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ACCOUNTABILITY FOR THE CRIMES AGAINST CIVILIANS COMMITTED DURING THE ARMED CONFLICT IN UKRAINE

Abstract. The article explores the question of crimes committed against the civilian population during the war in Ukraine and the possible ways of bringing to justice those responsible. A full-scale aggression launched by Russia has caused death and widespread suffering of thousands of Ukrainian civilians and combatants. The article focuses on the events following 24th February, 2022, bearing in mind that the conflict had started much earlier – with the illegal annexation of Crimea and the beginning of fighting in eastern part of the Ukraine in 2014. After introductory remarks in the first section, the second part of this article will be focusing on different acts constituting war crimes that were committed during the war in Ukraine, and the third part will address existing accountability mechanisms and briefly discuss the advantages and disadvantages of each of them.

Keywords: Ukraine, Russian, war crimes, civilians, international humanitarian law

ODPOWIEDZIALNOŚĆ ZA ZBRODNIĘ NA LUDNOŚCI CYWILNEJ POPEŁNIONE PODCZAS KONFLIKTU ZBROJNEGO W UKRAINIE

Streszczenie. Artykuł porusza kwestię zbrodni na ludności cywilnej popełnionych podczas konfliktu zbrojnego w Ukrainie i sposobów pociągnięcia sprawców do odpowiedzialności. Rosyjska agresja spowodowała śmierć i cierpienie tysięcy ukraińskich obywateli, zarówno cywilów jak i kombatantów. Analiza ograniczona jest do wydarzeń mających miejsce po pełnoskalowej napaści z 24 lutego 2022 roku, co pozostaje bez wpływu na fakt, że konflikt ten rozpoczął się o wiele wcześniej – wraz z działaniami zbrojnymi na wschodzie Ukrainy i aneksją Krymu w 2014 roku. Część pierwsza stanowi wprowadzenie, wskazuje akty prawne mające zastosowanie do oceny omawianej sytuacji oraz materiały źródłowe wykorzystane do przygotowania niniejszego opracowania. W części drugiej omówione zostały poszczególne czyny mogące stanowić zbrodnie wojenne, natomiast część trzecia stanowi refleksję na temat istniejących mechanizmów egzekwowania odpowiedzialności domniemanym sprawców, z uwzględnieniem wad i zalet każdego z nich.

Słowa kluczowe: Ukraina, Rosja, zbrodnie wojenne, ludność cywilna, międzynarodowe prawo humanitarne

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*My promise to you is that international law will not be an empty promise.
Today's documentation will be tomorrow's prosecution.*

Pramila Patten, UN Special Representative for Sexual Violence in Armed Conflict

1. INTRODUCTION

The very aim of international humanitarian law is to limit, to the maximum possible extent, the suffering of human beings during armed conflicts, and the main role of international criminal law is to bring to justice those responsible for the most serious crimes. The paper examines these two frameworks in the context of the Russian aggression on Ukraine, which has caused death, destruction, and rampant suffering of thousands of civilians and combatants (OHCHR Report 2022, 5–7). After introductory remarks in the first section, the second part of this article will focus on different acts constituting war crimes that were committed against civilian population, and the third part will address existing accountability mechanisms and briefly discuss the advantages and disadvantages of each of them.

1.1. Relevant law

1.1.1. *War crimes and grave breaches of Geneva Conventions*

Russian crimes against civilian population in Ukraine could potentially be classified as crimes against humanity and war crimes. As there are no doubts regarding the existence of international armed conflict, the article will focus on the latter category of crimes. In addition, some of same acts committed with the intent to destroy, in whole or in part, the Ukrainian national group as such may constitute the crime of genocide, an issue that has received significant scholarly attention (Azarov et al. 2023). The list of acts qualifying as war crimes within the meaning of the Rome Statute of the ICC is very long, although only part of them can be committed against civilians. According to Art. 50 of the Additional Protocol I to the Geneva Conventions, “civilian” is any person not belonging to the armed forces and not taking part in a “*levée en masse*” (Henckaerts, Doswald-Beck 2005, 17). In principle, the analysis will be narrowed down to the crimes that are not connected directly to the conduct of warfare, excluding acts such as indiscriminate attacks or use of prohibited weapons.¹ Bearing in mind the above-mentioned

