REVIEW
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Special Issue 2023

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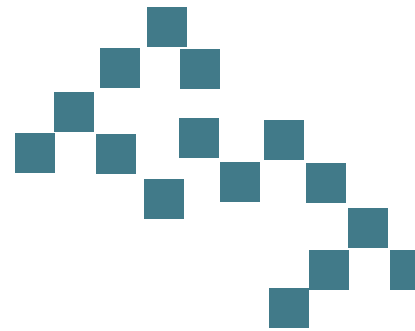

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Wydawnictwo KUL, ul. Konstantynów 1 H
20-708 Lublin, tel. 81 740-93-40
e-mail: wydawnictwo@kul.lublin.pl
http://wydawnictwo.kul.lublin.pl

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Preface

On February 24, 2022, Russian armed forces began the next stage of aggression against Ukraine, which was preceded by the annexation of Crimea in 2014 and the start of military operations in two parts of Ukraine's eastern oblasts – Donetsk and Lugansk. Russia officially maintained that its armed forces were not involved in the operations in Ukraine, although it was proven and widely known that in both incidents Russia's armed forces (without any identification symbols) and military equipment were involved. On February 24, 2022, Russia began the next phase by moving to active bombing (using air force and warships), this time of practically the entire territory of Ukraine. It also deployed its armed forces to other oblasts: Kharkov, Kherson, Kiev, Zaporozhye, Sumy and Chernihiv. Russia's boldness in launching and conducting armed aggression against another sovereign state results not only from unjustified territorial claims and state interests, but also from the low effectiveness of available international mechanisms, in particular international judiciary. Ukraine has achieved some success before the International Court of Justice (hereinafter – ICJ), including an ICJ Order of 16 March 2022, in which the ICJ ordered Russia, as an interim measure, to immediately halt military operations and cease any further hostilities on the territory of Ukraine. Despite the order Russia has not ceased its armed aggression, and since the ICJ issued the order of interim measures, Ukrainian authorities have been discovering mass graves of their citizens in reclaimed territories. The discovery of mass graves of residents of cities and towns temporarily occupied by Russia, and other evidence gathered so far, allow one to conclude that the Russian side is responsible for crimes against the civilian population

that meet the criteria of the most serious crimes under international law. Russia's conduct is contrary to all standards applicable in international relations, and the crimes committed against the civilian population require immediate action to bring those responsible to justice. Therefore, it is necessary to consider the existing standards in the area of prosecuting the crime of genocide and examine their usefulness in the context of the crimes committed in Ukraine.

The present issue of The Review European nad Comparative Law contains eight articles devoted directly to the problem of the crime of genocide in the context of the current situation in Ukraine.

In accordance with Article II of Convention on the Prevention and Punishment of the Crime 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, i.e.: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group living conditions calculated to cause its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group. The authors of the presented articles analyze the current situation in Ukraine in the context of individual elements of the definition.

Firstly, the concept of genocide is presented in a historical aspect by comparing previous actions that have been recognized by the international community as the crime of genocide or meet its criteria (Mišo Dokmanović "Lessons Learned from the Holocaust and the Contemporary Genocide", ; Krzysztof Masło, "When Is Genocide a Crime of Genocide? The Holodomor and the Katyn Massacre as a Crime of Genocide"; Magdalena Maksumiuk, "The Response of the International Community to the Genocide in Rwanda and the War in Ukraine"). Secondly, an attempt has been made to demonstrate that Russia's actions are aimed at complete or partial destruction of the Ukrainian nation (Volodymyr Pylypenko, "Russian Genocide in Ukraine as an Attempt to Destroy the Ukrainian Nation"; Pavlo Fris, "Psychological and Ideological Basis of Collaboration in the Conditions of Russian Aggression in Ukraine") and its national identity (Joanna Siekiera, "Between Genocide and War Crime – Legal-Cultural Analysis of the Russian Aggression in Ukraine"; Aleksandra Główczewska, Dominika Zawadzka-Klonowska, "Inter Arma Silent Musae". Destroying Museums,

Historical Buildings, and Monuments During the War in Ukraine as War Crimes Within the Meaning of International Law"). The last element of the definition, analyzed in more detail in this issue of The Review European nad Comparative Law is the problem of „forced transfer of children of members of the group" and, in the case of Ukraine, abduction of Ukrainian children and their deportation deep into the territory of Russia (Iryna Kozak-Balaniuk, Acts Committed by Russian Citizens in Ukraine after February 24, 2022 that May Constitute the Crime of Genocide).

We are deeply convinced that the papers published in this issue constitute an important contribution to the current discussion in the context of Russia's aggression against Ukraine.

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Lessons Learned from the Holocaust and the Contemporary Genocide

Mišo Dokmanović
Dr. iur., Full Professor, Faculty of Law, Ss. Cyril and Methodius University, Skopje, North Macedonia, correspondence address: Bul. Goce Delčev br. 9B, 1000 Skopje, North Macedonia, e-mail: m.dokmanovic@pf.ukim.edu.mk
https://orcid.org/0000-0002-9847-3468

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Abstract: The paper is focused on the analysis of the lessons learned from the genocides in the 20th century for the existing situation in Ukraine. Apart from the short overview of the history behind the term genocide and the adoption of the convention for its prevention and punishment in the post-World War II period, the paper explores the main specifics of the selected genocides (Armenian genocide, the Holocaust, Cambodia, Rwanda, and Yugoslavia). On the basis of the identified specifics, several conclusions and lessons have been drawn, including the expectation that mass atrocities will happen again and that international justice is often slow and deals with a limited number of perpetrators.

1. Introduction

The war in Ukraine and its consequences once again put humanity to the test. The unimaginable scale of destruction in a sovereign nation, with several million refugees and displaced persons, including tens of thousands of children, has once again raised concerns in the civilized world regarding the atrocities being committed. The issues of war crimes and genocide have once again returned to the discussion table.

Having this in mind, the paper is focused on the analysis of the lessons learned from the Holocaust and other 20th-century genocides for the prevention of mass atrocities in the contemporary world, including Ukraine. The systematic and deliberate destruction of an entire people or ethnic

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group has always been perceived as the "crime of all crimes." Yet the situation in the last century did not significantly change, as a number of genocides have occurred and been documented, including the Holocaust, an unprecedented state-sponsored genocide with the aim of annihilating the Jewish people by Nazi Germany and their allies and collaborators.

The paper has been focused on the lessons learned from the main genocides in the 20th century (Armenian genocide, the Holocaust, Bosnia and Herzegovina, Rwanda, and the former Yugoslavia) and their relevance to the existing war in Ukraine.

