

Note from the Field

Access to Justice Amid War in Ukraine Gateway

LIABILITY MECHANISMS FOR WAR CRIMES COMMITTED AS A RESULT OF RUSSIA'S INVASION OF UKRAINE IN FEBRUARY 2022: TYPES, CHRONICLE OF THE FIRST STEPS, AND PROBLEMS

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Summary: – 1. introduction. – 2. Violation of the War Laws and Customs is the Most Common Crime during the Russian Invasion of Ukraine. – 3. Liability Mechanisms for War Crimes Committed in Ukraine. – 3.1. *Prejudicial decisions of international courts.* – 3.2. *Methods for bringing Russia to justice.* – 4. Conclusions.

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ABSTRACT

Ukrainian law enforcement agencies are investigating more than 18,000 war crimes and crimes of aggression, including 18,177 violations of the laws and customs of war, more than 5,000 murders and 6,000 civilian injuries, and about 23,000 destructions of civilian infrastructure. We note these figures without considering the number of crimes committed in the occupied territories and the places of active hostilities. The number of crimes increases every day.

War crimes are a type of international crime, along with the crime of aggression, crimes against humanity, and genocide, which Russia is committing in Ukraine. However, in the article's title, the term 'war crimes' is used in a unifying context.

The researchers outline the range of war crimes and note the lack of systematisation due to the non-ratification of the Rome Statute by Ukraine, which significantly complicates the qualification of crimes for practicing lawyers. The authors then analyse such mechanisms of bringing the military, officers, and officials of Russia to justice as: a) the International Criminal Court (ICC), b) ad hoc tribunals, c) the European Court of Human Rights (ECtHR), d) national judicial systems on the principle of universal jurisdiction e) criminal proceedings of Ukraine, f) eclectic forms of cooperation of justice bodies of Ukraine with foreign and international partners, together with the chronology of the first steps for each. The rationality of the establishment of a special international ad hoc tribunal exists because of the duration of the proceedings in the ICC, the ICC workload and lack of funding, and the non-extension of the ICC jurisdiction to the crime of aggression due to Ukraine's non-ratification of the Rome Statute; ensuring the impartiality of the court in the eyes of the international community.

The authors draw the attention of the Ukrainian legislator to the need to improve the logistics of using foreign forensic experts' opinions in criminal proceedings on war crimes in Ukraine by amending the Criminal Procedure Code (CPC) on the procedure for its verification as sources of evidence.

The research methodology includes logical, historical, statistical, comparative law, and system-structural methods. The information base consisted of international legal acts, national legislation, official resources of authorities and international institutions, and other open data.

1 INTRODUCTION

Since Ukraine first faced the armed conflict initiated and supported by the Russian in Donbas in April 2014, the investigation of war crimes has not been a new activity for the investigation bodies, prosecutors, and courts of modern Ukraine. However, after the full-scale invasion of Ukraine by the Russian army on 24 February 2022, Ukraine faced unprecedented challenges for the national justice system and the necessity of the involvement of international justice in bringing the Russian military, government officials, and political and military leaders to justice.

The Office of the United Nations High Commissioner for Human Rights (UNHCR) has confirmed the deaths of 4,569 Ukrainians, including 304 children, and the injury of 5,691 civilians as of 19 June in consequence of Russia's full-scale war against Ukraine.³ The organisation emphasises that the real numbers are much higher because receiving information from places where intense fighting continues is delayed.

3 'Ukraine: Civilian casualties as of 12 June 2022' <<https://ukraine.un.org/en/185551-ukraine-civilian-casualties-12-june-2022>> accessed 22 June 2022.

According to the up-to-date statistics of the Office of the Prosecutor General of Ukraine press service, as of 22 June 2022, law enforcement agencies registered a total of 18,872 war crimes (18,177 of which – under Art. 438 of the Criminal Code – are violations of laws and customs of war), 324 deaths of children, and 592 wounds of children. These data are incomplete and do not take into account the number of crimes committed in places of active hostilities during Russia's full-scale military invasion of Ukraine.⁴

The Office of the Prosecutor General provides procedural guidance to the pre-trial investigation of waging an aggressive war under Art. 437 of the Criminal Code (the 'main case'). Within the investigation, 623 people have already been reported⁵ under Art. 442 of the Criminal Code of Ukraine for genocide.⁶ As of 9 June 2022, law enforcement agencies have identified 104 suspects of war crimes in Ukraine and sent eight cases to court, where three sentences have been passed.⁷ A digital resource, *warcimes.gov.ua*, has been created by the Prosecutor General's Office to collect evidence.

Representatives of the Ukrainian Legal Advisory Group provided the data on destroyed civil infrastructure facilities in May 2022: 19,700 residential buildings (4,431 as of 22 March); 1,665 educational institutions (548 as of 22 March 22); 570 medical institutions (135 as of 22 March); 426 cultural and art institutions. The ongoing hostilities and the increase in available liberated territories, which had been occupied or controlled by Russian troops, caused a significant 'jump' in numbers.⁸

In Kharkiv, for example, according to Kharkiv Mayor Igor Terekhov, as of 23 May 2022, from 24 February, the Russian army destroyed 3,482 houses of various forms of ownership, of which 2,482 apartment buildings, 1,000 residential buildings, cooperatives, and private households, and 492 residential buildings are not subject to restoration.⁹ Four hundred and ninety administrative buildings were damaged, including 109 schools, 98 kindergartens, 55 medical institutions, 46 cultural institutions, 14 higher educational institutions, and five temples.¹⁰

According to British intelligence, the major casualties, including civilian casualties, were caused because Russian troops do not use accurate and modern missiles for shelling; instead, they use outdated and ineffective missiles.¹¹ The Pentagon has also said that Russia has used medium-range and short-range missiles. This is outrageous because Russia has high-precision guided weapons. Russia has had the opportunity to use these weapons for surgical strikes on

4 'Crimes committed during the full-scale invasion of the Russian Federation' <<https://www.gp.gov.ua/>> accessed 22 June 2022.

5 Ibid.

6 'Challenges in war crimes trials were discussed at the international conference' (9 June 2022) <<https://supreme.court.gov.ua/supreme/pres-centr/news/1282328/>> accessed 22 June 2022.

7 I Venediktova, '104 suspects in committing war crimes in Ukraine have been identified' <https://www.ukrinform.ua/rubric-ato/3503336-venediktova-vstanovili-104-pidozruvanih-u-skoennivoennih-zlociniv-v-ukraini.html?fbclid=IwAR2bkw_svd5zsXV6XL5InRaF2jN6WRRoXU_7ALugERgl2EV4qjxTy1ONVRw> accessed 22 June 2022.