¹ This assumption is based on the historical distinction between the so-called “Hague law” dealing with means and methods of warfare, and “Geneva law”, which is focussed mainly on the protection of certain groups of people during armed conflicts. It is generally accepted that the two branches of law merged with the adoption of Additional Protocols in 1977, but the distinction is still sometimes used in the doctrine of international humanitarian law. “This ‘Hague Law’ (...) fixed the rights and duties of belligerents in their conduct of operations and limited the choice of methods and means of injuring the enemy in an international armed conflict. One should add

stipulations, five categories of war crimes will be described in the second part of this article: wilful killings, acts of torture, deportations, sexual violence, and pillaging – acts that are also covered by the regime of grave breaches created by the Geneva Conventions (Eboe-Osuji 2012, 206).²

1.1.2. *The law of occupation*

As a result of the Russian invasion of 2022, vast parts of the Ukraine were temporarily or still are under occupation. According to Art. 42 of Hague regulations, “territory is considered occupied when it is actually placed under the authority of the hostile army.” This triggers the application of the set of provisions from the IV Geneva Convention, which states that it “shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.” Russia denies this status and treats parts of Ukraine as part of the Russian Federation; after staging four plebiscites, on 30th September, 2022, Vladimir Putin announced the annexation of Donetsk, Kherson, Luhansk, and Zaporizhzhia oblasts of Ukraine, although the annexation of conquered territory is prohibited by international law. In addition, the Occupying Power shall not transfer its own civilian population into the territory it occupies – such actions can be classified as a war crime under Art. 8(b)(viii) of the Rome Statute (Hurska 2021). In any case, the illegal annexation should not prevent the ICC or other courts from applying relevant rules concerning belligerent occupation. Similar situation occurs in the case of some of the occupied Palestinian territories which are treated by Israel as its territory (East Jerusalem). Following the declaration under Art. 12(3) of the Rome Statute lodged by the Government of Palestine, the Pre-Trial Chamber issued a decision, stating that the Court could exercise its criminal jurisdiction and that the territorial scope of this jurisdiction extends to Gaza and the West Bank, including East Jerusalem.³

to this the ‘Geneva Law’ (...), which protects the victims of war and aims to provide safeguards for disabled armed forces personnel and persons not taking part in the hostilities. These two branches of the law applicable in armed conflict have become so closely interrelated that they are considered to have gradually formed one single complex system, known today as international humanitarian law. The provisions of the Additional Protocols of 1977 give expression and attest to the unity and complexity of that law” (ICJ 1996, par. 75).

² With the exception of sexual violence, which is not specifically mentioned in Art. 147 of the IV Geneva Convention. However, most of such acts can be qualified as a form of torture or inhumane treatment.

³ The declaration was lodged on 1st January, 2015, and since April 2015, Palestine has been a party to the Rome Statute.

1.1.3. *Human rights law*

In addition to the protection guaranteed by international humanitarian law, international human rights law also applies in times of armed conflicts; that is why absolute prohibition of torture, guaranteed, *inter alia*, by the UN Convention against torture remains in force. What is more, some human rights instruments reinforce the application of international humanitarian law to certain protected groups, such as children (Art. 38 of the UN Convention on the Rights of the Child). Since 16th September, 2022, the Russian Federation has no longer been a party to the European convention for the protection of human rights and fundamental freedoms (hereinafter: ECHR), although it does not mean that it is released from the obligations arising from the Convention in respect of any act performed to that date (Art. 58 ECHR). The cases brought to the ECHR against Russia are still pending, including the inter-state applications by Ukraine and the Netherlands. In any case, Russia is still bound by a number of other human rights instruments which apply to areas under state's 'effective control', and occupied territories are included in that definition.⁴ Moreover, Art. 43 of the Hague Regulations requires the occupant to respect the "the laws in force in the country", which means that all human rights treaties ratified by Ukraine shall be binding on occupied territories (Benvenisti 2008, par 14).

1.2. Resources

The full-scale war begun a year and a half ago. Many crimes are not yet revealed, in many instances the investigations are ongoing or have not even started yet. Gathering evidence and documenting violations of international humanitarian law during the ongoing armed conflict is a huge challenge for Ukraine and other entities engaged in this process. The Ukrainian Office of the Prosecutor General has created a special website, where victims and witnesses of war crimes can report it and send evidence.⁵ There are also other entities dealing with the collection of evidence and accounts of the crimes. One of them is the Raphael Lemkin Centre for Documenting Russian Crime in Ukraine created by the Pilecki Institute – a Polish NGO based in Warsaw. Another important source of information comes from the civilian surveillance: initiatives such as the Bellingcat investigative group publish "incidents (...) that have resulted in potential

⁴ Both Ukraine and the Russian Federation are party to seven UN core conventions: the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities.