2. The Concept and History of Genocide

Following World War II and the unimaginable persecution and destruction of European Jewry during the Holocaust, the international community was strongly committed to preventing mass atrocities in the future. The term "genocide" was coined by the Polish lawyer of Jewish descent, Raphael Lemkin, in the last years of the war to describe the campaign of extermination by Nazi Germany against the Jews during the Holocaust. Driven by his personal tragedy, he had the opportunity to participate in the Nuremberg trials, and the term "genocide" was included in Count 3 of the Indictment of the Nuremberg Trial Proceedings.[1] However, at this point, the term "genocide" had not yet been officially accepted as a formal legal term.[2]

A year later, the United Nations General Assembly recognized genocide as a crime under international law and urged Member States to enact the necessary legislation for the prevention and punishment of this crime.[3] It took an additional two years for the United Nations General Assembly to adopt the Convention on the Prevention and Punishment of the Crime of

1 "Coining A Word And Championing A Cause: The Story Of Raphael Lemkin", United States Holocaust Memorial Museum, accessed on August 24, 2023, https://web.archive.org/web/20230623112630/https://encyclopedia.ushmm.org/content/en/article/coining-a-word-and-championing-a-cause-the-story-of-raphael-lemkin; Yale Law School, The Avalon Project, Documents in Law, History and Diplomacy, Nuremberg Trial Proceedings Vol. 1, Indictment: Count Three, accessed September 10, 2023, https://avalon.law.yale.edu/imt/count3.asp.

2 Ibid.

3 United Nations, 1946 United Nations General Assembly Resolutions, The Crime of Genocide, accessed August 3, 2023, https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/033/47/PDF/NR003347.pdf?OpenElement.

Genocide (the Genocide Convention).[4] In Art. 2 of the Convention, genocide is defined as:

> 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.[5]

Moreover, the Convention provides punishment for other related acts such as conspiracy to commit, direct and public incitement to commit, attempt to commit, as well as conspiracy to commit genocide. Additionally, genocide in the convention is prohibited regardless of the time of commission (both during war and peace).

One should bear in mind that the Charter of the International Military Tribunal[6] and the Control Council Law No. 10[7] did not specifically include the crime of genocide as a separate offense against humanity. While the wording of relevant provisions clearly demonstrated that the crimes encompassed genocide, these documents did not explicitly mention it. The term used for the extermination of Jews and other groups was the crime of persecution.

3. Genocides in the 20th Century

From ancient times, there have been a number of cases of mass atrocities which fit the contemporary definition of genocide. However, the overall development of the civilization and the lessons learned from the Holocaust

4 The Convention entered into force on January 12, 1951.

5 United Nations, Convention on the Prevention and Punishment of the Crime of Genocide, accessed August 10, 2023, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf.

6 The Charter of the International Military Tribunal was prepared by the European Advisory Committee in August 1945. The charter defined the rules and procedures for the implementation of the Nuremberg trials.

7 Antonio Cassese, *International Law* (Oxford University Press, 2005), 443.

created the necessary framework for the establishment of a legal mechanism from punishment and prevention of the crime of genocide, as well as improved the instruments for the documentation of mass atrocities in the 20th century. In this part of the paper, several genocides of the 20th century and their specifics will be explored.

The Armenian genocide is considered the first large-scale genocide of the 20th century. It represented a series of deportations and killings of Armenian Christian people living in the Ottoman Empire, mainly occurring from spring 1915 to autumn 1916. Conducted in the context of World War I and by the Ottoman authorities controlled by the Young Turks movement, it was aimed to solidify Turkish dominance in the regions of central and eastern Anatolia by eliminating the sizeable Armenian community.

One should keep in mind that the Armenian community achieved a significant economic progress in the Ottoman Empire during the 19th century. They were involved in various segments of the economy, including industries such as cannon and shipbuilding, and worked as architects, merchants, watchmakers, and more. To illustrate the economic superiority of the Armenian people within Ottoman society, according to Krikor Zohrab, out of the 166 Ottoman importers, 141 were Armenian and 13 Turkish and out of the 9,800 shopkeepers and craftsmen, 6,800 were Armenian and 2,550 were Turkish.[8] Another factor influencing the decision to target Armenians was the aftermath of the Ottoman Empire's defeat in the First Balkan War, as well as the positions of Armenian political factions in collaboration with Russia to achieve their political goals. This resulted in an unprecedent campaign against the Armenian people. According to the United States Holocaust Memorial Museum, at least 664,000 and possibly as many as 1.2 million died during the genocide, either in massacres and individual killings, or from systematic ill treatment, exposure, and starvation.[9] As the first genocide of the 20th century, and with the development of technology, relevant documents and photographs are available.

8 Razmik Panossian, *The Armenians: From Kings and Priests to Merchants and Commissars* (London: Cambridge University Press, 2006), 128–87.

9 "The Armenian Genocide (1915–1916). Overview," United States Holocaust Memorial Museum, accessed August 23, 2023, https://encyclopedia.ushmm.org/content/en/article/the-armenian-genocide-1915–16-overview.

It should also be emphasized that while Turkish authorities acknowledge that atrocities occurred, they deny the existence of an organized plan or policy for the eradication of the Armenian people.

As it was already mentioned, the Holocaust represented an unprecedented state-sponsored murder of six million Jews by the Nazi regime and their allies and collaborators. The persecution of Jews began in 1933 and continued until 1945. During this period, the Nazi authorities developed a number of mechanisms to systematically deprive Jews of their political and economic rights. Later, these mechanism were implemented in the territories occupied by the Nazis and their allies. The Holocaust, as an unprecedent process of persecution and destruction of a people, culminated with the Wannsee Conference. This conference ensured the collaboration of Nazi government departments in the implementation of the Final Solution to the Jewish Question, which involved the deportation of all European Jews to occupied Poland for their extermination. In other words, there existed a concrete plan for the annihilation of the entire Jewish population, without exception. This plan included a systematic approach, encompassing identification, separation, transportation, and organized murder. As a result of the Nazi antisemitic policies, by 1945, six million Jewish men, women, and children had been murdered; two out of every three European Jews were killed. As it was already mentioned, the incomprehensible scale of organized murder and the evident determination of the civilized world after World War II not to tolerate these mass atrocities being ignored led to the adoption of the Genocide Convention. The definition of this new term and the adoption of the Convention represented an attempt to prevent similar atrocities occurring in the future. However, history has shown this to be tragically wrong.