8 'Coalition of human rights organizations that collect and document war crimes and crimes against humanity committed during Russia's armed aggression' <<https://www.5am.in.ua/>> accessed 22 June 2022.

9 'About 3.5 thousand houses were destroyed in Kharkiv' <<https://www.city.kharkov.ua/uk/news-ukharkovi-zruynovano-blizko-35-tisyachi-budinkiv-50858.html>> accessed 22 June 2022.

10 Ibid.

11 'Latest Defence Intelligence update on the situation in Ukraine' (11 June 2022, <https://twitter.com/DefenceHQ/status/1535495311044579328?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwtterm%5E1535495311044579328%7Ctwgr%5E%7Ctwcon%5E%5E1_&ref_url=http%3A%2F%2Fwww.pravda.com.ua%2Fnews%2F2022%2F06%2F11%2F7351865%2F> accessed 22 June 2022.

specific military targets. Instead, they struck civilian areas with inaccurate weapons, killing children. Considering their arsenal, it seems that this was a conscious choice.¹²

Investigating such a large number of war crimes and prosecuting such a large number of criminals is an unprecedented challenge for the criminal justice system of Ukraine and for international justice. The article aims to determine the range (types) of war crimes, find the mechanisms of bringing the military, officers, and officials of Russia to justice, identify problems, and suggest ways to eliminate them.

2 VIOLATION OF THE WAR LAWS AND CUSTOMS IS THE MOST COMMON CRIME DURING THE RUSSIAN INVASION OF UKRAINE

War crimes (a) are international crimes along with the crime of aggression (b), crimes against humanity (c), and genocide (d). The purpose of this article is not to determine the full range of war crimes, nor the problem of their qualification, the completeness of their implementation in national law, or other criminal or international law aspects. However, a basic understanding of their nature is necessary for the criminal prosecution of it.

Thus, the term 'war crimes' is collective in international law. This term includes severe violations of the rules of warfare ('violation of the laws and customs of war') and violations of the international humanitarian law (treaty and custom law) norms and principles. These crimes are committed intentionally or through gross negligence. The Geneva Conventions of 12 August 1949 and Additional Protocol I to it of 8 June 1977 oblige states to criminalise severe violations of international humanitarian law. Ukraine fulfilled this requirement by including Art. 438 'Violation of the laws and customs of war' in the Criminal Code of Ukraine.

Following Part 1 of Art. 438 of the Criminal Code, ill-treatment of war prisoners or civilians, the expulsion of civilians for forced labour, the looting of national values in the occupied territories, the use of means of warfare prohibited by international law, **and other violations of the laws and customs of war provided for by international treaties**, the binding nature of which has been approved by the Verkhovna Rada of Ukraine, as well as the issuance of an order to commit such actions, could be qualified as a war crime. Part 2 of Art. 438 of the Criminal Code would increase the penalty to life imprisonment if these actions were combined with premeditated murder.

The list of violations of the laws and customs of war in Art. 438 of the Criminal Code of Ukraine is not exhaustive. The norm refers to international treaties ratified by Ukraine and includes about 50 violations that are not well known to prosecutors, investigators, and judges of Ukraine. Ukrainian lawyers should analyse the almost three dozen international treaties in which war crimes are often repeated or clarified to learn the list of such acts that constitute violations of the laws and customs of war. This task would be simplified by Ukraine ratifying the Rome Statute of the ICC.

According to the four Geneva Conventions of 12 August 1949, war crimes include premeditated murder; torture, and inhuman treatment, including biological experiments, intentional infliction of severe suffering or serious injury, harm to health; illegal,

12 'A Washington expert about MLRS for Ukraine: It would completely change the course of the fighting' <https://www.dw.com/uk/vashynhtonskyi-ekspert-pro-mlrs-dlia-ukrainy-tse-povnistiu-zminyt-khid-boiv-a-61978127/a-61978127?fbclid=IwAR0Q5h01w9aCSWW1lToBEnJ-eRucxwYkUvleM_tLysMWx1wzz6zmjWGpzbk> accessed 22 June 2022.

unmotivated, and large-scale destruction and misappropriation of property not caused by military necessity, committed against people and property protected by the Conventions; taking hostages, etc. (Art. 50 GC1,¹³ Art. 51 GC2,¹⁴ Art. 130 GC3,¹⁵ Art. 147 GC4¹⁶).

Art. 85 of Additional Protocol I of 1977 expands the list of war crimes to include: the transformation of civilians or undefended areas into targets; carrying out an indiscriminate attack affecting the civilian population or civilian objects when it is known that such an attack will cause a large number of deaths and injuries among civilians; the deportation or relocation of all or part of the population of the occupied territory, etc.¹⁷

Art. 438 of the Criminal Code of Ukraine, based on customary norms of international humanitarian law, is also applied for violations of laws and customs of war.¹⁸ For example, the use of semi-shell JHP (Jacketed Hollow Point) bullets (the semi-shell JHP are torn by falling into the flesh) or other weapons and ammunition that cause excessive damage and destruction, suffering, and are indiscriminate in nature have been considered by states as crimes since the First or Second World War. According to research by Amnesty International, the Russian army fired with prohibited cluster munitions – containers containing dozens of submunitions scattered at a given height above the ground in Kharkiv. High percentages of submunitions do not explode on impact and thus actually turn into landmines. Amnesty International researchers found fragments of 9H210/9H235 cluster munitions in various city residential areas. Doctors from two Kharkiv hospitals showed researchers pellets they had removed from the wounds of victims of the shelling.¹⁹

3 LIABILITY MECHANISMS FOR WAR CRIMES COMMITTED IN UKRAINE

3.1 Prejudicial decisions of international courts

On 28 February, Ukraine applied to the ECtHR with statement no. 11055/22 ‘*Ukraine v. Russia (X)*’ on the indication of urgent interim measures to the government of the Russian Federation within the framework of para. 39 of the ECtHR Rules. The ECtHR immediately issued the decision on 1 March to indicate interim measures to state parties to the European Convention on Human Rights and Fundamental Freedoms (the Convention) during the consideration of the merits of a complaint of a violation of the Convention. Such interim

13 Convention on the Amelioration of the Condition of the Wounded and Sick in Armed Forces <https://zakon.rada.gov.ua/laws/show/995_151#Text> accessed 29 June 2022.