⁵ <https://warcrimes.gov.ua/en/all-crimes.html> (last accessed in November 2023).

civilian harm”, documented with user-generated content, such as videos and images. In order to help civilians with the adaptation in wartime, the Ukrainian Centre for Strategic Communication has developed the *Dovidka.info* project. Among many useful pieces of information found on this website, it calls upon recording violations of human rights and sharing the evidence with the Ukrainian and international community.⁶ Nevertheless, still, there are not many judicial materials available. For these reasons, this article is based also on sources such as: information and statistics published by the UN Human Rights Monitoring Mission in Ukraine (HRMMU), the Independent International Commission of Inquiry on Ukraine, and other UN agencies; reports of NGO’s: Human Rights Watch (HRW), Amnesty International (AI), Reporters Without Borders; conclusions of media investigations: *New York Times*, *BBC*, *The Independent*, *Deutsche Welle* (DW), and reports prepared by different research institutions.

According to the statistics published by the Office of the Prosecutor General of Ukraine, as of November 2023 there are more than 100 thousands cases concerning violation of the Art. 438 of the Ukrainian Criminal Code alone (violations of the laws and customs of war).⁷ Most probably, many years will have to pass until the true scale and nature of the crimes committed during this war will be revealed. Therefore, this article will deal only with a few selected examples of the most blatant violation of the laws protecting civilian population.

2. WAR CRIMES

2.1. Wilful killing

According to the principles of international humanitarian law, the death of non-combatants is not necessarily a violation. Civilian population must never be made the object of an attack, although the death or injury of civilians during an attack on a military objective can be permissible subject to the principles of proportionality and military necessity. The latter example requires careful scrutiny; every single case needs to be assessed with diligence. In any case, wilful killings of civilians is a grave breach of the IV Geneva convention and a war crime (Art. 8 (2)(a)(i) of the Rome Statute). According to the Elements of crimes, states must penalise killing of one or more persons protected under the Geneva conventions of 1949.

The Independent International Commission of Inquiry on Ukraine found numerous cases in which members of the Russian armed forces shot at civilians

⁶ “Record violations of human rights and constitutional values. But do it only if it is safe! Secretly record violations and share evidence with the Ukrainian and international community.” <https://dovidka.info/en/> (last accessed in November 2023).

⁷ <https://www.gp.gov.ua/> (last accessed in November 2023).

fleeing to safety, which resulted in the killing or injury of the victims. As it was pointed out in the report, the victims “wore civilian clothes, drove civilian cars and were unarmed.” Most of the incidents took place during daytime, which means that these traits should have been clear to the attacker (Independent International Commission of Inquiry on Ukraine 2022). In any event, under international humanitarian law, in case of doubt, a person shall be considered to be a civilian. This principle is a part of international customary law commonly accepted by states, including Ukraine and Russia.⁸ The HRMMU reports that 322 civilians died because of mine or explosive remnants of war as of October 2023 (OHCHR 2023). Russian troops left mines and booby traps in the formerly occupied territories. Mines had been placed in dead bodies and toys; doors had been wired with grenades to explode when open.⁹ It seems that in most cases, booby traps were deployed without consideration as to the status of the potential victims; many were found in the cities and densely populated areas or even in private households of Ukrainian population: “they are mining all this territory, mining houses, equipment, even the bodies of killed people” (Zelensky 2022). Overall, more than 9,700 civilians were killed since 24th February, 2022. The OHCHR believes that the actual figures are substantially higher, because the receipt of information from some regions has been delayed due to the ongoing hostilities, and many reports require confirmation (OHCHR 2023). Some Russian soldiers have already been convicted by Ukrainian courts. In May 2022, media worldwide reported first war crime conviction – the sentencing of V. Shishimarin, Russian tank commander who killed a civilian in the Sumy Oblast and has been sentenced to life imprisonment (District City Court of Kyiv 2022). The sentence has been reduced to 15 years by the court of appeal (Hogue 2023, 108).

Investigation conducted by the *New York Times* in Bucha, small town on the outskirts of Kyiv, has exposed mass graves and evidence of killings of

⁸ “(...) In case of doubt whether a person is a civilian, that person shall be considered a civilian; civilian population is a population which consists of civilians” (Regulations on the Application of International Humanitarian Law by the Armed Forces of the Russian Federation 2001, par. 1); “In case of doubt whether a person is a civilian, that person shall be considered to be a civilian” (Manual on the Application of IHL Rules 2004, par. 1.2.32).

