



Challenges Faced by Ukraine in the Context of International Armed Conflict: War Crimes and the Crime of Genocide

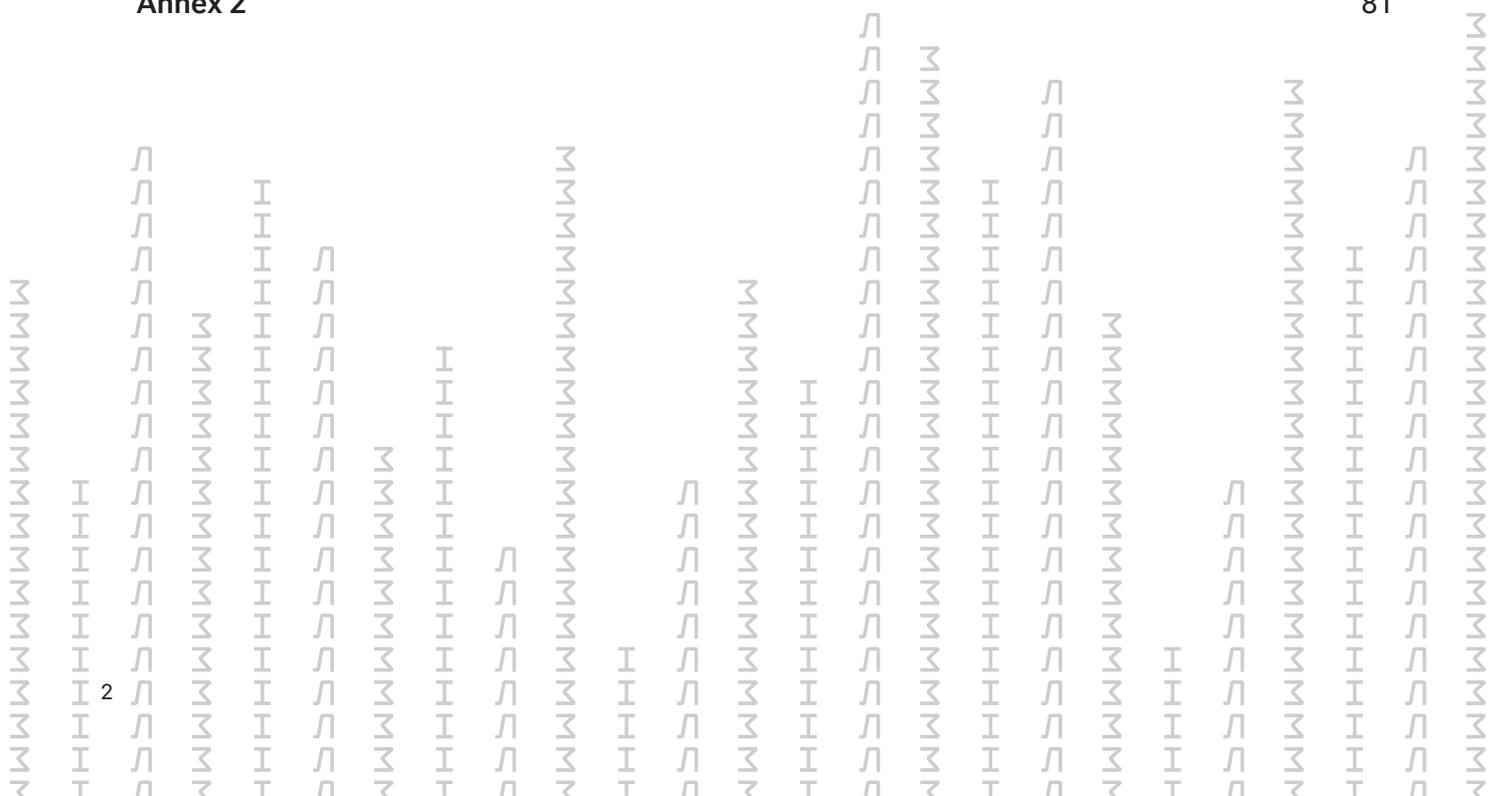


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List of abbreviations

ARC – Autonomous Republic of Crimea

CC Ukraine – Criminal Code of Ukraine

Convention – UN Convention on the Prevention and Punishment of the Crime of Genocide

CPC Ukraine – Criminal Procedure Code of Ukraine

ECtHR – European Court of Human Rights

ICC – International Criminal Court

ICJ – International Court of Justice

ICTR – International Criminal Tribunal for Rwanda

ICTY – International Criminal Tribunal for the former Yugoslavia

MFA Ukraine – Ministry of Foreign Affairs of Ukraine

PACE – Parliamentary Assembly of the Council of Europe

UHHRU – Ukrainian Helsinki Human Rights Union

UNDP – United Nations Development Programme

UNGA – UN General Assembly

UNSC – United Nations Security Council

VRU – Verkhovna Rada of Ukraine

Introduction

Since the first days of Russia's full-scale war against Ukraine in February 2022, Ukraine, as well as the entire international community, has been facing the issue of qualifying crimes committed against Ukraine. Lawyers, political scientists, and journalists tried to give a single definition to all the facts of brutal aggression and crimes, but their positions in international law differed so much that, in practice, it became a real challenge to qualify crimes in this war. This situation was confirmed, inter alia, in research by the Ukrainian Helsinki Human Rights Union, whose authors anonymously surveyed law enforcement officers to determine the possibilities for investigating war crimes¹.

Under international law, there are currently four separate, independent and distinct categories of international crimes that are recognised as the most gross and serious violations of human rights. For example, Article 5 of the Rome Statute of the International Criminal Court² provides for the jurisdiction of the Court and lists the following categories of international crimes: a) the crime of genocide; b) crimes against humanity; c) war crimes; and d) the crime of aggression³.

In their assessments, foreign experts tend to refer to two categories of crimes committed by Russia against Ukraine: 1) war crimes and 2) crimes against humanity. This situation can be explained by the fact that in the context of the current international armed conflict, when it is not yet known what the full (in the end, for the entire period of the conflict) consequences and damage will be, international institutions usually refer to the fact that they can only talk about those crimes whose elements are obvious and which can be documented even with limited access to locations, materials, etc. However, since the international institutions largely focus on documenting and qualifying Russia's actions against Ukraine as war crimes, it is objectively difficult to try to qualify these actions as a crime of genocide.

International crimes (the four categories mentioned above) do not have an internal hierarchy that would make a particular category more important than another. From a legal standpoint, all categories are equal as they relate to different types of crimes and acts.

Thus, the crime of genocide refers to "acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such."⁴ In fact, the crime of genocide is the most gross and serious violation of the rights of persons belonging to a particular group on the basis of nationality, ethnicity, race or religion. Accordingly, this crime has a specific intent: to destroy a particular group. It concerns the rights not of certain individuals but of individuals as integral parts of the group.

¹ UHHRU research "International Crimes in Ukraine" encompasses the case law of investigation and prosecution under six articles of the Criminal Code, which correspond to international crimes of aggression, genocide and crimes against humanity.

² Ukraine ratified the Rome Statute on 21 August 2024 by adopting the Law 'Upon ratification of the Rome Statute of the International Criminal Court and its amendments' (registration No. 0285 of 15.08.2). At the same time, the entry into force of this Law is possible only simultaneously with the entry into force of the Law 'On Amendments to the Criminal Code and the Criminal Procedure Code of Ukraine in connection with the ratification of the Rome Statute of the International Criminal Court and amendments thereto' (registration No. 11484 of 15.0). The Rome Statute itself shall enter into force for Ukraine on the first day of the month following the 60th day after the date of deposit of the instrument of ratification with the UN Secretary-General.

³ Rome Statute, Article 5.

⁴ Rome Statute, Article 6.

The list of acts constituting the crime of genocide includes:

- a) killing members of the group;
- b) causing serious bodily or mental harm to members of the group;
- c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) imposing measures intended to prevent births within the group;
- e) forcibly transferring children of the group to another group.

It is worth noting that the crime of genocide can be committed both in the context of armed conflict and in peacetime.

Crimes against humanity mean “any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”⁵ Thus, the part “as part of an attack” immediately stands out in this category, indicating that crimes against humanity can only be committed during armed conflict. In general, this category refers to violations of individual rights as provided for in international conventions and covenants.

This category contains a wide range of acts that constitute crimes against humanity, in particular:

- a) murder;
- b) extermination;
- c) enslavement;
- d) deportation or forcible transfer of population;
- e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- f) torture;
- g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity;
- h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3 of Article 7 of the Rome Statute, or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- i) enforced disappearance of persons;
- j) the crime of apartheid;
- k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.⁶

War crimes are violations of the norms and principles of international humanitarian law, i.e. violations of the rules, methods and means of warfare.

The list of acts constituting war crimes is quite extensive and includes, inter alia, the following acts:

1. Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
 - a) wilful killing;

⁵ Rome Statute, Article 7.

⁶ Ibid.

- b) torture or inhuman treatment, including biological experiments;
 - c) wilfully causing great suffering or serious injury to body or health;
 - d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - e) compelling a war prisoner or a protected person to serve in the forces of a hostile Power;
 - f) wilfully depriving a war prisoner or a protected person of the rights of fair and regular trial;
 - g) unlawful deportation or transfer or unlawful confinement of a protected person;
 - h) taking hostages;
2. Other serious violations of the laws and customs applicable in international armed conflict within the established framework of international law, namely, any of the following acts:
- a) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - b) intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
 - c) intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - d) intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
 - e) attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
 - f) killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
 - g) making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
 - h) the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
 - i) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - j) subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - k) killing or wounding treacherously individuals belonging to the hostile nation or army;
 - l) declaring that no quarter will be given;
 - m) destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
 - n) declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

- o) compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- p) pillaging a town or place, even when taken by assault;
- q) employing poison or poisoned weapons;
- r) employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- s) employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- t) employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to the Rome Statute by way of amendment in accordance with the relevant provisions set forth in Articles 121 and 123 of the Statute;
- u) committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- v) committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in paragraph 2(f) of Article 7 of the Rome Statute, enforced sterilisation, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
- w) utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- x) intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- y) intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
- z) conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.⁷

Crime of aggression means "the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations [...] 'Act of aggression' means 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 Charter of the United Nations."⁸

Acts constituting the crime of aggression include, inter alia, the following:

- a) the invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
- b) bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

⁷ Rome Statute, Article 7.

⁸ Rome Statute, Article 8.

- c) the blockade of the ports or coasts of a State by the armed forces of another State;
- d) an attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
- e) the use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- f) the action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
- g) the sending by a State that makes its territory available to another state of military equipment, weapons or other means of destruction;
- h) the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.⁹

The definitions and corpus delicti of international crimes enshrined in the Rome Statute show that these categories are independent and autonomous from each other. **There is no question of the hierarchy** or primacy of a certain category. However, it is worth noting that since the proposal to enshrine the category of the “crime of genocide” was made, there have been discussions in academic circles about the similarities and differences between this category and “crimes against humanity.” These discussions are based on the argument that both categories relate to the most serious violations of human rights and should, therefore, be consolidated into a single category. Supporters of this approach also often refer to the fact that the crime of genocide, as proposed by the founder of the concept, Raphael Lemkin, concerns only the Holocaust, and all modern cases of genocide do not reach the number of victims that suffered during the Holocaust, and therefore they are not genocide, but rather crimes against humanity. However, scholars and experts on the crime of genocide have repeatedly refuted this approach. The central counter-argument is that the Holocaust was a phenomenon of World War II, which was striking in its cruelty and number of victims, but the crime of genocide does not mean that in order to destroy a certain group, it is necessary to destroy the entire group or that there must be millions of victims for the acts to qualify as a crime of genocide.¹⁰ Therefore, in support of this argument, experts refer to the provisions of the Genocide Convention, which provides for the obligation of all state parties to prevent the crime of genocide. This provision indicates that the number of victims should not only be the same as the number of victims of the Holocaust but also that, whenever possible, states must prevent the commission of a crime and the destruction of members of a particular group, reducing the number of victims to a minimum.

In the case of Ukraine, all four categories of international crimes need to be considered, but the critical point is to promote the issue of recognising, investigating and qualifying russia’s crimes against Ukraine as genocide.

⁹ Rome Statute, Article 8.

¹⁰ In the section “The crime of genocide,” the issue of the quantitative criterion in the context of the crime of genocide and the practice of international judicial institutions in establishing a quantitative limit for recognising crimes as constituting the crime of genocide will be considered in detail.

This importance is explained by the fact that in the context of “war crimes” and “crimes against humanity” categories, they will be investigated and qualified by the International Criminal Court. As for the crime of aggression, this issue is currently being actively addressed by the Ukrainian expert group working on the creation of a special international criminal tribunal to investigate the crime of aggression. So, three out of four categories will be covered by international judicial institutions, and there is a good chance that justice will be restored and the perpetrators will be brought to justice. However, the crime of genocide has no potential mechanism for its consideration or qualification, as no convictions for the crime of genocide have been handed down within the International Criminal Court. Each case on genocide charges was either reclassified by the International Criminal Court as “crimes against humanity” or closed. Furthermore, the special tribunal that the Ukrainian expert group is working on provides only for jurisdiction over the crime of aggression, leaving genocide out of it. Thus, there is currently a problem in the absence of an effective international mechanism that would have jurisdiction and a real opportunity to investigate and qualify the crime of genocide in the context of Ukraine. Therefore, **it is a matter of principle that the crime of genocide is not left outside the scope of judicial proceedings.**

The importance of this issue is that the crime of genocide is **the only category of international crimes** that indicates the **special intention** of the aggressor state to **destroy a certain group in whole or in part**. In the case of Ukraine, this is a key point because war crimes and crimes against humanity only indicate violations of humanitarian law and human rights in the context of an international armed conflict, while the crime of genocide indicates a special intent to destroy a group, namely Ukrainians, and the duration, systematicity, planning, scale and systemic nature of Russia's crimes against Ukraine. Thus, the qualification and proof of the commission of three categories of international crimes by Russia, in addition to genocide, are important for bringing perpetrators to justice for all crimes committed in the context of international armed conflict. Proof of the crime of genocide will illustrate that all these categories of international crimes were committed because of Russia's main goal of exterminating Ukrainians.

One of the obstacles to the qualification of Russia's crimes **against Ukraine as genocide is the fact that there is insufficient documentation** of acts that may constitute the crime of genocide, insufficient collection of evidence, interviews with witnesses, lack of special databases, etc.

In addition to the problem of the international community's non-recognition of the fact that Russia committed the crime of genocide against Ukraine, there are **problems and obstacles at the national level**. Thus, **significant gaps in national legislation** are an objective obstacle to the qualification of Russia's actions as a crime of genocide, effective investigation of cases and documentation of all evidence. Due to the outdated norms of criminal and criminal procedure law, which do not comply with the norms and principles of international law (international humanitarian and criminal law), it is difficult for government authorities to qualify and investigate Russia's crimes against Ukraine in the context of international crimes.

Ultimately, the most pressing problem is the **discrepancy between the norms on paper and their application in practice**. In this context, the lack of knowledge of international law (international humanitarian and criminal law, international human rights law) among public prosecution, law enforcement officers and judicial officials is a serious challenge. Due to the lack of knowledge, employees of these bodies cannot effectively and quickly investigate and consider cases of Russian crimes within the categories of international crimes, which slows down the entire justice process and complicates the qualification of crimes as war crimes or genocide.

However, in addition to these problems, there are also more superficial problems, such as the incorrect use of terminology, which blurs the concepts and perceptions of the general public and leads to the misuse of international law terminology. Journalists and some lawyers still use the term “злочини проти людства” (crimes against mankind), which does not correspond to the English-language terminology and has nothing to do with the category of international crimes enshrined in the Rome Statute and the statutes of ad hoc international criminal tribunals.

So, there are two problems in the context of terminology: 1) incorrect translation of international legal instruments, which leads to the use of incorrect terminology; 2) incorrect use of the term in general due to lack of knowledge of the specifics of international legal terminology.¹¹

It is more acceptable and more frequent for Ukrainian scholars and legislators to mention the crime of genocide, a term that is also used rather fragmentarily and unsystematically in relation to Russia's crimes against Ukraine. Thus, in article headlines and politicians' addresses, you can often find: “genocide in Bucha,”¹² “genocide in Irpin,”¹³ “genocide of Mariupol,”¹⁴ etc. A particularly urgent issue is the analysis of the appropriateness of using the term “crime of genocide” in relation to the tragedies and crimes committed by Russian armed forces against the Ukrainian people. For example, the T4P (Tribunal for Putin) initiative presented a legal substantiation of the preparation and filing of submission to the International Criminal Court regarding the “genocide of Mariupol.”¹⁵ In this context, it is worth considering the historical course of the conflict of interest, ideologies, and power between Ukraine and Russia before and during the ten-year war unleashed in 2014. After all, only a systemic approach and analysis of events, the intentions of the aggressor state, the motive, strategy and duration of the preparation and implementation of the plan can determine the likelihood of qualifying Russia's crimes as a crime of genocide. This analysis will be conducted in the following sections with a detailed consideration of each element.

The peculiarity of the crime of genocide as a category of international crimes is that it is a complex category that requires a very high level of evidence base to be recognised as constituting genocide. In addition, throughout the history of the Convention on the Prevention and Punishment of the Crime

¹¹ See Annex 1 (Crimes against humanity or against mankind?).

¹² An example of the fragmented use of the term “crime of genocide” by the media and government officials in the context of crimes committed by the Russian armed forces in Bucha: 1) War Crimes and Genocide in Bucha Require Additional Sanctions Against Russia: The World Reacts to the Massacre of Civilians in Bucha. 2) The World Should Boycott Everything Related to the Terrorist Country for the Genocide in Bucha – Ministry of Culture. 3) Business Insider: In Bucha, Russia Committed Genocide and Nothing Else. Although the article's text and the position of the expert (Eugene Finkel) it covers reveal the problem of Russia's intentions and the possibility of qualifying its actions as a crime of genocide in general, the title of the article contains a fragmentary use of the term “genocide.” 4) Punish Everyone for the Genocide in Bucha, Irpin and Hostomel. This is another example of limiting the crime of genocide to certain settlements in Ukraine. 5) Mass Murder of Innocents, Worse than ISIS: 10 World Media Covers about the Genocide in Bucha. 6) Evidence of Genocide. Dozens of Bodies of People Tortured and Killed by Russian Occupiers Found in Bucha.

¹³ An example of fragmentary use of the term “crime of genocide” in the media in the context of crimes committed by Russian armed forces in Irpin: Bucha, Irpin, Borodyanka Are Symbols of the Russian Genocide of the Ukrainian People: Residents Share Their Memories.

¹⁴ An example of fragmentary use of the term “crime of genocide” in the context of crimes committed by Russian armed forces in Mariupol: 1) 'It Was Really a Genocide: Ukraine Documents Russia's Crimes in Mariupol to Be Specially Submitted to The Hague; 2) The Genocide of People in Mariupol in Three Forms of Criminal Acts of the Russian Invaders. This article not only contains a fragmentary use of the term “crime of genocide” but also refers to the intention to file a submission to the ICC regarding the crime of genocide committed by Russian armed forces against the residents of Mariupol. The feasibility of this approach will be analysed in the section covering the crime of genocide; 3) Genocide in Mariupol: Human Rights Activists Prepare a Submission to the International Criminal Court; 4) Presentation “Genocide in Mariupol. Legal Substantiation of an International Crime.”

¹⁵ Presentation “Genocide in Mariupol. Legal Substantiation of an International Crime.”

Convention) and international judicial institutions, the number of successful cases on the recognition of crimes committed during international and non-international armed conflicts is insignificant. For example, judicial institutions that have made decisions on the crime of genocide include the International Criminal Tribunal for Rwanda (hereinafter referred to as the ICTR), the International Criminal Tribunal for the former Yugoslavia (hereinafter referred to as the ICTY) and the European Court of Human Rights (in the context of individual applications, hereinafter referred to as the ECtHR). At the same time, it is worth noting that the International Criminal Court (hereinafter referred to as the ICC) has never opened a case under the crime of genocide, reclassifying each such case as a crime against humanity, arguing that proving the crime of genocide requires a serious evidence base that is difficult to provide. The International Court of Justice (hereinafter referred to as the ICJ) has only considered cases on the interpretation of the Convention, providing clarification or broader interpretation of certain of its provisions.

It is worth noting that from the very beginning of the war, the Verkhovna Rada of Ukraine immediately reacted to the events and adopted a statement on the crime of genocide committed by Russia against Ukraine. In addition, a number of other steps were taken to prepare and adopt legislative acts and addresses, but these activities are currently insufficient to achieve the desired result.

One of the main obstacles to the recognition of the totality of crimes against Ukraine as a crime of genocide is the political aspect of the issue. Quite often, reference is made to the positions and opinions of leaders of foreign states and senior officials of international organisations that have already been formed and established in international practice. However, the key question remains how important the political component is and whether it should be made equivalent to the legal component.

The main problem in this context is the consideration of the qualification of crimes as genocide solely from a political point of view, based on national interests and the political position of foreign governments. Accordingly, the question arises whether they are ready to move away from the established approach, according to which the crime of genocide is a very serious and grave international crime that requires an excessive evidence base.

In addition, the political component of the issue is based on two factors:

1. The level of connection between the government of a foreign state with the aggressor state and the victim state;
2. Former colonial states have a particular fear of public discussion and qualification of crimes as genocide (this approach is justified by the risk of bringing them to justice for human rights violations and, in some cases, genocide crimes they committed against the indigenous population and their colonies).¹⁶

¹⁶ For an example of state opposition to the retroactivity of the Convention or any references to the crime of genocide, see Behind Canada's Decades-Long Scheme To Avoid Genocide Punishment, which describes how Canada is trying to avoid liability and erase the link between itself and the genocide committed against its indigenous population.

In general, the political component is an important aspect in recognising and qualifying crimes as international, as the domino principle is quite effective in the international arena, i.e., when influential players make decisions and other states follow suit.

However, it should be borne in mind that crimes are qualified by international judicial institutions in the legal plane, according to the letter of the law. Accordingly, in order to effectively bring the aggressor state to justice and qualify crimes, the international community and international judicial institutions should focus exclusively on the legal component of the issue. To this end, all the evidence must be considered, and the history of the conflict, including its sequence, duration, systematic nature, tactics, planning, and special motive, must be investigated.

However, at present, the typical response of the leading representatives of the international justice system is a dry statement that “there is insufficient evidence to establish the crime of genocide” and expressions of “deep concern,” despite which the international community continues to talk only about war crimes.

Thus, for the legally correct qualification of crimes and effective prosecution of the aggressor state, it is necessary to focus on these two aspects:

1. The activities of the Parliament of Ukraine regarding:
 - 1.1. The development and adoption of the necessary regulatory legal acts, including amendments to existing regulatory legal acts, to bring them in line with the realities of international armed conflict and international law standards;
 - 1.2. The legal support of the procedure for preparing and filing relevant claims with international judicial institutions and the formation of a clear requirement for the establishment of an ad hoc international criminal tribunal based on the model of the ICTR and the ICTY;
2. Foreign policy and public diplomacy to:
 - 2.1. Provide broader coverage of the context and history of the international armed conflict between Russia and Ukraine;
 - 2.2. Inform governments and citizens of foreign states about the scale and consequences of the crimes committed by Russia against the Ukrainian people, as well as threats of continuation of such acts in the future.

To this end, it is worth considering the categories of international crimes discussed in this text to clearly understand their meaning and differences. The distinction between these categories plays a crucial role in determining how and under what criteria Ukraine should file claims with international judicial institutions.

In view of the above, the key questions of this research are: “Do the norms of national legislation comply with the norms and principles of international law in terms of international crimes: war crimes and genocide?” and “How to legally justify the qualification of Russia’s crimes against Ukraine as the crime of genocide?”.

Furthermore, an analysis will be made of whether the framework of national legislation allows for the qualification of russia's crimes against Ukraine during the full-scale invasion as a crime of genocide and what changes should be made to national legislation.

The purpose of the analysis is to:

- 1) identify gaps in national legislation and consider the necessary steps and measures to be taken by the Parliament of Ukraine to bridge the gaps (which will facilitate the work of national judicial bodies, prosecution authorities and police in terms of investigation, review and qualification of russia's crimes in accordance with international law);
- 2) identify potential strategies for the effective qualification of russia's crimes against Ukraine within the framework of international crimes;
- 3) identify the international judicial institutions that are the most effective platforms for investigating and qualifying russia's crimes against Ukraine and for hearing cases;
- 4) identify the main obstacles at the national and international levels to the qualification of russia's crimes against Ukraine as genocide and war crimes.

The research methodology is based on the analysis of international legal documents (conventions, statutes), the practice of international judicial institutions in cases of genocide, and reports of international organisations and international non-governmental organisations that provide a comprehensive analysis of the crimes committed by russia in Ukraine.