One should keep in mind that a number of scholars have argued that the comparison between the Holocaust and other genocides is inadequate for a number of reasons including the fact that the Holocaust was unparallel in a number of ways. In this context, Yehuda Bauer has argued that the main difference between the Holocaust and other genocides was the intention to destroy every member of the group without exception, leaving the group with no chance of survival. it was the Nazis' intention to eliminate all Jews without exception, representing the most extreme form of genocide. As a result, the Holocaust has become the paradigm for

genocidal threats in general.[10] In this context, some scholars argue that the discourse on the Holocaust within the general history of genocide and mass violence will divert attention from what was unique about the extermination of Jews. While these positions are highly relevant and valid, there are several reasons for comparing the Holocaust and other genocides. This includes the fact that the Holocaust is often seen as a starting point for research into other genocides, and the term "genocide" was created in response to the destruction of the European Jews. Additionally, knowledge about other genocides could potentially offer new perspectives in the study of the Holocaust.[11]

Having this in mind, in this part of the paper, we will briefly explore the main specifics of the genocides conducted by the end of the 20th century.

One of the deadliest genocides carried out in the second half of the 20th century was the genocide in Cambodia. According to the political scientist Karl D. Jackson, the Cambodian genocide was "the greatest per capita loss of life in a single nation in the twentieth century."[12] Over the period of four years (1975–1979) the Khmer Rouge military government was responsible for the deaths of between 1.5 and 3 million people.

The main target groups for the genocide were religious groups (out of a total of 2,680 Buddhist monks from eight of Cambodia's 3,000 monasteries, only 70 monks were found to have survived in 1979),[13] ethnic minorities (Vietnamese, Chinese, Thai, Muslim Cham etc.) and the majority Khmer population (15% of the rural population and 25% of the urban population perished between 1975 and 1979).

After seizing power, the key figure behind the genocide, Pol Pot, aimed to establish a form of agrarian utopia in Cambodia. All intellectuals, as well

10 Yehuda Bauer, "On the Holocaust and Other Genocides. Joseph and Rebecca Meyerhoff Annual Lecture," October 5, 2006. First Printing, February 2007.

11 *The Holocaust and Other Genocides: An Introduction*, eds. Barbara Boender and Wichert ten Have (Amsterdam: NIOD Institute for War, Holocaust and Genocide Studies, Amsterdam University Press, 2012), 8–9.

12 Bennett Sherry, "Why Does Genocide Still Happen?," World History Project, 1040L, accessed September 3, 2023, https://www.oerproject.com/-/media/WHP-1200/PDF/Unit9/WHP-1200–9-2–3-Read---Why-Does-Genocide-Still-Happen---1040L.ashx.

13 Ben Kiernan, "Orphans of Genocide: The Cham Muslims of Kampuchea under Pol Pot," *Bulletin of Concerned Asian Scholars* 20, no. 4 (1988): 2–33.

as those who spoke foreign languages, were immediately killed. Private property and the national currency were abolished. Cities were abandoned, and schools closed.

International responses to the mass atrocities in Cambodia were very limited. Following the Vietnamese invasion in 1979, the provisional People's Republic of Kampuchea was established. However, the former regime maintained its diplomatic presence abroad, including at the UN, without facing consequences for a limited period of time. At the same time, during the 1980s, no significant efforts were made to investigate the crimes committed by the Khmer Rouge. Several legal organizations rejected proposals to send delegations to Cambodia to investigate the crimes. Only a few voluntary organizations initiated some form of reaction to the mass atrocities, including the US Cambodia Genocide Project (1980), the Australian section of the International Commission of Jurists (1990), the Minnesota Lawyers International Human Rights Committee (1990), and so on.

The pressure from the public began to grow in the early 1990s. The New York Times called for the publication of a list of Khmer Rouge war criminals, their exclusion from Cambodian political life, and a trial before an international tribunal for crimes against humanity.[14] Additionally, in the fall of 1991, the Paris Peace Agreement was signed between the involved parties. In this regard, Article 17 of this agreement foresaw the appointment of a guardian for human rights: "The United Nations Commission on Human Rights should continue to monitor closely the human rights situation in Cambodia, including, if necessary, by the appointment of a Special Rapporteur who would report their findings to the Commission and to the General Assembly."[15]

Following the political turmoil of the 1990s, the Extraordinary Chambers in the Courts of Cambodia (ECCC) were established in 1997 through an agreement between the United Nations and the Royal Government of

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14 Ben Kiernan, "The Cambodian Genocide, 1975–1979," in *The Holocaust and Other Genocides: An Introduction*, edited by Barbara Boender and Wichert ten Have (Amsterdam: NIOD Institute for War, Holocaust and Genocide Studies, Amsterdam University Press, 2012), 87.

15 Agreement for a Comprehensive Political Settlement of the Cambodia Conflict, 1663 UNTS 27 (Paris, 23 October 1991), Art. 17. See: United Nations, Department of Public Information, *The United Nations and Cambodia 1991–1995* (UN Blue Book Series, Vol. II, UN, 1995).

Cambodia, with the sole purpose of ensuring accountability for the crimes of the Khmer Rouge regime. It took another decade until the first open hearing was organized in November 2007. The main claim of the prosecutors was that the Communist Party of Kampuchea has committed crimes against humanity and genocide. While a number of perpetrators died before being convicted (including Son Sen, Pol Pot, Ke Pauk and Mok), several prominent members of the Khmer Rouge were convicted. For instance, Kang Kek Iew was found guilty of crimes against humanity; Khieu Sampha's verdicts included genocide, crimes against humanity, and grave breaches of the Geneva Convention, among others. The Tribunal concluded its operations in 2022.

The genocides continued to occur in other places as well. The process of decolonization brought a major shift in the global balance of power, increasing tensions in many African nations. This was also the case in Rwanda, a Central African country where a century of German and Belgian imperialism had divided people along ethnic lines.

When the country gained its independence in 1962, tensions between the Hutu majority and Tutsi minority started a cycle of violence. Discrimination and violence against the Tutsi persisted during the 1960s and 1970s, leading many members of the community to leave the country. In 1990, Tutsi rebels invaded Rwanda from the north which once again triggered hostilities and resulted in a three year civil war. Under the auspices of the Organisation of African Unity, a peace treaty known as the "Arusha Accords"[16] was signed between the Rwandan Government and the insurgents (Rwandese Patriotic Front). The treaty envisioned the establishment of a Broad-Based Transitional Government with the participation of the insurgents. Additionally, a UN mission, the United Nations Assistance Mission for Rwanda (UNAMIR), was established in October 1993.[17] While the Accords set a course for sustainable peace, the situation abruptly escalated on April 6, 1994, following the downing of the airplane carrying

16 Peace Agreement between the Government of the Republic of Rwanda and Rwandese Patriotic Front, accessed August 27, 2023, https://peacemaker.un.org/sites/peacemaker.un.org/files/RW_930804_PeaceAgreementRwanda-RwandesePatrioticFront.pdf.