⁹ According to Art. 2(2) and Art. 4 of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, booby trap is “any device or material designed, constructed or adapted to kill or injure and which functions unexpectedly when a person disturbs or approaches an apparently harmless objects or performs an apparently safe act.” It is forbidden to use this kind of weapons in cities, towns, villages or other areas containing a similar concentration of civilians in which combat between ground forces is not taking place or does not appear to be imminent, unless “(a) they are placed on or in the close vicinity of a military objective belonging to or under the control of an adverse party; or (b) measures are taken to protect civilians from their effects, for example, the posting of warning signs, the posting of sentries, the issue of warnings or the provision of fences.”

a dozen civilians. For the first time in the history of warfare there are so many video evidences of mass atrocities committed against civilians. As revealed by the investigation, some of the killings that took places in Bucha were recorded by street cameras, drones, and mobile phones of witnesses (The New York Times 2022). Drones also recorded killings that took place in the beginning of March 2022 on the Zhytomyr highway outside Kyiv (DW 2022). Several months later mass graves were discovered in Iziium. After the city had been recaptured by Ukrainian forces, more than 400 graves marked with wooden crosses were found in a suburban forest. Most of the bodies belonged to civilians, many showed signs of violent death, some presented traces of torture (BBC 2022). Killings of civilians in Bucha, Iziium, and other regions had very often been preceded by acts of detention, interrogation, and ill-treatment (Independent International Commission of Inquiry on Ukraine 2023, par. 55).

2.2. Torture

Torture is prohibited by Article 32 of the IV Geneva Convention; it also constitutes a grave breach and a war crime within the meaning of Art. 8 (2)(a)(ii) of the Rome Statute. According to the Elements of crimes, torture is the infliction of severe physical or mental pain or suffering upon one or more persons for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind (Rodley 2002, 467–493).

The HRW reported 42 instances of torture that took place in the Russian-occupied areas of the Kherson and Zaporizhzhia regions (HRW 2022a). More accounts followed after the liberation of Kherson in November 2022. Ukrainian parliament commissioner for human rights said they found “10 torture chambers in this region” (Muzzafar 2022). Evidence of torture on a mass scale was revealed after the liberation of Iziium, which had been occupied by Russian troops for more than 6 months. Survivors described being subjected to electric shock, severe beatings, waterboarding, and other forms of cruel treatment. According to the HRW, the violence and abuse in Iziium were not random incidents, “multiple victims shared credible accounts (...) of similar experiences of torture during interrogation in facilities under the control of Russian forces and their subordinates, indicating this treatment was part of a policy and plan” (HRW 2022c). Some professional groups were targeted more often – Russian troops threatened representatives of local media in the occupied territories in order to prevent them from reporting the facts and force them to spread propaganda. According to the Reporters Without Borders (RSF), many journalists were threatened and tortured. One of them was Oleh Baturin, who was kidnapped by Russian soldiers in Kakhovka, tortured for eight days, and then released. Also members of the families were targeted and taken hostage (RSF 2022).

In the areas that were under Russian control during longer periods of time, dedicated detention facilities were established and more diverse methods of torture were used. In such cases, more perpetrators have been involved in the commission of torture and other crimes – including the Federal Security Service of the Russia, the National Guard and its subordinate units as well as Russian aligned armed groups from the so-called Donetsk and Luhansk People’s Republics (Independent International Commission of Inquiry on Ukraine 2023, par. 52). Many torture victims reported being subjected to rape and other forms of sexual abuse (Davies 2022). Torture and other forms of inhumane treatment have also taken place in the filtration camps, a practice linked to deportation of civilians that will be described below.

2.3. Deportation or forcible transfer of population, including children

Forcible transfer and deportation of civilians is a grave breach of the IV Geneva Convention and a war crime according to Art. 8 (2)(a)(vii) and 8 (2)(b)(viii) of the Rome Statute. To constitute a crime, these acts need to be “forcible.” The consent to be moved has to be voluntary and genuine, i.e. not given under coercive conditions. In addition, forcible transfer of children of one national group to another group can also qualify as an act of genocide within the meaning of Art. 6 of the Rome Statute, as well as Art. 2 of the Genocide Convention of 1948. This would require proving that the deportations were organised with the intent to destroy, at least in part, the Ukrainian nation (Azarov et al. 2023, 261).