14 Geneva Convention for the amelioration of the condition of the wounded, sick and shipwrecked members of the armed forces at sea <https://zakon.rada.gov.ua/laws/show/995_152#Text> accessed 29 June 2022.

15 Geneva Convention relative to the Treatment of Prisoners of War <https://zakon.rada.gov.ua/laws/show/995_153#Text> accessed 29 June 2022.

16 Convention relative to the Protection of Civilian Persons in Time of War <https://zakon.rada.gov.ua/laws/show/995_154#Text> accessed 29 June 2022.

17 Additional Protocol to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977 <https://zakon.rada.gov.ua/laws/show/995_199#Text> accessed 22 June 2022.

18 M Hnatovsky, T Korotky, ‘Definition of war crimes in international criminal law’ <<https://yur-gazeta.com/publications/practice/kriminalne-pravo-ta-proces/viznachennya-voennih-zlochyniv-umizhnarodnomu-kriminalnomu-pravi.html>> accessed 22 June 2022.

19 Amnesty International, “‘Anyone can die at any time’”: indiscriminate attacks by russian forces in Kharkiv, Ukraine’ (Index: EUR 50/5682/2022 June 2022) <https://pressecloud.amnesty.de/s/p34zRES2QeCKZK9?dir=undefined&openfile=34875&fbclid=IwAR2bx7Q3G2ZvYSHOGvZ5N6wZO14_IItMgP1wOJDKc5OMKhH0fk7uXlLpa3RI> accessed 22 June 2022.

measures are binding on the government of Russia. It states that the current hostilities pose a real and constant threat of severe violations of the conventional rights of the civilian population following Arts. 2, 3, and 8 of the Convention. The ECtHR stated:

‘With a view to preventing such violations and pursuant to Rule 39 of the Rules of Court the Court decides, in the interests of the parties and the proper conduct of the proceedings before it, to indicate to the Government of Russia to refrain from military attacks against civilians and civilian objects, including residential premises, emergency vehicles and other specially protected civilian objects such as schools and hospitals, and to ensure immediately the safety of the medical establishments, personnel and emergency vehicles within the territory under attack or siege by Russian troops.’

On 4 March 2022, the ECtHR supplemented the decision, including a requirement for Russia to ensure unimpeded access of civilians to safe routes of evacuation, medical care, food, and other essentials, guaranteeing the rapid and unhindered passage of humanitarian aid and the movement of humanitarian workers.²⁰

Thus, the ECtHR is monitoring the war waged by Russia against Ukraine. Russia's disregard for the Court's decision is a direct violation of the ECtHR's provisions, which will make it easier to prove violations, recover compensation, and pave the way for individual claims in the ECtHR and investment arbitrations by individuals and companies against the Russian Federation. Therefore, the decision of the ECtHR can be used as prejudice in other international and national courts.

On 26 February 2022, Ukraine filed a complaint with the UN International Court of Justice (The Hague, the Netherlands) regarding Russia's violation of the Convention on the Prevention and Punishment of the Crime of Genocide. On 16 March 2022, the UN International Court of Justice granted Ukraine's request to stop the Russian military invasion of Ukraine. The decision of the International Court of Justice (ICJ) is binding, and the refusal of the Russian Federation to voluntarily comply with this order will certainly have consequences for further consideration of the case on the merits.²¹

3.2. Methods for bringing Russia to justice

There are various mechanisms for bringing Russia, its military, officers, and officials of Russia to justice: 1) the ICC; 2) an *ad hoc* tribunal (if such will be created); 3) the ECtHR, as in the case of the shooting of plane MN17 over Ukraine; 4) national judicial systems; 5) criminal proceedings of Ukraine (and civil proceedings for property damage).

The International Criminal Court (ICC) is located in The Hague, the Netherlands. The ICC is not a part of the official UN structures, although the UN can initiate cases in ICC on the proposal of the UN Security Council. The ICC is a permanent judicial body that has existed since July 2002. The ICC activity is based on the Rome Statute, adopted in 1998 (signed by 120 states).

The basis of the ICC's *modus operandi* is the principle of *complementarity*, which is enshrined in Art. 17 of the Rome Statute and determines the sequence involving the ICC's jurisdiction as the court of 'last instance'. Thus, the complementary principle is applied here, which means that the ICC may be involved when the national investigation and justice possibilities are exhausted.

20 Ukraine v Russia (X) (no 11055/22) <<https://www.echr.coe.int/Pages/home.aspx?p=caselaw/interstate&c=>> accessed 22 June 2022.

21 Order allegations of genocide under the Convention on the Prevention and Punishment of the Crime of Genocide. (Ukraine v Russian Federation) <<https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-00-EN.pdf>> accessed 23 June 2022.

The Rome statute stipulates that states must prioritise the most serious crimes committed in their territories or by their citizens. The ICC can exercise jurisdiction only in cases where national legal systems cannot cope with their responsibilities, especially when states intend to act but are unwilling or unable to investigate crimes properly. The principle of complementarity is based on two other principles: *the principle of respect for the national jurisdiction* and *the principle of productivity and efficiency*. In general, the advantage of national jurisdiction over the ICC is that it provides the best access to evidence, witnesses, and areas where alleged crimes have been committed and, therefore, the best ability to investigate crimes. Moreover, the ICC as an institution may consider only a limited number of cases because of its limited human and financial resources compared with the number of armed conflicts in the world and the corresponding extent of possible consequences. Therefore, the principle of complementarity serves as a mechanism to stimulate states' efforts on their priority to investigate and prosecute the most serious international crimes. In the cases where the state cannot handle the proceedings, the ICC Prosecutor must be prepared to act decisively in investigations, demonstrating the international community's intention to prosecute international crimes.²² The ICC jurisdiction extends to states that have ratified the Rome Statute or recognised the jurisdiction of the ICC.

So far, Ukraine has chosen the second option. Ukraine signed the Rome Statute on 20 January 2000, but on 11 July 2001, the Constitutional Court of Ukraine ruled that the Rome Statute did not comply with the Constitution of Ukraine (the court used far-fetched arguments, such as saying that Art. 1 of the Rome statute, which states that the 'ICC ... complements national criminal justice authorities', contradicts the Constitution of Ukraine. If we use such an approach, the ECHR and its jurisdiction also do not comply with the Constitution of Ukraine, which is not true). That is one of the reasons why Ukraine did not ratify it.