These sources are analysed for:

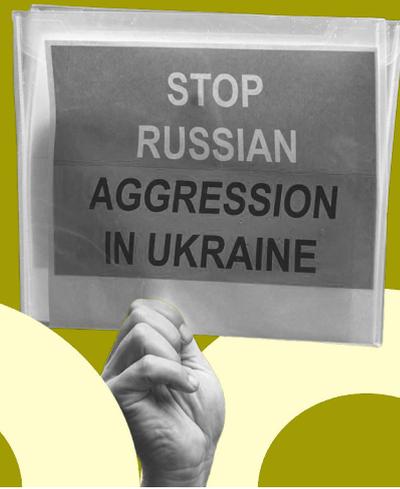
- 1) comparing Ukrainian legislation and its compliance with international law (this comparison is carried out to identify gaps in national legislation that hinder the effective investigation and qualification of russia's crimes);
- 2) comparing the existing practice of international judicial institutions in terms of interpretation and application of the provisions of the Genocide Convention to specific cases (for example, the tribunals for Rwanda and the former Yugoslavia) with the current case of Ukraine (for a detailed analysis of the case law on each paragraph of Articles 2 to 3 of the Convention and to establish whether the situation and crimes committed by russia in Ukraine are in line with the case law);
- 3) establishing the key positions and arguments of international organisations and institutions regarding the recognition of russia's crimes in Ukraine as a crime of genocide.

The research takes into account such variables as:

- 1) the duration of the international armed conflict (since it is not yet over, there are numerous variables that may affect the course of events, in particular the number of victims, the extent of damage, etc.);
- 2) the lack of consensus on the recognition of the crime of genocide committed against Ukrainians, which may raise the question of whether russia's crimes against Ukraine should be qualified as a crime of genocide.

Chapter 1

War crimes: Realities and challenges



1.1. Enshrining war crimes in international legal instruments

According to Article 8 of the Rome Statute of the ICC, war crimes are:

- a) grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention;
- b) other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law;
- c) in the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause;
- d) paragraph 2(c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature;
- e) other serious violations of the laws and customs applicable in armed conflicts;
- f) paragraph 2(e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organised armed groups or between such groups.¹⁷

¹⁷ Rome Statute, Article 8.

This article of the Rome Statute is a model of how war crimes should be enshrined in national legislation. In fact, this article is an internationally accepted standard. However, Ukrainian legislation leaves many gaps in enshrining this category, which leads to inconsistency with international law, as will be analysed in the following subsections.

In fact, war crimes are a violation of international humanitarian law, formerly known as *jus in bello* (the law of war), i.e. violation of the rules and laws of warfare in the context of both international armed conflict and non-international armed conflict.¹⁸

In addition to the Rome Statute, war crimes are enshrined in detail in the Geneva Conventions, namely:

- 1) the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field;
- 2) the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea;
- 3) the Geneva Convention relative to the Treatment of Prisoners of War;
- 4) the Geneva Convention relative to the Protection of Civilian Persons in Time of War.

War crimes are also enshrined in three additional protocols:

- 1) Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts;
- 2) Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts;
- 3) Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional Distinctive Emblem.

The Geneva Conventions are peculiar in that they have been ratified by a record number of states according to international law standards. Thus, 196 states have ratified these conventions. At the same time, the ratification rate of the Protocols is somewhat lower: 174, 169 and 79 ratifications, respectively.

Whether a state has ratified any of the conventions, the norms enshrined in these documents will be binding upon it, as all provisions of the conventions are norms of **customary international law**. That is, a violation of any of the rules enshrined in the conventions will result in a violation of international humanitarian law since most states have recognised the rules set out in these conventions as binding upon them and as having been applied by most states for a long time. Therefore, states act in accordance with international humanitarian law even without ratifying the conventions.

The Hague Conventions of 1899 and 1907 enshrined the methods and means of warfare, establishing a list of prohibited means of warfare (e.g., prohibited weapons) and, for the first time, defining the legal regime of prisoners of war, military occupation and forms of cessation of hostilities (surrender, armistice), the concept of neutrality in time of war, etc.¹⁹

¹⁸ Analytical material of the United States Institute of Peace on the crime of genocide, crimes against humanity and war crimes.

¹⁹ Encyclopaedia of Modern Ukraine The Hague Conventions on the Laws and Customs of War of 1899 and 1907.

Thus, international humanitarian law in the context of war crimes is a disposition that establishes the rules and norms of conduct of the parties during an armed conflict, specifying permissible and prohibited conduct. International criminal law plays the role of a sanction, establishing the punishment and format of liability for violations of international humanitarian law. Thus, the category of war crimes is at the intersection of three branches of international law: international humanitarian law (in terms of rules and norms of conduct of parties to an armed conflict); international criminal law (in terms of establishing punishment); international human rights law (in terms of human rights violations in the context of an armed conflict: the rights of civilians, prisoners of war and others).

In addition, two key points should be distinguished:

1. International humanitarian law regulates crimes committed against two categories of persons: civilian population and combatants (persons directly involved in an armed conflict). Thus, war crimes can be committed against two different categories of persons, which entails different types and degrees of responsibility.
2. Crimes committed in the context of an armed conflict can be classified as war crimes if they are committed: in violation of the established and permitted means and methods of war. Thus, according to the Practical Guide to International Humanitarian Law prepared by Médecins Sans Frontières, the means of warfare include weapons and weapons systems used during hostilities. Methods of warfare include tactics and strategies used against the enemy during an armed conflict.²⁰

The norms on permissible means and methods of warfare are violated during an international armed conflict through direct non-compliance with international law, which is exacerbated by the imbalance of power between the parties to the conflict.²¹ If one of the parties to the conflict has a greater potential (armed, power, human, technological or strategic), it is likely that this party will violate the rules of the means and methods of warfare. The greater the imbalance of power between the parties, the more likely it is that the stronger party will violate the norms on the permissible means and methods of warfare, as it has more power and strength and greater confidence in impunity. Violations of these norms, in particular, breach the principles of international humanitarian law such as proportionality, distinction and military necessity.

For example, the principle of proportionality stipulates that the force used against the enemy must be proportionate to the threat it poses, and the military advantage gained from the use of force must far outweigh the harm caused to the civilian population. The principle of distinction requires that the use of force by one party against another must take into account the distinction between military and civilian objects and between civilian populations and combatants.²² Finally, the principle of military necessity provides for the use of force only against military objectives that pose an immediate threat or danger.²³

²⁰ The Practical Guide to Humanitarian Law. Methods (and Means) of Warfare.

²¹ Ibid.

²² IHL: How the Principle of Distinction Works // Yurydychna Gazeta.

²³ Principles of War under International Humanitarian Law // Law in Times of War.

The key point of war crimes as a category of international crimes is the time limit. Thus, war crimes take place only in the context of an international or non-international armed conflict from its beginning to its end, effectively setting limits on what actions and crimes can be qualified as war crimes. An exception may be made for certain cases, such as crimes committed against prisoners of war, as they may continue after the official end of the armed conflict.

Thus, if the crimes committed by Russia against Ukraine are qualified as war crimes, they will be limited to the time frame of the international armed conflict between the two states, excluding any other historical events and crimes committed against Ukraine.

Thus, if the crimes committed by Russia against Ukraine are qualified as war crimes, they will be limited to the time frame of the international armed conflict between the two states, excluding any other historical events and crimes committed against Ukraine. This approach is explained by the principle of non-retroactivity of criminal law, which means that criminal law does not apply to events that occurred before the adoption of the relevant law that provides for punishment for certain acts or omissions.

Given the brief description of the content and features of war crimes as a category of international crimes, it can be assumed that they are relatively easy to qualify as such, since:

- 1) they are committed by the parties in the context of an international armed conflict (by Russia against Ukraine during the full-scale war);
- 2) they have clear criteria and requirements to be recognised as such, thus simplifying the task of documenting and collecting evidence of war crimes committed;
- 3) the threshold of the evidence base is much lower than for the crime of genocide;
- 4) there is no criterion of special intent, continuity of the crime, etc.;
- 5) war crimes are a more obvious and less politicised category.

1.2. Activities and position of international institutions and bodies

Two separate international institutions are involved in collecting evidence and qualifying Russia's crimes against Ukraine as war crimes, namely the **Independent International Commission of Inquiry on Ukraine** (hereinafter referred to as the Commission), established by the UN Human Rights Council on 4 March 2022, and the **ICC Prosecutor**, who launched an investigation into Russia's grave crimes against Ukraine on 2 March 2022.²⁴

²⁴ Delivering Justice for War Crimes in Ukraine // Human Rights Watch.

The Commission's mandate under resolution 49/1 provides for the following powers:

- 1) to investigate all alleged violations of human rights and international humanitarian law, as well as other crimes in the context of russia's aggression against Ukraine, and to establish facts, circumstances and root causes of such violations;
- 2) to collect, consolidate and analyse evidence of such violations, including the systematic collection and storage of information, documents and evidence;
- 3) to document and confirm relevant information and evidence, including by visiting the scene and cooperating with judicial or other institutions;
- 4) to identify, where possible, the perpetrators of crimes violating human rights or international humanitarian law;
- 5) to make recommendations, including on taking the necessary measures to bring the perpetrators to justice.²⁵

Although the Commission's mandate was due to expire in 2023, a year after its establishment, it was extended for another year by the adoption of resolution 52/32.

The Commission published its First Report to the UN General Assembly on 18 October 2022, describing the information and evidence it had collected between February and March 2022. This report was based on events in four oblasts, namely Kyiv, Chernihiv, Kharkiv and Sumy Oblasts. The main contribution of the report was the conclusion that russia had committed war crimes, massive human rights violations and violations of international humanitarian law against Ukraine.²⁶

The report itself covers issues such as the Commission's mandate, its cooperation with Ukrainian authorities and other UN bodies, and the history of the conflict. The Commission also describes different categories of crimes committed by russia against Ukraine that constitute violations of international humanitarian law and, therefore, are war crimes.

First, the Commission draws attention to the indiscriminate use of explosive weapons (cluster munitions, unguided missiles and airstrikes) by russia in densely populated areas, which has resulted in the death and injury of a large number of civilians and the damage and destruction of a significant number of civilian infrastructure facilities. The Commission emphasised that such attacks violated the principle of distinction and proportionality, as civilians were targeted and the consequences were too severe, as residential buildings, schools and hospitals were destroyed.

Second, the Commission documented cases in which the russian armed forces fired at civilians attempting to evacuate and used their force in a manner that directly endangered the civilian population in violation of international humanitarian law.

Third, the Commission documented cases of mass executions, illegal detention, torture, ill-treatment, rape and other forms of sexual violence (even children were victims) committed by the russian armed forces against Ukraine (in the above-mentioned four regions).

²⁵ Independent International Commission of Inquiry on Ukraine // United Nations Human Rights Council.

²⁶ A/77/533: Independent International Commission of Inquiry on Ukraine – Note by the Secretary-General.

Cases of illegal detention, illegal deportation to the territory of russia and disappearances were also documented. The Commission also noted the negative and devastating impact of russia's crimes on Ukrainian children, who, having been subjected to physical violence, torture, sexual abuse, etc., must deal with these long-term psychological traumas and learn to live in new realities. As a result, the Commission made recommendations for further cooperation between international institutions and national authorities to improve the effectiveness of the investigation and prevent harm to victims and witnesses.²⁷

The Commission published the Second Report to the UN Human Rights Council on 16 March 2023. The Commission noted that it had made eight trips to Ukraine, visited 56 settlements and interviewed Ukrainian refugees in Georgia and Estonia. The Commission also highlighted the devastating consequences of the war for the civilian population, as, according to information provided by the UN High Commissioner for Human Rights, 8,006 Ukrainian civilians were killed and another 13,287 were injured during the year.

The Commission found that russia had violated a number of provisions of international humanitarian and human rights law and that these violations together constituted war crimes.

War crimes documented by the Commission include the following:

- 1) intentional killings;
- 2) attacks on civilians;
- 3) causing an excessive number of incidental deaths;
- 4) inhuman treatment;
- 5) unlawful deprivation of liberty;
- 6) torture;
- 7) rape;
- 8) forced transfers and deportations of children.²⁸

The Commission has again documented russia's indiscriminate and disproportionate use of explosive weapons, which have been used to attack densely populated cities and areas. Separately, the Commission noted russia's systematic attacks on Ukraine's energy infrastructure and torture, which may constitute a second category of international crimes, in particular, crimes against humanity.²⁹

In fact, in its second report, the Commission confirmed and reiterated all of russia's war crimes against Ukraine documented in the first report, with the only difference being that they became larger, more systematic, and indiscriminate and eventually turned into crimes against humanity.

The Commission also provided a fairly extensive list of recommendations to both sides of the conflict and to russia in particular. However, these recommendations are purely declarative, so any call to the

²⁷ The First Report of the Commission.

²⁸ The Second Report of the Commission.

²⁹ Ibid.

aggressor to comply with international law, respect for the civilian population, and cooperation with international bodies is, of course, ineffective and inefficient (an example of such inefficiency is the disrupted agreements on the provision of a green corridor for the evacuation of civilians from front-line zones (shooting of cars with civilians and preventing representatives of non-governmental and humanitarian organisations), disrupted grain export agreements (rocket attacks on the port resulting in damage to ships), etc.).

In its meeting document of 29 August 2023, the Commission provided a full report to confirm and clarify its previous report to the Council. It contains details and evidence of crimes committed by Russia against Ukraine, describing individual cases and elaborating on the issues of accountability. Furthermore, the Commission examined the background of the full-scale war (since 2014) and the violations of international humanitarian law by Ukraine.³⁰

The Commission published its third report to the UN General Assembly on 20 October 2023. The Commission stressed in this report that the war has been going on for two years and that it is causing an increasing number of civilian casualties that cannot even be accurately calculated. The Commission also noted that it had found new evidence of violations of international humanitarian and international human rights law, which together constitute war crimes. So, the Commission documented indiscriminate attacks by Russia that resulted in the deaths and injuries of the civilian population and the damage and destruction of civilian objects. In addition, as in previous reports, the Commission found that Russia continued to commit the following war crimes: intentional killings, torture, rape and other forms of sexual violence, deportation of children to Russia, illegal detention and unlawful deprivation of liberty. In this report, the Commission provides more detail, describing case by case the indiscriminate and disproportionate use of explosive weapons by Russia and the sexual violence and related war crimes that were committed in the course of such crimes.³¹

The Commission paid special attention to the issue of the deportation of children to Russia. However, it is worth noting that this category of crimes was described in the context of war crimes and crimes against humanity, without mentioning the crime of genocide. This approach is quite predictable, but at the same time interesting, since the deportation of children and their separation from their parents is a direct component of the crime of genocide.

To summarise, it should be taken into account that the Commission continues to monitor the situation in Ukraine on a regular basis, directly visiting the scenes, conducting interviews, documenting evidence of crimes and qualifying them to establish what category of crimes Russia is committing against Ukraine.

³⁰ Conference room paper of the Independent International Commission of Inquiry on Ukraine.

³¹ The Third Report of the Commission.

The Commission has documented the crimes in detail, collected information from witnesses and victims, provided its assessment of the events, and published reports that are available to the public. However, it should be taken into account that the **Commission does not have access to territory or information from russia, as the latter refuses to cooperate, provide case files or allow any presence of monitors.** This factor is an obstacle to the Commission's work, as its reports are incomplete, and the real assessments of the consequences of russia's armed aggression against Ukraine are inaccurate and sometimes far from the truth. In addition, it is worth noting that despite the detailed documentation of crimes, the Commission provides rather generalised recommendations (which are manifested in general wording, such as: "The Commission recommends that the russian federation immediately cease its aggression and all acts of violence committed against the civilian population in violation of applicable international human rights and humanitarian law, and cease the use of torture, sexual and gender-based violence and other forms of ill-treatment,"³² which is an obvious requirement for the aggressor state, but does not provide any mechanisms for achieving it), which not only do not reflect the realities of the armed conflict but also do not encourage any of the effective ways to end it, resolve it and bring the perpetrators to justice.

As noted above, in addition to the Commission, the **ICC Prosecutor** is also investigating russia's crimes against Ukraine. First of all, it is worth recalling that the **ICC is a special international judicial institution** because:

- 1) it is the only permanent international criminal court;
- 2) although the ICC considers disputes between states (like the ICJ), it is based on the principle of individual liability, i.e., it is not the state that will be held liable, but the specific individuals who are guilty of planning, implementing or committing international crimes;
- 3) its jurisdiction extends exclusively to four categories of international crimes (the most serious crimes against human rights), namely: the crime of genocide, war crimes, crimes against humanity and the crime of aggression (and only in respect of crimes committed after 2002 – from the date of entry into force of the Rome Statute, i.e., the principle of non-retroactivity applies here);
- 4) the Court's jurisdiction is quite unique, as it can only extend to cases where: a) the crimes were committed by a state party to the Rome Statute, on the territory of a state party or on the territory of a state that has accepted the jurisdiction of the Court; b) in accordance with a resolution adopted under Chapter 7 of the UN Charter, the case was referred to the ICC Prosecutor on behalf of the UN Security Council (hereinafter referred to as the UNSC);
- 5) the principle of complementarity applies, i.e. the existence of the ICC is not intended to replace the national judicial system, but only to supplement it (the ICC intervenes by initiating an investigation only if the state refuses to investigate the case in good faith or has no real opportunity to conduct such an investigation);
- 6) the ICC does not have a police or enforcement agency within its structure, so it must work closely with states and their national structures to make arrests, detain people, freeze assets and accounts, etc.³³

³² The Third Report of the Commission.

³³ ICC's work.

Since 17 July 2018, in accordance with Section 7 of the UN Charter, the UN Security Council may refer a case of an act of aggression to the ICC Prosecutor. In the case of an act of aggression, the case may be referred regardless of whether the state is a party to the Rome Statute (or has ratified it).³⁴

Ukraine ratified the Rome Statute only on August 21, 2024, although before that Ukraine twice accepted the jurisdiction of the Court under Article 12(3) of the Statute over crimes committed on its territory. The first declaration of acceptance of the Court's jurisdiction concerned events on Ukraine's territory from 21 November 2013 to 22 February 2014. The second declaration concerned the extension of the time limits of the first declaration for an indefinite period to cover all crimes committed by Russia on the territory of Ukraine from 20 February 2014.

The next step for Ukraine was the **ICC Prosecutor's decision of 28 February 2022** to take the necessary steps to obtain the authority to open an investigation into the "situation" in Ukraine. This decision was dictated by a preliminary opinion based on a preliminary expert examination of the events in Ukraine. Thus, on 1 March 2022, the Republic of Lithuania filed the first application to the Court regarding the situation in Ukraine. After that, the Court received a joint application on behalf of a group of states. A total of 43 states have filed applications with the Court.

Following the states' applications, the **ICC Prosecutor opened an investigation into the situation in Ukraine as early as 2 March 2022**. Thus, in accordance with the existing jurisdiction, the scope of the situation in Ukraine includes any past or present allegations of war crimes, crimes against humanity or the crime of genocide committed in any part of Ukraine's territory by any person since 21 November 2013.

A year later, **on 17 March 2023, the ICC Pre-Trial Chamber II issued two arrest warrants:** for the President of the Russian Federation, Vladimir Putin and the Russian Children's Ombudsman, Maria Lvova-Belova. The decision to issue the warrants was dictated by the existence of sufficient evidence to suggest that the suspects were directly responsible for the commission of a war crime, in particular the **illegal deportation of the population (children) and the illegal transfer of the population (children) from the occupied territories of Ukraine to the territory of Russia.**

In its annual report for 2023 to the UN General Assembly, the ICC provided information on the issuance of two arrest warrants and noted that it continued to investigate and was actively present in Ukraine and the relevant region. However, apart from this information, no other data is in the public domain.

Despite the issuance of arrest warrants, the detention of these individuals may take years, or they may not be detained at all. This problem has arisen because the ICC does not have a mechanism for detaining and transferring criminals to the Court. In terms of arrest, the ICC relies on the state parties to the Rome Statute, which must arrest Putin and Lvova-Belova if the opportunity arises. However, even if state parties to the Statute are willing to cooperate and assist the ICC in arresting these individuals, the question of Putin's personal immunity as head of state arises. In addition, it is practically difficult to arrest a head of state while he is on the territory of his own state, as his immunity is in force there. If the ICC had a mechanism to prosecute and detain suspects and criminals, it could do so despite the immunity of the head of state. However, state parties to the Statute do not have the

³⁴ ICC's work.

authority to violate the immunity of the head of state of another state, so detention is possible only if the head of state travels to the territory of another state (in addition, he must travel to the territory of a state cooperating with the ICC). Therefore, since the ICC itself cannot arrest, and other states may not be able or willing to assist the ICC in this, arrest warrants may remain an unrealised step.³⁵ Another serious problem in the context of the ICC's effectiveness is the speed of case consideration and the frequent reclassification of cases into "simpler" categories of crimes.

In this regard, experts are increasingly discussing the establishment of an ad hoc criminal tribunal that would have jurisdiction over all four categories of international crimes and would be endowed with a real mechanism for prosecution, detention, interrogation and prosecution.

In the context of establishing an ad hoc tribunal, an important point is that there are grounds to assert, in accordance with Philippe Sands's position, that Karim Khan (ICC Prosecutor) and other ICC judges are deliberately blocking both the work of the Court and the process of establishing an ad hoc international criminal tribunal solely because of their own interests and struggle for spheres of influence. During the International Conference on the Special Tribunal for the crime of aggression against Ukraine held in London in February 2024, Philippe Sands³⁶ noted that the ICC was actually blocking the idea of establishing the tribunal only because of the fear of losing power and influence of its institution, that the tribunal would take over certain powers, and the ICC would not have the power it had now.

However, the ICC already has limited powers, or rather jurisdiction, as it cannot consider a case of a crime of aggression committed by Russia since it has not ratified the Rome Statute. That is why the ICC has issued arrest warrants on charges of illegal deportation and illegal transfer of children from Ukraine to Russia.³⁷

Therefore, in view of the above, regardless of the specific function, jurisdiction or powers of international institutions or specially created bodies, they come to the same conclusion: from 24 February 2022 to the present day, Russia has systematically committed war crimes against Ukraine, violating international humanitarian law, international human rights law and customary international law. These violations are expressed in disproportionate and indiscriminate attacks on the civilian population and civilian infrastructure, torture, sexual violence, etc. In other words, there is no question for the international community of whether Russia is committing war crimes against Ukraine. Instead, the current questions are what kind of crimes are being committed (from the list of acts constituting war crimes under Article 8 of the Rome Statute), how many of them are being committed, and with what consequences. This situation shows that there is no resistance from the international community to recognise the actual commission of war crimes.

³⁵ Putin's Arrest Warrant, Immunity and the International Criminal Court // Research Society of International Law.

³⁶ Philippe Sands is a practising barrister at Matrix, Director of the Centre on International Courts and Tribunals, Queen's Counsel, and Professor of Law.

³⁷ ICC «turf war» blocking Ukrainian bid to have top Russians tried, advocate says.

In addition to the Commission and the ICC Prosecutor, a number of non-governmental organisations and foreign governments are also dealing with the issue of war crimes, conducting their own investigations and providing assessments of events. For example, the Congressional Research Service's report "War Crimes in Ukraine," prepared for the U.S. Congress, provides a compilation of all available data and analysis of crimes committed by russia against Ukraine.

The report reiterates that as of 29 September 2023, 108,904 potential war crimes committed by russia were recorded. It also states that committing war crimes is not a new tactic or accusation against the russian federation, as it has a clear scenario that is repeated from conflict to conflict, particularly in the context of the conflict in Chechnya, support for the Assad regime in Syria, aggression in Georgia and others.

The report also highlights that tens of thousands of Ukrainians have been killed or injured as a result of the armed conflict and that the economic and humanitarian situation has deteriorated significantly, with the armed hostilities leading to numerous war crimes. The report also notes that the U.S. government has accused russia of committing war crimes and that in a speech on 18 February 2023, Secretary of State Antony Blinken said that based on a detailed analysis and the facts presented, it had been determined that **russian military personnel had committed crimes against humanity in Ukraine**, in addition, the facts of indiscriminate and mass killings of civilians, rape and other forms of sexual violence, deliberate attacks aimed at civilians, bombing of civilian objects and infrastructure, forced filtration of civilians from the occupied territories, etc. were confirmed.³⁸

The report provides a clear list of evidence pointing to the commission of war crimes by russia against Ukraine, including:

- 1) mass graves of civilians and prisoners in the liberated territories (Bucha, Irpin, Iziium, Lyman, Kher-son and Mariupol), which indicates mass killings of civilians (including execution by shooting);
- 2) revenge for battlefield losses, which was directed at civilians (indiscriminate and disproportionate missile attacks on civilians and infrastructure);
- 3) killings of civilians, unlawful detentions, enforced disappearances, interrogations and repressions;
- 4) establishment of filtration camps where Ukrainian civilians (including children) are interrogated and forcibly relocated to other regions;
- 5) sexual violence;
- 6) abduction of children;
- 7) torture of prisoners;
- 8) air strikes on civilian objects.

