Commission suggests that, by analogy with the use of force in the event of an attack, the illegality of other measures taken by the injured state against the attacker may be excluded. This suggests that Ukraine could allow the prosecution of the leadership of Russia and Belarus in its own national court. However, this idea is only hypothetical and has never been implemented in practice. Furthermore, absolute immunity could potentially be a legal norm that is not permitted to be violated in the manner described in light of its ordinary status. Even if this is omitted, self-defence must be timely and proportionate, and it is therefore difficult to imagine the exercise of this right after the end of the conflict, and even more so by states other than the victim of the attack.

Thus, the possibility of recourse to the national judiciary of Ukraine in the context of prosecution for the crime of aggression seems questionable under international law, almost impossible in terms of practical implementation without the support of the international community, and threatens to be prosecuted by the International Court of Justice for an internationally wrongful act. At the same time, this does not apply to the perpetrators of the crime of aggression, who do not have personal immunities by virtue of their position. At the same time, the difficulty of gaining significant international support for the establishment of an international mechanism and the unlikelihood of capturing and bringing the leadership of the Russian Federation and Belarus to justice leads some researchers to believe that personal immunities should not be a key issue, as justice will be served only after regime change and the new authorities of the Russian Federation and Belarus agree to lift their immunities or to refer the case to the ICC in the UN Security Council. This approach is pragmatic and provides for the creation of a mechanism in Ukraine's national system right now, but with a delayed effect - until the change of state leaders takes place. At the same time, this makes the mechanism absolutely dependent on political circumstances in the aggressor countries, which may never develop, while the functioning of the international mechanism involves a real threat of detention of the leadership of the Russian Federation and Belarus outside their countries without the need for appropriate consent. Although gaining international support for the latter is indeed not easy, and the international mechanism has a number of diplomatic and political issues of effectiveness, at least the discussion of its functioning will take place with the international community, rather than relying on the perpetrators of the crime of aggression. In any case, practical expediency should not contradict international law. A national court will face an

obstacle in prosecuting the leadership of another state for the crime of aggression, which cannot be overcome only by creating it. The emphasis on the need to wait for the Russian Federation and Belarus to waive their leadership immunities indicates that the issue of immunities still remains a key one even for the national mechanism.

Despite the fact that some international tribunals do not enjoy absolute immunities, there are no clear criteria for what constitutes an "international" tribunal. That is why there is an ongoing discussion about which tribunal should be considered such and how to avoid the opposite label - "non-international". The so-called "hybrid/mixed" (hybrid) nature of a tribunal is sometimes associated in academic circles with a "non-international"/national court [10], in particular because there are no criteria for its definition. For the same reason, a representative of the Office of the President of Ukraine stated that a hybrid tribunal is an unacceptable tool for creating a mechanism of accountability for the crime of aggression [120]. Therefore, there is a need to define the criteria of what constitutes an international tribunal and what is meant by the word "hybrid" in order to have an idea of what we are talking about.

The International Criminal Court has argued that the counterbalance to national courts are international courts, which "...do not act on behalf of a particular state or states. Rather, international courts act on behalf of the international community as a whole" [121]. The Special Court for Sierra Leone expressed a similar view that international tribunals "...are not organs of the state, but receive their mandate from the international community" [122, pp. 295-298]. The scientific community also offers a similar vision that an international tribunal "... must meet two conditions: (1) it must be established in accordance with international law, and (2) it must sufficiently reflect the will of the international community as a whole ...". This proposal for the definition of an "international" tribunal, unfortunately, leaves a lot of room for interpretation, and thus for opponents of its creation. Currently, the UN Security Council is authorised to respond to violations of peace and security by adopting binding resolutions, which entitles the UN Security Council to establish international tribunals, in particular, the ICTR and the ICTY were established. This mechanism cannot be used by Ukraine, as the vote of the Russian Federation as a permanent member of the UN Security Council is binding, and it will undoubtedly use it to block such a process. The International Criminal Court, which was established on the basis of a multilateral intergovernmental treaty, the Rome Statute, to which 123 states and 137 signatories are currently parties, has also been granted the status of "international". It is not a court under the auspices of the UN, but the work on its creation was carried out by the Preparatory Committee established by the UN General Assembly. [123, c. 277-280].

