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INVESTIGATING AND PROSECUTING INTERNATIONAL CRIMES COMMITTED IN THE CONTEXT OF THE RUSSIAN AGGRESSION AGAINST UKRAINE: THE POLISH INVOLVEMENT

Abstract. The paper aims to present the available options relating to the investigation and prosecution of international crimes allegedly committed in Ukraine by the Russian authorities and members of the Russian armed forces. Firstly, it presents domestic Ukrainian criminal proceedings on these crimes. Then, the ongoing investigation in the International Criminal Court on war crimes and crimes against humanity as well as the initiatives to create a special international court that would deal with the responsibility for the crime of aggression are explored. Finally, considering substantial Polish involvement, it would be interesting to have an insight into how Poland already has and could, in the future, further contribute to bringing to justice the perpetrators of international crimes committed in Ukraine.

Keywords: international crimes in Ukraine, crime of aggression, Joint Investigation Team, criminal responsibility

BADANIE I ŚCIGANIE ZBRODNI MIĘDZYNARODOWYCH POPEŁNIONYCH W ZWIĄZKU Z ROSYJSKĄ AGRESJĄ PRZECIWKO UKRAINIE: PERSPEKTYWA POLSKIEGO ZAANGAŻOWANIA

Streszczenie. W artykule przedstawiono dostępne rozwiązania ścigania zbrodni międzynarodowych popełnionych przez władze rosyjskie i członków rosyjskich sił zbrojnych w Ukrainie. W pierwszej kolejności przedstawiono krajowe ukraińskie postępowania karne dotyczące tych przestępstw. Następnie omówiono śledztwo toczące się przed Międzynarodowym Trybunałem Karnym dotyczące zbrodni wojennych i zbrodni przeciwko ludzkości oraz inicjatywy mające na celu utworzenie specjalnego sądu międzynarodowego, który zajmowałby się pociągnięciem do odpowiedzialności karnej za zbrodnie agresji. Wreszcie, mając na uwadze dotychczasowe istotne zaangażowanie Polski, warto zaszykalizować, w jaki sposób Polska już przyczyniła się i mogłaby w przyszłości brać dalszy udział w działaniach zmierzających do pociągnięcia do odpowiedzialności sprawców zbrodni międzynarodowych popełnionych w Ukrainie.

Słowa kluczowe: zbrodnie międzynarodowe w Ukrainie, zbrodnie agresji, wspólny zespół śledczy, odpowiedzialność karna

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1. INTRODUCTION

The Russian aggression against Ukraine has resulted in the evident violations of international law. Firstly, it itself constitutes a breach of the fundamental norm of the prohibition on the use of force and an act of aggression. As such, it was recognised by the most prominent scientific groups, such as the Institut de Droit International (IDI Declaration 2022), the European Society of International Law (ESIL Statement 2022), and the International Law Association (ILA Statement 2022). Russia, violating Article 2(4) of the 1945 United Nations (UN) Charter, acted as an aggressor (UN General Assembly Resolution on aggression against Ukraine, March 2022)¹ and “must be held to account for any violations of international law in or against Ukraine including its aggression (...), as well as any violations of international humanitarian law and international human rights law” (UN General Assembly Resolution on Remedy and Reparation, November 2022). Almost unanimous condemnation of the Russian invasion of Ukraine by the international community is an unquestionable manifesto that this conduct is overwhelmingly viewed as unacceptable (Gill 2022, 126). Among international scholars there is concurring agreement that “the invasion of Ukraine constitutes an unlawful use of force, an act of aggression and an egregious violation of a rule of *jus cogens*” (Green, Henderson, Ruys 2022, 27; similarly Kwiecień 2022, 11), and “(...) is, without doubt, one of the most serious and flagrant violations of the core international legal rule prohibiting the use of armed force in international relations since the Charter came into force”, constituting at the same time “(...) almost open and shut example of the crime of aggression and as such this has definite consequences beyond the largely theoretical possibility of criminal liability of the persons responsible for the planning and initiation of the invasion” (Gill 2022, 125–126). Secondly, the inhuman acts committed in the course of the invasion, including widespread violation and abuse against civilian population and wanton, large-scale destruction of essential infrastructure, indisputably constitute war crimes and crimes against humanity.