³⁸ War Crimes in Ukraine // Congressional Research Service.

1.3. VRU's legislative activity and parliamentary diplomacy

Since the first days of the war, the Verkhovna Rada of Ukraine has been actively developing and preparing regulatory legal acts to criminalise those acts that were not included in the Criminal Code. In particular, statements and addresses to foreign states and international organisations contained requests to recognise the commission of various categories of crimes by Russia against Ukraine and to provide assistance in collecting evidence, prosecuting and bringing to justice those responsible for the commission of international crimes.

Between 24 February 2022 and 22 February 2024, at least 47 legislative initiatives were registered in the Verkhovna Rada of Ukraine (see Annex 2), including 10 statements and 27 addresses. The rest are draft laws and resolutions proposing that the Verkhovna Rada adopt a decision to condemn and toughen the punishment for such crimes during illegal armed aggression.

The Law of Ukraine “On Amending Certain Legislative Acts of Ukraine on the Implementation of International Criminal and Humanitarian Law” (draft law of 27 December 2019, registration No. 2689)

Before the outbreak of the war, on 20 May 2021, the Parliament of Ukraine adopted the Law of Ukraine “On Amending Certain Legislative Acts of Ukraine on the Implementation of International Criminal and Humanitarian Law” (draft law No. 2689 of 27 December 2019). However, despite the adoption of this Law and its submission to the President of Ukraine for signature on 7 June 2021, the President has not yet signed it, so it has not entered into force.

The changes proposed by this Law are strategically important:

- 1) it is proposed to supplement Article 8 of the Criminal Code of Ukraine with a new part 2, which introduces the principle of universal jurisdiction over aggression, genocide, crimes against humanity and war crimes;
- 2) it is proposed to add Article 31-1, which stipulates the specifics of the criminal liability of military commanders, other persons who actually act as military commanders, and other commanders for relevant international crimes.³⁹

³⁹ The Law of Ukraine “On Amendments to Certain Laws of Ukraine as Regards the Implementation of the Provisions of the International Criminal and Humanitarian Law” (draft law of 27 December 2019, registration No. 2689).

The Law also amends the following Articles: 44 (Legal grounds and procedure for exemption from criminal liability), 49 (Exemption from criminal liability due to expiration of the statutory limitations), 68 (Sentencing for unfinished crimes and crimes committed in complicity), 69 (Sentencing for lesser penalty than provided by law), 74 (Exemption from punishment and serving of punishment), 80 (Exemption from serving a sentence due to expiration of the statutory limitations for the execution of a guilty verdict) of the Criminal Code for the establishment of rules on the specifics of criminal liability for aggression, genocide, crimes against humanity and war crimes, 437 (amended in a wording consistent with the wording of the Rome Statute on the crime of aggression).

This Law also proposes amendments to Article 438 of the CC Ukraine. Currently, the text of Article 438 in force reads as follows:

“ 1. Cruel treatment of prisoners of war or civilians, deportation of civilian population to engage them in forced labour, pillage of national treasures on occupied territories, use of methods of warfare prohibited by international instruments, or any other violations of rules of the warfare stipulated by international treaties, ratified by the Verkhovna Rada of Ukraine, and also issuing an order to commit any such actions, shall be punishable by imprisonment for a term of eight to twelve years.”⁴⁰ ”

The current wording of the article raises many questions and discussions in legal circles, as it is too generalised, lacking details and actually borrowed from Russian legislation, which lacks any specifics to avoid unfavourable consequences. This article should have been amended back in 2014, but this has not happened in the 10 years of war.

The problems with the text of this article are the lack of:

- 1) a clear definition of war crimes and a list of acts that constitute them;
- 2) the objective side of the crime;
- 3) the specifics of qualification and investigation of crimes;
- 4) a reference to an exhaustive list of international legal treaties that are the source and may be referred to by public authorities in dealing with war crimes (prosecutors, courts);
- 5) references to customary international law;
- 6) the element of “methods of warfare,” since the article provides only for “means of warfare” (in the context of the current international armed conflict, it is necessary to enshrine both

⁴⁰ Criminal Code of Ukraine, Article 438.

elements – “means” and “methods,” since the aggressor state violates both the rules on the use of prohibited weapons and the rules on the use of prohibited tactics and strategies that violate the principles of proportionality, selectivity and distinction, causing excessive suffering, etc);

- 7) clarification of the wording “other violations of the laws and customs of war”, which leaves another gap.

Unfortunately, the absence of unambiguous answers to all the questions posed by the text of Article 438 does not contribute to the effective criminal prosecution of international crimes.

Instead, the Law of Ukraine “On Amending Certain Legislative Acts of Ukraine on the Implementation of International Criminal and Humanitarian Law” (draft law of 27 December 2019, registration No. 2689) proposes to amend this article in a new wording, providing that:

- 1) establishing the conditions under which committed acts are recognized as war crimes: “in connection with an international armed conflict or an armed conflict of a non-international nature”;
- 2) establishing a clear list of acts constituting war crimes, in particular:
 - a) transferring the civilian population of the occupying state to the occupied territory;
 - b) transferring the population of the occupied territory both within and outside this territory;
 - c) forcing a prisoner of war to serve in the armed forces of the opposing party to the conflict;
 - d) forcing citizens of the opposing party to the conflict to participate in hostilities against their own country;
 - e) unreasonable delay in the repatriation of a prisoner of war after the end of hostilities;
- 3) establishing a list of acts committed against the civilian population and persons protected by international humanitarian law as criminally punishable, in particular:
 - a) deportation of the population;
 - b) forced displacement of the population;
 - c) recruitment or involvement of a person under 15 years of age in the armed forces or other state military formations;
 - d) deprivation of the right to fair and proper legal proceedings;
 - e) acts that violate human dignity;
 - f) seizure or holding a person hostage;
 - g) illegal deprivation of liberty;
 - h) rape, sexual exploitation, forced pregnancy, forced sterilisation or any other form of sexual violence;
 - i) torture or other inhuman treatment (including any kind of experiments on a person, use of illegal methods of treatment, illegal removal of anatomical materials from a person for the purpose of transplantation or blood for the purpose of donation);
 - j) causing medium or grievous bodily harm;
 - k) injury to a person;
- 4) punishability of the intentional killing of a person protected by international humanitarian law.⁴¹

⁴¹ The Law of Ukraine “On Amendments to Certain Laws of Ukraine as Regards the Implementation of the Provisions of the International Criminal and Humanitarian Law” (draft law of 27 December 2019, registration No. 2689).

Another important contribution of the Law is adding Article 438² (War crimes involving the use of prohibited methods of warfare) and Article 438³ (War crimes involving the use of prohibited means of warfare) to the CC Ukraine. Such a distinction should solve the problem of the current wording of Article 438, which does not mention methods of warfare at all and does not specify the means in any way.⁴² In addition, in the context of the current norms of international humanitarian law, it is expedient and appropriate to supplement the CC Ukraine with Article 438⁴ (War crimes against humanitarian operations and the use of symbols) and Article 438⁵ (War crimes against cultural property protected by international humanitarian law).

If the President signs this law, national legislation would be brought in line with international law, which would resolve a number of issues. For example, the list of acts constituting war crimes will be expanded from a short list to a more comprehensive one, which is the international standard. Such an expansion of the list will be beneficial in the context of qualifying a wider range of Russia's acts as war crimes committed against Ukraine. In addition to the standard list of acts covering crimes against civilians and combatants, the list will include acts aimed at undermining humanitarian operations and the destruction or damage to cultural property. If these rules are harmonised with international legal norms, the work of the Ukrainian judiciary will be greatly facilitated, and their jurisdiction will be expanded.

The explanatory note to the draft law of 27 December 2019, registration No. 2689, also provided justification for the need to amend Article 438, citing the following arguments:

- 1) the current wording of the article violates the principle of legal certainty, namely because Ukraine has not submitted an official translation of Geneva Conventions to the depositary of Geneva Conventions;
- 2) the current wording of the article does not contain any reference to customary international law, which is the main source of international humanitarian law;
- 3) the main source and reference point in the context of war crimes is the Rome Statute, but Ukraine has not ratified it (this was the argument as of 2019, when the draft Law was being developed; at the same time, on August 21, 2024, the Verkhovna Rada nevertheless ratified this act);
- 4) the content of Article 438 is too broad due to the wording "other violations of the laws or customs of war."⁴³

According to the review of draft law No. 2689 by the Ukrainian Women Lawyers Association "JurFem," the current national legislation is not sufficient for a quality investigation or for the national judicial system to qualify war crimes and crimes against humanity as international crimes without statutory limitations. In addition, the review emphasises that the President of Ukraine's signing of the adopted law is urgent and a priority task in the context of saving prisoners' lives, bringing perpetrators of crimes to justice and creating a conditional "fuse" for the armed forces of the aggressor state.⁴⁴

As early as 5 April 2022, 26 NGOs published an address to the President of Ukraine calling on him to sign the law adopted by the Verkhovna Rada of Ukraine. So, the Ukrainian Helsinki Human

⁴² The Law of Ukraine "On Amendments to Certain Laws of Ukraine as Regards the Implementation of the Provisions of the International Criminal and Humanitarian Law" (draft law of 27 December 2019, registration No. 2689).

⁴³ The explanatory note to the draft Law of Ukraine "On Amending Certain Legislative Acts of Ukraine on the Implementation of International Criminal and Humanitarian Law" // Liga Zakon.

⁴⁴ Review of draft law 2689, which provides criminal responsibility for war crimes in Ukraine // JURFEM.

Rights Union criticised the current criminal legislation of Ukraine, noting: “War crimes are so poorly formulated that it is almost impossible to apply this qualification in practice.”⁴⁵ The UHHRU also stressed the need to adopt amendments, as the proposed Law could bridge the existing gaps.

The **Amnesty International High-Level Secretary General Mission to Ukraine** also pointed out the same gaps in national legislation with reference to the Criminal Code. For example, in its mission report of 20 May 2022, AI noted that the Criminal Code did not contain war crimes and crimes against humanity and that draft Law No. 2689, providing for the introduction of crimes of aggression, genocide, crimes against humanity, and war crimes to the Criminal Code, as well as amendments to the Criminal Procedure Code, could solve this problem.⁴⁶

Therefore, in the context of the international armed conflict that has been going on for more than two years, **it is particularly important to adopt amendments to the CC Ukraine**, especially in the terms of Article 438, and other amendments to criminal law to legally enshrine and regulate war crimes, which are currently the largest category of crimes committed by russia. Without proper legislative consolidation, it will be difficult not only to qualify which acts fall into this category and what the liability of the perpetrators should be, but also to apply this rule in the context of court proceedings since the maximum certainty and clarity of the legal norm are required for the consideration of a case.

VRU statements and addresses

At its first plenary session since the beginning of the international armed conflict, held on 3 March 2022, the Parliament welcomed the adoption of the **UN General Assembly Resolution Aggression against Ukraine**, which was passed on 2 March by more than two-thirds of the UN member states. On behalf of the Ukrainian people, the Parliament expressed deep gratitude to the UN member states that supported this resolution and Ukraine.

At the same meeting, the Verkhovna Rada of Ukraine discussed and adopted for the first time an **act condemning russia’s war crimes against Ukraine and the Ukrainian people**. The draft Resolution No. 7123 was based on the theses of russia’s breaches of international law, international conventions and international humanitarian law in particular. In connection with these blatant, large-scale and consistent breaches of international law, the VRU prepared an address to the international community to immediately introduce a no-fly zone on the territory of Ukraine, to immediately open humanitarian green corridors for the safe evacuation of women, children and the elderly and to guarantee their safety in direct cooperation with the International Committee of the Red Cross, and to deploy UN peacekeeping forces in Ukraine.⁴⁷ The relevant Resolution was adopted on the same day and signed by the Chair of the Verkhovna Rada the next day.

The importance of such addresses and statements by the Parliament is that they are adopted by the Verkhovna Rada of Ukraine on behalf of the Ukrainian people to timely inform the international

⁴⁵ Zelenskyy should immediately sign the law on war criminals, reg. No. 2689, in response to the atrocities committed by the russian army in Bucha. Address of NGOs // Ukrainian Helsinki Human Rights Union.

⁴⁶ AI High-Level Secretary General Mission to Ukraine. Statement on the results of the mission // Amnesty International.

⁴⁷ Draft Resolution on the Address of the Verkhovna Rada of Ukraine to the United Nations, the United Nations High Commissioner for Refugees, the International Committee of the Red Cross, the European Parliament, international organisations and their parliamentary assemblies, national parliaments and governments of the world on the urgent need to protect Ukraine’s civilian population from armed attacks by russian invaders.

community about facts of crimes committed by Russia against Ukraine, to legally define the scope and types of these crimes, and to officially request foreign governments and international organisations to facilitate and assist in the prosecution and holding of perpetrators of such crimes accountable.

The Law of Ukraine “On Amending the Criminal Procedure Code of Ukraine on Cooperation with the International Criminal Court”

One of the important steps taken by the VRU in the context of strengthening Ukraine’s legal position as a party to the international armed conflict was the vote for the **Law of Ukraine “On Amending the Criminal Procedure Code of Ukraine on Cooperation with the International Criminal Court.”** The law launched the mechanism of cooperation between Ukraine’s competent authorities and the International Criminal Court, providing for all aspects of such cooperation, interaction, and subordination between the ICC and national authorities. By adopting this Law, **Ukraine enabled the ICC to carry out criminal-procedural actions on the territory of Ukraine,** despite the lack of ratification of the Rome Statute by Ukraine (despite the lack of an act of ratification of the Rome Statute until August 21, 2024).

This is a positive step in terms of the possibility of investigating crimes committed by Russia in the context of the international armed conflict, but there are also nuances that have been highlighted by the AI High-Level Secretary General Mission to Ukraine. In particular, the law did not mention the ratification of the Rome Statute, which reduced the activities and jurisdiction of the ICC in Ukraine exclusively to the crime of Russia’s armed aggression against Ukraine.

Thus, this Law is a step forward in the context of cooperation with the ICC but, again, did not reflect any progress or intention to achieve changes in the context of ratifying the Rome Statute.

Parliamentary diplomacy

An important factor in the activities of the Parliament of Ukraine during the period of martial law was the formation of an international and inter-parliamentary coalition to prosecute the aggressor country and its armed forces for war crimes, crimes against humanity and genocide.

Active parliamentary diplomacy in this area developed in several directions:

1. Adoption of resolutions on addresses to foreign parliaments and international organisations to call for recognition of the fact that Russia has committed war crimes, crimes against humanity and genocide against Ukraine and to provide maximum assistance.
2. Visits of high-ranking foreign guests to the Parliament of Ukraine to support Ukraine.
3. Activities within special formats: parliamentary assemblies, permanent delegations, friendship groups and others.

Thus, **the first type** of parliamentary diplomacy in the context of international crimes committed by Russia against Ukraine includes:

- Resolution on the Address of the Verkhovna Rada of Ukraine to the House of Representatives and the Senate of the United States Congress on the Recognition of the Russian Federation as a State Sponsor of Terrorism.

- Address of the Verkhovna Rada of Ukraine to the United Nations General Assembly, the United Nations Environment Programme, the European Parliament, the European Commission, parliaments and governments of member states of the United Nations General Assembly on the establishment of a special environmental monitoring mission to record the environmental damage caused by the armed aggression of the Russian Federation on the territory of Ukraine (adopted by the Resolution of the Verkhovna Rada of Ukraine No. 2594-IX on 20 September 2022). This Address emphasised that the international armed conflict was accompanied by war crimes and crimes against humanity, acts of genocide unprecedented in their cruelty, the scale and seriousness of which threatened not only the Ukrainian people directly but also the environment of the whole of Europe.⁴⁸
- Address to the United Nations, institutions of the Council of Europe, the European Union, the Organisation for Security and Co-operation in Europe, the International Committee of the Red Cross, parliaments and governments of foreign countries regarding the violation of international humanitarian law by the Russian Federation and the de facto occupation authorities controlled by it in relation to Ukrainian prisoners of war. **This Address actually condemns and describes in detail Russia's war crimes**, calling on the addressees to condemn and prevent the establishment of a military tribunal for Ukrainian prisoners of war (in particular, for the Azov Regiment). According to the Parliament of Ukraine, such a tribunal is absolutely unlawful, as it violates the rights of prisoners of war and contradicts the provisions of Geneva Conventions and customary international law. In addition, the Address condemns violations of international humanitarian law and obligations to the UN and the International Committee of the Red Cross regarding prisoners of war.⁴⁹

The second type of parliamentary diplomacy includes a plenary session held on 24 March 2022 with the participation of the following high-ranking guests: Speaker of the Saeima of the Republic of Latvia Ms Ināra Mūrniece, Speaker of the Seimas of the Republic of Lithuania Ms Viktorija Čmilytė-Nielsen and President of the Riigikogu of the Republic of Estonia Mr Jüri Ratas.

Regarding support for Ukraine and public condemnation of Russia's actions and their qualification as international crimes, Viktorija Čmilytė-Nielsen said: "Ukraine made its choice in a democratic way. This cannot be questioned. And when the aggressor puts forward ultimatums against such a country, it is not just an anachronism, a grave and dangerous thing for our history, it is also a breach of international law, a crime."

On 1 April 2022, President of the European Parliament Roberta Metsola addressed the Ukrainian MPs and reminded them in her speech that Russia was committing crimes against Ukraine, such as shelling maternity hospitals and children, and noted that they were a clear breach of international law. The importance of this speech within the international dimension is that the President of the European Parliament actually represents the European Union, giving a clear course to all member states and defining their position on Russia's crimes. Moreover, a domino effect is often triggered in such situations, and states begin to support the position of other states, following the stronger ones.

⁴⁸ Resolution of the Verkhovna Rada of Ukraine "On the Address of the Verkhovna Rada of Ukraine to the United Nations General Assembly, the United Nations Environment Programme, the European Parliament, the European Commission, parliaments and governments of member states of the United Nations General Assembly on the establishment of a special environmental monitoring mission to record the environmental damage caused by the armed aggression of the Russian Federation on the territory of Ukraine."

⁴⁹ Resolution of the Verkhovna Rada of Ukraine "On the Address of the Verkhovna Rada of Ukraine to the United Nations, the institutions of the Council of Europe, the European Union, the Organisation for Security and Co-operation in Europe, the International Committee of the Red Cross, parliaments and governments of foreign countries regarding the violation of international humanitarian law by the Russian Federation and the de facto occupation authorities controlled by it in relation to Ukraine's prisoners of war."

On 14 April 2022, Marshal of the Senate of the Republic of Poland Tomasz Grodzki addressed the Parliament and, for the first time on behalf of the international community, stated in his speech:

“ Russian imperial chauvinism led to the crime of genocide. I am speaking about this purposefully because some people are very carefully analysing whether russian crimes in Mariupol, Bucha, Kharkiv and dozens of other cities are simply war crimes or genocide. Ukrainian civilians are being killed just because they are Ukrainians. If this is not genocide, then what is genocide? ”

This statement was the first time that a representative of a foreign state used the term “crime of genocide” in relation to russia’s crimes against Ukraine. The cause-and-effect relationship has not been established, but after that, starting in mid-April 2022, the parliaments of other foreign countries began to gradually recognise russia’s crimes as genocide.

On 3 May 2022, Boris Johnson, Prime Minister of the United Kingdom of Great Britain and Northern Ireland, participated in the plenary session via video link. In his address to the Parliament of Ukraine, Boris Johnson stressed that russian soldiers were committing atrocities, the consequences of which we are seeing after the liberation of Bucha, Irpin and Hostomel, and that these atrocities constituted war crimes for which the aggressor country must be held fully accountable.

In addition, representatives of foreign countries, the European Union and international organisations continue to visit Ukraine to document crimes, witness the consequences of aggression, communicate on possible formats of cooperation, etc.

On 30 January 2023, Chair of the Verkhovna Rada Committee on Foreign Policy and Interparliamentary Cooperation Oleksandr Merezhko, Chair of the Committee on Foreign Affairs of the European Parliament and chairs of the foreign affairs committees of the parliaments of Belgium, Bulgaria, Denmark, Estonia, Ireland, Spain, Latvia, Lithuania, the Netherlands, Germany, Norway, Poland, Slovenia, UK, Finland, Croatia, Czech Republic and Sweden issued a Joint Statement on the need to bring russia to justice for its crimes in Ukraine. This statement actually calls for support for Ukraine and its people, assistance in the ICC’s investigations into war crimes and crimes against humanity, and the establishment of a special international tribunal to punish russia for the crime of aggression.

Finally, the third type of parliamentary diplomacy includes the activities of the Parliamentary Summit of the International Crimea Platform. This summit was initially launched by the President of Ukraine, and during the war, the parliamentary dimension of the platform was formed, with representatives of the Parliament actively participating in it. The main purpose of the Crimea Platform and its Parliamentary Summit is to promote international and inter-parliamentary efforts of states to coordinate Ukraine’s efforts to restore its territorial sovereignty and develop ways to de-occupy Crimea.

Thus, the First Summit held on 25 October 2022 in Zagreb was attended by the Chair of the VRU, who addressed international partners with a speech calling for increased international efforts to

de-occupy the Crimean Peninsula and return it to Ukraine's jurisdiction. In addition, the Chair of the VRU noted the significant contribution of the Parliamentary Assembly of the Council of Europe, whose President was present at the event, as it was the first international organisation to recognise russia as a terrorist state.⁵⁰

An important aspect of the Parliament's activities in the framework of this summit is building strong ties with foreign parliaments to work on the de-occupation of Crimea and end russia's aggression against Ukraine. For example, as part of these efforts, the parliaments of Lithuania, Latvia and the NATO Parliamentary Assembly have established Crimea Platform support groups within their structures. Thus, one of the priorities of the Ukrainian Parliament is to work to ensure that parliaments of other foreign countries create similar groups.

The **Second Parliamentary Summit of the International Crimea Platform** was held in Czechia on 24 October 2023, attended by 69 parliamentary delegations from around the world.⁵¹ As part of this summit, cooperation with the countries of the Global South became the main area of work for the Parliament of Ukraine. This priority is explained by the fact that russia has very close ties with these countries, which it often takes advantage of during UN votes. However, as the Chair of the VRU noted: "A new page is beginning – it is already yielding its first results. The voting of some countries of the Global South in the UN is changing, and we are actively working with countries in Latin America, Africa, and Asia. Instead of russian propaganda, we have to promote other narratives, narratives of reality, narratives of truth, and this requires direct communication with the parliamentarians of these countries."⁵²

In addition, representatives of foreign states unanimously stressed the illegality of the occupation of Crimea, the need for maximum support for Ukraine to stop russia's aggression, and the search for optimal options for cooperation that would be effective for Ukraine.

⁵⁰ Speech by the Chair of the Verkhovna Rada of Ukraine, Ruslan Stefanchuk, at the First Parliamentary Summit of the International Crimea Platform.

⁵¹ The Second Summit of the International Crimea Platform.

⁵² Speaker of the VRU on the Second Summit.

1.4. War crimes and the Ukrainian justice system

Despite the VRU initiatives to criminalise Russia's actions and expand the list of acts constituting war crimes, in practice, there are many difficulties in understanding and applying the norms of national legislation in terms of international crimes, and even more so – the norms of international law (international humanitarian and criminal law).

According to the study “International Crimes in Ukraine” conducted by the Ukrainian Helsinki Union, Ukraine's current legislation does not enshrine the concept of “war crimes,” which significantly complicates the work of law enforcement agencies (this refers to officers investigating international crimes). In addition, until 2022, most acts that violated international humanitarian law in Ukraine were classified not as international crimes but as general criminal offences.⁵³

According to the UHHRU study, over 106,000 criminal proceedings have been opened under the article of war crimes. However, during the anonymous survey, law enforcement officers directly involved in the investigation of international crimes noted that they currently faced a number of obstacles to the investigation of these crimes, including: 1) lack of expertise on the specifics of investigating such crimes; 2) no mechanism for investigating such crimes; 3) shortcomings of the CPC Ukraine that hinder the investigation and do not provide clear guidance.⁵⁴

Furthermore, only 12% of the interviewed law enforcement officers indicated that they had passed special training on the specifics of investigating international crimes, while 35% of police officers admitted that they needed additional knowledge for such investigations, and only 5% of prosecutors used the experience of foreign countries and referred to decisions of international judicial institutions (including international tribunals) in their work.⁵⁵

In conclusion, interviewees unanimously stated that they needed centralised methodological training for all levels of law enforcement agencies to acquire the necessary knowledge and skills to investigate relevant cases.

This study and its results once again point to what has already been outlined earlier: currently, in the context of qualifying crimes committed by Russia in Ukraine and effectively handling cases, the main problem is the imperfection and gaps in criminal and criminal procedure legislation, as well as the lack of knowledge of law enforcement officers in the field of international law, in particular in the field of international humanitarian and criminal law.