Although the UN Security Council consists of 15 member states, it has the authority to represent the UN states and respond on their behalf to global threats. Therefore, such a decision may be a form of consent of the UN states to exclude the application of immunities before judicial institutions. As for the International Criminal Court, the Rome Statute is in line with the Vienna Convention on the Law of Treaties, its development was carried out with the assistance of the UN and with the participation of many states, and the text itself was approved by 120 states out of 148 present, of which only 7 voted against. Against this backdrop, it is important to understand what constitutes the hybrid nature of the tribunal, the key feature of which is the combination (mixing) of international and domestic elements at the same time (for example, international judges and national prosecutors). In fact, a hybrid tribunal is perceived as a national court established with the participation of the international community. It is also sometimes confused with an "internationalised" court, which is indeed a national court with certain international elements [124], but only one of the two possible manifestations of a hybrid tribunal. The reasons for the association of a hybrid tribunal with a national tribunal are the procedure for establishing and the powers of some existing hybrid tribunals, in particular, the Extraordinary Chambers in the Courts of Cambodia and the Special Tribunal for Lebanon. They were established on the basis of an agreement between these states and the UN, which was voted for by the international community when the relevant UN GA resolutions were adopted. In the case of Lebanon, the UN Security Council brought the agreement into force by its own resolution, as the agreement had not been ratified by Lebanon on its own.

In both Cambodia and Lebanon, the tribunals were part of the national justice system, operating under national law, with foreign judges administering justice and the UN administering the tribunals, to prosecute high-ranking officials in their own countries for national and international crimes. The founding documents of these tribunals did not include a provision on the non-application of immunities (in part because state officials do not have immunities before their own state). In contrast, another hybrid tribunal, the Special Court for Sierra Leone, was not part of the national system. It was established on the basis of an agreement with the UN, which was supported by a UN Security Council resolution. The Court acted on the basis of this international agreement, applied international procedures involving foreign and national judges in the administration of justice and the UN in the administration of justice to prosecute national and international crimes on the territory of the government, including with the participation of representatives of other states [125]. The constituent documents had separate provisions on the non-application of immunities, in particular the troika. Moreover, the court subsequently conducted proceedings and convicted the former president of another state, Liberia.

At the time of the Court's creation, the UN Secretary-General's report stated that the Court for Sierra Leone is "...a unique (sui generis) court of mixed jurisdiction and composition", "...not anchored in any existing system, i.e., the administrative law system of the United Nations or the national law of the State of the seat of the court". Such a provision "...requires the definition of rules for various purposes, including for the selection and administration of staff...", but "Like international tribunals, the Special Court for Sierra Leone is established outside the national judicial system...". The key point in the UN Secretary-General's report is that "The legal nature of the Special Court, like any other legal entity, is determined by its constituent instrument."[127]

In other words, a hybrid tribunal is not synonymous with a national court and is not the opposite of an international tribunal. A hybrid tribunal is defined as a tribunal that is a mixture of international and national elements, but its ultimate legal status as international or domestic is determined by its founding documents - the content of UN Security Council and General Assembly resolutions, international agreements and approved statutes. A hybrid tribunal can be international at the same time, as exemplified by the Special Court for Sierra Leone (although there are doubts about its international status).

International, national and hybrid tribunals are not part of the same classification, at least in this chapter. The first two relate to the legal status of the tribunal in terms of the application of personal immunities, the support of the international community and its relationship to the national justice system, while the third refers to the level of combination of international and national elements, which does not automatically make it international or national. In other words, calling a court "hybrid" does not answer the question of whether it will have international or national status. The use of another classification, namely international (absence of any national elements), hybrid (combination of international and national elements) and national (presence of only national elements), makes no sense in this legal discussion for the creation of a mechanism for the crime of aggression, as it is rather of scientific importance and cannot be applied in the context of the court's status in relation to the national justice system and personal immunities. In this case, at least the first two (international and hybrid) may be identical in meaning in today's legal paradigm.

Thus, the hybrid nature of the tribunal can be seen as a model of a mechanism of accountability for the crime of aggression against Ukraine. What is important is not the fact of hybridity, but 1) how the tribunal will be designed, 2) whether it is supported by the international community, and 3) what will be spelled out in the founding documents. In other words, a certain level of combination of international and national elements (hybridity) will ultimately determine one of its two possible statuses - international or national (aka internationalised if it contains international elements). The refusal to incorporate the tribunal into the judicial system of Ukraine and the exclusion of the application of substantive national legislation will help to secure the tribunal's international status, as evidenced by the practice of the UN General Assembly and the position of the Special Court for Sierra Leone.