During the Fourth Summit of the Heads of States and Governments of the Council of Europe in Reykjavík in May 2023, it was underlined that “Without accountability, there can be no lasting peace (...)” Also, they agreed that there is “the need for an unequivocal international legal response for all victims, as well as for the State of Ukraine” and that “Only by respecting the right to truth, to justice, to reparation and to guarantees of non-repetition will it be possible to overcome the past and create solid foundations to build unity in the spirit of harmony and cooperation with respect for human rights, democracy and the rule of law” (Reykjavík Declaration 2023).

¹ The resolution was adopted by a vote of 141 in favour to 5 against (Belarus, Democratic People’s Republic of Korea, Eritrea, the Russian Federation, and Syria) with 35 abstentions.

This article aims to present the available options relating to the investigation and prosecution of international crimes committed by Russians in Ukraine. Also, considering that the Polish involvement in these activities has already been substantial, it would be interesting to have an insight into how Poland already has and could, in the future, further contribute to bringing to justice the perpetrators of international crimes committed in Ukraine. This research is based mainly on the analysis of relevant legal provisions. Still, it also places them in the context of activities undertaken on the international plane and refers to current doctrinal proposals.

2. FACTUAL BACKGROUND

On 4th March, 2022, the UN Human Rights Council created the Independent International Commission of Inquiry on Ukraine² to investigate violations and abuses of human rights, violations of international humanitarian law, and other crimes that may have been committed in the context of the aggression by the Russian Federation against Ukraine (Human Rights Council Resolution, March 2022). The Commission's tasks are, among other things, to collect, consolidate, analyse, verify, record, and preserve evidence of violations and abuses, to identify individuals and entities responsible for committing international crimes in Ukraine, and to ensure that those responsible are held accountable.

According to the Commission's first report, there were instances of illegal use by the Russian armed forces of explosive weapons, which resulted in wide-area effects caused to residential buildings and infrastructure in populated areas, including schools and hospitals. In addition, indiscriminate attacks, violations of personal integrity, including executions, torture, and ill-treatment, summary executions, and sexual and gender-based violence, where the age of victims ranges from four to eighty-two years were described (Report of the Independent Commission of Inquiry on Ukraine 2022, A/77/533, paras. 38–96). Moreover, children were exposed to violations of their rights, including forced displacement and separation from family members (Report of the Independent Commission of Inquiry on Ukraine 2022, A/77/533, paras. 99–103, 108). Further works of the Commission and the analysis of the collected data indicate that other numerous war crimes and possibly crimes against humanity were committed in the course of the Russian war of aggression (Conference room paper of the Independent International Commission of Inquiry on Ukraine 2023, A/HRC/52/CRP-4, 28–137). Similarly, the latest Commission's report, dated 19th October, 2023, reveals

² The Commission is one of the many UN-mandated investigative bodies. Since the mid-2000, they have been increasingly created by various UN organs to answer to situations of serious violations of international humanitarian law and international human rights law, to promote accountability, and to counter impunity.

new violations of international human rights law and international humanitarian law, and corresponding crimes of unlawful attacks with explosive weapons, torture, sexual and gender-based violence, and transfers and deportations of children (Report of the Independent Commission of Inquiry on Ukraine 2023, A/78/540, paras. 16–69, 74–99).

3. ACCOUNTABILITY OPTIONS

The first choice as to who should investigate and adjudicate crimes committed in the territory of Ukraine is certainly the Ukrainian institutions. According to the territorial theory, which remains the essential principle of criminal jurisdiction, the state on whose territory the crime was committed has jurisdiction over the offence (Perkins 1971, 1155). Notwithstanding, the idea that the state's national courts should, as a rule, try crimes committed within the state's territory and against its nationals is central to the general and fundamental principle of international law – the principle of state sovereignty.

The Ukrainian Office of the Prosecutor General operates a central war crimes unit as well as regional war crimes units that focus on investigating crimes related to the current armed conflict.³ In addition, a specialised unit to deal with conflict-related sexual violence crimes has been established. As of 15th October, 2023, more than 100,000 crimes relating to the conflict, mainly war crimes but also cases of the crime of aggression⁴ and propaganda of war, according to articles 436, 437, and 438 of the Criminal Code of Ukraine, are examined.⁵ These numbers solely show the enormous burden that lies within the Ukrainian judicial authorities. Ukrainian courts are best placed to adjudge these cases not only because of the territoriality principle, but also due to practical reasons such as their proximity to the evidence, witnesses, and victims, their understanding of the context, and their knowledge of the languages involved (Nuridzhanian 2022).