17 United Nations, Resolution 872 (1993)/adopted by the Security Council at its 3288th meeting on 5 October 1993, accessed August 15, 2023, https://digitallibrary.un.org/record/197341?ln=en.

the Presidents of Rwanda and Burundi near the Rwandan capital, Kigali. Immediately after the assassination, the Prime Minister and acting Head of State of Rwanda were killed overnight, and the genocide began the next morning. The main targets of the genocide were Tutsi minority ethnic group, as well as some moderate Hutu and Twa. Within the first twelve hours, many Tutsi elites and moderate Hutus in influential positions in Kigali were killed. The process was assisted by RTLM (Radio Télévision Libre des Mille Collines), a radio station that started naming Tutsi and moderate Hutu individuals along with their addresses as signals for their elimination. After a week, the exterminations continued in the rural areas of Rwanda. Over a period of 100 days, around one million people have been slaughtered. The number of victims executed in such a short time period is unprecedented in history. Despite a limited UN mission on the ground, no effective national or international response occurred to prevent the genocide.

Considering the scale of the mass atrocities, the United Nations took action several months later and established the International Criminal Tribunal for Rwanda through the Security Council.[18] The Tribunal operated from 1994 to 2015 and convicted a total of 61 perpetrators, including notable cases such as the one against Jean-Paul Akayesu[19] and the case against the representatives of the RTML radio station and a newspaper. It should be emphasized that the judgement in the Akayesu case marked the first interpretation and application by an international court of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

Another example of mass atrocities and genocide was the violent dissolution of the Yugoslav federation. Once the most liberal socialist country in Eastern Europe and a leader of the Non-Aligned Movement, Yugoslavia disintegrated in the early 1990s in a series of military conflicts that claimed the lives of over 130,000 people. The largest loss of lives occurred in ethnically and religiously diverse Bosnia and Herzegovina, where mass murders escalated into genocide.

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18 United Nations, Resolution 955 (1994)/adopted by the Security Council at its 3453rd meeting on 8 November 1994, accessed August 21, 2023, https://digitallibrary.un.org/record/198038?ln=en.

19 This case represented the first conviction of rape as a component of genocide which has established a legal precedent.

Considering the growing escalation of conflict and the extent of hostilities, in May 1993, the United Nations Security Council passed Resolution 827,[20] which established the International Criminal Tribunal for the former Yugoslavia (ICTY). The Tribunal operated from 1993 to 2017, resulting in a total of 90 individuals being convicted. However, it is important to note that although the ICTY was established in 1993, this mechanism was not sufficient to prevent the Srebrenica massacre, which claimed the lives of over 8,000 Bosniak men and boys in the first half of July 1995. The killings were carried out by units of the Army of the Republic Srpska (VRS). Despite the presence of UN soldiers on the ground, they were unable to prevent the atrocities. Inaction by the Americans and Europeans, coupled with obstruction by the Russians, put UN peacekeepers in jeopardy. Serbian forces captured UN peacekeepers and used them as human shields. One month later, the scale of the mass killings led to a NATO-led bombardment of Serb military positions throughout Bosnia, and the Dayton Peace Accord, which ended the war in Bosnia, was signed in November 1995.

As for the issue of genocide in the Bosnian War, Bosnia and Herzegovina submitted an Application to the International Court of Justice (ICJ) initiating proceedings against the Federal Republic of Yugoslavia (later Serbia and Montenegro) regarding alleged violations of the Genocide Convention. The ICJ judgement concluded that acts of genocide were committed by members of the VRS in and around Srebrenica in July 1995. However, the Court concluded that Serbia did not commit genocide, did not conspire to commit genocide, and was not complicit in genocide. On the other hand, the Court found that Serbia violated the obligation to prevent genocide.[21] At the individual level, several perpetrators have been convicted of the crime of genocide. The first case of an individual convicted of

[20] United Nations, Security Council resolution 827 (1993) on establishment of the International Tribunal for Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, accessed August 23, 2023, https://digitallibrary.un.org/record/166567?ln=en.

[21] International Court of Justice, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgement of 26 February 2007, accessed September 7, 2023, https://www.icj-cij.org/case/91/judgments.

genocide by the ICTY was Radislav Krstic, one of the commanding officers of the Srebrenica massacre.

As far as the issue of genocide is concerned, it should be emphasized that legal acts for establishment of international tribunals have incorporated the crime of the genocide, including the International Criminal Tribunal for the Former Yugoslavia (ICTY),[22] the International Criminal Tribunal for Rwanda (ICTR),[23] and the International Criminal Court (ICC).[24]

Unfortunately, the aforementioned events in the 1990s were not the end of the history of genocide. The beginning of the 21st century brought new challenges as violence, mass atrocities, and destruction ravaged the Darfur region of western Sudan. It is estimated that over 400,000 people have died, and more than 2.5 million people have been displaced from their homes. The United States Congress and President George W. Bush recognized the situation in Darfur as a "genocide." Darfur, often described as "near Hell on Earth," was declared the worst humanitarian crisis in the world at that time. The International Criminal Court's investigation in Darfur led to the indictment of several individuals, including the former President of Sudan, Omar al-Bashir, who was charged for genocide.

4. The War in Ukraine

On February 24, 2022, a new era in European history began. The Russian invasion of Ukraine resulted in a massive loss of life, destruction of economic infrastructure, and a high number of refugees. Undoubtedly, the war in Ukraine has changed the world politically, economically, and strategically. As for civilian casualties, according to data from the UN Office of the High Commissioner for Human Rights, from February 2022 to August 2023,

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22 United Nations, Statute of the International Criminal Tribunal for the Former Yugoslavia, Article 2, accessed September 3, 2023, https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf.

23 United Nations, 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, between 1 January 1994 and 31 December 1994, Article 2.

24 Rome Statute of the International Criminal Court, Article 6, accessed September 2, 2023, https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf.

OHCHR recorded 26,717 civilian casualties in the country: 9,511 killed and 17,206 injured.[25]

After the first year of hostilities, in March 2023, the UK Defence Secretary suggested that more than 220,000 Russian troops and mercenaries have been killed or injured since the start of the invasion.[26] Additionally, according to the Kyiv School of Economics, the value of damage caused due to the invasion has reached $137.8 billion (at replacement cost) by the end of the first year of the war. This includes the complete destruction of 344 bridges, 440 educational facilities, 173 hospitals, and hundreds of thousands of homes, while many more buildings have suffered extensive damage.[27] Tens of thousands of children have been displaced, including to Russia, which additionally raised the concerns of the international community. At the same time, the number of refugees and internally displaced persons remains very high. An estimated 8 million Ukrainian refugees are now outside their country, and a further 5 million are internally displaced.