Individual or mass deportations of protected persons from occupied territory to the territory of the occupying power or to that of any other country are prohibited. Nevertheless, the occupying power may organise evacuation of a given area, if the security of the population or imperative military reasons so demand. In such a case, the occupying power shall secure, to the greatest practicable extent, that adequate accommodation is provided, that the removals are effected in satisfactory conditions of hygiene, health, safety, and nutrition, and that members of the same family are not being separated (Art. 49 of the IV Geneva Convention). Transferring or displacing civilians cannot be justified by humanitarian reasons if the humanitarian crisis triggering the displacement itself results from unlawful actions of the occupying power.

Shortly after the invasion, the Russian military forces forcibly deported at least 15,000 Ukrainian citizens from Mariupol to Russia. People were deprived of all their documents, including passports. Russian soldiers and other officials were separating families, confiscating Ukrainian documents, and issuing Russian passports in an apparent effort to change the demographic composition of certain Ukrainian regions (Blinken 2022). The HRMMU reported detention of a large numbers of Ukrainian civilians and their massive displacement to the areas under the Russian control or to Russia’s own territory. Only till the end of April 2022,

between 300,000 and 500,000 Ukrainian citizens had been deported to Russia according to various sources from both countries (OSCE 2022, 72). As reported by the HRW, thousands of Ukrainian citizens were subjected to a process referred to as “filtration” – a form of compulsory security screening, in which they typically collected peoples’ biometric data, including fingerprints and facial images, conducted body searches, and searched personal belongings, especially phones (HRW 2022b). While Russian authorities are allowed to conduct security screenings of those entering its territory, they should collect biometric data only where it is lawful, proportionate, and necessary. In addition, people should be informed of why their data is being collected, how it will be used, and how long it will be held for. Filtration camps were created to register, interrogate, and detain Ukrainian citizens before transferring some of them into Russia. According to the researchers from the Yale Humanitarian Research Lab, the filtration system had been created weeks before the invasion and began to grow following Russia’s capture of Mariupol in April 2022 in order to accommodate more people. The authors of the report identified at least 21 filtration facilities in and around the Donetsk oblast (Khoshnood, Raymond 2022, 8). A number of sources indicate that detainees were subject to torture, rape, starvation, and other grave human rights violations (Khoshnood, Raymond 2022, 16–18). After filtration process, some people were released within the DNR, others were deported onward to various cities across Russia, including those in the Far East. In Russia, Ukrainian citizens are usually placed in refugee centres; they are pressured to apply for asylum or Russian citizenship (HRW 2022b). Russia has used footages of displaced civilians as part of its propaganda. In some cases, the arrival of displaced civilians has been presented as successful humanitarian action broadcast by Russian TV.

In May 2022, President Putin signed a decree facilitating the acquisition of Russian citizenship by some categories of children (Independent International Commission of Inquiry on Ukraine 2023, par. 14). According to various sources, Russian authorities deliberately separate Ukrainian children from their parents and abduct them from different institutions to put them up for adoption in Russia. As indicated by a report published by the Yale Humanitarian Research Lab, the Russian government is operating a systematic network of at least 43 child custody centres scattered across the country (Khoshnood, Howarth, Raymond 2022).¹⁰ The report provides evidence of systematic efforts to cut off the communication between the deported children and their relatives in Ukraine, to prevent the children’s return to their families, and to “re-educate” them to support Russia. It also describes placing children for adoption by families in Russia. The evidence of such acts has lead the ICC to issue an Arrest Warrant for Vladimir Putin and

¹⁰ The research team has been monitoring the relocation programme since early spring 2022. The researchers had developed the methodology and data sources to document the transfer of Ukrainian children.

Maria Lvova-Belova on 17th March, 2023. Based on the Prosecution's applications, the Pre-Trial Chamber considered that there are reasonable grounds to believe that each suspect bears responsibility for the war crime of unlawful deportation of population and that of unlawful transfer of population from occupied areas, in particular of Ukrainian children.

2.4. Sexual violence

Wars are inherently gendered and have been since time immemorial; whilst men are killed in the battlefield, women's bodies are the spoils of war (O'Brien, Quenivet 2022). History shows that sexual violence is deep-rooted in armed conflicts (Brownmiller 1993). For most of the history, however, this category of crimes was neglected. The Nuremberg Tribunals failed to charge the defendants with sexual crimes, although the witnesses testified about it occurring. There is no specific mention of rape or other sexual crimes in the Charter of the International Military Tribunal, it could be prosecuted as a crime against humanity under Article 6(c) – "other inhumane acts." Similarly, sexual crimes as such have not been included in the grave breaches regime of the Geneva Conventions. The turning point came in the 1990s as a reaction to sexual atrocities committed in the former Yugoslavia and in Rwanda. It seems that, finally, this issue has been recognised as a serious problem requiring international attention. Rape has been included as a part of the definition of crimes against humanity in the Statutes of the two *ad hoc* Tribunals and in the Rome Statute. In addition, the ICC Statute specifically lists acts such as: sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, and other forms of sexual violence as war crimes in Art. 8 par. 2(b)(xxii).