⁵³ International Crimes in Ukraine: a Review of National Investigation and Case Law // Ukrainian Helsinki Human Rights Union.

⁵⁴ Ibid.

⁵⁵ Ibid.

Deputy Head of the High Council of Justice Dmytro Lukianov also cited the same obstacles to the administration of justice⁵⁶, including:

- 1) the lack⁵⁷ of unification between the Rome Statute and the CC Ukraine;
- 2) the articles on war crimes have not been amended for ten years;
- 3) there are different elements of crimes in the CC Ukraine and the Rome Statute;
- 4) there is an outflow of personnel and a lack of judges;
- 5) lack of knowledge in the field of international law.⁵⁸

Regarding the lack of knowledge, the main efforts to bridge this gap are made by non-governmental and international organisations that organise training, workshops, etc. For example, the UNDP organised a series of trainings for cross-sectoral law enforcement groups in September 2023. The purpose of this training was to raise awareness of the identification of war crimes, sexual crimes and others.⁵⁹

Despite the importance of such initiatives and projects under the auspices of non-governmental and international organisations, they do not fully address the need for systemic and methodological training for law enforcement and judicial officials to acquire knowledge in both aspects: 1) the theoretical and methodological framework and 2) procedural aspects.

1.5. War crimes: Summary

The activities of the Parliament of Ukraine and the shortcomings of the justice system in the context of qualification and investigation of war crimes, the following key points can be singled out:

- The category of “war crimes” means violations of international humanitarian law, which is, in fact, a violation of the rules and customs of warfare. Accordingly, violations of these norms are easier to document and qualify, as such acts are committed during an armed conflict, have clear consequences and a clear composition. In addition, this category of international crimes is less politicised, so it is relatively easier to use it as a basis for filing a claim with international judicial institutions.
- As of today, the international community, ad hoc international institutions and bodies recognise that acts committed by Russia against Ukraine constitute war crimes. This recognition is confirmed in reports, appeals, the issuance of arrest warrants by the ICC, etc.
- For Ukraine, there is no question of proving that Russia has committed war crimes and winning the right to file lawsuits with international judicial institutions under the article “war crimes.” However, an internal problem needs to be addressed as soon as possible: national criminal legislation does not meet international standards, is not correlated with international humanitarian law, and is not unified with the Rome Statute. Accordingly, modernising and amending legislation and providing special training for law enforcement and judicial officials are necessary.

⁵⁶ At the international conference “Justice in Cases of International Crimes in National Courts,” Deputy Head of the High Council of Justice of Ukraine Dmytro Lukianov spoke about the obstacles to the administration of justice, citing the list of causes given in the text.

⁵⁷ On August 15, 2024, draft law No. 11484 was registered in the Verkhovna Rada, aimed at bringing the provisions of the Criminal and Criminal Procedure Codes of Ukraine into compliance with the norms of the Rome Statute.

⁵⁸ Challenges that Courts Face in Considering Cases of International (War) Crimes. High Council of Justice of Ukraine.

⁵⁹ Justice professionals are enhancing their skills to effectively identify and investigate war crimes // UNDP.

Chapter 2

Crime of genocide: the likelihood of consideration by international judicial institutions



2.1. Enshrining the crime of genocide in international law

The concept of the crime of genocide is enshrined in the **1948 Convention on the Prevention and Punishment of the Crime of Genocide**. The path to the adoption of this Convention was thorny, as the crime of genocide as a category of international crimes was proposed by international lawyer **Raphael Lemkin** during the atrocities committed by Nazi Germany during World War II. Subsequently, Lemkin insisted on considering this category of crimes and its inclusion in the list of international crimes and in the Nuremberg Tribunal's indictment list. However, due to political interests, tense relations between the victorious states and lobbying for a "rival" category (crimes against humanity), the crime of genocide was never included in the Nuremberg Tribunal. However, the **UN Sixth Committee** soon began to codify the crime of genocide and develop an international legal instrument that would be aimed at prohibiting and preventing such crimes in the future, based on the painful experience of the Holocaust, which had no analogues in terms of its scale and consequences. This is why the Convention was developed and adopted. In the context of the Convention's provisions, it should be borne in mind that during its formulation, the views of the states that participated in the preparatory work were considerably different. That is why the text of the Convention is somewhat narrower than it could be. For example, initially, according to Lemkin's own vision and with due regard to the positions of individual states, the text of Article 2, which defines the crime of genocide, should have included **political and cultural groups** that should have been protected by the Convention. However, due to excessive disagreements in this regard, the final version does not contain the proposed groups, limiting itself to a narrower list.

Although the Convention's text is less comprehensive than its authors would have liked, the fact that this document was adopted in 1948 is a great achievement for the international community. It was

supposed to guarantee that any future act of genocide would not be tolerated or passed by the international community without bringing the perpetrators to maximum liability.

Article 1 of the Convention provides that genocide, whether committed in time of peace or in time of war, is a crime under international law which the Contracting Parties undertake to prevent and to punish by signing this Convention.⁶⁰

This norm is particularly important in the context that the crime of genocide can be committed not only during an armed conflict but also have its roots (beginning) in peacetime, which subsequently develops into an armed conflict. This is the first of the differences between the crime of genocide and war crimes that will be analysed further. However, it may be noted that in the case of war crimes, we can only speak of acts committed during an armed conflict in violation of international humanitarian law, while the crime of genocide should be viewed from a historical perspective to establish motive, intent, systematicity, duration, etc.

In addition, Article 1 is important in the context of states' obligation to prevent crimes of genocide, i.e., to prevent them from occurring or to stop them from the very beginning. Thus, experts of the **New Lines Institute for Strategy and Policy** in their report **The Russian Federation's Escalating Commission of Genocide in Ukraine: A Legal Analysis** for July 2023, emphasised that the prevention element was the primary goal of the Convention, as it is embedded even in its title. Experts also pointed out that the ICJ had established in which cases states should invoke their duty to prevent the crime of genocide:

“ The state's duty to prevent and the corresponding obligation to take the necessary measures arise when the state has learned or should have learned of a serious risk of the commission of a crime of genocide. ”

Moreover, the obligation to prevent the crime of genocide is not limited to the territory of the state, but extends to any territory where the state can take the necessary measures.⁶¹

Thus, in the context of the current international armed conflict, this element of Article 1 of the Convention is particularly important. Although 153 states have ratified the Convention, none of them have complied with the obligation to prevent the commission of the crime of genocide when there were serious grounds to believe that it would be committed.

⁶⁰ Convention on the Prevention and Punishment of the Crime of Genocide.

⁶¹ The Russian Federation's Escalating Commission of Genocide in Ukraine: A Legal Analysis // New Lines Institute.

Thus, Article 2 of the Convention contains a definition of genocide:

“ Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: a) killing members of the group; b) causing serious bodily or mental harm to members of the group; c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d) imposing measures intended to prevent births within the group; e) forcibly transferring children of the group to another group⁶² ”

The next stage in enshrining the crime of genocide was the **Code of Crimes against the Peace and Security of Mankind**, which the UN General Assembly commissioned the International Law Commission to develop at its second session in 1947. However, the work on the draft Code was performed in a too fragmented manner, which resulted in a long delay and was completed only in 1996. During the development of the Code, many proposals were made regarding the definition and elements of the crime of genocide, but in the final version, it was decided to follow the same approach and use the same definition as that provided in the Convention on the Prevention and Punishment of the Crime of Genocide. So, the International Law Commission adopted a version of the draft Code in 1996, Article 17 of which contained a definition of genocide similar to that of the Convention.

An important stage in enshrining the crime of genocide at the international level was its inclusion in the Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter referred to as the ICTY), which was established by the UN Security Council on 25 May 1993 on the basis of UN Security Council Resolution 827.

In **Article 1** of this Statute provides, inter alia, that the International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991.

Article 4 states that the International Tribunal shall have the power to prosecute persons committing genocide as defined in this article.

⁶² Convention on the Prevention and Punishment of the Crime of Genocide.

So, according to Article 4, genocide includes any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a) killing members of the group;
- b) causing serious bodily or mental harm to members of the group;
- c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) imposing measures intended to prevent births within the group;
- e) forcibly transferring children of the group to another group⁶³

In addition, Article 4(3) states the following acts shall be punishable:

- a) genocide;
- b) conspiracy to commit genocide;
- c) direct and public incitement to commit genocide;
- d) attempt to commit genocide;
- e) complicity in genocide.⁶⁴

It can be concluded from the text of these articles of the Statute that the ICTY also chose the wording of the Convention and repeated it almost verbatim. However, the importance of this enshrinement is that it was the first enshrinement of the crime of genocide in an international instrument that was to be applied in practice in the context of trials for crimes committed in the territory of the former Yugoslavia.

The Statute of the International Criminal Tribunal for the former Yugoslavia **was followed by the Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States** (hereinafter referred to as the ICTR) between 1 January 1994 and 31 December 1994. This International Tribunal was also established by the Security Council under Section VII of the UN Charter.

Article 1 of the Statute states that the International Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in Rwanda's territory and Rwandan citizens responsible for such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994.⁶⁵

Article 2 specifies that the International Tribunal for Rwanda shall have the power to prosecute persons committing genocide or committing any of the other acts enumerated in this Article.

⁶³ ICTY Statute.

⁶⁴ Ibid.

⁶⁵ ICTR Statute.

So, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a) killing members of the group;
- b) causing serious bodily or mental harm to members of the group;
- c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) imposing measures intended to prevent births within the group;
- e) forcibly transferring children of the group to another group.⁶⁶

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- b) conspiracy to commit genocide;
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- d) attempt to commit genocide;
- e) complicity in genocide.⁶⁷

The Rome Statute of the International Criminal Court is the latest in terms of adoption but one of the first in terms of the start of development. The question of its drafting arose immediately after the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide in 1948, as it was believed that its adoption had to some extent raised the question of the feasibility and possibility of having persons accused of genocide tried by a competent international court. The need to draft a Statute was evident, as the need for an international judicial body to try serious crimes under international law had emerged and was gradually growing. In this regard, the UN General Assembly invited the International Law Commission to consider this issue.

The process of drafting the Statute and resolving the issue of establishing an International Criminal Court took a long time, due to several factors:

- 1) referral of the issue to various authorised bodies;
- 2) a complicated process of negotiations and coordination of positions of UN member states;
- 3) a pause in the development due to the situation on the international arena, in particular during the Cold War;
- 4) different views on the list of international crimes (in particular, proposals to expand this list);
- 5) problems with the formulation of the definition of crimes.

It was only in 1993 that the International Law Commission prepared a draft Statute. The Commission's 1994 report noted that genocide, as defined in the Convention on the Prevention and Punishment of the Crime of Genocide, was undoubtedly a crime under general international law. Accordingly, a crime under general international law is recognised by the international community of states as entailing criminal liability for perpetrators.

⁶⁶ ICTR Statute.

⁶⁷ Ibid.

The Commission also proposed that genocide should be subject to “inherent jurisdiction”, which confirmed the seriousness of the crime of genocide. By inherent jurisdiction, the Commission meant that the Court would have subject matter jurisdiction over the crime by virtue of ratifying the Statute by a State Party. For all other crimes, states would have to decide to what extent they would accept the Court’s jurisdiction. The Commission considered that genocide should be subject to such jurisdiction not only because of the gravity of the crime itself but also because the establishment of the Court was specifically provided for in Article VI of the Genocide Convention.

Although many proposals were made regarding the definition of genocide while drafting the Statute, the Commission returned to the definition enshrined in the Convention in the final version.

The extremely long work on the establishment of a permanent court with jurisdiction over genocide culminated in a diplomatic conference held in Rome from 15 June to 17 July 1998.

Article 1 of the Rome Statute stipulates that it shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall complement national criminal jurisdictions.

Article 5 of the Rome Statute provides that the jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- a) the crime of genocide;
- b) crimes against humanity;
- c) war crimes;
- d) the crime of aggression.

Finally, **Article 6** defines genocide:

“ Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: a) killing members of the group; b) causing serious bodily or mental harm to members of the group; c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d) imposing measures intended to prevent births within the group; e) forcibly transferring children of the group to another group⁶⁸ ”

⁶⁸ Rome Statute.

The decision taken to avoid that the timing and processes of the judicial proceedings do not lead to the triumph of impunity has become extremely important. For example, the **Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity of 1968 and the Rome Statute stated that the statute of limitations does not apply to crimes of genocide** committed in both peacetime and wartime. Therefore, no matter how long it has been since the crime was committed, the perpetrators can always be prosecuted.

An analysis of international legal instruments that enshrined the concept of genocide as an international crime that violates international humanitarian and criminal law reveals that most acts (statutes of international tribunals, the draft code, the Statute of the International Criminal Court), despite numerous proposals and discussions, have consistently adhered to the definition and elements of the crime of genocide originally provided by the Genocide Convention. On the one hand, this is a positive trend, indicating the consistency and uniformity of application practice, continuity of understanding and interpretation of the genocide norms, which, in turn, emphasises the importance of the Convention and the seriousness of the crime itself. However, at the same time, it also demonstrates a certain stagnation in international law, which occurred due to the reluctance of some states to develop new, more progressive approaches that would be apolitical and in line with the realities of the modern world, in particular those that would recognise more groups, groups in need of protection from the crime of genocide, as well as more types of the crime itself (i.e., the inclusion of the cultural aspect and some new subtypes of the crime of genocide that have emerged since the adoption of the Convention and other international legal instruments, such as gendercide).

2.2. International community and recognition of the totality of russia's crimes as the crime of genocide

In the context of the international community's positions on the qualification of russia's actions as a crime of genocide, they can be divided into three substantive units: 1) position of international organisations and institutions; 2) position of foreign governments; 3) position of non-governmental organisations, leading international lawyers, professors of law and history.

Position of international organisations and institutions

In the context of the current armed conflict, which is in its active phase, the relevant authorities are still collecting evidence and documenting crimes, so it is futile to expect a statement or recognition of the fact that russia has committed the crime of genocide against Ukrainians. In general, this category requires an extremely high level of evidence, so we can say that the overwhelming

majority of international organisations refrain from making unequivocal statements or referring to the commission of war crimes and crimes against humanity, indicating that there is not enough evidence for genocide and there is no established and proven motive.

So, the **UN Commission**, as discussed in the previous section, has found in its reports that russia had committed numerous war crimes and crimes against humanity. However, with regard to the crime of genocide, the Commission uses the general wording “there is insufficient evidence and factors to indicate that russia has committed genocide.”⁶⁹ The Commission also emphasises in its reports that it continues to investigate violations against Ukraine and will continue to document russia’s crimes to the fullest extent possible. The most significant statement on genocide was made by the head of the Commission chair, Erik Møse, who said that although they did not have sufficient evidence, they continued to investigate step by step, taking into account the concerns and accusations of genocide committed by russia. In addition, Møse noted that the Commission had documented statements made in the russian media and that these statements might relate to the aspect of incitement to commit genocide.⁷⁰

The **ICC** does not actually express its position on the possibility of qualifying russia’s actions as a crime of genocide. However, the Prosecutor’s statement of 2 March 2022 on the opening of the investigation into the situation in Ukraine mentioned that, within the jurisdiction of the Court and without prejudice to the purpose of the investigation, the situation encompasses any past or present allegations of war crimes, crimes against humanity or genocide committed in any part of the territory of Ukraine by any person from 21 November 2013 to the present day. The fact that the crime of genocide is included in the crimes falling under the jurisdiction of the ICC in the context of the investigation of the situation in Ukraine indicates that this category can potentially be investigated and considered by the Court (provided that the requirement of sufficient evidence and an indication of the motive and intent of the aggressor state is met).

In its judgement of 2 February 2024, the ICJ established that it would investigate the issue of russia’s distortion of the interpretation of the provisions of the Genocide Convention in the context of Ukraine’s accusations of genocide in the East. At the same time, the Court ruled that it would not consider whether russia was committing the crime of genocide against Ukraine. Ukraine will have to file a separate lawsuit or wait for the ICC’s opinion to consider this particular aspect.⁷²

At the same time, the **Parliamentary Assembly of the Council of Europe** (hereinafter referred to as the **PACE**) has begun to recognise russia’s actions as a crime of genocide. Thus, the PACE adopted Resolution **No. 2529 of January 25, 2024 on the Situation of the Children of Ukraine**, calling

⁶⁹ “What russia Does in Ukraine Is Genocide” – American Researcher Samuel Totten // Radio Svoboda.

⁷⁰ The UN Commission Has Not Yet Concluded that russia Commits Genocide in Ukraine. But There Are “serious” war crimes” // Detector Media.

⁷¹ Situation in Ukraine // ICC.

⁷² “Solutions Are Usually Half-Hearted.” International Court of Justice’s Decision in the Case of Genocide on Ukraine’s Lawsuit against russia // Suspilne Media.

on the member states of the Council of Europe to recognise the deportation of Ukrainian children by Russia as genocide of the Ukrainian people.⁷³ This resolution was supported by votes of its 85 members, most of whom commented on the deportation and illegal adoption of Ukrainian children as a serious crime aimed at erasing the identity of children, re-educating them to Russian realities, thereby depriving Ukraine of a future.

The text of the resolution refers to five groups of children, namely children who:

- 1) remain on the territory of Ukraine;
- 2) are internally displaced;
- 3) have found temporary protection in Europe;
- 4) are missing;
- 5) have been deported or forcibly transferred to Russia and Belarus.⁷⁴

Key points of the resolution are the call for the return of all deported Ukrainian children home, as well as the creation of a joint programme between Ukraine and the Council of Europe Development Bank to address the individual needs of Ukrainian children.

Regarding the element of the crime of genocide, attention should be drawn to PACE Resolution 2495 (2023) of 27 April 2023 on “Deportations and forcible transfers of Ukrainian children and other civilians to Russian Federation or to Ukrainian territories temporarily occupied: create conditions for their safe return, stop these crimes and punish the perpetrators”. In particular, paragraph 2 states that in the case of the forced transfer of children, it is a crime of genocide that must be thoroughly investigated and the perpetrators brought to justice.⁷⁵

In addition, **paragraph 10** states that:

“ The Assembly underscores that the forcible transfer of children from one group to another group, with the intention to destroy, totally or in part, a national, ethnic, racial or religious group is considered as a crime of genocide under Article 2, paragraph (e), of the Genocide Convention, which matches with the documented evidence of deportation and forcible transfer of Ukrainian children to the Russian Federation or territories temporarily under Russian occupation ”

”

⁷³ The Parliamentary Assembly of the Council of Europe Adopts a Resolution “Situation of Children in Ukraine” // Holos Ukrainy.

⁷⁴ Ibid.

⁷⁵ PACE Resolution 2495 Deportations and forcible transfers of Ukrainian children and other civilians to the Russian Federation or to temporarily occupied Ukrainian territories: create conditions for their safe return, stop these crimes and punish the perpetrators.

Finally, in **paragraph 20** of the resolution, the Assembly emphasised that:

“ The perpetrators of crimes under international law, including the crime of aggression against another country, war crimes, crimes against humanity and genocide, must be identified and brought to justice⁷⁶ ”

Thus, PACE resolutions are important due to the recognition of the deportation and forcible transfer of Ukrainian children as a crime of genocide in terms of Article 2, paragraph (e) of the Convention. PACE resolutions, like the reports of the Commission or any other organisation, are political decisions and recognitions of the crime of genocide. This is positive for the overall context and influence on foreign states, but it is not a legal qualification and recognition. In fact, only legal qualifications matter in the sense that only a decision of an international judicial institution can bring criminals and the aggressor state to justice.

Position of foreign parliaments

As of now, seven states have recognised russia's crimes against Ukraine as a crime of genocide.

Poland was the first to make the relevant decision. On 23 March 2022, the Sejm adopted the **Resolution on russia's War Crimes, Crimes Against Humanity and Violations of Human Rights in Ukraine**. The Resolution states that Poland “strongly condemns the acts of constant violence, [...] acts of genocide,[...] committed on the territory of sovereign Ukraine by the armed forces of the russian federation together with its allies, by orders of military commanders directly subordinate to President Putin.”⁷⁷

Estonia was next, with its Parliament adopting the **Statement of 21 April 2022 on russia's War Crimes and Genocide in Ukraine**. “In the temporarily occupied territories, in particular the towns of Bucha, Borodianka, Hostomel, Irpin, Mariupol, and many other Ukrainian settlements, the russian federation has committed acts of genocide,” says the Statement. In its Statement, the Riigikogu recognises russia's crimes against Ukraine as genocide and calls on national parliaments and international organisations to do the same, to prosecute the perpetrators and establish an international court for this purpose (ad hoc tribunal).⁷⁸

⁷⁶ Deportations and forcible transfers of Ukrainian children and other civilians to the Russian Federation or to temporarily occupied Ukrainian territories: create conditions for their safe return, stop these crimes and punish the perpetrators // Parliamentary Assembly of the Council of Europe.

⁷⁷ PACE Resolution 2495 Deportations and forcible transfers of Ukrainian children and other civilians to the russian federation or to temporarily occupied Ukrainian territories: create conditions for their safe return, stop these crimes and punish the perpetrators.

⁷⁸ Ibid.

On 21 April 2022, the **Parliament of the Republic of Latvia** (Saeima) adopted the **Statement on Russia's Aggression and War Crimes in Ukraine**, recognising it as Russia's genocide against the Ukrainian people and reaffirming Latvia's commitment to prevent genocide.⁷⁹

On 27 April 2022, the genocide of the Ukrainian people was recognised by the House of Commons of the Parliament of **Canada**, stating in its **Motions** that the totality of crimes committed by Russia in Ukraine constitutes genocide.⁸⁰

On 10 May 2022, the Parliament of **Lithuania** (Seimas) adopted the **Resolution on the Recognition of the Actions of the Russian Federation in Ukraine as Genocide** and called on the establishment of a special international criminal tribunal to investigate the crime of Russian aggression. Thus, in the Resolution, the Parliament emphasises that the large-scale armed aggression against Ukraine is a genocide and calls on international organisations, parliaments and governments of foreign countries to recognise Russia's crimes in Ukraine as genocide and bring the perpetrators to justice.⁸¹

On 11 May 2022, the Parliament of **Czechia** adopted the **Resolution in support of Ukraine**, which recognised ethnically motivated crimes against Ukrainians, such as mass executions, disrespect for the dead, torture, rape, physical and mental violence, deportation and forced displacement of children, as acts of genocide against the Ukrainian people.⁸²

On 1 June 2022, the Parliament of **Ireland** adopted the **Motion** recognising that the crimes committed by the Russian military meet the criteria of the crime of genocide under the Genocide Convention, which indicates that Russia's invasion of Ukraine is a crime of genocide.⁸³

In addition, on 20 July 2022, senators introduced to the US Senate a draft Resolution to recognise Russia's actions in Ukraine as genocide of the Ukrainian people. The last activity on this draft took place on 7 December 2022, when the document was added to the Senate legislative calendar.⁸⁴

In addition, in September 2023, members of the US House of Representatives Foreign Affairs Committee made a statement that Putin is committing genocide in Ukraine as he is trying to erase the culture, people and religion of the Ukrainian people, which are the criteria for genocide.

⁷⁹ Which countries recognised Russia's actions after 24 February 2022 to be acts of genocide against the Ukrainian people? // Rule of Law Research Centre.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ S.Res.713 – A resolution recognizing Russian actions in Ukraine as a genocide.

⁸⁵ US Congressmen Accuse Putin of Genocide in Ukraine // Voice of America.

Position of non-governmental organisations, leading international lawyers, professors of law and history

The New Lines Institute for Strategy and Policy, together with the Raoul Wallenberg Centre for Human Rights, made the greatest contribution to proving and recognising russia's crimes in Ukraine as a crime of genocide. They published a report in May 2022 that provided a legal analysis of the russian federation's actions and crimes in Ukraine. The aforesaid report was drafted by more than 35 legal experts and scholars and was based on a study of russia's incitement to genocide in Ukraine and the obligation to prevent it.

The unequivocal contribution of this report was that it hit the headlines and that foreign parliaments used it to recognise the genocidal nature of russia's war against Ukraine.

The 2022 report focused on the russian federation's incitement to hatred of the Ukrainian people, spreading false information, encouraging violence, and distorting historical facts. The experts concluded that the more the state uses hate speech, the less sensitive its citizens become to violence, suffering and pain, and the more they begin to support such rhetoric. Accordingly, the report states that russia's open incitement to genocide is a violation of Article 3(c) of the Genocide Convention.

Moreover, the expert group called on the international community to prevent the crime of genocide in Ukraine since the presence of signs of a genocidal campaign and direct calls for its commission indicate that there is a very real possibility of its commission.