To strengthen international support and avoid incorrect associations, it may be advisable to refer to the mechanism as an "International" tribunal for the crime of aggression against Ukraine instead of

a "Special" tribunal, which would draw a parallel with the ICTR, ICTY, ICC and the International Military Tribunal (Nuremberg Tribunal). At the same time, the myth of "hybrid = national" should be debunked, but without prejudice to international support.

In view of the above, the following criteria can be identified that are important to meet in order for a tribunal to acquire the status of "international", in particular if it combines national and international elements (hybrid character).

First, the process of creation should receive the widest possible support from the world's states, at least the majority, preferably from each continent, which of course makes it more difficult to reach agreement. This support should be manifested through involvement in the process of establishing the mechanism, such as participation in the development of statutory documents, voting in international organisations, participation in an intergovernmental agreement, etc. It is important to take into account that the level of international support will determine the readiness of states to comply with the court's instructions and cooperate with it, including

This is especially important if it is not possible to legally oblige states to detain suspects at the request of a court, and therefore rely on diplomacy and "good faith". Since it is highly likely that the suspects will not appear before the court on their own and will not be able to travel internationally to a large part of the world, this will require consolidated diplomatic pressure on other states that will not have a clear position on extraditing the suspects if they appear on their territory. Moreover, this will also require a consolidated approach to restrictive measures (sanctions, Russia's participation in international institutions, etc.), the lifting of which should be conditioned on the extradition of suspects to court.

Secondly, the creation process must be provided with a legal basis in conventional or customary law (including through the evolutionary interpretation of norms), in particular under the Vienna Convention on the Law of Treaties, UN acts (the criterion of "compliance with international law", discussed in more detail below).

Thirdly, the tribunal's constituent instruments should include a provision on the non-application of personal immunities, together with its international support, i.e., they should support such a provision, for example, by a personal vote. Additionally, but no less importantly for the tribunal's effectiveness, the tribunal's founding documents should reflect the obligation of UN member states to cooperate with it. Although this is not necessary for the tribunal to be "international", it would significantly enhance its capacity (more on this below).

Fourthly, if the future tribunal combines international and national elements (hybrid character), their ratio should be balanced so as not to damage the legitimacy of the court and circumvent personal immunities. In this regard, an "international" tribunal cannot be incorporated into the national justice system. This also implies that it is necessary to refuse to use national law as the "constituent document" of the tribunal, since it must act on the basis of an internationally approved document (UN Resolutions, an international agreement signed with the UN Secretary-General and an approved Charter, etc.)

One of the ways to create a mechanism of accountability for the crime of aggression against Ukraine is to adopt a UN General Assembly resolution that would authorise the UN Secretary-General to conclude an international agreement between the UN and Ukraine. This option has quite a lot of support in the academic and political discourse, as there is general agreement that the tribunal established in this way would have international status. At the same time, it is important to bear in mind that some hybrid tribunals were established precisely because of such an agreement, but this did not automatically grant them the status of "international", which depended on the provisions of the constituent documents. [128]

A favourable vote in the UNGA will definitely ensure one of the two elements of an international tribunal - the court will act on behalf of the international community. At the same time, two important questions remain: 1) how many states should vote in favour of the relevant resolution and 2) whether the UNGA has the authority to establish an international tribunal or to legitimise such a process.

At first glance, it may seem that the UNGA has the relevant authority, as it has already participated in the creation of one potential international tribunal - the Special Court for Sierra Leone. However, the UNGA was authorised to establish the court by a UN Security Council Resolution

(Russia's veto would not allow this to happen) and there are certain doubts about the international status of this court, as mentioned above. Therefore, it is necessary to outline the specific powers of the UNGA.

The UN system has two main bodies - the UN Security Council and the UN General Assembly. The former has the right to take binding decisions to maintain or restore international peace and security in the event of aggression [129]. Along with "decisions", the UN Security Council can also adopt "recommendations" on the necessary "actions" in a similar situation. In the case of the ICTR and the ICTY, the UN Security Council "decided" to establish international tribunals, and in the case of the Court for Sierra Leone, it authorised the UNGA to make such a decision and "recommended" elements of the future court.

In turn, the UNGA can only discuss certain issues and make "recommendations" on them. Moreover, recommendations on a particular conflict can only be made if the UN Security Council fails to fulfil its mandate or requests such recommendations. The ICJ has confirmed the position that only the UN Security Council can demand coercive measures against the aggressor.

In this regard, it is unclear whether the UN General Assembly can "recommend" the creation of a binding international tribunal for all states and exclude the application of personal immunities, even if it gains enormous international support.