Thus, the ratification of the Rome Statute 'remained frozen' for two decades due to a lack of political will. On 20 May 2021, the Verkhovna Rada of Ukraine adopted the Law 'On amendments to certain legislative acts of Ukraine concerning the implementation of norms of international criminal and humanitarian law'.²³ This law was sent to the president for signature on 7 June 2021. As of June 2022, the president has not yet signed it, so the Rome Statute has not been ratified by Ukraine. So, as of now, Ukraine has only the second option of recognising the jurisdiction of the ICC on its territory – the submission of an application for recognition of the jurisdiction of the ICC following Part 2 of Art. 12 of the Rome Statute. Ukraine has already submitted such applications to the ICC twice by adopting resolutions by the parliament: on the massacres during the Revolution of Dignity in 2014²⁴ and on war crimes and crimes against humanity during the war in Donbas in 2015.²⁵

22 'The principle of complementarity: standards of international justice' Report of the Ukrainian Legal Advisory Group <http://justiceforthefuture.org.ua/uploads/MaterialDocument/ULAG_complementarity_web_ua_004_26_1594216073.pdf> accessed 23 June 2022.

23 The Law of Ukraine 'On amendments to certain legislative acts of Ukraine concerning the implementation of norms of international criminal and humanitarian law' <<https://www.rada.gov.ua/news/Povidomlennya/208710.html>> accessed 23 June 2022.

24 Resolution of the Verkhovna Rada of Ukraine on the Statement of the Verkhovna Rada of Ukraine on recognition by Ukraine of the jurisdiction of the International Criminal Court on committing crimes against humanity by senior state officials, which lead to particularly serious consequences and mass murders of Ukrainian citizens during peaceful protests between 21 November 2013 and 22 February 2014 <<https://zakon.rada.gov.ua/laws/show/790-18#Text>> accessed 23 June 2022.

25 Resolution of the Verkhovna Rada of Ukraine on the Statement of the Verkhovna Rada of Ukraine on recognition by Ukraine of the jurisdiction of the International Criminal Court on crimes against humanity and war crimes by senior officials of the Russian Federation and Leaders of DNR and LNR Terrorist Organizations which led to particularly severe consequences and the mass murders of Ukrainian citizens <<https://zakon.rada.gov.ua/laws/show/145-19#Text>> accessed 23 June 2022.

On 2 March 2022, 39 member states of the ICC filed an appeal with the ICC Prosecutor regarding the situation in Ukraine, following which the ICC Chief Prosecutor Karim A.A. Khan QC launched an investigation into Russian war crimes in Ukraine.²⁶

On 3 May 2022, the Verkhovna Rada of Ukraine adopted Law No. 2236-IX 'On amendments to the Criminal Procedure Code and other legislative acts of Ukraine concerning cooperation with the ICC',²⁷ which entered into force on 20 May 2022. It regulates the ICC cooperation with the Office of the Prosecutor General and the Ministry of Justice of Ukraine before and after the ratification of the ICC Rome Statute. Law No. 2236-IX amended the Criminal Procedure Code of Ukraine, including Section IX-2 'Peculiarities of Cooperation with the International Criminal Court'.

Under the adopted amendments, the transfer of the materials of criminal proceedings investigated by national law enforcement agencies to the ICC is allowed (Art. 620 of the CPC of Ukraine). The ICC Prosecutor may perform the necessary procedural actions on the territory of Ukraine, except for those that can be performed in Ukraine only in agreement with the national prosecutor, the investigating judge, or judge (Art. 624 of the CPC of Ukraine). The question is if the evidence gathered during the pre-trial investigation in Ukraine may be used in the ICC case. The answer is yes. As the ICC does not have sufficient resources and powers to conduct all investigations, the ICC relies on the cooperation of states, as it is through active and prompt assistance from national bodies ICC could be effective.²⁸

The jurisdiction of the ICC extends to the entire internationally recognised territory of Ukraine, including the temporarily occupied territories. The fact that Russia has not ratified the Rome Statute is not significant because Russia commits international crimes in the territory of Ukraine. The ICC has jurisdiction over crimes committed throughout Ukraine. The ICC does not have an *in absentia* procedure (in the absence of the accused). Therefore, in many cases, the Court will not be able to physically reach accused people to hold court hearings in their presence.

Even though ICC Prosecutor Karim A.A. Khan QC has already launched the investigation, there will be no investigation into the crime of aggression. The reason is that the Court does not exercise its jurisdiction over a crime of aggression committed by citizens or in the territory of a state that is not a party to the statute. Moreover, even if Ukraine ratified it now, ratification would not have a retroactive effect.

In addition, the proceedings on the ICC are long. For example, the ICC only completed the preliminary stage of the case study on the Maidan Massacre in Ukraine and the situation in Crimea and Donbas in December 2020. The ICC Prosecutor Fatou Bensoud concluded that there were sufficient grounds to believe that a 'wide range of acts involving war crimes and crimes against humanity under the jurisdiction of the court were committed in the context of the situation in Ukraine'.²⁹

Taking into account the last two arguments (lack of jurisdiction of the ICC over acts of aggression on the territory of Ukraine and long terms of proceedings), there is a reason for establishing an *ad hoc* international tribunal. The tribunal should be similar to the

26 Requirement to investigate and punish Russian war crimes in international courts. Published April 18, 2022. <<https://www.rada.gov.ua/news/razom/221903.html>> accessed 23 June 2022.

27 Draft Law on amendments to the Criminal Procedure Code of Ukraine on cooperation with the International Criminal Court <<https://itd.rada.gov.ua/billInfo/Bills/Card/39474>> accessed 23 June 2022.

28 S De Gurmendi, H Friman, 'The Rules of Procedure and Evidence of the International Criminal Court' (2000) 3 Yearbook of International Humanitarian Law 289-336. doi:10.1017/S138913590000672.

29 'Legal front: who and how Ukraine can prosecute in international courts' <<https://dejure.foundation/tpost/1u106gg0r1-yuridichnii-front-kogo-yak-ukrana-mozhe>> accessed 23 June 2022.

Nuremberg Trials after the Second World War or the International Tribunal for the Former Yugoslavia based, for example, on suggestions of the Chatham House, the Royal Institute of International Affairs.³⁰ The third argument for establishing the international tribunal is to ensure the court's impartiality. In order to provide access to justice in cases of aggression and war crimes by Russia, it should not be only Ukrainian courts that consider cases against Russia.