Now, we come to the essential question. When considering all these basic parameters, the legitimate question that arises is whether the conflict has the potential to escalate into war crimes and genocide. In this context, this is why a number of reports in the last 18 months have raised the question of whether war crimes, including genocide, have been committed in Ukraine.

Immediately after the start of the hostilities, the New Lines Institute for Strategy and Policy and the Raoul Wallenberg Centre for Human Rights released an analysis of the breaches of the Genocide Convention

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25 United Nations, Office of the High Commissioner for Human Rights, Ukraine: civilian casualty update 28 August 2023, accessed September 10, 2023, https://www.ohchr.org/en/news/2023/08/ukraine-civilian-casualty-update-28-august-2023#:~:text=Total%20civilian%20casualties,9%2C511%20killed%20and%2017%2C206%20injured.

26 Deborah Haynes, "Ukraine War: More than 220,000 Russian Troops and Mercenaries Killed or Injured since Start of Invasion, UK Defence Sec Says", SkyNews, March 29, 2023, accessed September 10, 2023, https://news.sky.com/story/ukraine-war-more-than-220–000-russian-troops-and-mercenaries-killed-or-injured-since-start-of-invasion-uk-defence-sec-says-12844916.

27 Janek Lasocki, "The Cost of War to Ukraine," Royal United Services Institute, February 24, 2023, accessed September 10, 2023, https://www.rusi.org/explore-our-research/publications/commentary/cost-war-ukraine#:~:text=Economic%20Collapse,billion%20(at%20replacement%20cost).

by the Russian Federation in the early stages of the conflict. The Report included an extensive set of arguments that Russia is responsible for direct and public incitement to commit genocide and presented a "pattern of atrocities from which an inference of intent to destroy the Ukrainian national group in part can be drawn."

The Report provides numerous examples of Russia's state-orchestrated incitement to genocide, including the denial of the existence of a Ukrainian identity, accusation in a mirror,[28] denazification and dehumanization, as well as the construction of Ukrainians as an existential threat. In this regard, the Report references statements made by high-level officials and state media journalists denying the Ukrainian identity. As far as the accusations in a mirror are concerned, several cases of statements by Russian official representatives have been presented in which Ukraine has been accused of planning, or having committed, atrocities like those Russia has envisioned against them, "framing the putative victims as an existential threat makes violence against them appear defensive and necessary." Apart from that, a number of statements have been documented which invoke "denazification" as one of the main goals of the invasion and have broadly described Ukrainians as subhuman. As a result of that, the Ukrainians are portrayed as mortal enemies which represent a legitimate target for destruction.

Moreover, a separate chapter in the Report has been dedicated to the issue of a genocidal pattern of destruction targeting Ukrainians. A number of examples of mass killings (including the Bucha events); deliberate attacks on shelters, evacuation routes, and humanitarian corridors; indiscriminate bombardment of residential areas; rape and sexual violence; and the forcible transfer of Ukrainians (including the forcible transfer of tens of thousands of Ukrainian children to Russia) have been indicated in the Report.[29]

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[28] Accusation in a mirror (AiM) is a common technique for inciting genocide by accusing one's intended victims of precisely the crimes that one intends to commit against them. More: Kenneth L. Marcus, "Accusation in a Mirror," *Loyola University Chicago Law Journal* 43, no. 2 (2012): 357–93.

[29] New Lines Institute for Strategy and Policy, Raoul Wallenberg Centre for Human Rights, An Independent Legal Analysis of the Russian Federation's Breaches of the Genocide Convention in Ukraine and the Duty to Prevent, May 2022, accessed September 10, 2023, https://newlinesinstitute.org/wp-content/uploads/English-Report-1.pdf.

Considering the sequence of events, on February 26, 2022, Ukraine submitted an Application to the International Court of Justice, initiating proceedings against the Russian Federation concerning "a dispute... relating to the interpretation, application, and fulfillment of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide." Ukraine also filed a Request for the indication of provisional measures. After several phases, including the submission of objections on various grounds by the Russian Federation, the Court determined that it had jurisdiction to order provisional relief "pursuant to Article IX of the Genocide Convention." This position marked a significant legal victory for Ukraine in the ongoing process at the International Court of Justice.

One should keep in mind that different views on the topic exist. The latest comprehensive report released by the UN Independent International Commission of Inquiry on Ukraine to the Human Rights Council was released on March 16, 2023. While the Report found that Russia has committed murder, rape, and torture in Ukraine, it stopped short of classifying its actions as genocide.[30] In addition, during the briefing of the Helsinki Commission on Russia's Genocide in Ukraine, Dr. Erin Rosenberg emphasized that Russia's actions do qualify as genocide under the genocide convention and that Ukrainian nationality is a protected group. However, she added that genocidal intent must be tied to a desire to physically or biologically destroy the group, not just culturally.[31] This also represents a legitimate argument in the overall discussion. Furthermore, as was the case in the aforementioned trials for genocide, concrete evidence from the targeted cases against the perpetrators is required.

5. What Could We Learn from the Holocaust and Other Genocides?

Keeping in mind the fact that a number of genocides have occurred after the Holocaust due to the limited mechanisms to prevent atrocities, some lessons learned can be identified from the 20th century cases. This is even more

30 United Nations, Human Rights Council, "Report of the Independent International Commission of Inquiry on Ukraine to the Human Rights Council (A/HRC/52/62)," accessed September 10, 2023, https://www.ohchr.org/en/hr-bodies/hrc/iicihr-ukraine/index.

31 Helsinki Commission Briefing On Russia's Genocide In Ukraine, November 14, 2022, accessed September 10, 2023, https://www.ohchr.org/en/hr-bodies/hrc/iicihr-ukraine/index.

important in respect to the existing situation in Ukraine. On the basis of the issues discussed in this paper, several lessons learned can be identified.

It will happen again. Although the mechanism for prevention and punishment of genocide has been in place for over 70 years, genocides have continuously occurred in several countries in the world. The scale of the conflict and the involvement of specific parties in Ukraine, along with the information mentioned on particular cases of atrocities, raise significant concerns and underscore the evident need for close monitoring of the situation. The prolongation of the conflict, combined with the frustration of the military, constitutes an additional factor for concern in the forthcoming period.

Each genocide has its own specifics. As it was demonstrated in the paper, each of the examined cases had its own phases, dynamics, and outcomes. While there may be some similarities between different phases of implementation, each genocide, each organized murder, retains its unique notoriety. Essentially, genocide is an organized murder, and it is of vital importance to recognize and prevent specific aspects in the early stages by comparing them with other cases.