On the one hand, if the UN Security Council "decides" to establish, and the UN General Assembly "recommends" the establishment of, a tribunal and engages another state through the Secretary-General, then the state involved creates the tribunal, not the UN. In other words, the UN legitimises the tribunal, not creates it. On the other hand, the ICJ noted that the role of the UN Security Council in the maintenance of peace and security, although primary, is not exclusive, and the powers of the UN General Assembly are not only "advisory". In particular, the UNGA takes "decisions" on important issues, namely recommendations for the maintenance of international peace and security. Moreover, the way the UN bodies interpret certain provisions of the Charter in practical application is important for determining the powers, and the adoption of a decision by the wrong body in accordance with the internal structure of the institution does not always mean that there are no obligations of the member states

On the other hand, in the absence of certainty, the adoption of the above decision may be an exercise of powers not assigned to the UNGA, which would exclude the criterion of establishing the court "in accordance with international law" and, therefore, the "international" status of the tribunal. Any doubt in this regard could undermine the ⅔ support required for the adoption of a UNGA resolution. The lack of proper support will increase the risk that the execution of arrest warrants by other states for such a tribunal could lead to Russia's application to the ICJ to establish a violation of international law against it and invalidate the agreement (if it is signed after the adoption of the UNGA resolution) [130].

This approach to establishing a tribunal is not without its drawbacks, but it seems to be a fairly logical consequence of what should happen if the UN Security Council is unable to make a decision due to the veto of a permanent member. Moreover, the current armed aggression of the Russian Federation is unprecedented and requires the search for new solutions, as it was to some extent during the Korean War. Moreover, in one way or another, the content and materials of the preparatory work [48] on Resolution 377 may serve as the basis for the UN General Assembly's real powers to respond to violations of international peace and security. There is reason to assume that the wider the support for such a tribunal, the more likely it is that the ICJ's interpretation of the ICJ can be adaptive and dynamic [131].

One option for creating a mechanism of international accountability for the crime of aggression against Ukraine is to establish a tribunal on the basis of an open interstate treaty to which any state in the world can accede. Such a scenario is analogous to the International Military Tribunal in Nuremberg, which was established by the four victorious powers in World War II and had jurisdiction over crimes against peace (analogous to the crime of aggression). That is, allegedly, two or more states can establish a tribunal that will have the status of an international tribunal and will not enjoy immunities.

First of all, it is worth noting that the Nuremberg Tribunal was a reaction of the times, made possible by the military defeat of the Third Reich. In these circumstances, there was no proper

assessment of the compliance of such a method of establishing a tribunal with international law. In addition, this experience was unique, and therefore it was impossible to rely on other examples of the establishment of international tribunals.

Secondly, the Nuremberg Tribunal is considered a "tribunal of the victors" who dictated their terms to the enemy against its will. Because of this, the tribunal has at least a "controversial" status in terms of current international law. If we take into account the current criteria for "international" status (international support and compliance with international law), even a few dozen states are unlikely to be able to ensure that at least the first criterion is met, and therefore it will be a court of nation states, not the international community [131]. It is unlikely that Ukraine and its international partners will be ready to participate in a tribunal that will have a direct parallel with Nuremberg. Moreover, Russia's full surrender seems unlikely at this point.

Third, any interstate treaty will be valid only for its parties. Other states would not be obliged to assist the court in any way or execute its arrest warrants. The effectiveness of the court could be very low, which would also make it difficult to support financially.

Fourthly, the immunities of senior state officials could have been lifted by the Third Reich "voluntarily" as a result of a surrender treaty Without signing such a treaty in accordance with the UN Charter, it would be invalid due to coercion, but even in this case, there is an argument that the state may have agreed to the removal of immunity, which is currently impossible to achieve in the case of Russia or Belarus.

There is also a controversial approach that the right to establish such an interstate tribunal may be based on the universal or national jurisdiction (criminal codes) of states over those responsible for the crime of aggression, i.e. the right to prosecute regardless of the place of commission of the crime and the state of citizenship. However, it cannot be unequivocally stated that the crime of aggression falls under universal jurisdiction. As of 1996, the UN Commission on International Law drafted a Code of Crimes against the Peace and Security of Mankind, which made it impossible for states to independently prosecute the perpetrators of the crime of aggression [131].