The Parliamentary Assembly of the Council of Europe supported establishing the *ad hoc* tribunal in late April. The Parliamentary Assembly recommended that Ukraine appoint a special representative on the consequences of Russia's aggression. On 19 May, the European Parliament, fully supporting the ICC Prosecutor's investigation and the work of the Commission of Inquiry of the Office of the United Nations High Commissioner for Human Rights, adopted a resolution establishing a special international tribunal. The document emphasises that the tribunal will investigate the crimes of military and government officials, political leaders, military leaders, and their allies involved in international crimes in Ukraine, over which the ICC has no jurisdiction.³¹

The Chairman of the Criminal Court of Cassation of the Supreme Court supported the idea of the establishment of the international tribunal for war crimes in Russia.³²

On 20 May 2022, Anton Korynevych (Ukraine's agent at the UN International Court of Justice) announced that Ukraine had already prepared draft documents to launch a special international tribunal on Russia. These documents would be the topic of discussion with international partners. For the successful outcome of discussions, Ukraine has the support of 42 states in the UN International Court of Justice; two PACE resolutions, a resolution of the Lithuanian Parliament, and a resolution of the European Parliament.³³

The ECtHR considers cases against states for violating the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols. Both individuals and state parties may apply to the ECtHR. Only a state party can be a defendant in the ECtHR. Today, the ECtHR is considering the case of the 'Netherlands and Ukraine v. Russia'. The case is about complaints of mass and systematic human rights violations in the temporarily occupied territories of Donbas, abductions, and attempts to smuggle orphans from Donetsk and Luhansk oblasts to Russia in 2014. In addition, there is the case concerning the shooting down of Malaysia Airlines plane MN17 over Ukraine. However, Russia announced its withdrawal from the Council of Europe and the denunciation (termination) of the Convention. Therefore, until Russia restores its membership in the Council of Europe, the ECtHR decision will be impossible to implement.

To bring to justice war criminals, it is necessary to follow the principle of universal jurisdiction, which allows for prosecuting foreigners who have committed international

30 A non-profit, non-governmental organisation based in London. The organisation's purpose is to analyse and promote understanding of major international issues and current affairs. It has been recognised several times as one of the most influential think tanks.

31 'Ukraine: MEPs want a special international tribunal for crimes of aggression' <<https://www.europarl.europa.eu/news/en/press-room/20220517IPR29931/ukraine-meps-want-a-special-international-tribunal-for-crimes-of-aggression>> accessed 23 June 2022.

32 'If we want to live in a democratic state, we must profess the appropriate principles – Stanislav Kravchenko, 17 June 2022' <<https://supreme.court.gov.ua/supreme/pres-centr/news/1285735/>> accessed 23 June 2022.

33 'Ukraine has prepared projects for the launch of an international tribunal over Russia' <https://www.unian.ua/war/tribunal-nad-rosiyyu-ukrajina-pidgotuvala-proekti-dlya-zapuskumizhnarodnogo-sudu-novini-vtorgnennya-rosiji-v-ukrajinu-11834841.html?_gl=1*6q6l00*_ga*MTAxMzI2NjYxNS4xNjUyNjE4NDQz*_ga_JLSK4Y8K67*MTY1MzA2MjQ5MS4xMy4xLjE2NTMwNjI1MzcuMTQ*_ga_DENC12J6P3*MTY1MzA2MjQ5MS4xMy4xLjE2NTMwNjI1MzcuMTQ> accessed 23 June 2022.

crimes in the territory of another state based on the seriousness of such crimes, which are a threat to the entire international community. For example, in the USA, the 'human rights class actions' mechanism exists, the purpose of which is '...to obtain neither damages nor injunctions against the defendant: both remedies have 'added value', but the main goal is to expose the wrongdoer to the judgment of public opinion.'³⁴ The peculiarity of this approach is that victims, regardless of their citizenship, who believe that human rights have been violated in any territory outside the United States, can apply to the courts of national jurisdiction of the United States, because 'the idea of transnational public law litigation is predicated on the theory according to which the infringement of human rights is such disgraceful behavior that every civilized nation should allow the victims to sue the wrongdoers for damages in its own civil courts, no matter if the event took place elsewhere or if the parties to the case are aliens.'³⁵

In practice, a narrower approach to universal jurisdiction is more commonly used: criminal prosecution in another country begins if a citizen of that country allegedly committed the international crime; if the crime was committed against a citizen of this country; or if the suspect is in the territory of that country.³⁶

The investigation can be launched at any time because war crimes, crimes against humanity, and genocide are a grave threat to world security. Therefore, the statute of limitations does not apply in that case. At the same time, the principle of universal jurisdiction is an additional mechanism for prosecuting war criminals.

National justice systems are faster than the ICC, so universal jurisdiction allows international justice to rely not on other courts. Any state that adheres to this universal jurisdiction principle (today, about 150 states) can join the prosecution of perpetrators of war crimes. It simplifies the procedure for punishing criminals. For example, if an arrest warrant is issued in one state, but the suspect is hiding in another, he/she must be prosecuted under uniform rules. The state where a person is hiding should not become a 'quiet haven' for criminals and their assets. On 21 June 2022, US Attorney General Merrick Garland expressed US readiness to assist Ukraine in identifying, searching for, and punishing those guilty of war crimes: 'The United States has a clear message: our partners, and we will use all means to hold those responsible accountable, there is no place to hide'.³⁷ During the visit to Ukraine, the Attorney General announced the creation of the war crimes investigation team headed by Ellie Rosenbaum. The investigation team will consist of experts on investigations related to human rights violations and war crimes.³⁸

Poland, Germany, Lithuania, Estonia, Slovakia, and Sweden were the first European countries to launch a criminal investigation into the events in Ukraine under the principle of universal jurisdiction.³⁹ Later, Latvia, Norway, and France launched their own investigations

34 E Silvestri 'Human Rights Class Actions' in A Uzelac, CH van Rhee (eds), *Transformation of Civil Justice* (Springer 2018), Ius Gentium: Comparative Perspectives on Law and Justice, vol 70. Springer, P. 202 <https://doi.org/10.1007/978-3-319-97358-6_11> accessed 23 June 2022.

35 Ibid. P.209.

36 Chubinidze, O. Universal Jurisdiction in National Legislation: Comparative Aspect. NAUKMA Research Papers. Law/ Vol. 4 (2019), P. 98-105 <<https://doi.org/10.18523/2617-2607.2019.4.96-105>> accessed 23 June 2022.