Since the beginning of the invasion, many allegations of conflict-related sexual violence have been made by state officials, national and international NGOs, media, and social media users. These are not isolated incidents but, rather, a part of a policy, as pointed out by the UN Special Representative of the Secretary-General on Sexual Violence in Conflict: "When you hear women testify about Russian soldiers equipped with Viagra, it's clearly a military strategy" (Patten 2022). As usual in cases of conflict related to sexual violence, women and girls constituted the majority of alleged victims (OHCHR 2022a, 96). Nevertheless, men and boys are also targeted, because the Russian Federation is using rape and other forms of sexual violence as one of instruments of terror to control the civilian population.

The Office of the Prosecutor General confirmed its focus on conflict-related sexual violence and the setting up of a specialised unit within the War Crimes Department to deal with this type of crimes (Marchuk 2022, 793). The very first trial held in absentia involved the rape of a civilian by a Russian soldier, Mikhail Romanov (Saliy 2022). Unlike other war crimes described above, sexual crimes are very often underreported and the true number of victims is likely

to be far higher than official figures suggest. Fear and shame are the main reasons why people affected by conflict-related sexual violence do not report that fact (Myroniuk 2022; OHCHR 2022a, 6).

2.5. The pillaging, destruction, and appropriation of civilian property

The ICC statute contains numerous provisions protecting property, both during international and in non-international armed conflicts. War crimes of pillaging towns or other places and destroying or seizing the enemy's property are prescribed in Article 8(2)(b)(xiii) and (xvi). According to the Elements of crime, pillaging is an intentional appropriation of certain property for private or personal use, done without the consent of the owner. In addition, unlawful appropriation of property that is not justified by military necessity can be classified as a grave breach of the IV Geneva Convention, as long as it is carried out extensively – an isolated incident would not be enough. Moreover, the occupying power is not allowed to destroy real or personal property belonging individually or collectively to private persons, to the State, to other public authorities, or to social or co-operative organisations, except where such destruction is made absolutely necessary by military operations (Art. 53 of the IV Geneva Convention).

Acts of pillaging and destruction of property do not seem that serious compared to other crimes described previously. However, they also require attention because of the symptomatic and widespread character. The image of a Russian soldier bringing home a washing machine has become one of many symbols of this war. After the liberation of certain places, many people returned home to find that they have been robbed. Reports of stolen personal belongings such as clothes, kitchen devices, perfumes, electronic devices, and even furniture were repeated by civilians from many previously occupied areas (Pastukhov 2022). Many pillaged items were sent to Russia using shipping services of different companies. Footages from online camera of one of the delivery services in Belarus were published online in April 2022 – Russian soldiers captured in the video were most likely using it to send items stolen from Ukrainians. Not only personal things belonging to civilians, but also many cultural artefacts have been stolen. The HRW reported pillaging of “thousands of valuable artefacts and artworks from two museums, a cathedral, and a national archive in Kherson” (HRW 2022d). Similar acts were committed in Mariupol and Melitopol, a potential breach of Art. 4(3) of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, to which Russia and Ukraine are both parties. Things that could not be stolen were often destroyed, as well as the interiors of houses and other buildings. All these practices are not a new phenomenon – they had occurred before in other conflict areas in which Russian soldiers and mercenaries were deployed, including

Chechnya and Georgia.¹¹ Some commentators say that stolen goods are a form of an additional motivation for army members (Pastukhov 2022). Others point out to the fact that they are ill-equipped on the battlefield and deprived of home. Images of Russians stealing chickens and gasoline were also published in social media. According to the Ukrainian Defence Ministry: “Due to significant logistical problems and stretched communications, they are unable to properly provide their units with fuel, food, equipment, ammunition and rotation. The Russian army gave permission to do something that had already been occurring for weeks when it instructed its troops to live off the land and move to ‘self-sufficiency’ until further orders” (Ministry of Defence of Ukraine 2022).

As proven by the first verdicts of Ukrainian courts in cases concerning stolen property, the judges appear to have adopted a harsh stance towards the persons accused of the war crime of pillage – the sentences are comparable to those delivered in cases concerning wilful killings and similar atrocities. On 3rd August, 2022, the District Court in Kyiv had sentenced Russian soldier, Sergey Zakharov, to 12 years of imprisonment for pillaging women’s jewellery worth equivalent of 13,000 UAH. In a similar case, the Court in Chernihiv had sentenced Russian POW, Nikolai Filatov, to eight years and six months of imprisonment for pillaging a civilian’s golden necklace (Marchuk 2022, 794).