Even if we omit this argument and agree with the existence of universal jurisdiction, the latter gives the right to establish material liability for a crime in the criminal code, and does not remove personal immunities, which are procedural in nature, from the three. The principle of relations between two equal states, which do not have sovereignty over each other, continues to apply between states [66]. For the same reasons, the state cannot prosecute the troika for genocide or war crimes, although unconditional universal jurisdiction is provided for them. This is confirmed by the approach of the International Court of Justice in the case of DRC v. Belgium, which declared the issuance of a Belgian arrest warrant for the detention of the Congolese Foreign Minister for war crimes a violation of international law.

One of the options for the legal basis of an interstate agreement could be the Budapest Memorandum between Ukraine, Russia, the United States and the United Kingdom, which provided for guarantees from the nuclear powers on the non-use of nuclear weapons against Ukraine and, in general, guarantees to respect the territorial integrity and sovereignty of Ukraine. This memorandum became part of the nuclear weapon states' obligations under the Treaty on the Non-Proliferation of Nuclear Weapons, to which Ukraine acceded as a non-nuclear weapon state. Similar guarantees were in fact expressed for all non-nuclear states on behalf of the nuclear weapon states at the UN [132].

The content of the memorandum could potentially be used as a form of waiver of procedural immunity of its officials before the three states mentioned above if Russia commits a crime of aggression against Ukraine. Such a conclusion is unlikely, at least for the reason that the memorandum does not provide for such a provision. It is difficult to imagine that nuclear states would waive their immunity to all non-nuclear states by providing appropriate guarantees. The opposite approach could set a precedent for holding other nuclear-weapon states accountable that they would obviously not support. In addition, there are other legal instruments that declaratively prohibit the crime of aggression, but they hardly give grounds to establish a tribunal for its commission.

Even if we agree that the memorandum can serve as a substantive jurisdiction over the crime of aggression, there are at least significant doubts about the procedural jurisdiction (lifting of immunities).

The creation of a tribunal on the basis of a memorandum is likely to lack international support and the two key states of the treaty, the United States and Britain, which should fully take on the promotion and functioning of the tribunal. It is quite likely that such a tribunal will be labelled a "victors' tribunal", as it will not meet the two criteria for establishing an international tribunal. Moreover, even if we omit all of the above, Belarus is not a signatory to the memorandum, and therefore it will be impossible to bring it to justice.

It should also be borne in mind that such an approach to the creation of a tribunal could give rise to similar tribunals for any officials of any state. It is quite likely that, in response, Russia, Belarus, Iran and other Russian partners will create their own tribunal for officials of Ukraine, the United States, Britain and other partners of Ukraine. Proponents of an interstate treaty for the tribunal may argue that in the second case, states would be acting contrary to international law, as they would not be prosecuting a crime of aggression, but rather concealing their own and abusing the law. At the same time, a serious question arises as to who will determine the tribunal's "inconsistency" with international law. In the case of the Russian Federation, it may look quite obvious, but if we imagine a situation where officials of NATO member states are prosecuted for attacks on Yugoslavia or states that invaded Iraq, it will hardly be easy to establish the tribunal's "compliance" with international law. This can only be established after an actual investigation by the established tribunal, a consolidated position of the international community or an assessment by the International Court of Justice.

The only advantage of establishing a tribunal under this scheme is its political nature, which would allow the use of the soft power of the United States and Britain, which can put pressure on other states to comply with the tribunal's decisions. However, even in this case, the toolkit will be very limited, as it is currently impossible to imagine an absolute military defeat of the Russian Federation.

The main counter-argument may be that the International Criminal Court cannot prosecute Russia for the crime of aggression, as it is not a party to the Rome Statute. However, states independently limited the Court's jurisdiction when adopting the Rome Statute on the crime of aggression, and therefore nothing prevents them from adopting another text of an interstate treaty in a similar way. This may be evidenced by the fact that the ICC issued an arrest warrant for the Russian President for war crimes, although Russia is not a party to the Rome Statute. This is possible because the Rome Statute was approved by the international community as a whole, namely that its jurisdiction can be exercised even over citizens and officials of a state and for crimes committed on the territory of a state party to the Statute, despite the fact that another state is not a party to the Statute.

Based on the above, an interstate agreement on the establishment of an international tribunal to bring those responsible for the crime of aggression against Ukraine to justice may take place, but it must comply with international law and act on behalf of the international community as a whole. The procedure for establishing the International Criminal Court can be taken by analogy

The next mechanism discussed for international responsibility for the crime of aggression against Ukraine is the participation of the European Union (EU) and/or the Council of Europe in the establishment of a tribunal or even the conclusion of an agreement with Ukraine on this [133].