37 'The US attorney general makes an unannounced visit to Ukraine and pledges "unwavering support"' <<https://cutt.ly/ZKzFLP1>> accessed 23 June 2022.

38 'US attorney general announces team to prosecute war crimes in Ukraine' (21 June 2022) <<https://cutt.ly/pKx7mLT>> accessed 23 June 2022.

39 I Venediktova, 'Six countries have launched the investigation into Russia's war crimes' <<https://hromadske.radio/news/2022/03/20/shist-krain-pochaly-rozsliduvannia-voiennykh-zlochyniv-rosii-venediktova>> accessed 23 June 2022.

too. Poland and Lithuania were the first countries to work with Ukrainian witnesses and victims who had arrived in these countries.⁴⁰ Germany⁴¹ started investigating civilian, energy infrastructure shelling, and cluster bomb use⁴² in March. In June, the head of the Federal Criminal Police Office, Holger Münch, announced that the police, in cooperation with the foreign intelligence service, was investigating a three-digit number of facts - potential war crimes. Investigations include those suspected of directly committing war crimes and political or military officials who give orders to commit crimes⁴³. **France also has an anti-terrorist infrastructure, investigates crimes primarily against its citizens, and has launched four investigations for now. French law enforcement officers, together with Ukrainian law enforcement agencies, work in teams**⁴⁴. For example, France joined the special group to investigate the circumstances surrounding the death of journalist Frederic Leclerc-Imhoff. He was killed during a movement in a humanitarian convoy near Severodonetsk in the Luhansk region⁴⁵.

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There are also other (eclectic or hybrid) forms of interstate and international assistance in investigating Russian war crimes in Ukraine. The results of such assistance (collected evidence) can be used, it seems, in the ICC, within the jurisdiction of states under the principle of universal jurisdiction or in the national justice of Ukraine. We can identify the three forms listed below.

- a) A Joint Investigation Team (JIT) organised by Ukraine, Lithuania, and Poland on 25 March 2022 under the auspices of Eurojust.⁴⁷

The JIT focuses on the collection, secure storage, and rapid exchange of information and evidence of war crimes of the Russian Federation, collected during investigations in the territory of the state parties. In addition, the focus of JIT is the identification of assets of

40 'Ukraine, Lithuania and Poland have set up a joint investigation team to investigate Russia's war crimes' <<https://www.unn.com.ua/uk/news/1969681-ukrayina-litva-ta-polscha-stvorili-splnu-slidchu-grupudlya-rozsliduvannya-voyennikh-zlochiv-uf>> accessed 23 June 2022.

41 Notably, Germany has universal jurisdiction over international crimes broadly and has the financial and human resources for such investigations. The German police, prosecutor's office, and migration service have specialized units in international crimes since the early 2000s. For example, even in the physical absence of suspects, Germany has amassed a solid analytical base on the conflicts in Syria and Iraq. As a result, a German court convicted a former Syrian intelligence officer of crimes against humanity in January 2022.

42 In Germany, the investigation of Russian war crimes in Ukraine has begun. 08.03.2022 <<https://www.dw.com/uk/u-nimechyni-pochaly-rozsliduvannia-voiennykh-zlochyniv-rosii-v-ukraini/a-61051225>> accessed 23 June 2022.

43 German law enforcement officers are involved in investigating of hundreds of war crimes in Ukraine - the head of the Federal Department of Criminal Police. 18.06.2022 <<https://www.radiosvoboda.org/a/news-nimetski-pravoohorontsi-rozsliduvannia-voienni-zlochyni/31904199.html>> accessed 23 June 2022.

44 France has launched an investigation into war crimes in Ukraine. 14.04.2022 <https://lb.ua/society/2022/04/14/513421_frantsiya_rozpochala_rozsliduvannya.html> accessed 23 June 2022.

45 France has launched an investigation into the death of a journalist in the Luhansk region. 31.05.2022 <<https://ua.korrespondent.net/ukraine/4482539-frantsiia-rozpochala-rozsliduvannia-zahybeli-zhurnalista-na-luhanschyni>> accessed 23 June 2022.

46 US attorney general announces team to prosecute war crimes in Ukraine. June 21, 2022 <<https://cutt.ly/pKx7mLT>> accessed 23 June 2022.

47 Eurojust is a European agency that works with the judicial and police authorities of the EU member states. The primary purpose of Eurojust is to support and coordinate the work of investigators and prosecutors in respect of a serious crime involving two or more member states (Art. 85 of the Lisbon Treaty). <<https://www.eurojust.europa.eu/>> accessed 23 June 2022.

war criminals with a view to their freezing and confiscation.⁴⁸ The ICC became a part of the group in April, and Estonia, Latvia, and Slovakia joined later.⁴⁹

Eurojust President Ladislav Hamran noted that the legal community had never reacted with such determination in the history of armed conflicts. According to him, the investigation of war crimes in Ukraine and bringing the perpetrators to justice will be one of the largest similar events. Prosecutor Karim A.A. Khan QC believes that the activity of JIT could become a model for international investigations in the future. According to him, this is how it is necessary to respond to such crimes, which ICC often investigate. Eurojust will provide JIT with technological assistance for collecting war crimes data, provide oral and written translation of the evidence collected, and ensure that all data collected by the JIT are available for exchange between all parties involved.⁵⁰

- b) Support and assistance 'on the ground' by foreign investigators and experts in gathering evidence of war crimes in Ukraine.

For example, on 11 April, a group of 18 French *gendarmes* and forensic scientists arrived in Ukraine.⁵¹ According to the Prosecutor General of Ukraine, I. Venediktova, part of the group worked on examinations of bodies in mass graves, conducting forensic examinations and DNA analysis, taking genetic material from families looking for missing people in Bucha, and comparing it with samples of unidentified corpses. The other part of the group still works in the Chernihiv region.⁵²

On 17 May, ICC Prosecutor Karim A.A. Khan QC confirmed through the ICC press service that a team of investigators, forensic experts, and support staff (42, including 30 from the Netherlands) would work with French and other countries' forensic experts in Ukraine. The aim is to help identify the remains of human bodies, perform ballistic analysis, and preserve forensic evidence.⁵³

- c) Provision of foreign states' financial, technical, and advisory assistance.