Furthermore, even though Ukraine is not a State Party to the 1998 Rome Statute of the International Criminal Court (ICC), this Court established criminal proceedings relating to the situation in Ukraine.⁶ Ukrainian authorities twice, in

³ For the text of the law on the Ukrainian prosecution's service, see: <https://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1789-12&p=1275121932817014#Text> (accessed: 12.12.2023).

⁴ Solely one major case of the crime of aggression of the Russian Federation relates to 678 suspects, including ministers, deputies, military commanders, and officials. See <https://www.gp.gov.ua/en> (accessed: 15.10.2023).

⁵ Updated information on the scale of the proceedings is available on the website of the Office of the Prosecutor General of Ukraine: <https://www.gp.gov.ua/en>. The text of the Criminal Code of Ukraine in English, see https://sherloc.unodc.org/cld/uploads/res/document/ukr/2001/criminal-code-of-the-republic-of-ukraine-en_html/Ukraine_Criminal_Code_as_of_2010_EN.pdf (accessed: 15.10.2023).

⁶ For broader analysis, see Kuczyńska (2022).

2014 and 2015, referred to article 12(3) of the ICC Statute, which enables a state not party to the Statute to accept the exercise of jurisdiction of the Court over alleged crimes under the Rome Statute occurring on its territory. After more than five years of preliminary examination, on 11th December, 2020, the ICC Prosecutor Fatou Bensouda announced that there is a reasonable basis to believe that war crimes and crimes against humanity within the jurisdiction of the Court have been committed in the context of the situation in Ukraine and that she would request authorisation from the Pre-Trial Chamber of the Court to open investigations. However, only after the outbreak of a full-scale invasion did the subsequent ICC Prosecutor, Karim A.A. Khan, announce that he would finally seek authorisation to open an investigation. Usually, it takes some time to decide on this issue in the Pre-Trial Chamber. Fortunately, this step could be omitted in the case at hand due to the action undertaken by 43 States Parties, including Poland, which submitted referrals to the ICC.⁷ In such a course of events, it took only hours for the ICC Prosecutor to announce that he would proceed with opening an investigation into the situation in Ukraine. The investigation encompasses any allegations of war crimes, crimes against humanity, and genocide committed on the territory of Ukraine from 21st November, 2013, onwards. On 17th March, 2023, the ICC issued warrants of arrest for the Russian President Vladimir Putin and his Commissioner for Children's Rights, Maria Lvova-Belova, with the allegation of committing war crimes of unlawful deportation and transfer of Ukrainian children from occupied territories of Ukraine to Russia from at least 24th February, 2022 (Annual Report of the ICC to the UN on its activities in 2022/23, par. 16). The ICC investigation is ongoing, and the evidence is being collected. What is also interesting is the overall approach of this investigation that aims to develop multiple, interconnected lines of investigation, engaging in cooperation and coordination efforts with a variety of national and international participants (Annual Report of the ICC to the UN on its activities in 2021/22, par. 53).

The most challenging, not only in the Ukrainian context but also in a general discussion on individual criminal responsibility, is the question of prosecuting the crime of aggression.⁸ The crime of aggression is defined in Article 8 bis of the Rome Statute as 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. Compared to other international crimes, the crime of aggression is specific and even more challenging to prove. To find an individual criminally responsible, direct state action must be established (Hajdin 2022, 4). In other words, it is impossible to hold

⁷ The first was the Lithuanian referral and then the joint referral by another 38 Member States, which was later joined by four others.

⁸ For an elaborate analysis of this issue, see Grzebyk (2013). Also, compare Van Chaaek (2012).

someone accountable for the crime of aggression without confirming that the act of aggression took place.