This idea is probably based on the fact that the armed conflict is taking place on the European continent, European states are strongly supporting Ukraine, and the latter is trying to fully integrate into the EU. At the same time, Russia views the latter as its main adversary alongside the United States and has been expelled from the Council of Europe. Similarly, Belarus is not a member of either the EU or the Council of Europe. Accordingly, the choice of a "European" mechanism should be approached carefully, so that the tribunal is not accused of bias.

The conclusion of a regional agreement between Ukraine and the EU is a rather unusual construction, as the EU itself is a supranational political and economic association of states on the European continent. It is not a classical international organisation, but rather a way of joint and mutually agreed existence of European states. The main rights and obligations within the framework of this association arise only after joining it. One could probably imagine some kind of regional tribunal within this system, where officials of a particular member state could be held criminally liable for their actions. At the same time, neither Ukraine nor Russia are members of the EU, and therefore the latter cannot create a mechanism for third states based solely on the internal supranational system.

The experience of establishing the Extraordinary African Chambers to prosecute former Chadian President Hissène Habré for international crimes can serve as a counterargument. The basis for this was an agreement signed between the African Union (which was to become an analogue of the EU) and Senegal on the basis of the former's recommendation to set up the chambers on the basis of the latter's judicial system, where the former Chadian president was at the time. This experience is hardly comparable to the potential agreement between the EU and Ukraine. Firstly, Senegal and Chad are members of the African Union, which means that they have certain obligations to the African Union that they have undertaken by their own free will. The internal documents of the African Union could have been the basis for such a decision regarding its members. Secondly, it was not an international tribunal that was established, but a domestic judicial institution of Senegal. Thirdly, although Senegal convicted the former president of another state, Chad, the latter agreed to lift the procedural immunity of its former president. Accordingly, the establishment of a court within the Ukrainian system on the basis of an agreement between Ukraine and the EU would exclude its "international" status and the right to prosecute the leadership of the aggressor state under international law. Currently, there is no reason to assume that Russia or Belarus will waive the personal immunities of their political leaders

Thus, there are currently many models of a potential international mechanism of accountability for the crime of aggression. The key issue remains the need to lift the personal immunities of the leadership of the Russian Federation and Belarus, which is currently possible only if the tribunal acquires the status of an "international" tribunal, and thus is excluded from the national justice system. For the same reason, the tribunal should operate on the basis of an internationally approved document, not a national law, which should ideally contain provisions on the non-application of immunities and the obligation of UN member states to cooperate with the court. The establishment process itself should be "in accordance with international law" (have a legal basis in international law) and supported by the international community (the tribunal should not act on behalf of a particular state, including Ukraine).

International status does not mean that a combination of national and international elements is excluded, i.e. the tribunal may be hybrid, but it cannot be an internationalised national court. The ratio of the following elements should provide for the support of the international community for each of them

Despite the proposals to establish the tribunal on the basis of an interstate treaty, an agreement between Ukraine and the Council of Europe or the European Union, the number of states parties to these organisations and a potential treaty is unlikely to provide sufficient support from the international community, which should be guided at least by the number of UN members. At present, only a resolution of the UN General Assembly during the 11th emergency session, supported by ⅔ of the voting and present representatives of states, or at least by a majority, is likely to ensure the tribunal's action on behalf of the international community. It is important to bear in mind that the UNGA only "recommends" the establishment of the tribunal, and does not create it on its own, and therefore it must be followed by the conclusion of an international agreement with Ukraine approved by a resolution, which could become an interstate treaty open for signature. At this stage, such a treaty could be joined by the member states of the European Union and the Council of Europe, which would become the basis for the functioning of the tribunal and assume direct obligations. This actually indicates that the various proposed models for establishing the mechanism can be considered in synergy.

The disadvantage of this method of establishing an international mechanism is that it requires enormous international support, and thus diplomatic and political measures. Moreover, states that vote in favour of the resolution but do not sign an interstate treaty will not be obliged to cooperate with the court, including executing arrest warrants and detaining perpetrators of the crime of aggression. At the same time, at least supporting such a provision when voting on the constituent documents of the tribunal will legitimise the voluntary execution of such an arrest warrant by states without the risk of Russia's successful case in the ICJ regarding the invalidity of the treaty and the commission of an internationally wrongful act by other states.

Conclusions.