On 25 May 2022, the EU, the US, and Great Britain created the Atrocity Crimes Advisory Group (ACA), which assists in recording, documenting, investigating, and prosecuting the most serious international crimes. The ACA's primary mission is to support units of the Office of the Prosecutor General of Ukraine (UCP) in investigating war crimes and bringing perpetrators to justice, as well as operational cooperation with the EU member states, third partner countries, and the ICC, including the Joint Investigation Group

48 Ukraine, Lithuania and Poland have set up a joint investigation team to investigate Russia's war crimes' (25 March 2022) <<https://suspilne.media/221675-ukraina-litva-ta-polsa-stvorili-spilnu-slidcu-grupu-abi-rozsliduvati-voenni-zlocini-rf/>> accessed 23 June 2022.

49 I Venediktov, 'Estonia, Latvia and Slovakia have joined the group investigating crimes in Russia' <https://lb.ua/society/2022/05/31/518533_estoniya_latviya_i_slovachchina.html> accessed 23 June 2022.

50 'How the EU and the ICC help Ukraine investigate Russia's war crimes' (7 June 2022) <<https://www.dw.com/uk/yak-yes-ta-mks-dopomahaiut-ukraini-v-rozsliduvanni-voiennykh-zlochyniv-rf/a-62051363?maca=ukr-rss-ukrnet-ukr-all-3816-xml>> accessed 23 June 2022.

51 'A detachment of gendarmes from France has arrived in Ukraine to investigate Russian war crimes' <<https://www.unian.ua/society/viyna-v-ukrajinu-pribuv-zagin-zhandarmiv-z-franciji-dlya-rozsliduvannya-viyskovih-zlochiv-rf-pid-kiyevom-novini-lvova-11781810.html>> accessed 23 June 2022.

52 I Venediktova, 'Thanks to the diplomacy of President Zelensky, we have created a strong legal front' <<https://gp.gov.ua/ua/posts/irina-venediktova-zavdyaki-diplomatiyi-prezidenta-zelenskogo-mistvorili-potuznii-yrudicnii-front>> accessed 23 June 2022.

53 'The prosecutor of the International Criminal Court sent the largest group of investigators in history to Ukraine' (17 May 2022) <<https://www.pravda.com.ua/news/2022/05/17/7346773/>> accessed 23 June 2022.

coordinated by Eurostat. The ACA brings together international experts to provide strategic advice and operational assistance to the Office of the Prosecutor General of Ukraine and other stakeholders on issues such as gathering and preserving evidence, operational analysis, investigation of conflict-related sexual violence, crime scene review, and forensic investigations, indictments, cooperation with international and national law enforcement agencies.⁵⁴ Canada allocated about \$800,000 in assistance to the ICC to investigate sexual violence by Russian soldiers (according to the President of Ukraine V. Zelensky, following the conversation with the Prime Minister of Canada, Justin Trudeau).⁵⁵

Lastly, the majority of war crimes cases will still be heard within Ukraine's national judiciary. Criminal proceedings in this category have no exceptions to the procedure. So general procedural order provided for in the CPC of Ukraine is applied. As well, the amendments to Section IX-1 of the CPC of Ukraine 'Special regime of pre-trial investigation and trial in martial law', in which the Verkhovna Rada responded to the challenges of martial law, and which are also applicable to all categories of criminal proceedings and regulate the features of pre-trial investigation and entering information into the Unified Register of Pre-trial Investigation, conducting a search, etc. should be taken into account. A notable divergence of war crimes proceedings is that the procedural management and prosecution of it is carried out by a specialised department for combating crimes committed in armed conflict (the so-called 'war department' in the Prosecutor General's Office) and by prosecutors of relevant regional prosecutor's offices.

The problem, which already exists, is the use of the opinions of forensic experts in criminal proceedings on war crimes in the national judiciary of Ukraine. The first aspect of this problem is the (im)possibility of using the results of the French, Dutch, and other foreign experts (criminologists, immunologists, geneticists (DNA) of the Special Investigation Group and the ICC) as a source of evidence or expert opinion in Ukraine. In criminal proceedings in Ukraine, only evidence obtained in the way prescribed by the CPC of Ukraine (Part 1 of Article 84 of CPC) can be used. According to the CPC testimony, physical evidence, documents, and expert opinions are procedural sources of evidence (Part 2 of Article 84 of CPC). Following Art. 10 of the Law 'On forensic examination' (the Law), a person can work as a forensic expert only after a procedure of certification and qualification (including training in state specialised institutions of the Ministry of Justice of Ukraine in a particular specialty). Moreover, under Art. 9 of the Law, such a person must be included in the state register of forensic experts. In addition, under Art. 7 of this Law, there is a state forensic monopoly on all types of forensic, medical, and psychiatric examinations. This means that only experts from state-specialised forensic institutions can perform these types of examinations in Ukraine. Therefore, the opinions of foreign forensic experts in Ukraine are not acceptable by law. At the same time, forensic and medical examinations are most in demand in the investigation of war crimes.

However, Art. 23 of the Law allows the heads of state specialised institutions to involve foreign specialists in the expert commissions with Ukrainian experts and employees of these institutions. It is necessary for them to get the consent of the body or person who appointed the forensic examination. Thus, Ukrainian investigators and prosecutors in war crimes proceedings should consider this fact in advance. They should ensure that the involvement of foreign experts in conducting the forensic examination is duly specified in the documents. In this case, the court recognise expert opinions with the participation of foreign experts as

54 The European Union, the United States and the United Kingdom have established the Atrocity Crimes Advisory Group (ACA).

55 'Canada has provided \$ 800 million in special assistance to Ukraine – Zelensky' (14 June 2022) <<https://suspijne.media/250238-kanada-nadala-ukraini-specdopomogu-na-800-mln-dolariv-zelenskij/>> accessed 23 June 2022.

admissible evidence. Otherwise, if this is not done, the opinions of foreign experts can be used only in the status of a document (source of evidence), which, compared to the expert's opinion, has less importance in the evidence base.

The legal possibility of using the foreign expert opinions in war crimes proceedings in all courts (ICC, foreign jurisdiction courts on the principle of universal jurisdiction, and courts of Ukraine) could be an alternative option to bureaucratic red tape to legalise the opinions of foreign experts in criminal proceedings in Ukraine. However, this requires amendments to Art. 615 of the PC of Ukraine. Such a step would optimise the paperwork and not force experts to duplicate their opinions for domestic and foreign or international criminal proceedings. It would comply with the principle of procedural economy.