In the case discussed here, there is no option to proceed with the crime of aggression before the ICC, as neither Ukraine nor Russia are state parties to the Rome Statute. Also, due to the head of state's immunity rule, it is legally impossible to proceed with the trial of State officials in the courts of foreign states. Under international law, there is no exception to immunity in the case of a crime of aggression (ILC Report 2022, 239). It is stressed that "the determination by a national court of one State of the question of whether another State had committed aggression would be contrary to the fundamental principle of international law *par in parem imperium non habet*" (ILC Report 1996, 30). Therefore, the most common proposal as to how to deal with the crime of aggression committed against Ukraine by the political leaders and military commanders of the Russian Federation is the establishment of an international court. There are different proposals, either to create the court based on a multilateral treaty or an agreement with an international organisation (as a special or a hybrid tribunal), or to establish such a tribunal based on the powers of the UN. However, the realisation of either proposal appears problematic. Firstly, it seems impossible for the UN Security Council to adopt a resolution creating such an *ad hoc* tribunal simply due to Russia's veto power. Also, the UN General Assembly powers based on the "Uniting for Peace" resolution must be considered insufficient to establish an efficient international criminal tribunal dealing with the crime of aggression in the discussed context. Legally, it is more probable that a special court could be created by the agreement between Ukraine and the United Nations; here, there is a precedent of the Extraordinary Chambers in the Courts of Cambodia showing that the UN General Assembly has the power to trigger the process of setting up a tribunal. Another issue is the scope of personal jurisdiction of such a court. Some authors suggest broad personal jurisdiction, allowing for the prosecution of all those who, for instance, consciously took part in waging a war of aggression (Grzebyk 2023, 23). However, it should be pointed out that it is more accurate if the jurisdiction *rationae personae* of this court is limited to the most responsible, as a crime of aggression is and should be the crime of leaders. Notwithstanding that the proposals differ in detail, the proponents share a common conclusion: a new international tribunal is essential to ensure justice.

4. THE POLISH INVOLVEMENT

Poland has been engaged in post-aggression activities aiming at supporting and helping Ukraine in many fields. Unsurprisingly, this involvement is also visible concerning the accountability for international crimes committed following the Russian aggression. The act of aggression against Ukraine, a state sharing

a border with Poland, undermines European and international peace and security, and, as such, is directed against the interest of the whole international community.

The Polish criminal law makes conducting criminal proceedings on international crimes committed abroad possible. Article 113 of the 1997 Criminal Code provides a jurisdictional basis for prosecution. This provision introduces into the Polish criminal law the universal jurisdiction principle concerning crimes penalised by the Rome Statute. The universal jurisdiction principle constitutes the basis for prosecuting and punishing persons committing the most serious crimes regardless of where the crime was committed or the nationality of the perpetrator or victims.⁹ It is based on the premise that certain international crimes are so heinous that they ‘shock the conscience of humanity’ such that those who commit them are truly *hostis humani generis*, thus justifying the idea that anyone may exercise jurisdiction over them (Princeton Principles, 23). Furthermore, Chapter XVI of the Criminal Code (Articles 117–126c) enlists the criminal behaviours that essentially amount to crime of aggression, genocide, war crimes, and crimes against humanity, as defined in international law. There is an ongoing Polish investigation into the aggressive war launched on 24th February, 2022, by the authorities and public officials of the Russian Federation against the sovereignty, territorial integrity, and political independence of Ukraine and acts classified as war crimes committed with this aggression by the Russian armed forces.¹⁰ The investigation also covers the activities of the Belarusian authorities that made this state’s territory available for committing acts of aggression against Ukraine. It was opened on 28th February, 2022, in the National Prosecutors’ Office in Warsaw. What should be emphasised is that, apart from Ukraine, Poland was the first state to initiate criminal proceedings. On the one hand, this investigation must be assessed as bearing symbolic value: the initiation of proceedings by the Polish prosecutor’s office not only shows Poland’s compliance with international obligations relating to the prosecution of international crimes but, at the same time, constitutes an unequivocal proclamation that the most serious crimes cannot and will not go unpunished. On the other hand, formalising the investigation was the most feasible way to collect evidence in the form of the testimonies of victims and witnesses who had left Ukraine and found help and shelter in Poland.

Until now, the Polish input into collecting evidence on crimes committed in Ukraine has been significant. According to the publicly available information,

⁹ For broader analysis, see: Ostropolski (2008).

¹⁰ The official communication of the National Prosecutor’s Office on the opening of the investigation mentions Articles 117 (aggressive war), Article 122 (use of prohibited means and methods of warfare), Article 123 (attacks on civilians), and 124 of the Criminal Code (attacks on the cultural property), see <https://www.gov.pl/web/prokuratura-krajowa/mazowiecki-pion-pz-pk-wszczal-sledztwo-w-sprawie-napasci-rosji-na-ukraine> (accessed: 12.12.2023).

only until February 2023, over 1700 witnesses were interviewed. Also, additional documentary evidence of crimes, such as films and photos, has been collected. What is more, the testimonies of witnesses have allowed for identifying 24 separate instances of murders of civilians, forced deportations, and torture, notwithstanding the establishment of the identity of some of the perpetrators.¹¹

Nevertheless, there are no plans to proceed with the proceedings further, with the Polish investigation having primarily auxiliary character.¹² This approach is correct. The Polish prosecutors collect as much evidence as possible that would later be used either in Ukrainian criminal proceedings or in future trials before the ICC or any special tribunal if established.