The Russian-Ukrainian war is a complex and multidimensional phenomenon accompanied by numerous international crimes, among which crimes against humanity, war crimes and acts of aggression stand out. Despite the active work of Ukrainian and international judicial institutions, as well as international organisations, the process of bringing the Russian Federation and its actors to justice faces numerous challenges, such as political obstacles, immunity of high-ranking officials and the lack of effective mechanisms for addressing the crime of aggression at the international level.

Ukraine has taken significant steps to ensure justice and consolidate Russia's international legal responsibility. An important event was the ratification of the Rome Statute, which allows crimes against humanity and war crimes to be considered under the jurisdiction of the International Criminal Court. However, in order to effectively bring the aggressor to justice, it is necessary to establish a special international tribunal that will overcome the blocking of processes in the UN Security Council and ensure a fair trial.

The war in Ukraine shows the imperfection of the legal system of international law. The main problem is that Russia is a very important player in the international community, and the international community is not consolidated.

Unfortunately, there is no clear answer to the question "How to bring Russia to justice?" or "How to ensure peace in Ukraine?" - there is no clear answer. There are many theoretical possibilities, but today they are not reflected in practice.

Russia continues to commi international crimes in Ukraine, and today's time only allows us to document and publicise this tragedy, which has been going on for 10 years.

The idea of establishing a tribunal is promising, but the main preliminaries of this possible event took place only if the party on trial lost, and today this possibility is only theoretical.

The current war in Ukraine confirms the need to reform international legal mechanisms to ensure the inevitability of punishment for international crimes, but unfortunately, there is no effective mechanism for bringing to justice today.

The study found that today the Russian Federation skilfully uses all legal instruments, which allows it to continue its military aggression against the civilian population of Ukraine with impunity. In view of this, it remains necessary to focus on finding new alternatives to bring Russian officials to justice for committing crimes of genocide and crimes against humanity. It is quite possible to overcome Russia's resistance if the international community is unanimously supportive. With this in mind, one of the options for ending the war in Ukraine could be the creation of a Special International Tribunal, whose judges would not only be able to issue arrest warrants for the perpetrators, but also launch the process of paying reparations to Ukraine.

Nevertheless, the fact remains that Russia is the only empire in the world that avoided decolonisation after two world wars in the 20th century. All other empires ceased to exist and were forced to let go of their colonies. Moreover, Russia is the only empire that has not only survived to the present day, but has never, and I emphasise never, admitted guilt for its imperial crimes and has not been punished for them. For thousands of years, the world has had the concept that the victors are not judged says former Justice Minister Denys Malyuska, but Ukraine is trying to move away from it now, during the war, and has developed a number of mechanisms to bring Russian war criminals to justice. Perhaps not all of them will be effective, the minister notes, but the more of them we have, the more trump cards we will have in the negotiations.

Another difficult problem is that the war has been going on since 2014, not 2022. And, while Russia's responsibility for crimes committed after 24 February 2022 is indisputable, the responsibility for the crimes of the previous years of the Axis is, oddly enough, debatable.

War, in the traditional sense, has remained only in books and memory. Today's realities force us to face the newest ways of warfare, which include the use of information warfare through propaganda on social media, television and radio, the use of drones, cyberattacks and other electronic means of warfare. The use of technology, in turn, creates a certain vacuum, a separated reality for a certain group of people within the conflict and also distorts the reality for the residents of other states when it comes to identifying the root causes of conflicts and bringing the perpetrators to justice. The very term "hybrid/hybrid" is a borrowed word (hybrid, from the English word "mixed"), which means a

combination of heterogeneous elements. According to the Ukrainian dictionary, "hybrid" means something that consists of something different, heterogeneous. The term "hybrid" also has a primordially biological meaning - the fusion of two or more different organisms. The term "hybrid war" came to Ukraine from the United States with the beginning of the armed aggression of the Russian Federation.

Frank G. Hoffman, a well-known contemporary theorist in the field of armed conflict and military-political strategy, emphasises that along with asymmetric conflicts and unconventional wars (situations where no overt hostilities are conducted), there is also the concept of "hybrid wars", which are now increasingly used.

The specificity of this combination lies in the fact that each of the military and non-military methods of hybrid conflict is used for military purposes and is used as a weapon. The transformation into a weapon is not limited to the media sphere. All other non-military means of conducting hybrid warfare are also literally used as weapons that inflict damage of various levels on enemy systems. Such a functional combination of heterogeneous phenomena and means within hybrid conflicts requires a comprehensive analytical approach from representatives of different fields of knowledge

It should also be noted that the ineffectiveness of the UN Security Council due to the abuse of the veto by permanent members can also lead to its helplessness in resolving existing "hot" conflicts. Let's take the example of the Middle East, where there has been a permanent war for more than a decade. Over the past ten years, the permanent members have vetoed 28 resolutions on the Middle East, of which Russia has vetoed 16, China - 9, and the United States has vetoed 3 times.