Early action is vital. There have been a number of examples of early manifestations of crimes that ultimately led to genocide. This was the case in all the analyzed situations. Particular attention should be given to any signs of extensive hate speech and crimes, demonstration of policies for the official identification of certain groups (religious, ethnic, political), and their separation/ghettoization, evidence of violations of basic human rights during a military conflict, among other factors.

The deployment of peacekeepers is often ineffective to prevent mass atrocities. While UN missions have achieved evident success in many instances, several examples in history, including the cases explored in this paper, demonstrated that deployment of peacekeepers did not prevent genocides. This was evident in both Bosnia and Herzegovina, as well as Rwanda. One of the lessons learned is that such deployments require better planning and more advanced risk assessment to mitigate the challenges of atrocities, war crimes, and genocide.

International justice is slow and deals with a limited number of perpetrators. The examples analyzed in the paper have clearly shown that the international justice is notably slow. This was evident in all the cases

examined in this paper (the Holocaust, Cambodia, Rwanda, and Yugoslavia). At the same time, the number of prosecuted cases for war crimes and the crime of genocide remains limited. This is an important lesson learned from previous military tribunals and should be taken into account in the current situation.

People make choices. In all conflicts, people have the choice to help or not to help the victims. It is approximately estimated that between 50,000 and 500,000 non-Jews helped the Jews during the Holocaust. According to Mordecai Paldiel, the former Director of the Righteous at Yad Vashem, the approximate number of people who risked their lives to save Jews during the Holocaust is around 50,000 individuals, which represents less than one-half of one percent of the total population under Nazi occupation. This was also the case in Rwanda. This statistical information clearly shows that the opportunities for rescue from war crimes and genocide are very limited.

Document atrocities. Access to technology has evidently improved over the years. New technologies are widely available. This expands the potential for documenting atrocities in conflicts. The technology is often available to different parties – victims, bystanders, and perpetrators.

In summary, the complex situation in Ukraine has the potential to escalate into an even more violent conflict, which naturally raises concerns about war crimes, including the crime of genocide. The words of Justice Robert H. Jackson, Chief of Counsel for the United States, made during his opening statement of the Nuremberg Trials seem more relevant than ever:

> Civilization asks whether law is so laggard as to be utterly helpless to deal with crimes of this magnitude by criminals of this order of importance. It does not expect that you can make war impossible. It does expect that your juridical action will put the forces of international law, its precepts, its prohibitions and, most of all, its sanctions, on the side of peace, so that men and women of good will, in all countries, may have 'leave to live by no man's leave, underneath the law.'[32]

[32] Robert H. Jackson Centre, Opening Statement before the International Military Tribunal, November 21, 1945, accessed September 10, 2023, https://www.roberthjackson.org/speech-and-writing/opening-statement-before-the-international-military-tribunal/.

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When Is Genocide a Crime of Genocide? The Holodomor and the Katyn Massacre as a Crime of Genocide

Krzysztof Masło
Dr., Assistant Professor, Faculty of Law and Administration, Cardinal Stefan Wyszyński University in Warsaw, correspondence address: , e-mail: k.maslo@uksw.edu.pl
https://orcid.org/0000-0002-9085-3589

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Abstract: The Holodomor and Katyn Massacre are founding crimes of the USSR and the Eastern Bloc's state. Their common feature was an attempt to annihilate nations and prevent them from achieving independence. Quite often, both crimes are called genocide, but their legal qualification from the perspective of the then international law is extremely difficult. However, there are solid grounds for qualifying both of these crimes, and particularly the Katyn Massacre, as genocide. As a result of the development of the law of armed conflicts in international law in the 1930s and 1940s, there was a ban on committing acts that the 1948 Convention defined as genocide.

1. Introduction

On December 13, 2022, the European Parliament adopted a resolution recognising the Holodomor, understood as the artificial famine of 1932–1933 in Ukraine caused by a deliberate policy of the Soviet regime, as a genocide against the Ukrainian people and as a crime.[1] From the perspective of the 21st century, the answer to the question of whether the Holodomor and another – yet unaccounted crime of Soviet Russia – the Katyn Massacre, were genocide is evident. Any act that corresponds to the description contained in the Convention on the Prevention and Punishment of the Crime

[1] European Parliament resolution of 15 December 2022 on 90 years after the Holodomor: recognising the mass killing through starvation as genocide, (2022/3001(RSP).

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of Genocide (hereinafter the 1948 Convention) is genocide and gives rise to individual criminal responsibility at the international level. If the Holodomor and the Katyn Massacre had been committed contemporaneously, we would have no objection to calling these acts genocide. Both crimes, however, were committed several years before the adoption of the 1948 Convention. The fundamental question, therefore, arises as to whether the year 1948 is the cut-off date, i.e. whether only acts committed after that date constitute genocide or whether acts committed before 1948 can also be considered genocide and constitute an international crime.

An immediate assumption should be made that 1948 is not a cut-off date, as it is the date of adoption of the Convention by the UN General Assembly (UNGA). The Convention did not enter into force until January 12, 1951, and by that time, only 26 states (out of 56 voting in favour at the UNGA) had become bound by it. In the realm of law, genocide emerged in 1951. However, the term had been in legal language since 1944, when it was introduced into the international debate by Raphael Lemkin in his work *Axis Rule in Occupied Europe*.[2] The thesis of this article is that the acts which R. Lemkin called genocide and which were subsequently defined in the 1948 Convention had been prohibited by international law since the beginning of the 20th century when the concept of the principles of humanity and the requirements of public conscience were introduced into the language of international law at the Hague Peace Conference.

This article is historical. Indeed, it is a mistake to describe the Holodomor and the Katyn Massacre from the perspective of current international law. International law, including in particular international humanitarian law and international criminal law, has undergone an enormous evolution since the Second World War. Thus, in order to give a good description of the Holodomor and the Katyn Massacre, it is necessary to look at international law as it was in the first half of the 20th century.

I will begin this article by briefly describing the Holodomor and the Katyn Massacre. The next chapter will be devoted to the prohibition of genocide in international law and, in particular, the origin of the crime of genocide from the crime against humanity and the relationship of this

[2] Rafał Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (New York: Columbia University Press, 1944).

crime to the law of armed conflict. The final chapter will attempt to subsume the Holodomor and the Katyn Massacre into the understanding of the crime of genocide at the time.