In addition to the individual activities undertaken by the Polish authorities, there are also collective actions operating at the European Union (EU) level, primarily but not exclusively in the form of a joint investigation team (JIT).

JITs were initiated by the EU in 2002 by the Council Framework Decision of 13th June, 2002, on joint investigation teams, originally “for the purpose of combating international crime as effectively as possible”, predominantly terrorism, trafficking in drugs, and human beings. They bring together investigators and prosecutors from the EU Member States and non-EU countries, supported by Europol and Eurojust if needed. Since its introduction, the use of JITs within the EU has expanded, and now they are also created to jointly investigate core international crimes such as genocide, war crimes, and crimes against humanity.

Considering the impact that the situation in Ukraine has on the EU as a whole and its Member States, as well as the data regarding crimes taking place, it is not surprising that a dedicated JIT has also been established and that Poland has been among the initiators of the creation of the JIT on the alleged core international crimes committed in Ukraine. The JIT agreement was signed on 25th March, 2022, by Lithuania, Poland, and Ukraine to enable the exchange of information and facilitate investigations into war crimes, crimes against humanity, and other core crimes committed in the course of the Russian invasion.¹³ Successively, it has been joined by Latvia, Estonia, Romania, Slovakia, and the Office of the Prosecutor of the ICC. Then, in March 2023, also US Justice Department entered the agreement,

¹¹ Information on the results of the investigation was revealed by Prosecutor General Zbigniew Ziobro during a press conference held on 24th March, 2023, at the National Prosecutor's Office in Warsaw, see: *Briefing w sprawie śledztwa dotyczącego napaści Rosji na Ukrainę. Prokuratura Krajowa. Portal Gov.pl* (<https://www.gov.pl/web/prokuratura-krajowa/briefing-w-sprawie-sledztwa-dotyczacego-napasci-rosji-na-ukraine>) (accessed: 29.10.2023).

¹² Some scholars claim that the Polish courts could conduct trials of the individuals who support the Russian aggression and war crimes (Zontek 2023). Such trials would be ideally in accordance with the Polish law; however, it seems unlikely that Poland would decide not to extradite the potential suspects to Ukraine or to surrender them to an international court, let it be the ICC or a different institution, and instead to adjudge them on its own.

¹³ For specific information, see <https://www.eurojust.europa.eu/eurojust-and-the-war-in-ukraine> (accessed: 29.10.2023).

and, on 5th October, 2023, Europol became another participant in the JIT. It is worth mentioning that since April 2023, the JIT has been authorised to examine the alleged cases of genocide in Ukraine.¹⁴

A JIT, as a form of cooperation, allows for a direct exchange of information and evidence, facilitates working faster and more efficiently, makes it possible to carry out joint operations and investigative measures, and shares technical expertise and human resources. A notable aspect is the financial support provided by the EU to the JIT, as it reduces the impact on national budgets. It is worth mentioning that as a part of the activities undertaken in the framework of JIT, Poland provided considerable technological assistance to Ukrainian judicial authorities. Already, twice, the Polish prosecutors and police have gathered evidence of war crimes in Ukraine using 3D laser scanners.¹⁵ They inspected locations, including civilian buildings and infrastructure sites destroyed as a result of shelling. 3D scanners constitute an innovative, advanced technology beneficial for the reconstruction of events. As such, this kind of evidence is a valuable source of precise data for further criminal investigations.

It should also be noted that Poland is a member of the newly established International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA). The Centre was embedded in Eurojust to support national investigations into the crime of aggression related to the war in Ukraine.¹⁶ It enables independent prosecutors from different states to work together in the same location on a daily basis, exchange evidence quickly and efficiently, and agree on a common investigative and prosecution strategy. What must be underlined is that the work of the ICPA will effectively prepare and contribute to any future prosecutions of the crime of aggression, irrespective of the jurisdiction before which these will be brought.¹⁷ The members of the ICPA include Ukraine and five JIT members states; however, also other states possessing information or evidence relevant to the investigation of the crime of aggression against Ukraine may request their participation. Taking part in this forum also indicates Poland's commitment and meaningful role in dealing with the most severe international crimes.