A year later, in July 2023, the New Lines Institute for Strategy and Policy, together with the Raoul Wallenberg Centre for Human Rights, published their second report, The russian federation's Escalating Commission of Genocide in Ukraine: A Legal Analysis, where they provided a detailed legal analysis of russia's crimes, actually analysing the crimes under each clause of Article 2 of the Convention.⁸⁶

The report indicated that despite all the warnings and calls for the prevention of the crime of genocide, as of 2023, russia's actions have gone from incitement and calls for genocide to the direct commission of the crime of genocide. Thus, Dr Azeem Ibrahim, Director of the New Lines Institute for Strategy and Policy, noted that while drafting the report, experts collected evidence indicating russia's intention to exterminate the Ukrainian people in whole or in part. This evidence includes the following crimes: mass atrocities, torture, forced displacement, systematic sexual violence, and destruction of cultural heritage.⁸⁷

⁸⁶ The Russian Federation's Escalating Commission of Genocide in Ukraine: A Legal Analysis // New Lines Institute.

⁸⁷ Azeem Ibrahim. Genocide of russia Against Ukraine // Ukrainska Pravda.

The evidence was also based on the following elements:

- The slogan of russian propaganda, government and media is “We Can Do It Again,” which has deep historical roots dating back to the end of World War II. Moreover, this slogan was used by russia against Ukrainians during the outbreak of the armed conflict in Ukraine in 2014 and in 2022 before and at the beginning of the full-scale invasion. In particular, Putin used this phrase in his speeches, giving it a historical and nationalist connotation, which allegedly indicates the power and superiority of the russian state. Days after russia used this slogan, on 28 February 2022, russian television host Dmytro Kisiliov threatened, “Why do we need a world without russia in it?.” Experts stated in the report that it was the hidden threat from russia to use nuclear weapons. Moreover, experts see the red line of the russian authorities’ intentions in the behavioural patterns and wording used by the authorities and the armed forces. For instance, phrases like: “How dare you live like this” or “It doesn’t count as a war crime if you had fun committing it,” etc. show a clear sign that the entire campaign is based on hatred of everything Ukrainian and Ukrainians in general.⁸⁸
- Testimonies of russian soldiers who participated in the tragedies in Bucha, Izium and Stryi Bykiv. They confirm facts of unequivocal violations of international law, extremely cruel treatment of civilians, and murder and torture of persons based on them being Ukrainians.⁸⁹
- Forcible removal and deportation of Ukrainian children to russia. Thus, at least 3,000 forced transfers of children to the russian federation and the creation of at least 43 camps for “re-education” of these children were recorded. Experts stressed that re-education of children, blurring their identity, and depriving them of their language, culture, and traditions was an unambiguous component of genocide.⁹⁰

Moreover, the **report is based on 5 “Ds”** indicating direct and public incitement to commit genocide:

- 1) disinformation;
- 2) denial;
- 3) dehumanisation;
- 4) delegitimization;
- 5) demonisation.

The main conclusion of the second report was the recognition of russia’s genocide in Ukraine, which is gradually leading to the destruction of Ukrainians, Ukrainian culture and the Ukrainian future (deportation of children).

One of the leading scholars who recognise russia’s crimes as genocide, **Eugene Finkel**, a political scientist and historian at Johns Hopkins University, told in his interviews that there is evidence of killings of people based on their Ukrainian identity (e.g. in Bucha), which indicates the genocidal nature of the war. Thus, Finkel noted that now it was not just killing people; it was targeting

⁸⁸ The Russian Federation’s Escalating Commission of Genocide in Ukraine: A Legal Analysis // New Lines Institute.

⁸⁹ Ibid.

⁹⁰ Ibid.

a national identity group, which would be very difficult to prove but which was already underway. Finkel also pointed out that Russia's intentions could be traced through official statements by government officials and publications by state media. In this context, he referred to an article titled "What should Russia do with Ukraine?" published by Russia's state-owned media, RIA. The article argues that Ukraine is impossible as a nation-state, should not exist as such, and even its name apparently cannot be retained, and the Ukrainian nationalist elite needs to be liquidated since its re-education is impossible. Given such public statements from the state media, Finkel concludes that the risk of genocide is growing, becoming a reality rather than a convention.⁹¹

At the same time, for Professor **Philippe Sands**, there appears to be evidence of war crimes and crimes against humanity. The motivation for this position is that, according to Prof Sands, who has considerable experience working with international judicial institutions, it will be very difficult to prove the intention and motive of the aggressor state to destroy all or part of the Ukrainian people.

Experts who share the position that Russia's crimes in Ukraine constitute a crime of genocide include **Samuel Totten**, an American professor of history, researcher and author of several books on genocides in the world, and **Timothy Snyder**, a historian and professor at Yale University.

Thus, Samuel Totten believes that Russia's crimes in Ukraine constitute the crime of genocide, especially in terms of the forced transfer and deportation of Ukrainian children. Moreover, he points out that, from the perspective of the Convention, genocide is the destruction of a group in whole or in part, and this is what is happening in Ukraine, especially in terms of the destruction of Ukrainian identity, language, culture, etc.⁹²

Timothy Snyder also insists that the Russian Federation is committing genocide against the Ukrainian people and does not even conceal its intention since they openly talk about it at the level of government officials (Putin, Medvedev) and state media. Snyder also asserts that Russia falls under all five criteria of genocide under Article 2 of the Convention, which is a clear case of genocide.⁹³

Summing up, it should be noted that the situation with the recognition of Russia's crimes in Ukraine as genocide is quite heterogeneous. Sometimes, this is due to insufficient knowledge of the history and cultural context of relations between Ukraine and the Russian Federation, which makes it impossible to deeply understand Russia's motives and intentions. Other times, it is due to a number of issues that narrow down to political interests and unwillingness to set a precedent. However, there is already a positive trend towards the gradual recognition of the totality of these crimes as the crime of genocide.

⁹¹ Ukraine war: Is Russia committing genocide? // BBC.

⁹² "What Russia Does in Ukraine Is Genocide" – American Researcher Samuel Totten // Radio Svoboda.

⁹³ Timothy Snyder: Why the West Hasn't Recognized Russian Aggression as Genocide against Ukrainians // European Pravda.

2.3. Enshrining the crime of genocide in national law and the activities of the Verkhovna Rada of Ukraine

At present, Ukrainian legislation on the crime of genocide is relatively limited since it provides only a definition of genocide that repeats Article 2 of the Convention. Thus, the current version of Article 442 of the Criminal Code of Ukraine of 5 April 2001 provides as follows:

“ 1. Genocide, that is a wilfully committed act for the purpose of total or partial destruction of any national, ethnic, racial, or religious group by extermination of members of any such group or inflicting grievous bodily injuries on them, creation of life conditions aimed at total or partial physical destruction of the group, decrease or prevention of childbearing in the group, or forceful transferring of children from one group to another, shall be punishable by imprisonment for a term of ten to fifteen years or life imprisonment⁹⁴ ”

Thus, the wording of Article 442 is an attempt to follow Article 2 of the Convention but is not a complete reproduction of the Article, omitting some wording. In addition, Article 442 (clause 2) provides that public calls to genocide and also making any materials with calls to genocide shall be punishable by arrest or imprisonment. Clause 2 is a reference to Article 3 of the Convention. However, only one of the five clauses of Article 3 was included in Article 442: c) direct and public incitement to commit genocide. That is, the other four clauses of Article 3 of the Convention were omitted, leaving a gap in national legislation.

In general, it is worth noting that not only is the text of Article 442 relatively outdated and needs to be amended, but all criminal legislation needs to be brought in line with international law and the Genocide Convention. In particular, the current version of the CC Ukraine does not mention the limitation terms in the context of the crime of genocide, liability, procedural aspects, etc.

In order to fill in these gaps and update criminal legislation, the Law of Ukraine “On Amendments to Certain Laws of Ukraine as Regards the Implementation of the Provisions of the International Criminal and Humanitarian Law,” already mentioned in the context of war crimes (Draft Law of 27 December 2019, registration No. 2689), should have been adopted.

⁹⁴ Criminal Code of Ukraine, Article 442.

This Law provides to read Article 442 of the CC Ukraine as follows:

“ 1. 1. Genocide, i.e. any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: 1) Killing members of the group; 2) Causing serious bodily or mental harm to members of the group; 3) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; 4) Imposing measures intended to prevent births within the group; 5) Forcibly transferring children of the group to another group, shall be punishable by imprisonment for a term of ten to fifteen years or life imprisonment⁹⁵ ”

The new version of Article 442 (clause 1) is a more complete and legally correct reflection of Article 2 of the Genocide Convention, as it clearly distinguishes between five separate criteria of genocide in compliance with the Convention.

However, Article 442 (clause 2) remained contextually close to the current version of the Article, providing for as follows:

“ 2. Public calls for acts provided for by Part 1 of this Article, proclaimed for the purpose of total or partial destruction of any national, ethnic, racial, or religious group as such, and also making any materials with calls to such acts for the purpose of distribution, or distribution of such materials, shall be punishable by imprisonment for a term from three to seven years⁹⁶ ”

Whether Article 442 (clause 2) is an attempt to reproduce Article 3 of the Genocide Convention remains unclear, as the text is as divergent as possible, and only one of the acts constituting the crime of genocide is mentioned.

Another important aspect of the Law is the amendments to Section III of the CC Ukraine, which stipulate that if acts referred to in Article 442 were not recognised as a crime under the criminal law of Ukraine at the time of their commission but were recognised as a crime of genocide under international law, it is considered that such acts were recognised as a crime under the criminal law of Ukraine at the time of their commission.

⁹⁵ The Law of Ukraine “On Amendments to Certain Laws of Ukraine as Regards the Implementation of the Provisions of the International Criminal and Humanitarian Law” (draft law of 27 December 2019, registration No. 2689).

⁹⁶ Ibid.

This provision is particularly important because the current version of Article 442 leaves some questions regarding the objective aspect of the crime unresolved, which may cause problems in initiating cases or investigations. However, if the Law is signed by the President and comes into force, we will have a provision that stipulates that russia's crimes in Ukraine should still be recognised as a crime of genocide if they were recognised as such under international law.

As for the Verkhovna Rada's direct activities during the full-scale war, on 14 April 2022, the Verkhovna Rada adopted **Resolution No. 2188-IX "On the Statement of the Verkhovna Rada of Ukraine "On the Commission of Genocide in Ukraine by the russian federation."** In this Statement, the Verkhovna Rada outlined the entire historical background of the conflict between Ukraine and russia and its position, explaining the reasons for recognising the crimes committed by the russian federation in Ukraine since 24 February 2022 as a crime of genocide against the Ukrainian people. This Resolution instructed the Chair of the VRU to: 1) deliver the text of the Statement to a number of international and inter-parliamentary organisations and foreign states; 2) appeal to the Prosecutor General's Office, the Ministry of Foreign Affairs and the Ministry of Justice to properly document facts of the genocide of the Ukrainian people by russia and all its subordinate structures.⁹⁷

Another step towards recognising the crimes of the russian federation in Ukraine as a crime of genocide was the adoption on 31 March 2023 of the **Law of Ukraine "On the Prohibition of Propaganda of the russian Nazi Totalitarian Regime, the Act of Aggression of the russian federation as a Terrorist State Against Ukraine, and Symbols Used by the Armed and Other Military Formations of the russian federation in the War Against Ukraine."** Although the Law itself does not directly address the crime of genocide, its text contains the wording that russia is a terrorist state that commits genocide against the Ukrainian people. This wording is also important since the more often (if relevant) there is a reference to russia committing the crime of genocide against the Ukrainian people, and the more evidence and confirmation of such a crime, the better it is for the future evidence base that can be used in international judicial institutions in genocide cases.

⁹⁷ Resolution of the Verkhovna Rada of Ukraine regarding the Statement of the Verkhovna Rada of Ukraine "On the Commission of Genocide in Ukraine by the russian federation."

2.4. The possibility of qualifying Russia's crimes against the Ukrainian people as the crime of genocide: the practice of the ICTR and the ICTY

In order to objectively analyse whether the totality of Russia's crimes in Ukraine can be considered a crime of genocide against the Ukrainian people, the most effective way is to analyse Article 2 of the Convention point by point in combination with the practice of the ICTR and ICTY, the analysis of the report of the New Lines Institute for Strategy and Policy, and those crimes and acts documented as crimes of the Russian Federation in Ukraine.

“ It is worth starting the analysis with Article 2 (Part 1) of the Convention, which provides that: “Genocide means any acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group... ”

It is clear that the analysed Article does not directly provide for legal instruments to determine that a certain set of acts or crimes constitutes the crime of genocide. For this purpose, it is worth referring to the ICTR's practice. Thus, according to the Trial Chamber, in order to confirm the fact of genocide, it is necessary that: 1) one of the acts specified in Article 2 (clause 2) of the Statute (analogous to Article 3 of the Convention) was committed; 2) the purpose of these acts was a specific national, ethnic, racial or religious group as such; 3) the act was committed with the **intent** to destroy such a group in whole or in part. It is the **special intent** that distinguishes the crime of genocide from other common law crimes, such as massacres of civilians. Thus, we can speak of two components of genocide: prohibited acts and special intent to commit genocide.⁹⁸

According to this Article, the purpose, i.e. the intent of the aggressor state, must be the complete or partial extermination of a certain group of the population. However, the question arises as to what exactly **is meant by intent and how to identify it**. In this context, in the Kamuhanda case, the ICTR Trial Chamber concluded that the crime of genocide requires a finding of both **mens rea** (criminal intent, i.e. the subjective side of the crime) and **actus reus** (the objective side of the crime), where mens rea comprises the specific intent or *dolus specialis* described in Article 2 (Part 1) of the Convention, i.e. the commission of a genocidal act with intent to destroy, in whole or in part, a national, ethnical, racial or religious group; and the actus reus consists of any of the five acts enumerated in Article 3 of the Convention.⁹⁹

⁹⁸ The Practical Guide to Humanitarian Law. Genocide // Medecins Sans Frontieres.

⁹⁹ Genocide, War Crimes and Crimes Against Humanity. A Digest of the Case Law of the International Criminal Tribunal for Rwanda // Human Rights Watch.

It may seem that even this explanation of the Trial Chamber remains somewhat vague since the Article makes it clear that in order to establish the fact of the crime of genocide, it is necessary to prove the intent of the aggressor state to commit genocide, not a crime of any other category. However, in the judgement **in the Seromba case, the ICTR Appeals Chamber emphasised that the intent to commit genocide can also be identified by circumstantial evidence.** It also noted that the intent of genocide may be inferred from certain facts or indicia, including but not limited to:

- a) the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others;
- b) the scale of atrocities committed;
- c) the general nature of crimes committed in a region or a country;
- d) the fact that the victims were deliberately and systematically chosen on account of their membership of a particular group, while the exclusion, in this regard, of members of other groups
- e) the exclusion, in this regard, of members of other groups;
- f) the political doctrine which gave rise to the acts referred to;
- g) the repetition of destructive and discriminatory acts;
- h) the perpetration of acts which violate the very foundation of the group or considered as such by their perpetrators.¹⁰⁰

Moreover, **in the Gacumbitsi case, the Trial Chamber added that the intent to commit the crime of genocide could also be clearly discerned by the fact** of a physical attack on a group or its property, the use of offensive language against the targeted group, the weapons used in the attacks, and the severity of wounds inflicted on the victims, the methodical nature of the planning, and the systematic nature of the crime.¹⁰¹

The judges also found that victims of genocide are selected based on their belonging to a particular group. The intent to destroy the group as such in part or in whole implies that victims are selected based on their belonging to the national, racial, ethnic or religious group whose destruction is planned.

In accordance with the Convention and the ICTR practice, in order to establish russia's intent to commit the crime of genocide against Ukrainians, it is advisable to refer to 1) direct evidence of genocidal intent and 2) indirect evidence of genocidal intent.

Direct evidence of genocidal intent

- **One of the acts specified in Article 2 (clause 2) of the Statute (analogous to Article 3 of the Convention) has been committed:** it is now possible to unequivocally state that crimes under two of the five clauses of Article 3 of the Convention (Article 2 (clause 2) of the ICTR Statute) have been committed, namely: a) genocide and b) direct and public incitement to commit genocide (the element of direct and public incitement to commit genocide was analysed in the previous part hereof

¹⁰⁰ Genocide, War Crimes and Crimes Against Humanity. A Digest of the Case Law of the International Criminal Tribunal for Rwanda // Human Rights Watch.

¹⁰¹ The Practical Guide to Humanitarian Law. Genocide // Medecins Sans Frontieres.

in terms of the New Lines Institute report. However, it should be briefly noted that Russia is committing direct and public incitement through public statements by state authorities, which contain direct calls that Ukraine should not exist, that it is not a sovereign state, and that the Ukrainian people as a separate group does not exist at all (in particular, in numerous statements by Putin, well known to the international community). Such incitement is also present in the official Russian state-owned media, which systematically broadcast hatred and demonisation of Ukrainians, arousing indifference and tolerance of violence on the part of Russians).

- **These actions were targeted at a specific national, ethnic, racial or religious group as such:** the target of these actions was a specific national group, i.e. Ukrainians.
- **These actions were committed with the intent to destroy this group in whole or in part.**

However, analysing the direct evidence, many experts have a reasonable question of whether it is possible to talk about the commission of genocide without unequivocally establishing Russia's intention to commit genocide. In this regard, it is worth turning to indirect evidence of genocidal intent, which may indicate that the aggressor state does have this intent and can be traced through various factors.

Indirect evidence of genocidal intent

- **The general context of other illegal actions systematically targeted at the same group as the actions committed by the accused or other persons.** Accordingly, the general context of other unlawful acts committed by Russia against Ukraine can be considered from a much broader historical perspective, analysing the scientific facts of distant historical times as actions directly related to the establishment of the fact of genocide. These include, at least, the following:
 - a) eight years of aggressive policy and occupation of the east of Ukraine (Donetsk and Luhansk Oblasts), including systematic shelling of civilian infrastructure, formation of illegal armed groups, issuance of Russian passports, persecution of persons who identified themselves as Ukrainians and refused to switch to Russian and get Russian passports;
 - b) illegal invasion and occupation of the Autonomous Republic of Crimea (oppression, torture, illegal and arbitrary imprisonment of persons who identified themselves as Ukrainians or Crimean Tatars, spoke Ukrainian, recognised Ukraine as their state and only Ukrainian state authorities; banning the Ukrainian and Crimean Tatar languages in schools; eradication of culture and traditions, forced settlement of the ARC by Russian citizens, targeted persecution of believers of the Ukrainian Orthodox Church of Kyivan Patriarchate, and later – the Orthodox Church of Ukraine);
 - c) sponsoring the use of force against the participants of the Revolution of Dignity in 2013 (incitement to change Ukraine's course from pro-European to pro-Russian, financing of "titushky" (who disrupted peaceful protests and caused acts of violence, hiding former President Viktor Yanukovich, etc.).

Moreover, to illustrate the duration and systematic nature of Russia's policy towards Ukrainians, it is worth referring to the general context of Russia's illegal actions in the times of empire and especially in Soviet times aimed at exterminating the cultural and intellectual elite of Ukraine in order to destroy a part of the group without which the group as such cannot exist (banning the Ukrainian

printed word in 1861, 1876 and 1881; arrests and repressions against members of the Cyril and Methodius Brotherhood, the XIX century's intellectual and political elite of Ukrainians, who led the movement on both sides of the Dnipro River for the national liberation of Ukraine; arrests of Ukrainian intellectuals in the 1920s and trumped-up trials; court cases against the Union for the Liberation of Ukraine (SVU) in March 1930, which aimed to discredit the Ukrainian intelligentsia and destroy the national movement; The Executed Renaissance (a campaign of repression known as the Great Terror began in March 1937; from October 27 to 4 November 1937, the most massive execution of Ukrainian intellectuals took place — more than 287 people); Operation "Blok," which aimed to suppress people who spread anti-Soviet politics, including any cultural or national manifestations: carolling or traditional holidays; arrests of the members and suppression of the activities of the Ukrainian Helsinki Group in the 60s and 70s of the twentieth century). But the most tragic page of Ukrainian history is undoubtedly the Holodomor, a deliberately planned and committed crime of the Stalinist regime against the Ukrainian people.¹⁰²

- The **scale of the crimes committed**: as of 2024, according to incomplete data, more than 10,233 civilians (including more than 511 children) were killed, more than 19,289 people¹⁰³ were injured, more than 1.9 million Ukrainians (including more than 200,000 children) were forcibly displaced or deported to russia,¹⁰⁴ and the amount of direct damage to Ukraine's infrastructure reached \$151.2 billion (as of 1 September 2023)¹⁰⁵.
- The **general nature of crimes committed in the region or country**: as discussed above, russia has a clear tendency to exterminate the Ukrainian people through the constant suppression and eradication of Ukrainian culture, national and religious identity, especially the Ukrainian language, as well as the physical destruction of the intellectual elite. Furthermore, such behaviour and policy are not exceptional or new for russia, as it has a long history of similar campaigns within the region, in particular:
 - a) the Civil War in Georgia (1991–1993);
 - b) the war in Abkhazia (1991–1993) with the transformation of Abkhazia into a puppet state;
 - c) the Transnistrian conflict (1992) with the transformation of Transnistria into a puppet state;
 - d) the Ossetian-Ingush conflict (East Prigorodny conflict) (1992), which led to ethnic cleansing;
 - e) the Chechen war (1994–1996 and 1999–2009);
 - f) the russian-Georgian war (2008), which resulted in South Ossetia becoming a puppet pseudo-state.

Thus, it is quite obvious that russia is committed to armed aggression, interference in the internal affairs of states and the destruction of national identity in order to completely subjugate other nations to its will and political course in order to restore the former russian empire.

- The **fact of the deliberate and systematic destruction of victims because of their belonging to a particular group, while the destruction of representatives of other groups is excluded**: in this context, there is evidence that russian soldiers and armed groups killed and tortured civilians precisely because of their belonging to a national group (Ukrainians), for their bold self-identification

¹⁰² How russia Has Been Destroying the Ukrainian Intellectuals for Centuries // Svidomi.

¹⁰³ UN: More than 10,200 Civilians Killed Since the Beginning of russia's Invasion, Including One Child in Captivity // Suspilne Media.

¹⁰⁴ Herasymchuk: The Number of Children Adopted by russia, Announced by Lvova-Belova, May Be Overestimated // Suspilne Media.

¹⁰⁵ The amount of direct damage to Ukraine's infrastructure caused by the war is estimated at \$151.2 billion as of 1 September 2023 // Kyiv School of Economics.

as Ukrainians, for using the Ukrainian language. In particular, the atrocities committed by russians in Bucha, Irpin, Mariupol, and Iziom, or the story of “basement tortures” in Yahidne in Chernihiv Oblast, confirmed these facts and were a shock to all civilized world. In these towns and villages, russian soldiers committed mass executions, demonstrative torture, and sexual crimes against people who were Ukrainians and identified themselves as such. Moreover, there were repeated cases of torture or murder of people who had patriotic tattoos, jewellery, Ukrainian-language correspondence in messaging apps installed on their phones, etc. This element also includes the abuse, torture, and murder of persons who are in the territory temporarily occupied by russia and refuse to speak russian, take russian passports, and openly declare that they are Ukrainians.

This category also includes the fact of forced transfer and deportation of Ukrainians and Ukrainian children, in particular to the territory of russia, which is a deliberate transfer of Ukrainians to the territory of the aggressor state for their re-education and destruction of the cultural identity of Ukrainians.

- **The general political doctrine that led to such actions:** As for the political doctrine, there is also an element of russia’s consistent and long-term policy of not recognising Ukraine as an independent sovereign state and Ukrainians as a separate nation. It was manifested in constant encroachment on the territory of Ukraine and attempts to involve Ukraine in various pro-russian political blocs and international groups. Over time, this escalated into the propaganda of the imperial-chauvinistic narrative that it is Ukraine that is oppressing the russian-speaking population, committing genocide against the population of Donetsk and Luhansk oblasts and that the eastern regions and Crimea are expressing their will to join the russian federation, etc. In other words, the ground for a full-scale war has been prepared for years and decades, using propaganda, hate speech, disinformation and fake accusations of Ukraine’s violation of international law, which became “the basis for russia’s actions to liberate and save the russian-speaking population.”
- **Repeated actions aimed at destruction and discrimination:** russia systematically and consistently commits international crimes against the Ukrainian people, targeting civilians and causing an increasing number of casualties.

Therefore, both direct and indirect factors evidence that russia had in previous decades and still has a clear intention to destroy a national group (Ukrainians), in whole or in part. As for the “in whole or in part” element, it is still difficult to answer definitely until the end of the international armed conflict since the intention is complete destruction, but in fact, partial destruction of the group takes place.

The practice of the ICTR and the ECHR is worth referring to in terms of the **quantitative criterion of genocide**. Thus, a formula was derived from the ICTR decisions, according to which there is no need to comply with the quantitative criterion in order to recognise a crime as genocide. In the **Seromba case**, the Trial Chamber concluded that the quantitative criterion was not decisive to evidence of the fact of genocide.¹⁰⁶

¹⁰⁶ Genocide, War Crimes and Crimes Against Humanity. A Digest of the Case Law of the International Criminal Tribunal for Rwanda // Human Rights Watch.