3. ACCOUNTABILITY

Assuring accountability of those responsible for war crimes is one of the main goals of international criminal justice (Sterio 2023, 501). It is also clear that “bringing to justice” people committing international crimes during the war in Ukraine is among the priorities for the Ukrainian government and for governments of states that are supporting it. Potentially, there are many different accountability models available: prosecutions in Ukrainian national courts, prosecutions in specialised war crimes chambers or so-called “internationalised” domestic tribunals, prosecutions in national courts of other states under universal jurisdiction, prosecutions at the ICC, or specially created hybrid tribunals.¹² It seems that three

¹¹ “The looting of Alkhan-Yurt was systematic and organised, involving a large number of soldiers who acted with impunity throughout their stay in the village. Looted goods were stored in the homes occupied by Russian commanders as well as the tents of soldiers, and were transported openly in military vehicles out of Alkhan-Yurt. It is simply impossible that such widespread looting could take place in broad daylight without the knowledge and, at a minimum, the tacit consent of Russian commanders. The looting that took place in Alkhan-Yurt was not an isolated incident of such misconduct by Russian forces in Chechnya: since the beginning of the Chechen conflict, Russian troops have been systematically looting villages and towns under their control, and there is no evidence that the Russian command has taken any steps to prevent it” (HRW 2000).

¹² Created under a special agreement between Ukraine and an international organisation, most probably the UN or the EU (such as the Special Court for Sierra Leone or the Extraordinary

of those methods are of particular importance – national prosecutions by Ukraine, prosecutions by other states on the basis of the principle of universal jurisdiction, and prosecutions by the ICC. Each method has advantages and disadvantages. It is desirable for various mechanisms to operate in parallel, supporting each other's work. Using different accountability mechanisms allows a better cooperation and the simultaneous conduct of multiple prosecutions. The latter seems especially important, taking into account the number of reported war crimes.

3.1. National prosecutions

The individuals responsible for the commission of war crimes can face prosecution in domestic courts of the territorial state, in the same way as those who commit “ordinary” offences. National level prosecutions could take place in Ukrainian courts or within specialised war crimes chambers composed of judges, who should first receive appropriate training and develop the requisite expertise in terms of adjudicating large numbers of complex war crimes cases (Sterio 2023, 479). There are several undisputed advantages associated with prosecutions in domestic courts of the conflict country: access to victims, witnesses, and evidence; territorial proceedings are less costly and more time-efficient, and they allow the local population to follow or participate in the proceedings. In addition, participation in local proceedings may have a reconciliatory effect on the affected population. Nevertheless, some commentators raise doubts as to the very idea of holding trials during the ongoing war, arguing that this may affect the fairness of proceedings in a negative way (Marchuk 2022, 789).

According to official statistics published by the Office of the Prosecutor General of Ukraine, there are more than 100,000 reported cases concerning violations of the laws and customs of war (as of November 2023). This situation creates many new challenges for the criminal justice authorities and the forensic expert community (Shevchuk 2022). As mentioned previously, some trials of alleged war criminals have begun, several have already been concluded. Nevertheless, even the very first conviction raised some doubts with regard to the application of international humanitarian law – courts of both instances have qualified killing of a civilian as a violation of Art. 51(2) of the I Protocol (terrorising civilians), but not as a grave breach of the IV Geneva Convention (Marchuk 2022, 800).

3.2. The International Criminal Court

The ICC Statute was negotiated in 1998 and entered into force on 1st July, 2002. There are 123 member states, including most of the European countries, but neither the Russian Federation nor Ukraine are parties to the Rome Statute. However, the

Chambers in Cambodia). This is unlike *ad hoc* Tribunals created in the 1990s by the UN Security Council, which is obviously not possible with Russia as a permanent member with veto power.