On April 29, 2022, a group of deputies introduced draft law No. 7330, 'On Amendments to the Criminal Procedure Code of Ukraine on Improving the Activities of Joint Investigation Teams,' to the Verkhovna Rada of Ukraine⁵⁶. It seems that this draft law should solve the problem mentioned above. The draft law provides amendments to parts 1-3, a complete change of part 4, and new part 5 of Article 571 of the Ukrainian Criminal Procedure Code (Chapter 43 of the Criminal Procedure Code 'International legal assistance during procedural actions'). However, it does not answer several practical questions regarding the activities of special investigative groups. Perhaps, for this reason, the committees of the Verkhovna Rada of Ukraine are still working on it. Council of Europe experts expressed specific considerations regarding the provisions of the draft law⁵⁷. In particular, in para. 3 p. 2 Art. 571 of the Criminal Procedure Code is proposed to regulate the procedure for creating a joint investigative team (JIG) and composition of JIG, including the process for appointing a senior investigator of the JIG - by a resolution of the head of the pre-trial investigation body in agreement with the Prosecutor General (or a person performing his duties). However, the draft law does not specify who can be a part of the group, whether its composition will be limited only to investigators (Ukrainian and foreign), or prosecutors, experts, and specialists may also be a part of the JIG. Including a wide range of specialists in the JIG is under European standards and best practices. Firstly, according to the valid observation of the Council of Europe experts, if the draft law defines the senior investigator role of the JIG as the chief, the entry of prosecutors into the JIG will become a problem, as it contradicts the status of the prosecutor under the legislation of Ukraine (Art. 75 of the Conclusion)⁵⁸. Secondly, in our opinion, if the law does not provide for the possibility of including foreign countries' judicial experts in the JIG, their status as judicial experts will not correspond to Ukrainian legislation. In practice, it will cause disputes about the admissibility of their opinions. The draft law regarding the foreign experts' participation does not regulate these issues, and therefore, foreign experts will not be able to conduct forensic examinations individually. Their professional activity will be possible only by following Art. 23 of the 'Law on forensic examination'. This approach does not simplify documentary and bureaucratic procedures of carrying out expert examinations.

The second aspect of the problem is the significant demand for conducting many forensic (ballistic, explosive, other weapons) and medical examinations in this category of cases.

56 Draft law No. 7330 'On Amendments to the Criminal Procedure Code of Ukraine on Improving the Activities of Joint Investigation Teams' <https://itd.rada.gov.ua/billInfo/Bills/Card/39520?fbclid=IwAR0Xw7m_X3JeqUq9gAKdC08MEMu2L2P-yLKCduj_OkET3oRZi4XL2jpyV2s> accessed 23 June 2022.

57 Expert opinion of the expert advisory group of the Council of Europe on support of the Office of the Prosecutor General of Ukraine regarding Draft law No. 7330 'On Amendments to the Criminal Procedure Code of Ukraine on Improving the Activities of Joint Investigation Teams' <<https://rm.coe.int/coe-expert-opinion-ua-joint-investigative-teams-draft-law-7330-ukr/1680a71abd>> accessed 23 June 2022.

58 Ibid. Para. 53. p. 12.

A forensic examination is mandatory in all cases of death, injuries, mutilations, and contusions due to hostilities, missiles, artillery shelling, etc., under Part 2 of Art. 242 of the CPC to establish the causes of death or the nature and extent of injuries. A significant gap in the evidence base in cases under Art. 438 of the CPC is failure to conduct such examinations. Therefore, there is the possibility of a lack of proof of these circumstances beyond a reasonable doubt in case of failure to conduct the forensic examination. As these types of forensic examinations belong to the state forensic monopoly, the Ministry of Justice and the Ministry of Health (which administer the work of the relevant state forensic institutions) should direct forensic experts of the relevant specialties to the areas where the largest number of investigations are carried out. In addition, one of the problems is the time of conducting the forensic examination in prolonged occupation conditions. There is the risk of conducting forensic examinations being impossible due to the 'perishable' nature of the object of their study – the body of a person or corpse. As a result of physical processes – wound healing, decomposition of the corpse, the disappearance of micro-traces-layers – a significant part of the identification and diagnostic signs are not preserved. Forensic examinations of corpses are conducted after their exhumation, and examinations in cases of sexual violence in armed conflict are meaningless in general if they are done a long time after the crimes were committed. Therefore, for such cases, it is essential to consider the possibility of amending Art. 615 of the CPC on lowering the standard of proof: refusal of mandatory forensic medical examination in war crimes proceedings in case of objective impossibility of its timely conduct and inexpediency of such in obtaining evidence in the conditions of occupation. Otherwise, war criminals will avoid criminal liability due to the impossibility of proving their guilt in the form prescribed by procedural law.

4 CONCLUSIONS

Since the beginning of the full-scale Russian invasion of Ukraine on 24 February 2022, the Ukrainian judiciary has proved its effectiveness on the legal front. On 1 March 2022, at the request of Ukraine, the ECtHR ruled that the current military actions of Russia pose a real and constant threat of severe violations of the conventional rights of civilians under Arts. 2, 3, and 8 of the Convention. The ECtHR ordered the Russian government to refrain from military attacks on civilians and civilian objects. On 16 March 2022, the UN ICJ granted Ukraine's request to stop the Russian military invasion of Ukraine. In March 2022, the Prosecutor of the ICC launched an investigation into Russian war crimes in Ukraine.

Since Ukraine has not ratified the Rome Statute (which systematises war crimes), Ukrainian lawyers must refer to the 27 Conventions, which enshrine certain crimes.

There are mechanisms for bringing the military, officers, and officials of Russia to justice, such as a) the ICC; b) an *ad hoc* tribunal; c) the ECtHR; d) national judicial systems on the principle of universal jurisdiction; e) criminal proceedings of Ukraine; f) eclectic forms of cooperation of justice bodies of Ukraine with foreign and international partners.

The establishment of an international *ad hoc* tribunal is important given the length of proceedings, the workload and lack of funding for the ICC, and the non-extension of the ICC's jurisdiction over the crime of aggression due to Ukraine's non-ratification of the Rome Statute, ensuring the requirement of impartiality of the court from an outside observer.

It is necessary to adjust the use of foreign forensic expert opinions in criminal proceedings in Ukraine on war crimes by amending the CPC. It is also vital to consider the possibility of abolishing the rule on making forensic examinations mandatory in case of objective

impossibility and inexpediency of its conduct under conditions of prolonged occupation in case of objective impossibility and its obtaining.

We hope that this systematised information and these opinions will be helpful to practitioners and lawmakers.

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