In **Vasiliauskas v. Lithuania**, the ECtHR stated that the up-to-date definition of genocide included the intent to destroy a significant part of a national, ethnic, racial or religious group and that this “part” could be measured both quantitatively and qualitatively.¹⁰⁷ The qualitative criterion herein means that it is not necessary to destroy millions of people of one group (it can be two people) for this crime to be recognised as an act of genocide. However, it must be proved that such extermination had significant consequences for the group as a whole because of the role these victims played in the group.

In **Drélingas v. Lithuania**, the ECtHR also concluded that Mr Drélingas’s actions could be qualified as genocide because two partisans were affiliated with a national group protected by the Genocide Convention, which had played an essential role in protecting the Lithuanian nation’s national identity, culture, and self-awareness. The Court took into account that since the victims were members of the partisan movement for the independence of the Lithuanian state and the applicant should have known that his actions against them constituted a crime and could be recognised as genocide, given that there was a special intent to destroy members of the partisan movement who resisted the Soviet regime.¹⁰⁸

William B. Taylor, a former U.S. ambassador to Ukraine who currently serves as vice president for Russia and Europe at USIP, also made a very apt point regarding the quantitative criterion, saying that the very concept of genocide was often incorrectly associated with mass extermination and tragedies, such as the Holocaust and the massacre of the Tutsi tribe in Rwanda. Mr. Taylor explains that the definition of genocide focuses on the intent to destroy a group in whole or in part, so not all cases need to be quantitatively equal to these historical cases to be considered genocide.¹⁰⁹

Accordingly, the quantitative argument, which is often used against genocide cases, is considered by experts as the one meaning that to be qualified as genocide, the number of victims must reach a certain number to recognise the intent to destroy a group in whole or in part, and therefore is not absolute. Given the present-day realities of international law and judicial practice, it can be argued that the reference to the Holocaust is irrelevant, as it was an unprecedented tragedy in terms of its scale and consequences. However, not every crime of genocide must result in the extermination of hundreds of thousands or millions of people in order to qualify as genocide.

Further, we proceed to **analyse Article 2 of the Convention by clauses**. The order of the analysis shall be as follows: 1) analysis of the ICTR practice; 2) analysis of the New Lines Institute report; 3) analysis of Ukraine’s case. The sequence of the analysis depends on the applicability of these components to each individual clause (certain components may be missing). The step-by-step analysis of Article 2 is based on the ICTR’s practice since the ICTY has delivered significantly fewer verdicts on charges of genocide (due to reclassification of cases or death of the accused).

¹⁰⁷ Case of Vasiliauskas v. Lithuania.

¹⁰⁸ Case of Drélingas v. Lithuania.

¹⁰⁹ Is Russia Committing Genocide in Ukraine? // United States Institute of Peace.

Art. 2, clause (a): Killing members of the group

According to the **New Lines Institute Report**, Russian armed forces have directly participated in killing Ukrainian men, women, and children in a variety of ways, including summary executions, missile shelling, torture, targeting evacuation caravans, etc. Moreover, Russian armed forces deliberately targeted the areas with civilian infrastructure and civilian shelters. The Report emphasises that Russian soldiers active in such killings and attacks have been awarded state honours by the Russian president, and Russian media have released celebratory messages after mass targeting of Ukrainian civilians in big cities and civil infrastructure.¹¹⁰

Also, according to the information above, more than 10,000 civilians have been killed so far. At the same time, the **U.S. Holocaust Memorial Museum** has determined that a massacre is already qualified as such if it reaches the mark of 1,000 non-combatant deaths per year. Currently, the number of civilian deaths in Ukraine per year is already well above this threshold. Thus, Article 2(a) of the Convention qualifies Russia's actions in terms of killing Ukrainians.

Art. 2, clause (b): Causing serious bodily or mental harm to members of the group

The **ICTR's practice** is important in terms of Article 2(b) of the Convention. For instance, in the **Semanza case**, the Trial Chamber concluded that the purpose of the Statute is "to put an end to acts that entail serious bodily injury, in particular acts of sexual violence that are not included into the category of murder." Also, in **Kayishema and Ruzindana case**, the Trial Chamber pointed out that a **serious bodily injury should mean** an injury that poses a serious threat to health, causes disfigurement or causes any serious damage to external or internal organs or senses.¹¹¹

In its Report, the **New Lines Institute** states that **Russian soldiers have wilfully caused serious bodily and mental harm to Ukrainians** using systematic tactics that have become only worse and more sophisticated over time. Physical and mental harm has been utilised by Russian state forces and occupational authorities to explicitly expunge expressions of Ukrainian identity during what perpetrators call "denazification sessions."¹¹²

Consistent patterns of grievous physical and psychological harm inflicted by Russian soldiers against Ukrainian men, women, and children have been documented in various areas of Ukraine. These tactics include **extensive torture**, including in camps and detention centres created and funded by the Russian state for this purpose. Forms of torture that have been well documented within Russia for nearly 20 years are being systematically exported to Ukraine to target Ukrainians on the basis of their group identity.¹¹³

The Report also focuses on **widespread rape with extreme brutality and other forms of conflict-related sexual violence** by Russian forces has been documented in all territories that the Russian Federation has officially controlled.

¹¹⁰ The Russian Federation's Escalating Commission of Genocide in Ukraine: A Legal Analysis // New Lines Institute.

¹¹¹ The Practical Guide to Humanitarian Law. Genocide // Medecins Sans Frontieres.

¹¹² The Russian Federation's Escalating Commission of Genocide in Ukraine: A Legal Analysis // New Lines Institute.

¹¹³ Ibid.

Eventually, the Report focuses on **intensive mining** – including of private homes, food facilities, and **corpses – that has** also been implemented by Russian forces across Ukraine, with demonstrated intent to worsen Ukrainians' mental and physical health. Russia's regular nuclear threats (since February 2022) also inflict acute mental harm on Ukrainians.

In terms of physical harm to the health of Ukrainians, Dmytro Lubinets, the Ukrainian Parliament Commissioner for Human Rights, emphasises that as of September 2023, **17,535 adults and 1,123 children** have been **injured** due to Russian attacks. Russia also uses a system of filtration camps, where Russian soldiers force Ukrainians to undress, abuse them, torture, rape and illegally detain them, exert moral pressure and humiliate their human dignity.¹¹⁴

In addition to the above, it is also worth noting that systematic nighttime attacks on civilians with missiles and drones, fake missile launches and the take-off of missile carriers, threats to use nuclear weapons or explode nuclear power plants, energy terrorism and other factors cause unequivocal psychological damage to the Ukrainian population, who have to deal with the consequences and seek professional psychological help due to excessive stress and anxiety. Children who are psychologically unprepared for such events and terror especially suffer in such conditions.

Returning to the **ICTR's practice in terms of "serious bodily or mental harm,"** the Trial Chamber in "The Prosecutor v. Musema" case underlined that "serious bodily or mental harm" includes, but is not limited to: 1) acts of bodily or mental torture; 2) inhumane or degrading treatment; 3) rape; 4) sexual violence, and 5) persecution.¹¹⁵

Moreover, such **"serious harm" need not entail permanent or irremediable harm.** Most importantly, the ICTR has recognised that **sexual violence fell within the category of serious physical or psychological harm** and, therefore, constituted a crime of genocide if committed with the intent to destroy a protected group in whole or in part.¹¹⁶

In "The Prosecutor v. Mikaeli Muhimana" case, the ICTR stated that "grievous bodily harm was any serious physical injury to the victim, such as torture and sexual violence. Such an injury needs not be irremediable."¹¹⁷

Furthermore, in "The Prosecutor v. Musema" case, the ICTR Trial Chamber emphasised that rape and sexual violence not only constituted serious physical and psychological harm to victims but were also one of the worst ways to harm a victim since they caused both physical and psychological damage.¹¹⁸

¹¹⁴ Why Genocide? // LB.ua.

¹¹⁵ Genocide, War Crimes and Crimes Against Humanity. A Digest of the Case Law of the International Criminal Tribunal for Rwanda // Human Rights Watch.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

Referring to the existing case law and interpretation of the Genocide Convention, several issues are worth mentioning. First, during sexual violence and rape, russian soldiers inflicted not only physical (the coercive act itself) and psychological (long-term consequences and post-traumatic stress) harm but also accompanied these acts of sexual violence with excessive cruelty and bodily injuries. For instance, among known cases of sexual violence, it was documented that rape victims were also subjected to additional physical violence: teeth were knocked out, beatings, limbs were broken,¹¹⁹ skin and face were cut, a gun was held to their face and temple, etc.

The Commission's report provides the following situation as an example:

“ A 75-year-old woman was attacked by a russian soldier. He hit her on her face, chest, and ribs and strangled her as he was interrogating her. He ordered her to undress, and when she refused, he ripped off her clothes, cut her abdomen and raped her several times¹²⁰ ”

The Commission found that, in addition to rape, the soldier also tortured the victim.

Another case of sexual violence, accompanied by additional violence, mentioned by the Commission was the case when in March 2022, a russian soldier came to the house of an 83-year-old woman and interrogated her on whether she knew persons who cooperated with the Ukrainian Armed Forces and beat her, ordered her to undress and raped her for several hours. He also threatened to rape the woman's husband, who lived with a disability and was present in the house. The Commission recognised the entirety of acts committed by this soldier as an act of sexual violence and torture.¹²¹

There were also cases of russian soldiers raping pregnant women, causing miscarriages and serious physical and psychological injuries to the victims.¹²²

Art. 2, clause (c): Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part

The New Lines Institute's Report states that russia has deliberately inflicted conditions of life calculated to bring about Ukrainians' physical destruction. This campaign has been carried out in a systematic, coordinated manner that has consistently escalated over the past year. The Report also states that russia has increased its unrelenting attacks on Ukrainian cities, including the wholesale destruction of numerous cities and the systematic expulsion of millions of Ukrainians from their

¹¹⁹ "They Wanted to Skin Themselves": Psychologists Talk About the Condition of Women Raped by russians and Ways to Save Them // Ukrainska Pravda.

¹²⁰ Report of the Independent International Commission of Inquiry on Ukraine.

¹²¹ Ibid.

¹²² Ibid.

homes. The fact of creating conditions of constant danger and fear of civilians for their lives, combined with real shelling and missile attacks, form living conditions aimed at the destruction of the group.¹²³

In addition, russia's policy led to the forced deportation of Ukrainians to the russian federation through systematic "filtration" processes designed to erase or eradicate Ukrainian expressions of identity.

The Report also contains other efforts to create living conditions aimed at the destruction of the group: 1) consistent bombing of cities' sources of electricity, water, gas, and communications, and 2) tactics that target Ukrainian identity and cultural heritage. A significant escalation has been mass missile strikes targeting critical civilian infrastructure across Ukraine, timed for Ukraine's harsh winter (2022) – the most vulnerable season for the physical survival of Ukrainians. These strikes aimed at posing a significant threat to the physical survival of millions of Ukrainians, yet russia consistently and systematically escalated its campaign for months, and russian state actors cheered these brutal tactics.¹²⁴

The Report also draws attention to the fact that such coordinated attacks on civilian infrastructure and energy infrastructure, in particular, have gone far beyond the frontline regions, spreading throughout Ukraine and that the reconstruction will cost Ukraine hundreds of billions of dollars. In addition, 1,004 attacks on the healthcare system have been recorded.

Subsequently, all of these campaigns and plans of russia are aimed at:

- 1) creating conditions when Ukrainians need to survive;
- 2) cutting off Ukrainians from heat, light, communication and water, which actually takes away all basic human needs;
- 3) causing famine, as it is difficult to cook without water, electricity and gas, and a significant factor is also the mining of fields, setting fire to crops, missile attacks on ships and vehicles with Ukrainian crops (grain);
- 4) creating conditions when it is difficult to receive medical care (destruction of hospitals, maternity hospitals, etc.).

Art. 2, clause (d): Imposing measures intended to prevent births within the group

In cases where sexual violence is aimed at preventing the birth of children in a protected group, for example, through female genital mutilation, sterilisation or forced impregnation, such sexual violence falls within the scope of Article 2(d) of the Convention.

In "The Prosecutor v Akayesu" case, ICTR recognised that sterilisation, genital mutilation and forced impregnation could constitute an act of genocide if they were aimed at preventing the birth

¹²³ The Russian Federation's Escalating Commission of Genocide in Ukraine: A Legal Analysis // New Lines Institute.

¹²⁴ Ibid.

of children in a protected group.¹²⁵ Moreover, the Trial Chamber has stated that rape might also be a measure aimed at preventing the birth of children in a protected group since it caused significant psychological damage. The ICTR also recognised the social aspect of forced impregnation, stating that:

“ In patriarchal societies, where affiliation with a group is determined by the identity of the father, an example of a measure intended to prevent births within a group is the case where during rape, a woman of the said group is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother’s group¹²⁶ ”

Today, some legal scholars see the link between forced impregnation and genocide as even broader. According to them, when the process of childbearing is used to reproduce members of one group and at the same time prevent the birth of members of another, it is a form of extermination. Furthermore, being pregnant with a child from a member of a hostile group makes a woman unable to bear children of her own group, and even after giving birth, she may be too devastated to bear children of her own group in the future. What matters is not the actual genetic affiliation of forcibly conceived children to both groups but the subjective perception of the perpetrator and the attitude of the victim and her community towards him.

In this context, Dmytro Lubinets notes that the Russian military commit sexual violence with a deliberate purpose, namely to block the moral and physical reproductive functions of Ukrainians by oppressing and demoralising individuals.¹²⁷

In addition, Yuriy Bilousov, Head of the Department of the Prosecutor General’s Office of Ukraine, specified that the Prosecutor’s Office is currently facing types of torture that border on sexual violence and genital mutilation, which is very common on the part of Russian military personnel. To damage genitals, Russian soldiers use electroshock (electric shocks to various parts of the body, including the genitals, which causes particularly severe pain), as well as genital mutilation, up to and including cutting off the genitals.¹²⁸

In general, it can be concluded that currently, **childbirths within the Ukrainian group are prevented by the following:**

- 1) rape and sexual violence, which causes long-term psychological suffering to victims, making it impossible or difficult for them to potentially have children within their group;
- 2) genital mutilation of the Ukrainian population;
- 3) forced impregnation of Ukrainian women with children by the occupiers.

¹²⁵ Genocide, War Crimes and Crimes Against Humanity. A Digest of the Case Law of the International Criminal Tribunal for Rwanda // Human Rights Watch.

¹²⁶ Ibid.

¹²⁷ Why Genocide? // LB.ua.

¹²⁸ Investigation of the Atrocities of Russian Occupiers: “Genital Mutilation, Cutting off Limbs, Children, Old People” // Argument.

However, it should be borne in mind that the element of forced impregnation is quite complex and comprehensive since it involves not only pregnancy as a result of rape but also the deliberate detention of a woman for the purpose of pregnancy, which is aimed at replacing members of one group with another. Therefore, it is difficult to judge this element until all the evidence and facts of the sexual offence are collected.

Art. 2. clause (e): Forcibly transferring children of the group to another group

Regarding the forcible transfer of children of one group to another group, the **New Lines Institute mentioned in its report that the large-scale transfer of Ukrainian children to russia or russian-controlled territories might be equated to the forcible transfer of children of one group to another group under Article 2(e) of the Genocide Convention.**¹²⁹

While the exact number of forcibly displaced children is unknown, Ukrainian officials verified the identities of **19,393 children who have been transferred.** The problem is also that while the exact numbers of forcibly displaced and deported Ukrainian children are unknown, the displacement itself continues to occur systematically.

The Report also states that **russian legislation has also been adapted to “legalise” these forcible transfers without the child’s or guardian’s permission.** Given the documented cultural stigma attached to adoption in russia, these procedures appear to be designed to strip Ukrainian children of their Ukrainian identity, citizenship, and sense of belonging to the national group. These formalised procedures also indicate intensive state involvement in the procedure at the highest level, as well as many lower-level authorities following instructions from the state.¹³⁰

Another aspect of this crime is that the russian authorities have also taken steps to conceal Ukrainian children’s identities and make it otherwise challenging for children to be returned home.

Thus, the expert group that drafted the report concluded that it was evidence of premeditation, coordinated planning and systematic directions that uniformed russian state security officers were caught on Ukrainian CCTV footage searching for children in orphanages and confiscating children’s files to further search for children against the wishes of their communities and guardians, which constituted genocide under Article 2(e) of the Convention.¹³¹

It should be noted separately that the issue of displacement and deportation of Ukrainian children is complex and has the most negative consequences for Ukraine as a whole, since: 1) by transferring Ukrainian children, russia deprives Ukraine of its future generation; 2) by transferring Ukrainian children to ‘new families’ or ‘re-education camps,’ russia erases the national identity of children, their culture, language and traditions; 3) such transfer and separation of children from their families, society and country can create doubts that they will be fought for and returned.

¹²⁹ The Russian Federation’s Escalating Commission of Genocide in Ukraine: A Legal Analysis // New Lines Institute.

¹³⁰ Ibid.

¹³¹ Ibid.

Art. 3, clause (c): Direct and public incitement to commit genocide

In addition to analysing Article 2 of the Convention, it seems reasonable to draw an analogy between the ICTR's case of Georges Rutaganda and the Russian state authorities (represented by President Vladimir Putin) and the Russian state media.

For example, in the case of Georges Rutaganda, who held a high position in the party of the assassinated Rwandan President Juvenal Habyarimana, Rutaganda was accused of being a shareholder in Radio Télévision Libre des Mille Collines, which regularly incited listeners to commit genocide in its broadcasts.¹³²

Since the crime of genocide was planned by Hutu representatives over a long period of time and was prepared through propaganda and agitation, the element of incitement deserves special attention. In the Seromba case, the ICTR Appeals Chamber specified that the fact of genocide was not limited to its direct and physical commission since other actions could be equated with direct participation in criminal behaviour (*actus reus*), including aid and assistance in its commission, as well as direct and public incitement to commit the crime of genocide. In the Nahimana and Others' case, the Appeals Chamber emphasised that any person might be found guilty of direct and public incitement to genocide if such a person directly and publicly incited to genocide (the material element or criminal conduct, *actus reus*) and if he or she intended to directly and publicly incite others to commit genocide (the intent element, *mens rea*).¹³³

Thus, drawing an analogy with the statements and rhetoric of the president of the Russian Federation and state media, which constantly use hate speech against Ukrainians, dehumanise and demonise them, and use wording and slogans that question the very existence of Ukraine and Ukrainians, it can be concluded that this is, in fact, a systematic and planned public call and incitement to commit genocide. Therefore, certain representatives of the authorities and the media may be charged under Article 3(c) of the Convention in the future.

2.5. Ukraine's experience in recognising the Holodomor as a crime of genocide

Forced collectivisation of agriculture in Ukraine, a large-scale campaign of de-kulakisation of peasants, exploitative grain procurement campaigns, mass repression and terror against the Ukrainian rural population – this was the targeted and well-planned policy of the Bolshevik Party and the Soviet government, which led to the starvation death of millions of Ukrainians in 1933.

¹³² Genocide, War Crimes and Crimes Against Humanity. A Digest of the Case Law of the International Criminal Tribunal for Rwanda // Human Rights Watch.

¹³³ The Practical Guide to Humanitarian Law, Genocide // Medecins Sans Frontieres.

Raphael Lemkin was the first international lawyer to qualify the 1933 famine in Ukraine as a crime of genocide. In 1953, he delivered his report entitled “Soviet genocide in Ukraine” in New York. The report was later translated into many languages and distributed in reputable universities and research circles. It qualified the famine in Ukraine through the prism of the main provisions of the 1948 UN Convention on the Prohibition and Punishment of the Crime of Genocide as a crime of genocide by the communist regime against the Ukrainian nation, especially its historical and cultural core, i.e. the peasantry.

Lemkin described the famine in Ukraine as “a classic example of Soviet genocide, its longest and broadest experiment in Russification – the destruction of the Ukrainian nation.”¹³⁴

Long before the emergence of various “refuting studies” about “natural disasters and the grain crisis” as allegedly one of the main causes of the famine, R. Lemkin objectively analysed the causes of the famine in the attitude of the ruling elite of the Soviet government to Ukrainians as “a serious threat to the very heart of Sovietism.”¹³⁵ Hence, the authorities made well-planned attacks on the national Ukrainian spirit:

- 1) expressions against the national intellectuals (imprisonment, deportation, liquidation of more than 50,000 Ukrainian writers, scientists, educators and cultural actors);
- 2) liquidation of the Ukrainian Autocephalous Orthodox Church and 10,000 of its priests;
- 3) starvation of independent peasants;
- 4) fragmentation of the Ukrainian people by settling foreigners in Ukraine and at the same time scattering Ukrainians throughout Eastern Europe.

In his report, the scholar calls the city of Vinnytsia the Ukrainian Dachau and Zavadka (Morokhivska) village the Ukrainian Lidice. At the same time, he notes that “there have been no attempts at complete annihilation, such as was the method of the German attack on the Jews.”

In addition to Lemkin, the Holodomor in Ukraine was recognised as genocide by well-known American researchers Robert Conquest and James Mace, who share the approach of Raphael Lemkin described above, qualifying the Holodomor as: 1) a crime of genocide and 2) a grave crime against humanity.

The U.S. Congressional Commission on the Ukrainian Famine, established in 1988, having collected and properly processed a huge documentary base, provided substantiated conclusions (a 524-page report) on the genocidal nature of the Holodomor in Ukraine. The main conclusions of the Commission were: a) large numbers of inhabitants of the Ukrainian SSR starved to death in a man-made famine in 1932–1933, caused by the seizure of the 1932 crop by Soviet authorities; b) the victims of the

¹³⁴ Lemkin R. Soviet genocide in Ukraine (article in 28 languages) // The Ukraine 3000 International Charitable Foundation, as part of the History Lessons programme. Kyiv: Maisternia Knyhy, 2009. 208 p.

¹³⁵ Ibid.

Ukrainian Famine numbered in the millions; c) the Ukrainian Famine of 1932–1933 was caused by the maximum extraction of agricultural produce from the rural population; d) J. Stalin and those around him committed genocide against Ukrainians in 1932–1933; e) the American government had ample and timely information about the Famine but failed to take any steps, which might have ameliorated the situation.

Although the Commission did not provide clear legal definitions and assessments, setting as its main task the establishment of historical truth, it also identified the main causes of the famine in Ukraine:

- 1) export of grain from Ukraine in 1932;
- 2) forced collectivisation;
- 3) dekulakisation of the wealthy rural population;
- 4) denationalisation;
- 5) genocide.

Members of the Commission concluded that at least 7.5 million people died from the Holodomor.

In 2009, American lawyer Samuel Totten and Australian historian Paul Bartrop prepared a collection of scientific materials, *The Genocide Studies Reader*. This book contains a thorough analysis and list of all the elements of the crime of genocide during the 1933 Holodomor known to international law. Having analysed the number of victims of the Holodomor (in their opinion, between 5 and 7 million Ukrainian peasants), the ideological nature of the clear plan of social extermination, and the violent destruction of religious and national groups, these scholars place the Holodomor among a number of other genocides of the first half of the twentieth century, such as the Armenian Genocide and the Holocaust.

Despite being mostly cautious in their assessment of the Holodomor in Ukraine, the well-known researcher Norman Neumark concludes:

“ If the victims were allowed to die because they were Ukrainians, then an indictment for genocide according to the 1948 definition makes sense... The bottom line is that Stalin, Molotov, Kaganovich, and their ilk were convinced that Ukrainian peasants as a group were “enemies of the people” who deserved to die. This was enough for the Soviet leadership; it should be enough to conclude that the Ukrainian famine was genocide ”

The political recognition of the Holodomor at the state level was first made in Ukraine in the Presidential Decree “On Measures to Commemorate the 60th Anniversary of the Holodomor in Ukraine” of 19 February 1993. The Decree provided for days of mourning and remembrance in Ukraine. Resolution No. 1696 of the Cabinet of Ministers of Ukraine, dated 26 October 1998, officially provided for events to commemorate the victims of the Holodomor.