ICC has jurisdiction over that armed conflict, pursuant to two declarations lodged by Ukraine and many referrals by States parties.¹³ Ukraine had accepted the ICC's jurisdiction after the annexation of Crimea in 2014, but that process was not yet completed in 2022, so "Russian tanks literally rolled into a still-open situation before the Court" (Kelly 2023, 80). Taking into account its earlier conclusions and following referrals from 43 member states, on 28th February, 2022, the Prosecutor of the ICC decided to open an investigation into allegations of war crimes, crimes against humanity, and genocide. Authorisation by the Pre-Trial Chamber was granted two days later, i.e. on 2nd March, 2022. International support for the ICC prosecution has also taken a form of extra-budgetary contributions and seconded staff provided by some states (Vasiliev 2022). Under the complementarity principle, however, the ICC should refrain from taking on cases that Ukraine or other states are willing and able to handle on their own (Art. 17.1(a) of the Rome Statute). As some commentators point out, the future of international criminal law is domestic, and Ukraine is no exception. That is why attention should be given to the possibility of domestic prosecutions: by Ukraine, but also by other states of the "justice coalition" created shortly after the outbreak of the full scale war (Vasiliev 2022).

3.3. Universal jurisdiction

Universal jurisdiction is a concept based on the idea that certain crimes are so harmful to international community that states are entitled to start the investigation regardless of the location of the crime and the nationality of the perpetrator or the victim. A distinction can be made between situations in which States are obliged to investigate under universal jurisdiction (mandatory universal jurisdiction) and those with respect to which they may choose to do so (permissive universal jurisdiction). Universal jurisdiction may stem from a customary rule or from the international treaty; in the second scenario, it is generally mandatory. One of the basis for the exercise of compulsory universal jurisdiction is the grave breaches regime created by the Geneva Conventions of 1949, requiring that "each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts" (Clapham 2023).¹⁴ According to the rule 157 of the customary international humanitarian law, "states have the right to vest universal jurisdiction

¹³ Ukraine has accepted the *ad hoc* jurisdiction of the ICC by lodging two Article 12(3) declarations: the first one after the Maidan protests and the second one in the aftermath of the occupation of Crimea and the outbreak of war in eastern part of the country. Unlike the first declaration, which was limited in scope, the second declaration extended to alleged crimes committed from 20th February, 2014, onwards. More: <https://www.icc-cpi.int/situations/ukraine> (last accessed in November 2023).

¹⁴ Art. 49 of the I Geneva Convention, Art. 50 of the II Geneva Convention, Art. 129 of the III Geneva Convention, Art. 146 of the IV Geneva Convention.

in their national courts over war crimes.” As is pointed out by the ICRC, this right/obligation is supported extensively by national legislation. A large number of war crime cases have been adjudicated by national courts on the basis of universal jurisdiction, and the states of nationality of the accused did not object. In addition, military manuals of many states support the rule that war crimes jurisdiction can be established on the basis of the principle of universal jurisdiction.

Germany, Estonia, Latvia, Lithuania, and Poland have opened universal jurisdiction investigations of war crimes following the 2022 Russian invasion.¹⁵ Several other countries declared similar intention (Pashkovsky 2022). In addition, in January 2023, the United States has adopted new legislation entitled the “Justice for Victims of War Crimes Act”, allowing for prosecutions of those responsible for grave breaches of the Geneva Conventions in the United States, where there is no other connection apart from the presence of the alleged perpetrator in the USA (Clapham 2023). These developments have been described as “cooperative universal jurisdiction”, as they allow non-belligerent allies of Ukraine to provide important strategic, logistical, and operational support in the enforcement of international humanitarian law. What is particularly important is the fact that universal jurisdiction allows joint cooperation and assistance for the collection and preservation of evidence in an ongoing conflict zones (Burk 2023, 9). The “justice coalition” formed by different states in the cooperation with institutions such as Eurojust is an unprecedented development. Initiatives such as “Lublin Justice Triangle” and the creation of joint investigative teams shows that many states are willing to support Ukraine in the pursuit of justice.

4. CONCLUSIONS

It is clear that no single accountability measure is suitable to achieve full justice for war crimes committed in Ukraine and to fulfil different goals of international criminal justice. Various mechanisms must function in parallel and support each other’s work. It is necessary to conduct multiple prosecutions in a complementary and comprehensive manner (Sterio 2023, 482). This conclusion leads to questions concerning the division of work between domestic actors and the ICC in the delivery of justice. It seems that the situation in Ukraine might become the breeding ground for innovative forms of international cooperation in war crimes cases (Vasiliev 2022).

¹⁵ On the basis of Art. 113 of the Polish Penal code: “Notwithstanding regulations in force in the place of commission of the offence, the Polish penal law shall be applied to a Polish citizen or an alien, with respect to whom no decision on extradition has been taken, in the case of the commission abroad of an offence which the Republic of Poland is obligated to prosecute under international agreements, or an offence described in the Rome Statute of the International Criminal Court.”

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