2. Historical Account of the Holodomor and the Katyn Massacre

The term Holodomor is used to describe the deliberately induced famine among the rural population of Ukraine in 1932–1933 by the highest authorities of the USSR. In its 2022 resolution, the European Parliament stressed that the famine "was cynically planned and cruelly implemented by the Soviet regime in order to force through the Soviet Union's policy of collectivisation of agriculture and to suppress the Ukrainian people and their national identity". The European Parliament pointed out that "the Soviet regime deliberately confiscated grain harvests and sealed the borders to prevent Ukrainians from escaping from starvation" and that in 1932 and 1933 "the Soviet Union exported grain from the territory of Ukraine while people there were starving".[3]

The predominant view among historians is that the genesis of the Holodomor was the forced collectivisation of agriculture carried out by the central authorities of the USSR in the late 1920s, which was strongly resisted by the Ukrainian population, including the Poles living in the area.[4] Private property stood in the way of the construction of the communist system and, as the basis of the existing sociopolitical system, was to be overthrown by violence. As early as 1919, the decree of the All-Ukrainian Central Executive Committee "On Socialist Management of Land and Means of Conversion to Socialist Agriculture and the Subsequent Resolutions of the All-Russian Communist Party (Bolsheviks)" was issued and became the basis of the collectivisation policy in Ukraine. It was later supplemented by the resolution "On work in the countryside" (1927), the directive of the Central Committee of the All-Russian Communist Party (Bolsheviks) "On the increase of grain supplies" (1928) and the order of the Central Committee of the All-Russian Communist Party (Bolsheviks) "On the pace

3 European Parliament resolution of 15 December 2022 on 90 years after the Holodomor: recognising the mass killing through starvation as genocide, (2022/3001(RSP).

4 Roman Dzwonkowski, "Głód i represje wobec ludności polskiej na Ukrainie (1932–1933, 1946–1947)," *Teka Komisji Historycznej* 9, (2012): 205.

of collectivisation and measures of state assistance in the building of kolkhozes" (1930).[5] According to the latter order, collectivisation in Ukraine was to be completed by spring 1932. The actions of the Soviet authorities were met with dissatisfaction by the peasants. Historians report that 14,000 peasant revolts were recorded in 1930 alone, opposing the forced creation of state collective farms (so-called kolkhozes). [6]

The process of collectivisation in Ukraine was very slow. By the end of 1929, farms covering only 8.8% of the agricultural land area had been collectivised.[7] Therefore, the Soviet authorities decided to solve this problem by force. A decree of August 7, 1932 on the protection of the property of state enterprises, kolkhozes and cooperatives and on the strengthening of social (socialist) property introduced the death penalty for stealing a few ears from a kolkhoz field. According to socialist doctrine, the law was drafted by Joseph Stalin.[8] The decree equalised criminal protection of state and kolkhoz property and ruled out amnesty for those convicted of misappropriating kolkhoz property. Already in the introduction to the decree, it was emphasised that kolkhoz property was the basis of the Soviet system, that it was sacrosanct and inviolable, and that people committing an attack on socialist property should be considered enemies of the people. The decree applied to adults and children alike, and the usual punishment for misappropriation of kolkhoz property was the death penalty by firing squad combined with confiscation of all property. This punishment could be commuted to 10 years' imprisonment in the presence of particularly mitigating circumstances; imprisonment could be imposed without trial. Misappropriation of property was understood extremely broadly, including any form of attack on socialist property. Between August and December 1932 alone, some 125,000 people were sentenced to death under the decree,

5 Книга Пам'яті про жертви Голодомору 1932–1933 років в Україні: Хмельницька область, Український Інститут Національної Пам'яті.

6 Dzwonkowski, "Głód i represje."

7 Barbara Januszkiewicz, "Tworzenie polskich kołchozów narodowościowych w ramach kolektywizacji rolnictwa na Podolu w latach 20. i 30. XX w. Przyczynek do dziejów rolnictwa na radzieckiej Ukrainie," *Zeszyty Wiejskie*, no. 26 (2020): 116.

8 Leszek Lernell, "Ochrona prawa własności socjalistycznej w radzieckim prawie karnym," *Demokratyczny Przegląd Prawniczy*, no. 11 (1949): 25.

including 5,400 people.[9] As practice showed, the August 1932 decree was applied even in situations where a few ears were stolen from the kolkhoz fields. The August 1932 decree was supplemented by the introduction of compulsory deliveries of agricultural produce in December 1932. Formally, the decree ordered the collection of supplies from kulaks, Polish agents and so-called counter-revolutionary elements, but de facto, it became the basis for the removal of entire grain stocks from kolkhoz warehouses in Ukraine, as well as the basis for the confiscation and destruction of leftover food hidden in private homes.

At the same time, the Stalinist authorities banned the movement of the rural population to urban areas, and a food rationing system based on ration cards issued only to those registered in towns and cities was introduced.[10] In all regions where famine prevailed in the winter of 1932/1933, the sale of train tickets was banned, and GPU officers blocked the roads. The scale of the famine in the Ukrainian countryside is evidenced by the fact that, from January 1933 onwards, around 220,000 people were detained every month trying to cross into the cities. It is from this period of the construction of communism in the USSR that the infamous example of Pavlik Morozov also comes from.

The number of victims of the Holodomor is difficult to estimate; generally, between 4,000,000 and 10,000,000 victims are cited. [11]

The Katyn Massacre, which became the founding myth of the Polish People's Republic, is much better known to historians and lawyers. Paradoxically, German Nazism contributed to this by allowing independent observers, including doctors, from the International Committee of the Red Cross, to visit the execution sites of Poles. Of course, the activity of the Polish Institute of National Remembrance also contributed to clarifying the *modus operandi* of the Soviet-Russian authorities, including the identification of the principals and executors of the murders of Poles. While the number and identity of all the victims are not fully known, the course of this crime is quite well documented.

9 Dzwonkowski, "Głód i represje," 207.
10 Ibid., 210.
11 Ibid.

After Poland lost the 1939 September campaign, the Soviets took more than 200,000 Polish prisoners of war. Private soldiers were soon released, while the Soviets placed the officers in special NKVD camps at Kozelsk, Starobilsk and Ostashkov. In addition to soldiers, the detainees included uniformed officers, especially State Police officers. In the NKVD camps, prisoners were subjected to Soviet propaganda and agitation, as well as interrogation. These activities were directed by specially delegated Soviet officers who tried to recruit Poles to cooperate. The few officers who decided to cooperate with the NKVD were to be used as agents in the camps and the future in the creation of units cooperating with the Soviets. One such person was Colonel Zygmunt Berling, later commander of the 1st Kosciuszko Infantry Division and the First Polish Army.