On 28 November 2002, the Verkhovna Rada of Ukraine resolved to hold “a special session of the Verkhovna Rada of Ukraine in May 2003 with the participation of the President of Ukraine and members of the Cabinet of Ministers of Ukraine to commemorate the victims of the Holodomor of 1932–1933,” instructing the Ministry of Foreign Affairs of Ukraine for the first time to take international measures aimed at recognising the Holodomor in Ukraine of 1932–1933 as a state policy of genocide against the Ukrainian people.¹³⁶

On 12 February 2003, the Verkhovna Rada of Ukraine held parliamentary hearings dedicated to the commemoration of the 70th anniversary of the Holodomor of 1932–1933. Resolution No. 607-IV of the Verkhovna Rada of Ukraine, dated 6 March 2003, approved the Recommendations of the Parliamentary Hearings on Commemorating the Victims of the Holodomor of 1932–1933.¹³⁷ It is significant that the Recommendations of the parliamentary hearings, in addition to the traditionally frequent use of such terms as “tragedy,” “death of millions of Ukrainians,” and “catastrophe,” already contained a recommendation to raise the issue of recognising the Holodomor of 1932–1933 as genocide of the Ukrainian people with the United Nations and to adopt a Law of Ukraine on recognising the fact of genocide of the Ukrainian nation in 1932–1933.¹³⁸

On 15 May 2003, the Verkhovna Rada of Ukraine adopted the Resolution “On the Appeal to the Ukrainian People to Commemorate the Victims of the Holodomor of 1932–1933,” where it concluded that “the qualification of this catastrophe of the Ukrainian nation as genocide is of fundamental importance for the stabilisation of social and political relations in Ukraine. It is a significant factor in restoring historical justice, moral healing of several generations from the terrible social stress, indisputable proof of the irreversibility of the processes of society democratisation, a stern warning to attempts to establish a new dictatorship in Ukraine and to neglect the most important human right, i.e. the right to life.¹³⁹

Three years later, i.e. on 28 November 2006, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On the Holodomor of 1932–1933 in Ukraine,” which condemned the criminal actions of the USSR’s totalitarian regime, the organisation of the Holodomor, which caused the destruction of millions of people, the destruction of the social foundations of the Ukrainian people, their age-old traditions, spiritual culture and ethnic identity.¹⁴⁰

Pursuant to the Law adopted in May 2009, the Security Service of Ukraine initiated a criminal case against the former top leadership of the Soviet state and the Communist Party: J. Stalin, V. Molotov, L. Kaganovich, P. Postyshev, S. Kosior, V. Chubar, M. Khataievych.

¹³⁶ Resolution of the Verkhovna Rada of Ukraine “On the 70th Anniversary of the Holodomor in Ukraine.”

¹³⁷ Resolution of the Verkhovna Rada of Ukraine “On Recommendations of the Parliamentary Hearings on Commemorating the Victims of the Holodomor of 1932–1933.”

¹³⁸ Ibid.

¹³⁹ Resolution of the Verkhovna Rada of Ukraine “On the Appeal to the Ukrainian People of the Participants of the Special Session of Ukraine on 14 May 2003 to Commemorate the Victims of the Holodomor of 1932–1933.”

¹⁴⁰ Law of Ukraine “On the Holodomor of 1932–1933 in Ukraine.”

This criminal case was initiated on the genocide in Ukraine in 1932–1933, i.e. on the grounds of a crime under Article 442 (Part 1) of the Criminal Code of Ukraine. The initiation of the criminal case was a natural, though, in the opinion of some scholars, too late response to the demands of the Ukrainian society to investigate the crimes of the communist regime, the most serious of which was the Holodomor in terms of its tragic scale and consequences.

In accordance with the procedural rules effective at the time of the criminal case initiation, the Security Service of Ukraine should have either initiated a criminal case or refused to initiate it with reasons when reacting to the said provisions. Given the amount of evidence collected and the facts established, which directly indicate the signs of the crime of genocide in Ukraine in 1932–1933, the Security Service of Ukraine reasonably issued a resolution to initiate such a criminal case, accepted it for proceedings, and conducted a relevant investigation.

It is no surprise that during the investigation, the investigators did not face the issue of finding or presenting an official document(s) that would irrefutably prove the existence of a plan to commit the crime of genocide or intent to commit it. The 1948 Convention on the Prevention and Punishment of the Crime of Genocide does not provide for/require the availability of such a document, but evidence of such intent is required.

When investigating the criminal case, which consists of 330 volumes, investigators of the Security Service of Ukraine interrogated 1,890 witnesses, attached 5,000 archival documents, identified 857 mass graves of Holodomor victims, conducted 24 forensic examinations, including historical and legal, demographic, medical, psychological, as well as used other materials, including reports and messages of foreign diplomatic and consular missions accredited in the USSR for 1932–1935.

The investigation resulted in the documentation of the main active perpetrators and a procedural decision to initiate criminal proceedings against J. V. Stalin, V. M. Molotov, L. M. Kaganovich, P. P. Postyshev, S. V. Kosior, V. Y. Chubar, and M. M. Khataievysh on the fact of organising the genocide in Ukraine in 1932–1933, on the grounds of an offence under Article 442 (Part 1) of the Criminal Code of Ukraine. Following that, on 31 December 2009, consolidated criminal case No. 475 was sent to the Kyiv Court of Appeal for consideration in accordance with Ukraine's criminal procedure law and in agreement with the Prosecutor General's Office of Ukraine.

Having examined the case file, the Court of Appeal recognised its uniqueness in the practice of domestic criminal justice and its special procedural specificity. The Court of Appeal had no procedural opportunity to word an indictment¹⁴¹ and pronounce a verdict against the individuals accused by the Main Investigation Department of the Security Service of Ukraine of committing the crime of genocide, as the criminal procedure law of Ukraine does not provide for the punishment of the deceased.

¹⁴¹ The term "indictment" is given here in accordance with the provisions of the Criminal Procedure Code of Ukraine of 1960, according to which the investigation was carried out in 2009–2010.

In accordance with Article 6 (Part 8, clause 1) of the Criminal Procedure Code of Ukraine in force at the time, the Court of Appeal closed the proceedings not because of the circumstances constituting the grounds of rehabilitation but only because the accused persons had died.

At the same time, the Court of Appeal, in accordance with the Criminal Procedure Code of Ukraine in force at the time, verified the compliance of the conclusions of the Main Investigation Department of the Security Service of Ukraine with facts established by the investigation, and confirmed the validity of the qualification of the Holodomor as a crime of genocide against a part of the Ukrainian national group.

The Court of Appeal paid due attention to the analysis of both the statutory and factual grounds for qualifying the Holodomor of 1932–1933 in Ukraine as a crime of genocide. The court found that, according to the 1948 UN Convention on the Prohibition and Punishment of the Crime of Genocide and Article 442 (Part 1) of the Criminal Code of Ukraine, “genocide means [...] acts committed for the purpose of total or partial destruction of any national, ethnic, racial, or religious group as such” and in order to qualify criminal acts as genocide “it is necessary to prove that the perpetrator has a specific intent to destroy only a group defined in the Convention and that their criminal behaviour is directed against the defined group as such.”

In determining the factual grounds for qualifying the Ukrainian Holodomor as a crime of genocide, the Court of Appeal noted that the case file revealed the causes and motives for the crime and the characteristics of its objective and subjective sides. **The Court’s ruling recognised that the Holodomor of 1932–1933 in Ukraine was proved to have been:**

- 1) planned with the purpose of suppressing the Ukrainian national liberation movement and preventing the establishment of an independent Ukrainian state;
- 2) committed by forced withdrawal of all food from Ukrainian peasants and depriving them of access to food, i.e. artificially creating living conditions that led to the physical destruction of a specific component of the Ukrainian national group – Ukrainian rural population;
- 3) committed as one of the stages of a special operation against a part of the Ukrainian national group as such, since it was the Ukrainian nation, not national minorities, that was the subject of state-building self-determination, and only it could exercise the right to self-determination enshrined in the 1924 Constitution of the USSR by seceding from the USSR and forming an independent Ukrainian state;
- 4) organised by the top leadership of the Soviet Communist Party regime, where the seven individuals identified in the case played a particularly important and active role in the commission of the crime.

The ruling of the Court of Appeal, in particular, states: “The pre-trial investigation body has fully and comprehensively established the special intention of J. V. Stalin (Dzhugashvili), V. M. Molotov (Skriabin), L. M. Kaganovich, P. P. Postyshev, S. V. Kosior, V. Y. Chubar, and M. M. Khataievych to destroy a part of the Ukrainian (and not any other) national group and has objectively proved that this intention concerned the Ukrainian national group as such.”¹⁴²

¹⁴² The ruling of the Kyiv City Court of Appeal in the criminal case initiated due to genocide in Ukraine in 1932–1933.

The issue of retroactive effect of Article 442 of the Criminal Code of Ukraine was the focus of much attention of the Court of Appeal. Relying on Article 7 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 1 of the 1968 UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, the Court found that there were “no legal prohibitions on the retroactive application of Article 442 (Part 11) of the Criminal Code of Ukraine” to the actions of the perpetrators of the 1932–1933 genocide in Ukraine.

The Court of Appeal agreed with the conclusion of the Main Investigation Department of the Security Service of Ukraine, which was based on forensic scientific and demographic expertise, that the direct result of the deliberate extermination of a part of the Ukrainian national group organised by the communist regime was the starvation to death of 3,941,000 people (previously, according to the Institute of Demography and Social Studies of the National Academy of Sciences of Ukraine, the number of deaths was published as 3.4 million). The Court of Appeal found that there were no grounds for returning the criminal case for additional investigation since, given the case-specific character, the pre-trial investigation had been conducted fully and comprehensively.

On 13 January 2010, the Kyiv City Court of Appeal delivered a ruling in the name of Ukraine, which recognised that in 1932–1933, on the territory of Soviet Ukraine, the highest-level leaders of the party and government “deliberately organised and committed genocide in Ukraine, creating living conditions designed to physically destroy a part of the Ukrainian national group,” i.e. the crime of genocide was committed.¹⁴³

The above-mentioned leadership of the Communist Party and the Soviet state were named as the organisers and perpetrators of the crime of genocide.

The ruling of the Court of Appeal legally established the fact of the crime of genocide by a competent national judicial authority in a legal document which, under Article 129-1 of the Constitution of Ukraine, is binding on everyone and throughout Ukraine.

Closer to the 90th anniversary of the Holodomor of 1932–1933, the issue of recognition by the international community of the Holodomor as an act of genocide by the Soviet authorities against the Ukrainian people became particularly relevant. In this regard, the Verkhovna Rada has resumed its efforts to call on foreign countries to recognise the Holodomor as genocide. Thus, on 16 November 2022, the Verkhovna Rada adopted an appeal to international organisations and parliaments of foreign countries to recognise the Holodomor as genocide.¹⁴⁴ As of 2022, 23 states recognised the Holodomor as genocide. Moreover, an important step towards restoring historical justice and recognising the Soviet government as responsible for genocide was the Resolution adopted by the European Parliament on 15 December 2022 to recognise the Holodomor as an act of genocide.¹⁴⁵

¹⁴³ The ruling of the Kyiv City Court of Appeal in the criminal case initiated due to genocide in Ukraine in 1932–1933.

¹⁴⁴ Resolution of the Verkhovna Rada of Ukraine “On the Appeal of the Verkhovna Rada of Ukraine to International Organisations and Parliaments of the World on Recognising the Holodomor of 1932–1933 in Ukraine as Genocide of the Ukrainian People.”

¹⁴⁵ Why Is It Important for Ukraine that the World Recognises the Holodomor of 1932-1933 as Genocide // Suspilne Media.

The path to the recognition of the Holodomor as an act of genocide by so many states and the European Parliament was long and difficult. The reason for this is the over-politicisation of the issue, the long-lasting concealment by the Soviet authorities of the scale of the brutal extermination of the Ukrainian peasantry, and the deliberate denial and cynical distortion of historical facts by the successor to the USSR, the Russian Federation.

However, it is worth noting that despite the large-scale support of foreign states and international organisations in recognising the Holodomor as a crime of genocide, such recognition is political. Unfortunately, as the Holodomor was committed before the adoption of the Genocide Convention, it is almost impossible to file a lawsuit with any international judicial institution to initiate a case and restore justice.

Unlike the situation with the Holodomor, Ukraine is now free to file lawsuits with international judicial institutions regarding the crime of genocide committed by Russia and even insist on the establishment of a special international tribunal that will be able to effectively consider this case. It is this difference from the Holodomor case that Ukraine should use to achieve not only political recognition of the genocide committed by Russia but also legal qualification and justice.

2.6. Special international tribunal for the crime of aggression: Pros and cons

2.6.1. Why are the ICC and the ICJ not an effective solution?

In the context of the ICJ, it is worth noting that the system of this Court has its advantages, in particular, the ability to consider claims filed by a state against another state, providing for punishment (sanctions) for the entire country. However, it should also be understood that **cases in Court are considered for a very long time (sometimes decades), and decisions regarding genocide are usually very limited and cautious**, with most charges of genocide being rejected with the typical explanation of “insufficient evidence to establish deliberate intent.”

If we briefly analyse the ICJ's practice in terms of the crime of genocide, the Court has received a total of five cases:

- The first case considered by the ICJ was initiated by a request from the UN General Assembly for an advisory opinion on reservations to the Convention on the Prevention and Punishment of the Crime of Genocide. In fact, it was an advisory opinion on the interpretation of the Genocide Convention.

- The second case was a **lawsuit by Bosnia and Herzegovina v. Serbia and Montenegro** for genocide committed during the breakup of the former Yugoslavia. In this case, the ICJ ruled on most of the allegations that although the acts committed by Serbia and Montenegro were criminal and violated international law, due to the lack of established and sufficiently proven deliberate intent, they could not be recognised as genocide, but instead could be qualified as war crimes and crimes against humanity. Compared to trials within international criminal tribunals, the ICJ required a higher level of evidence base, repeatedly stating that deliberate intent is a necessary element for a crime to be recognised as genocide. However, the Court's final conclusion is that the acts committed in Srebrenica, as set out in Article 2(a) and (b) of the Convention, were committed with the deliberate intent to partially destroy the Bosnian Muslim group as such. The Court, therefore, recognised these acts to constitute an act of genocide committed by members of the Republika Srpska forces in and around Srebrenica from around 13 July 1995.
- The third case was a **lawsuit filed by Serbia and Montenegro v. 10 NATO member states** that in 1999 decided to bombard Yugoslavia in response to the events in Kosovo and the refusal to stop the armed hostilities and massive violations of international law. However, the ICJ refused to consider the case of Serbia and Montenegro v. NATO, citing lack of jurisdiction.
- The next genocide case was **Croatia v. Serbia**. On 2 June 1999, Croatia filed an application with the ICJ, accusing Serbia of violating the Genocide Convention by seizing certain areas of the country and massacring the Croatian population. Serbia filed a counterclaim. This proceeding lasted more than 15 years in total. However, eventually, the ICJ decided to dismiss both states' claims because, despite the recognition of their committing serious crimes, they did not qualify as genocide under the Genocide Convention due to the lack of established deliberate intent.
- The most recent case was the genocide lawsuit in the **Gambia v. Myanmar** case in 2019. The prerequisite for the lawsuit was the events that took place in October 2016 and August 2017, when Myanmar's security forces conducted ethnic cleansing against the Rohingya, a Muslim ethnic minority living in Rakhine State, Myanmar. On 23 January 2020, the ICJ issued a ruling on provisional measures, where it stated that, having considered the provisional measures requested by the Gambia and examined the circumstances of the case, it concluded that the provisional measures should not be identical to those requested by the Gambia. The Court confirmed that widespread crimes that may qualify as the crime of genocide in violation of the Genocide Convention are being committed in Myanmar and that there is a real need for provisional measures that could help reduce the number of victims and bring the conflict to a halt.

There is a tendency in the current practice of the ICJ to refuse to consider a case, dismiss claims, re-qualify a case and have very high requirements to the body of evidence. Moreover, the ICJ's resolutions are ineffective in terms of stopping the ongoing crime and bringing the perpetrators to justice. For example, the resolution issued in 2020 regarding Myanmar has not had any results. As of 2024, the Rohingya's situation has deteriorated, with continuing massive human rights violations, the complete deprivation of their citizenship and identification cards, economic pressure, forced displacement within the country, forced migration and labour, sexual crimes, mass illegal detention and killings. Thus, despite the provisional measures resolution, Myanmar has done nothing to stop and prevent further crimes against the Rohingya, and the ICJ and the UN have not responded to the ongoing Rohingya genocide, dragging the case out for five years.

Similarly, on 16 March 2022, the ICJ decided to impose provisional measures against Russia, satisfying all of Ukraine's claims (e.g., that Russia should immediately cease hostilities that began on 24 February 2022).¹⁴⁶ Thus, the situation is similar to the situation with provisional measures in the Myanmar case. The judgement was delivered in 2022 (two years ago), but the aggressor state has not implemented a single point. It ignores such decisions, knowing that no real sanctions will follow.

In addition, it should be borne in mind that the ICJ has already refused to consider whether Russia has violated the Genocide Convention in terms of committing the crime of genocide against the Ukrainian people, focusing only on the question of whether it has distorted the concept and interpretation of the Convention.

Of course, it is possible to file a separate lawsuit to the ICJ accusing Russia of committing the crime of genocide against the Ukrainian people, but the Court's practice indicates a very low probability of successful consideration of this case, with results that would bring the aggressor state to justice and restore justice. Therefore, in terms of the crime of genocide, the ICJ is not the most effective international judicial institution.

At the same time, submissions regarding other categories of international crimes, such as war crimes and crimes against humanity, as well as any other variations of lawsuits (similar to cases already considered), are a very real option for Ukraine. In this context, it is worth mentioning the active discussions regarding the ICJ's decisions on Russia's violation of the Convention for the Suppression of the Financing of Terrorism and the Convention on the Elimination of All Forms of Racial Discrimination. There was a lot of speculation about whether this was a victory or a defeat. In order to avoid such rhetoric beyond the legal sphere, the answer is that this is a complex and lengthy process. There will be no clear victories and no easy lawsuits or decisions in the legal sphere of Russia's war against Ukraine, but every lawsuit filed with international judicial institutions and every judgement (even with only partial satisfaction of claims) is a process that builds the image of Ukraine as a state governed by the rule of law and the image of Russia as an aggressor state and a systematic and gross violator of international law.

The tactic of referring these cases to the ICC for consideration and investigation is also quite controversial. The main problem is that in its entire history, **the ICC has never passed a verdict on charges of genocide**, reclassifying all cases as crimes against humanity or war crimes. Accordingly, a rather obvious question arises: whether it makes sense to rely on the ICC in terms of the crime of genocide, given its zero practice of considering cases involving genocide charges?

¹⁴⁶ UN International Court of Justice.

2.6.2. A tribunal for the crime of aggression: Pros and cons

A prerequisite for the establishment of a special tribunal for the crime of aggression is the fact that the ICC cannot exercise jurisdiction over it unless both the victim and the aggressor state have ratified and recognised the Court's jurisdiction over it. So far, only Ukraine has ratified the Rome Statute of August 21, 2024. However, the lack of ratification by Russia creates an obstacle for holding it accountable for crimes against Ukraine. In view of this, it is expected that in 2024 the Assembly of States Parties to the Rome Statute will consider the issue of changing this requirement of the act.¹⁴⁷

At the same time, back in 2015, Ukraine made an attempt to grant the ICC jurisdiction over all four categories of international crimes that may have been committed on the territory of Ukraine from 20 February 2014 onwards. However, the ICC Prosecutor noted that this jurisdiction does not extend to the crime of aggression and that the crime of aggression is not applicable to the current situation in Ukraine.

Therefore, since the ICC does not have jurisdiction over the crime of aggression and even after the ratification of the Rome Statute by Ukraine due to its non-ratification by the Russian Federation, an idea and an initiative group arose to create a Special Tribunal to punish the crime of aggression against Ukraine.¹⁴⁸

Anton Korynevych, Ambassador-at-Large of the Ministry of Foreign Affairs of Ukraine, noted that two models of the foundation for the special tribunal are currently being considered: 1) its creation under an agreement between Ukraine and the UN; 2) an internationalised model.¹⁴⁹ In fact, the internationalised model, which is more considered as a working option, will be a national judicial model with international elements.¹⁵⁰

Such progression of events and the way out of the situation is a very good decision and step. However, if a special tribunal is created only for the crime of aggression, several factors should be taken into account, including those already analysed before. Thus, if reference is made to the ICC's jurisdiction, and the Court is unable to consider a case of the crime of aggression, the question arises as to why it is not possible to consider the model of establishing an international criminal tribunal ad hoc according to the ICTR and the ICTY models. After all, several facts can be established from the existing practice of the ICC:

- a) the Court has not delivered a single verdict on the crime of genocide;
- b) the Court, having a large database of documented evidence since 2014, has not yet begun to consider any case regarding Ukraine;
- c) before the ratification of the Statute by both Ukraine and Russia, there is no jurisdiction over the crime of aggression in the context of Ukraine.

¹⁴⁷ The Verkhovna Rada of Ukraine ratified the Rome Statute of the International Criminal Court // Representation of the President in the Autonomous Republic of Crimea.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Korynevych: Ukraine Has Developed Various Aspects of the Special Tribunal Regarding Russian Aggression // Ukrinform.

Given these factors, it would be much more effective to propose and demand the establishment of an international criminal ad hoc tribunal according to the ICTR and ICTY models. This tribunal would have full jurisdiction over all four categories of international crimes, would be able to incorporate elements of international humanitarian law (following the ICTR example), and would have a new and less politicised panel of judges.

Experts debate the possibility of establishing such a tribunal. However, its model is almost identical to the one proposed for the establishment of a tribunal to consider the crime of aggression: through the UN General Assembly to circumvent the right to veto within the Security Council (from Russia and potentially from China).

2.7. The crime of genocide: Summary

As a summary of the international and domestic law, the activities of the Parliament of Ukraine, the practice of the International Criminal Tribunals (ICTR and ICTY), and international judicial institutions analysed above in the context of qualifying and investigating the crime of genocide, the following key points can be distinguished:

- The crime of genocide is an exceptional category of international crimes that requires extensive evidence, in particular, evidence of the aggressor state's special intent to destroy a certain (national) group in whole or in part. This makes it difficult to persuade the international community, as well as international courts, to recognise and investigate Russia's crimes as the crime of genocide.
- It is necessary to collect, record and document as many as possible of all public and official statements on behalf of the top state authorities of Russia, all crimes and damage caused, in order to identify a clear intent, tactics and purpose for the potential investigation of the crimes of the Russian Federation in Ukraine as genocide. Thus, it is necessary to create a similar evidence base in addition to the already existing evidence base of war crimes committed by Russia in Ukraine.
- In accordance with the practice of international judicial institutions (the ICJ and the ICC), it is possible to consider and work on the option of establishing an ad hoc international criminal tribunal for Ukraine regarding the international crimes committed by Russia. This tribunal should be modelled after the ICTR and the ICTY, particularly following the former's example of incorporating the provisions of the Geneva Convention into the statute to fully investigate and try cases under all four categories of international crimes.

Annexes

Annex 1. Crimes against humanity or against humankind?

Art. 5 of the Rome Statute provides for the crimes within the jurisdiction of the Court:

“1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- a) The crime of genocide;
- b) Crimes against humanity;
- c) War crimes;
- d) The crime of aggression. ”

The Statute’s original states as follows: “The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.”

Thus, in accordance with the original, the legally correct translation of this category of international crimes is “crimes against humanity.” The word “humanity” is used in the translation because it implies that the crimes are committed not against humankind but against all laws and concepts of humanity. In other words, these crimes are atrocities, the most serious violations of human rights.

Now let's look at the options for incorrect translation and use of the term.

No	Original	Translation/Misuse
1	Based on a careful analysis of the law and available facts, I have determined that members of Russia's forces and other Russian officials have committed crimes against humanity in Ukraine ¹⁵¹	На підставі ретельного аналізу законодавства та наявних фактів я визначив, що військовослужбовці російських військ та інші російські офіційні особи вчинили злочини проти людства в Україні ¹⁵²
2	<p>These acts are not random or spontaneous; they are part of the Kremlin's widespread and systematic attack against Ukraine's civilian population.</p> <p>We reserve crimes against humanity determinations for the most egregious crimes¹⁵³</p>	<p>Ці дії не є випадковими чи спонтанними; вони є частиною широкомасштабної та систематичної атаки Кремля проти цивільного населення України.</p> <p>Ми використовуємо визначення «злочини проти людства» для найбільш кричущих злочинів¹⁵⁴</p>
3		<p>Злочини проти людства</p> <p>Поняття злочинів проти людства визначено в Римському статуті Міжнародного кримінального суду¹⁵⁵.</p> <p>(Окрім неправильного вживання, ще й неперевірене формулювання Римського статуту)</p>
4		За два роки в Латвії порушено 9 справ за воєнні злочини та злочини проти людства ¹⁵⁶ .
5		Злочин геноциду – один із кількох міжнародно-правових злочинів, але не єдиний. До таких найтяжчих з погляду міжнародного права злочинів також належать злочин агресії, воєнні злочини та злочини проти людства.

¹⁵¹ Crimes Against Humanity in Ukraine // US Embassy.

¹⁵² Crimes against Humankind in Ukraine // U.S. Embassy in Ukraine.

¹⁵³ Crimes Against Humanity in Ukraine // US Embassy.