Thus, it can be said that "political games" are being played with the veto, which ultimately paralyse the Security Council, preventing it from restraining further escalation of the conflict in the Middle East.

In conclusion, it should be emphasised that the imperfection and outdated nature of the veto mechanism in the UN Security Council was demonstrated on 24 February 2022 and is costing the Ukrainian people and the entire civilised world a great deal. The Russian Federation still uses the opportunity to veto all UN Security Council decisions that go against its interests. An example is Russia's veto of the Security Council Resolution on the illegality of the annexation of four Ukrainian regions, which was imposed on 30 September 2022.

It is because of such precedents that the existing system of veto power in the UN Security Council needs to be radically changed and improved to ensure the effective functioning of international mechanisms and institutions in today's realities and challenges, and for the UN as a leading international organisation to avoid the fate of the League of Nations and bring those responsible for the crimes to justice

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SUMMARY

The thesis analyzes the Russian-Ukrainian war within the broader context of international law and historical precedents, particularly focusing on Russia's military aggression and its violation of international legal standards. It draws parallels between the Second World War and Russia's invasion of Ukraine, advocating for the establishment of a tribunal akin to the Nuremberg Trials to prosecute Russia's military and political leadership for crimes of aggression, war crimes, and crimes against humanity.

Key points include:

1. **Historical Comparison**: The study compares the mechanisms of accountability used after WWII with the need for a similar approach for the current conflict.
2. **Legal Violations**: Russia's annexation of Crimea (2014) and the full-scale invasion (2022) are identified as breaches of the UN Charter and other international conventions. Documented war crimes include attacks on civilians, torture, and forced deportations.
3. **International Response**: Despite efforts by the International Criminal Court (ICC) and other bodies, challenges such as the immunity of high-ranking officials and the inefficiency of the UN Security Council hinder justice.
4. **Proposed Solutions**: Recommendations emphasize the need for a special international tribunal supported by the UN General Assembly or an agreement involving the European Union.

Conclusion: The war highlights significant flaws in international legal systems. Although theoretical frameworks for accountability exist, practical implementation remains difficult due to geopolitical complexities

SUMMARY (IN LITHUANIAN)

Darbe nagrinėjamas Rusijos ir Ukrainos karas platesniame tarptautinės teisės ir istorinių precedentų kontekste, ypač atkreipiant dėmesį į Rusijos karinę agresiją ir jos tarptautinių teisės normų pažeidimus. Jame paralelės tarp Antrojo pasaulinio karo ir Rusijos įsiveržimo į Ukrainą, pasisakoma už tribunolo, panašaus į Niurnbergo procesą, sukūrimą, kad būtų persekiojama Rusijos karinė ir politinė vadovybė už agresijos nusikaltimus, karo nusikaltimus ir nusikaltimus žmoniškumui.

Pagrindiniai punktai apima:

1. Istorinis palyginimas. Tyrime lyginami atskaitomybės mechanizmai, naudojami po Antrojo pasaulinio karo, su panašaus požiūrio į dabartinį konfliktą poreikiu.

2. Teisiniai pažeidimai: Rusijos įvykdyta Krymo aneksija (2014 m.) ir plataus masto invazija (2022 m.) laikomi JT Chartijos ir kitų tarptautinių konvencijų pažeidimais. Dokumentuoti karo nusikaltimai apima išpuolius prieš civilius, kankinimus ir priverstinį trėmimą.

3. Tarptautinis atsakas. Nepaisant Tarptautinio baudžiamojo teismo (TBT) ir kitų institucijų pastangų, tokie iššūkiai kaip aukšto rango pareigūnų imunitetas ir JT Saugumo Tarybos neveiksmingumas trukdo teisingumui.

4. Siūlomi sprendimai. Rekomendacijose pabrėžiamas specialaus tarptautinio teismo, kurį remtų JT Generalinė Asamblėja, arba susitarimo, kuriame dalyvauja Europos Sąjunga, poreikis.

Išvada: karas išryškina reikšmingus tarptautinių teisinių sistemų trūkumus. Nors teorinės atskaitomybės sistemos egzistuoja, praktinis įgyvendinimas išlieka sudėtingas dėl geopolitinių sudėtingumo