¹⁴ <https://www.eurojust.europa.eu/news/joint-investigation-team-garners-further-support-icpa-and-agrees-investigate-genocide-crimes> (accessed: 29.10.2023).

¹⁵ <https://www.pap.pl/aktualnosci/polscy-sledczy-po-raz-drugi-dokumentowali-dowody-rozsyjskich-zbrodni-na-ukrainie> (accessed: 29.10.2023).

¹⁶ The Centre is a unique form of cooperation based on the EU law provisions on JITs. Also, its creation was preceded by the adoption of Regulation (EU) 2022/838 of the European Parliament and of the Council of 30th May, 2022, amending Regulation (EU) 2018/1727 as regards the preservation, analysis, and storage at Eurojust of evidence relating to genocide, crimes against humanity, war crimes, and related criminal offences, OJEU L 148/1.

¹⁷ For information on the Centre, its role, and future tasks, see the website of Eurojust, <https://www.eurojust.europa.eu/international-centre-for-the-prosecution-of-the-crime-of-aggression-against-ukraine> (accessed: 3.11.2023).

5. CONCLUSIONS

In general, investigating and prosecuting international crimes raises significant concerns. They relate to the large number of victims, witnesses, and perpetrators affected by the proceedings. Even with the criminal proceedings already taking place in Ukraine and other states,¹⁸ the numbers may challenge the rights of both defendants and victims to fair and effective trial.¹⁹ Moreover, there are significant legal and political obstacles related mainly to the prosecution of the leadership, especially noticeable in the case of Russia, a permanent member of the UN Security Council.²⁰

There is no doubt that atrocities cannot go unpunished. It sounds like a truism, but no lasting peace exists without accountability. Therefore, it is crucial to have all perpetrators of crimes committed during the conflict in Ukraine and anywhere else brought to responsibility. It requires a lot of effort and time. This short research has proven that much has been done in delivering criminal justice since the beginning of the Russian-Ukrainian conflict. The enormous set of evidence has been collected not only directly by the Ukrainian authorities but also by other states; there are ongoing investigations in Ukraine and other domestic jurisdictions, the ICC has its investigation, and a JIT is operating within the EU. Polish involvement is equally visible in many aspects, including the effective participation in activities on the EU forum, the conduct of Polish investigation, and the direct participation in evidence-gathering activities in Ukraine. Here and now, there is time for the whole international community to take the next step and establish an international tribunal on the crime of aggression to close the impunity gap and provide for the responsibility of every individual, irrespectively of their personal capacity, the power of national state, or any other circumstances. Significantly, creating this institution as a direct response to the crimes committed by the Russian leaders will constitute an essential message that every single member of the international community, even the most powerful one, must observe the law and will not escape international justice. However, although the

¹⁸ There are already investigations, for instance, in Canada, the Czech Republic, Estonia, France, Germany, Latvia, Lithuania, Poland, Romania, Slovakia, Spain, Sweden, Switzerland, the United Kingdom, and the USA. For more information, see Conference room paper of the Independent International Commission of Inquiry on Ukraine 2023, A/HRC/52/CRP-4,143.

¹⁹ Therefore, there are such proposals as, for instance, establishing a High War Crimes Court that would complement existing Ukrainian courts, the ICC, and any potential international tribunal for the crime of aggression as a hybrid tribunal. For more information and Draft Law for a Ukrainian High War Crimes Court, see Public International Law and Policy Group, Draft Law for a Ukrainian High War Crimes Court, July 2022, available at <https://www.publicinternational-lawandpolicygroup.org/draft-law-ukrainian-high-war-crimes-court> (accessed: 15.10.2023).

²⁰ The most legitimate way of dealing with the criminal responsibility for the crime of aggression of the Russian leadership would be the establishment by the UN Security Council of an *ad hoc* tribunal, which is highly unlikely due to Russia's veto power.

idea of bringing Russian leaders to responsibility for crimes is widely accepted, it seems impossible. Already in 1998, the international community established an institution – the International Criminal Court – envisaged as the one that would end impunity. Unfortunately, the impunity gap has not yet been closed more than twenty years later. Despite many efforts, it is difficult to assume that it will be closed in the foreseeable future.

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