¹⁵⁴ Ibid.

¹⁵⁵ Crimes Against Humankind // DW.

¹⁵⁶ In two years, 9 cases of war crimes and crimes against humankind have been initiated in Latvia // Ukrinform.

No	Original	Translation/Misuse
5		<p>Злочини проти людства</p> <p>Інша назва – злочини проти миру та безпеки людства. Римський статут Міжнародного кримінального суду в Гаазі визначає, що до злочинів проти людства належить будь-яке з перелічених нижче діянь, якщо воно вчинене в межах широкомасштабного або системного нападу на цивільних осіб.</p> <p>Визначальною характеристикою злочинів проти людства є те, що злочинні дії є частиною політики певного уряду, при цьому винні не обов'язково повинні ідентифікувати себе з цією політикою або широко розповсюджених злочинів, які замовчуються чи виправдовуються урядом або фактичною владою¹⁵⁷.</p> <p>(Знову некоректне посилання на Римський статут)</p>
6		<p>Усі російські військові злочини і злочини проти людства мають бути розслідувані.</p> <p>«Усі військові злочини РФ і злочини проти людства мають бути розслідувані та піддані судовому переслідуванню. Нідерланди підтримують ці зусилля. Нідерланди відправили свої групи для розслідування цих злочинів», – сказав Гукстра на спільному брифінгу з очільником МЗС України Дмитром Кулебою та главою МЗС Естонії Урмасом Рейнсалу у Львові¹⁵⁸</p>
7	<p>President of the Republic of Moldova Maia Sandu condemned the atrocities committed by russian army in Bucha and other Ukrainian cities.</p>	<p>Злочини проти людства буде покарано</p> <p>Учора, в річницю визволення, за участі керівників України та іноземних лідерів у Бучі згадували торішні трагічні сторінки.</p>

¹⁵⁷ What Crimes Russia Commits in Ukraine // The Ukrainian Institute of National Memory.

¹⁵⁸ All Russian War Crimes and Crimes Against Humankind Must Be Investigated // Interfax-Ukraine.

No	Original	Translation/Misuse
7	<p>She posted about it on her Facebook and Twitter pages:</p> <p>«It is impossible to look at the atrocities in Bucha and other Ukrainian cities. I am shocked by the brutality against civilians. Moldova decisively condemns these crimes against humanity, this illegal and unprovoked war against Ukraine», the message says¹⁵⁹.</p>	<p>Мая Санду впевнена, що злочини повинні мати наслідки, злочини проти людства повинні мати важкі наслідки¹⁶⁰.</p>
8		<p>Геноцид та злочини проти людства: як Львів вплинув на міжнародне право та появу цих термінів?¹⁶¹</p>
7		<p>Вона наголосила, що жодна нація не перебуває в безпеці, коли одна країна порушує суверенітет і територіальну цілісність іншої, а злочини проти людства залишаються безкарними. (Камала Гарріс)¹⁶²</p>

¹⁵⁹ President of the Republic of Moldova Maia Sandu condemned russian army atrocities in Ukraine // Honorary Consulate of the Republic of Moldova sn Khmelnytsky/

¹⁶⁰ Crimes Against Humankind Will Be Punished // Uriadovyi Kurier.

¹⁶¹ Genocide and Crimes Against Humankind: How Lviv Influenced International Law and the Emergence of These Terms? // Hromadske Radio.

¹⁶² US Officially Recognises that russia Has Committed Crimes Against Humanity // Factly.

Annex 2. Crimes against humanity or against humankind?

Quantitative Visualisation of Legal Acts Adopted by the Verkhovna Rada of Ukraine Regarding the Criminalisation of Russia's Actions Against Ukraine, Bringing Domestic Legislation in Line with International Law and Working on Amendments to Criminal Law

Between 24 February 2022 and 22 February 2024, at least 47 legislative initiatives (draft laws and resolutions, declarations, statements, and requests) were registered in the Verkhovna Rada of Ukraine that propose that the Verkhovna Rada adopt a decision to condemn and toughen the punishment for such crimes during the illegal armed aggression.

To illustrate the legislative activity of the Verkhovna Rada, the chart below shows acts adopted during the war aimed at prosecuting and punishing the crime of genocide and war crimes. The acts have been adopted since 24 February 2022.

Seq. No	Act	Name	Status	Published	Link
1	Resolution of the Verkhovna Rada of Ukraine; Statement No. 3488-IX of 22 November 2023	On the Statement of the Parliament of Ukraine on the 90th Anniversary of the Holodomor of 1932–1933 in Ukraine	Effective	Holos Ukrainy of 24 November 2023, No. 236	https://zakon.rada.gov.ua/go/3488-20
2	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 3099-IX of 3 May 2023	On the Appeal of the Verkhovna Rada of Ukraine to the Parliaments and Governments of Foreign States, International Organisations and their Inter-Parliamentary Assemblies to Condemn the Crimes of Forced Deportation of Ukrainian Children Committed by the Russian Federation and the Republic of Belarus	Effective	Holos Ukrainy of 10 May 2023, No. 93	https://zakon.rada.gov.ua/go/3099-20
3	Law of Ukraine of 23 August 2023, No. 3341-IX	"On Amending the Criminal Procedure Code of Ukraine in Terms of Peculiarities of Calculating the Time Frame for Pretrial Investigation under Martial Law"	Effective	Holos Ukrainy of 24 August 2023, No. 28	https://zakon.rada.gov.ua/go/3341-20

Seq. No	Act	Name	Status	Published	Link
4	Resolution of the Verkhovna Rada of Ukraine; Statement No. 3078-IX of 2 May 2023	On the Statement of the Verkhovna Rada of Ukraine, "On the Use of the Ideology of Racism by the Political Regime of the russian federation, Condemnation of the Principles and Practices of Racism as Totalitarian and Man-Hateful"	Effective	Holos Ukrainy of 13 May 2023, No. 96	https://zakon.rada.gov.ua/go/3078-20
5	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 33315-IX of 10 August 2023	On the Appeal of the Verkhovna Rada of Ukraine to the Leaders and Parliaments of Foreign States to Restrict the Entry of russian and Belarusian Athletes and Sports Delegations to their Territories	Effective	Holos Ukrainy of 16 August 2023, No. 163	https://zakon.rada.gov.ua/go/3315-20
6	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 3283-IX of 28 July 2023	On the Appeal of the Verkhovna Rada of Ukraine to the United Nations, Parliaments and Governments of the Group of Seven, the European Union and the NATO Member States, the European Parliament, the Parliamentary Assembly of the Council of Europe, the OSCE Parliamentary Assembly, the NATO Parliamentary Assembly, the Inter-Parliamentary Union, the International Committee of the Red Cross, the Independent International Medical Humanitarian Organisation "Médecins Sans Frontières" to Ensure the Exchange and Return to Ukraine of all Ukrainian Prisoners of War and All Illegally Detained Persons	Effective	Holos Ukrainy of 3 August 2023, No. 154	https://zakon.rada.gov.ua/go/3283-20
7	Resolution of the Verkhovna Rada of Ukraine; Statement No. 2961-IX of 20 March 2023	On the Statement of the Verkhovna Rada of Ukraine on the Need to Ensure Accountability of those Responsible for the Most Serious Crimes under International Law on the Territory of Ukraine	Effective	Holos Ukrainy of 25 March 2023, No. 61	https://zakon.rada.gov.ua/go/2961-20
8	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 3282-IX of 28 July 2023	On the Appeal of the Verkhovna Rada of Ukraine to the United Nations Educational, Scientific and Cultural Organisation (UNESCO), Parliaments and Governments of Member States of this International Organisation on the Need to Deprive the russian federation of its Membership in UNESCO	Effective	Holos Ukrainy of 3 August 2023, No. 154	https://zakon.rada.gov.ua/go/3282-20

Seq. No	Act	Name	Status	Published	Link
9	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 2947-IX of 24 February 2023	On the Appeal of the Verkhovna Rada of Ukraine to the UN Human Rights Committee, the UN Committee on the Rights of the Child, the UN International Court of Justice, the UN High Commissioner for Refugees on the Violation by the russian federation of International Treaties (Conventions) Having the Signs of Genocide of the Ukrainian People in Terms of Forced Deportation to the Aggressor State or Within the Temporarily Occupied Territories of Ukraine of Children Who Are Citizens of Ukraine and Children Who Lived on the Territory of Ukraine, Demanding the Return of such Children to their Parents or Legal Representatives	Effective	Holos Ukrainy of 3 March 2023, No. 45	https://zakon.rada.gov.ua/go/2947-20
10	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 3163-IX of 28 June 2023	On the Appeal of the Verkhovna Rada of Ukraine to the United Nations, the International Atomic Energy Agency, the European Union, the Organisation for Security and Cooperation in Europe, the North Atlantic Treaty Organisation, the Council of Europe and their Parliamentary Assemblies, Parliaments and Governments of Foreign States to Prevent a Nuclear Disaster at the Zaporizhzhia Nuclear Power Plant and to Counteract Nuclear Blackmail of the russian federation, a Nuclear Terrorist State	Effective	Holos Ukrainy of 30 June 2023, No. 130	https://zakon.rada.gov.ua/go/3163-20
11	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 2942-IX of 24 February 2023	On the Appeal of the Verkhovna Rada of Ukraine to the Parliaments and Governments of the World States and International Organisations on the Anniversary of the Full-Scale Invasion of Ukraine by the russian federation	Effective	Holos Ukrainy of 2 March 2023, No. 44	https://zakon.rada.gov.ua/go/2942-20
12	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 3142-IX of 10 June 2023	On the Appeal of the Verkhovna Rada of Ukraine to the United Nations, Parliaments and Governments of its Member States, International Organisations and their Parliamentary Assemblies in Connection with Another Act of Terrorism by the russian federation, i.e. the Explosion of the Kakhovka Hydroelectric Power Plant named after P.S. Naporozhnyi	Effective	Holos Ukrainy of 17 June 2023, No. 121	https://zakon.rada.gov.ua/go/3142-20

Seq. No	Act	Name	Status	Published	Link
13	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 3118-IX of 29 May 2023	On the Appeal of the Verkhovna Rada of Ukraine to the Interparliamentary Assembly on Orthodoxy and the Parliaments of its Member States	Effective	Holos Ukrainy of 8 June 2023, No. 114	https://zakon.rada.gov.ua/go/3118-20
14	Resolution of the Verkhovna Rada of Ukraine, No. 2903-IX	On Recognising the russian Criminal Organisation Known as the Wagner Private Military Company or Wagner Group as an International Criminal Organisation and Condemning the Activities of its Members	Effective	Holos Ukrainy of 15 February 2023, No. 32	https://zakon.rada.gov.ua/go/2903-20
15	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 2901-IX of 6 February 2023	On the Appeal of the Verkhovna Rada of Ukraine to the Parliamentary Assembly of the Organisation for Security and Co-operation in Europe (OSCE PA) and the Parliaments of its Member States on the Inadmissibility of Participation of Members of the russian federation's Parliament in the Work of the Assembly's Statutory Bodies	Effective	Holos Ukrainy of 15 February 2023, No. 32	https://zakon.rada.gov.ua/go/2901-20
16	Resolution of the Verkhovna Rada of Ukraine; Statement No. 2787-IX of 1 December 2022	On the Statement of the Verkhovna Rada of Ukraine on the Recognition of the russian Regime as a Terrorist One, Illegitimacy of the russian federation's Membership in the United Nations and its Reform, Responsibility of Members of russian Political Parties Supporting Aggression	Effective	Holos Ukrainy of 8 December 2022, No. 249	https://zakon.rada.gov.ua/go/2787-20
17	Resolution of the Verkhovna Rada of Ukraine; Statement No. 2788-IX of 1 December 2022	On the Statement of the Verkhovna Rada of Ukraine on Energy Terrorism of the russian federation	Effective	Holos Ukrainy of 8 December 2022, No. 249	https://zakon.rada.gov.ua/go/2788-20
18	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 2740-IX of 16 November 2022	On the Appeal of the Verkhovna Rada of Ukraine to International Organisations and Parliaments of the World on Recognizing the Holodomor of 1932–1933 in Ukraine as Genocide of the Ukrainian People	Effective	Holos Ukrainy of 23 November 2022, No. 238	https://zakon.rada.gov.ua/go/2740-20
19	Resolution of the Verkhovna Rada of Ukraine; Statement No. 2692-IX of 19 October 2022	On the Statement of the Verkhovna Rada of Ukraine on the Condemnation of the Support of the Islamic Republic of Iran for the Armed Aggression of the russian federation against Ukraine	Effective	Holos Ukrainy of 19 October 2022, No. 214	https://zakon.rada.gov.ua/go/2692-20

Seq. No	Act	Name	Status	Published	Link
20	Resolution of the Verkhovna Rada of Ukraine; Statement No. 2672-IX of 18 October 2022	On the Statement of the Verkhovna Rada of Ukraine on the Condemnation of the Armed Aggression of the russian federation against the Chechen Republic of Ichkeria, the Occupation of its Territory and the Crime of Genocide against the Chechen People	Effective	Holos Ukrainy of 19 October 2022, No. 214	https://zakon.rada.gov.ua/go/2672-20
21	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 2633-IX of 6 October 2022	On the Appeal of the Verkhovna Rada of Ukraine to the International Community to Support the Right to Self-Determination of the Peoples of the russian federation	Effective	Holos Ukrainy of 12 October 2022, No. 208	https://zakon.rada.gov.ua/go/2633-20
22	Resolution of the Verkhovna Rada of Ukraine; Statement No. 2632-IX of 6 October 2022	On the Statement of the Verkhovna Rada of Ukraine in Connection with the Criminal Decisions of the Leadership of the russian federation Regarding the Attempted Annexation of the Temporarily Occupied Territories of Donetsk, Luhansk, Zaporizhzhia and Kherson Oblasts of Ukraine	Effective	Holos Ukrainy of 12 October 2022, No. 208	https://zakon.rada.gov.ua/go/2632-20
23	Resolution of the Verkhovna Rada of Ukraine; Statement No. 2630-IX of 21 September 2022	On the Statement of the Verkhovna Rada of Ukraine in Connection with the Next Stage of Escalation of the World Security Situation Provoked by the Latest Decisions of the Criminal Authorities of the russian federation	Effective	Holos Ukrainy of 23 September 2022, No. 195	https://zakon.rada.gov.ua/go/2630-20
24	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 2594-IX of 20 September 2022	On the Address of the Verkhovna Rada of Ukraine to the United Nations General Assembly, the United Nations Environment Programme, the European Parliament, the European Commission, Parliaments and Governments of Member States of the United Nations General Assembly on the Establishment of a Special Environmental Monitoring Mission to Record the Environmental Damage Caused by the Armed Aggression of the russian federation on the Territory of Ukraine	Effective	Holos Ukrainy of 23 September 2022, No. 195	https://zakon.rada.gov.ua/go/2594-20
25	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 2504-IX of 15 August 2022	On the Appeal of the Verkhovna Rada of Ukraine to the Members of the Financial Action Task Force Combating Money Laundering (FATF) to Exclude the russian federation from the FATF Membership and Add it to the List of High-Risk Countries	Effective	Holos Ukrainy of 18 August 2022, No. 169	https://zakon.rada.gov.ua/go/2504-20

Seq. No	Act	Name	Status	Published	Link
26	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 2742-IX of 16 November 2022	On the Appeal of the Verkhovna Rada of Ukraine to the Group of Twenty States Regarding the Exclusion of the russian federation from the Group	Effective	Holos Ukrainy of 24 November 2022, No. 239	https://zakon.rada.gov.ua/go/2742-20
27	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 2306-IX of 19 June 2022	On the Appeal of the Verkhovna Rada of Ukraine to the UN Human Rights Committee, the UN Committee on the Rights of the Child, the International Court of Justice, the UN High Commissioner for Refugees on the Violation by the russian federation of International Treaties (Conventions) and on the Inadmissibility of Transferring Children Being the Citizens of Ukraine and Children Who Lived on the Territory of Ukraine, Abducted and Forcibly Transferred to the Aggressor State, Other States or Displaced Within the Occupied Territories of Ukraine, to the Families of russian Citizens	Effective	Holos Ukrainy of 21 June 2022, No. 127	https://zakon.rada.gov.ua/go/2306-20
28	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 2305-IX of 19 June 2022	On the Appeal of the Verkhovna Rada of Ukraine to the Parliaments and Governments of Foreign States on the Termination of Agreements on the Avoidance of Double Taxation with the Aggressor State russian federation	Effective	Holos Ukrainy of 21 June 2022, No. 127	https://zakon.rada.gov.ua/go/2305-20
29	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 2298-IX of 19 June 2022	On the Appeal of the Verkhovna Rada of Ukraine to Member States of the European Union and the Institutions of the European Union to Support the Granting of the Status of a Candidate State for Accession to the EU to Ukraine	Effective	Holos Ukrainy of 21 June 2022, No. 127	https://zakon.rada.gov.ua/go/2298-20
30	Resolution of the Verkhovna Rada of Ukraine; List, Sanctions of 31 May 2022, No. 2288-IX	On Approval of Proposals to Apply Personal Special Economic and Other Restrictive Measures (Sanctions) Against Representatives of the russian Orthodox Church	Effective	Holos Ukrainy of 2 June 2022, No. 115	https://zakon.rada.gov.ua/go/2288-20
31	Law of Ukraine No. 2265-IX of 22 May 2022	On the Prohibition of Propaganda of the russian Nazi Totalitarian Regime, the Armed Aggression of the russian federation as a Terrorist State Against Ukraine, Symbols of the Military Invasion of the russian Nazi Totalitarian Regime in Ukraine	Effective	Holos Ukrainy of 11 June 2022, No. 121	https://zakon.rada.gov.ua/go/2265-20
32	Law of Ukraine No. 2257-IX of 12 May 2022	On Amendments to Some Legislative Acts of Ukraine Regarding Increasing the Effectiveness of Sanctions Related to the Assets of Certain Persons	Effective	Holos Ukrainy of 23 May 2022, No. 109	https://zakon.rada.gov.ua/go/2257-20

Seq. No	Act	Name	Status	Published	Link
33	Resolution of the Verkhovna Rada of Ukraine; Statement No. 2235-IX of 3 May 2022	On the Statement of the Verkhovna Rada of Ukraine on the Occasion of the 77th Anniversary of the Victory Over Nazism and on the Inadmissibility of the russian federation's Appropriation of the Victory Over Nazism	Effective	Holos Ukrainy of 6 May 2022, No. 98	https://zakon.rada.gov.ua/go/2235-20
34	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 2559-IX of 6 September 2022	On the Appeal of the Verkhovna Rada of Ukraine to Institutions of the European Union and Member States of the European Union to Stop Issuing Visas to Citizens of the russian federation	Effective	Holos Ukrainy of 9 September, No. 185	https://zakon.rada.gov.ua/go/2559-20
35	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 2234-IX of 3 May 2022	On the Appeal of the Verkhovna Rada of Ukraine to the House of Representatives and the Senate of the United States Congress on Designation of the russian federation as a State Sponsor of Terrorism	Effective	Holos Ukrainy of 6 May 2022, No. 98	https://zakon.rada.gov.ua/go/2234-20
36	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 2547-IX of 30 August 2022	On the Appeal of the Verkhovna Rada of Ukraine to the United Nations, Member States of the European Union, the European Council, the Organisation for Security and Cooperation in Europe, the Parliaments and Governments of NATO Member States, the International Committee of the Red Cross, the Independent International Medical Humanitarian Organisation "Médecins Sans Frontières" to Condemn the Mass Execution of Ukrainian Prisoners of War by the Aggressor State in Olenivka on 29 July 2022	Effective	Holos Ukrainy of 1 September 2022, No. 180	https://zakon.rada.gov.ua/go/2547-20
37	Law of Ukraine No. 2217-IX of 21 April 2022	On Amending Certain Laws of Ukraine Regarding the Regulation of the Legal Regime in the Temporarily Occupied Territory of Ukraine	Effective	Holos Ukrainy of 6 May 2022, No. 98	https://zakon.rada.gov.ua/go/2217-20
38	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 2546-IX of 30 August 2022	On the Appeal of the Verkhovna Rada of Ukraine to the United Nations, the institutions of the Council of Europe, the European Union, the Organisation for Security and Co-operation in Europe, the International Committee of the Red Cross, Parliaments and Governments of Foreign States Regarding the Violation of International Humanitarian Law by the russian federation and the De Facto Occupation Authorities Controlled by it in Relation to Ukraine's Prisoners of War	Effective	Holos Ukrainy of 1 September 2022, No. 180	https://zakon.rada.gov.ua/go/2546-20

Seq. No	Act	Name	Status	Published	Link
39	Resolution of the Verkhovna Rada of Ukraine; Statement, Memo No. 2188-IX of 14 April 2022	On the Statement of the Verkhovna Rada of Ukraine "On the Commitment of Genocide in Ukraine by the russian federation"	Effective	Holos Ukrainy of 16 April 2022, No. 88	https://zakon.rada.gov.ua/go/2188-20
40	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 2189-IX of 14 April 2022	On the Appeal of the Verkhovna Rada of Ukraine to the International Olympic Committee and the Governing Bodies of International Sports Federations Regarding the Recommendation to Ban the Participation of Athletes of the russian federation and the Republic of Belarus in International Competitions and to Exclude Citizens of the russian federation and the Republic of Belarus from the Governing bodies of these Organisations	Effective	Holos Ukrainy of 16 April 2022, No. 88	https://zakon.rada.gov.ua/go/2189-20
41	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 2141-IX of 24 March 2022	On the Appeal of the Verkhovna Rada of Ukraine to the United Nations, the European Commission, the European Parliament, Other International Organisations and their Parliamentary Assemblies, Parliaments and Governments of the European Union and NATO Member States, Parliaments and Governments of Democratic States of the World on the Need to Take Additional Joint Measures to Stop the Aggression of the russian federation Against Ukraine and Prevent the Spread of this Aggression to Other Countries in Europe	Effective	Holos Ukrainy of 25 March 2022, No. 66	https://zakon.rada.gov.ua/go/2141-20
42	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 2502-IX of 15 August 2022	On the Appeal of the Verkhovna Rada of Ukraine to the United Nations, Institutions of the European Union, the Organisation for Security and Cooperation in Europe, the International Atomic Energy Agency and Parliaments and Governments of its Member States to Condemn the Act of Nuclear Terrorism Committed by the Aggressor State – the russian federation – at the Zaporizhzhia Nuclear Power Plant in Enerhodar, Zaporizhzhia Oblast, Ukraine	Effective	Holos Ukrainy of 18 August 2022, No. 169	https://zakon.rada.gov.ua/go/2502-20

Seq. No	Act	Name	Status	Published	Link
43	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 2496-IX of 29 July 2022	On the Appeal of the Verkhovna Rada of Ukraine to the European Union and the Group of Seven States as Founders of the Financial Action Task Force (FATF) to Strengthen the Combating of Money Laundering, Including Funds of Criminal Origin, Terrorist Financing, and Financial Mechanisms Used by the Russian Federation to Avoid Sanctions and Continue its Invasion of Ukraine	Effective	Holos Ukrainy of 11 August 2022, No. 164	https://zakon.rada.gov.ua/go/2496-20
44	Resolution of the Verkhovna Rada of Ukraine; List No. 2279-IX of 31 May 2022	On Amendments to the Agenda of the Seventh Session of the Verkhovna Rada of Ukraine of the Ninth Convocation	Effective	Official Gazette of Ukraine of 10 June 2022, No. 45, p. 10, Art. 2433, deed code 111667/2022	https://zakon.rada.gov.ua/go/2279-20
45	Law of Ukraine No. 2236-IX of 3 May 2022	On Amendments to the Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine on Cooperation with the International Criminal Court	Effective	Holos Ukrainy of 19 May 2022, No. 106	https://zakon.rada.gov.ua/go/2236-20
46	Law of Ukraine No. 2198-IX of 14 April 2022	On Amendments to the Criminal Code and the Criminal Procedure Code of Ukraine Regarding the Improvement of Responsibility for Collaborative Activities and the Features of the Application of Preventive Measures for Committing Crimes Against the Foundations of National and Public Security	Effective	Holos Ukrainy of 22 April 2022, No. 92	https://zakon.rada.gov.ua/go/2198-20
47	Resolution of the Verkhovna Rada of Ukraine; Appeal No. 2104-IX of 3 March 2022	On the Appeal of the Verkhovna Rada of Ukraine to the United Nations, the United Nations High Commissioner for Refugees, the International Committee of the Red Cross, the European Parliament, International Organisations and their Parliamentary Assemblies, National Parliaments and Governments of the World on the Urgent Need to Protect Ukraine's Civilian Population from Armed Attacks by Russian Invaders	Effective	Official Gazette of Ukraine of 22 April 2022, No. 31, p. 53, Art. 1641, deed code 110861/2022	https://zakon.rada.gov.ua/go/2104-20