At the beginning of 1940, the Soviet authorities decided to murder the Polish prisoners of war. On March 5, 1940, Lavrenty Beria sent a memo to Joseph Stalin, according to which he considered it necessary to order the NKVD:

1. 14,700 people in prisoner-of-war camps, former Polish officers, officials, landowners, policemen, intelligence agents, gendarmes, settlers and prison wardens,
2. as well as 11,000 people arrested and imprisoned in the western regions of Ukraine and Belarus, members of various k-r [*counter-revolutionary*] spy and sabotage organisations, former landowners, factory owners, former Polish officers, officials and fugitives
   - be dealt with in a special procedure, with the highest penalty applied to them – execution by firing squad.

[...] Handle the cases without summoning the arrestees and without presenting charges, decisions to terminate the investigation and indictment [...].[12]

The note bears the four handwritten signatures of four Politburo members (Joseph Stalin, Kliment Voroshilov, Vyacheslav Molotov and Anastas Mikoyan) approving Beria's proposal, as well as notations of a "yes" vote by Mikhail Kalinin and Lazar Kaganovich. Three days later, the Politburo issued a secret decision that the cases of Polish prisoners of war should

[12] Katyn Decision of 5 March 1940, accessed July 16, 2023, https://katyn.ipn.gov.pl/kat/bibliografia-i-mediatek/dokumentacja-archiwalna/12378,Decyzja-Katynska-z-5-marca-1940-r.html.

be dealt with under a special procedure "without summoning the arrested and without presenting charges, a decision on the completion of the investigation and indictment" with the highest penalty applied to them, i.e. execution by firing squad.[13] On the basis of this, on March 22, Beria issued an order "on the unloading of NKVD prisons in the USSR and BSRS". Piotr Soprunienko, head of the NKVD Prisoners of War Board, was responsible for its implementation.[14] He signed lists containing details of prisoners to be executed. The first three such lists were handed over on April 1. The victims of Soviet crime were not only officers but also civilians, a total of at least 21,768 people.

The tragedy of the Polish officers murdered by the NKVD was completed by the tragedy of their families. As early as March 2, 1940, the Central Committee of the Communist Party of the Soviet Union decided to deport the families of the murdered to the regions of northern Kazakhstan for 10 years.[15] The deportations involved some 60,000 people.[16] The Katyn Massacre thus resulted in the annihilation of the Polish military, social and political elite.

3. Prohibition of Genocide in International Law

The term genocide appeared in international law in the late 1940s and did not exist at the time of the Holodomor and the Katyn Massacre. Raphael Lemkin used it for the first time in a book published in 1944.[17] In the 1930s, however, he used another term, semantically similar to genocide, that is, "barbarism". It meant oppressive and destructive acts directed

13 Karol Karski, "The Crime of Genocide Committed against the Poles by the USSR before and during World War II: An International Legal Study," *Case Western Reserve Journal of International Law* 45, no. 3 (2013): 710–1.

14 Maria Harz, "Pierwsze zeznanie Soprunienki," in *Zeszyty Katyńskie nr 15. Zbrodnia Katyńska – Pytania pozostałe bez odpowiedzi*, ed. Marek Tarczyński (Warsaw: Niezależny Komitet Historyczny Badania Zbrodni Katyńskiej. Polska Fundacja Katyńska, 2002), 136.

15 Witold Kulesza, "Zbrodnia Katyńska jako akt ludobójstwa (geneza pojęcia)," in *Zbrodnia Katyńska. W kręgu prawdy i kłamstwa*, ed. Sławomir Kalbarczyk (Warsaw: Instytut Pamięci Narodowej, 2010), 56.

16 Tucholski, "Katyń – liczby i motywy," in *Zbrodnie NKWD na obszarze województw wschodnich Rzeczypospolitej Polskiej*, ed. Bogusław Polak (Koszalin: Wydawnictwo Uczelniane Wyższej Szkoły Inżynierskiej, 1995), 48.

17 Lemkin, *Axis Rule*.

against members of a particular religious or racial community, consisting of pogroms, massacres and actions aimed at the existential destruction of the group in question.[18]

Genocide is a term used to describe certain behaviours, and its absence is not an obstacle to the emergence of an international norm that would prohibit acts of genocide. The best example of this is crimes against humanity, which were first defined at the level of international law in 1945 in the Charter of the International Military Tribunal, describing prohibited behaviour that may have been committed before the Second World War even began.

3.1. Prohibition of Genocide in the 1948 Convention

The first treaty to formulate an explicit and the most authoritative prohibition of genocide was the Convention of 9 December 1948 on the Prevention and Punishment of the Crime of Genocide.[19] The Convention entered into force on January 12, 1951, and 153 states are now parties to it. The definition it formulated received universal acceptance from the international community and became the defining basis for the crime of genocide in all post-1990 international and hybrid criminal courts.

The 1948 Convention formulates a definition of genocide, under which it understands any of the following acts committed with the intent to destroy, in whole or in part, national, ethnic, racial or religious groups, as such: the killing of members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group and the forced transfer of children of members of the group to another group (Article 2). The Convention also identifies the prohibited perpetrators of genocide, i.e. in addition to the commission of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide and complicity in genocide (Article 3).

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18 Szawłowski, "Rafał Lemkin – twórca pojęcia „ludobójstwo" i główny architekt Konwencji z 9 XII 1948 (w czterdziestolecie po śmierci)," *Sprawy Międzynarodowe*, no. 2 (2005): 75.

19 Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, United Nations, Treaty Series, vol. 78, 277.

The Convention contains a number of obligations addressed to contracting parties. Of primary importance is the obligation in Article I to prevent and punish acts of genocide as defined in Articles 2 and 3. One of the most effective ways to prevent genocide is to ensure that those accused of these crimes are punished and that penalties are implemented against them.[20] Therefore, Article 4 obliges contracting parties to ensure that any person guilty of genocide is punished, whether they are a member of the government, a public official or a private individual. The prevention of the crime of genocide implies the prohibition of its commission.[21]

Although the 1948 Convention affirms that genocide is a crime under international law, it cannot be a per se basis for criminal responsibility at both the national and international levels.[22] The condition for the former is the criminalisation of genocidal behaviour by national criminal law coupled with the obligation to establish national jurisdiction. As long as a national criminal law has not criminalised genocide and established a criminal sanction, the perpetrator of genocide cannot be held criminally responsible before a national judicial authority. This is why the 1948 Convention establishes an obligation for contracting parties to criminalise (Article 5) and establish a national criminal jurisdiction (Article 6). At the international level, the realisation of individual criminal responsibility depends on the existence of a norm prohibiting acts of genocide. This does not need to derive from written law and may be based on customary international law or a general principle. International criminal responsibility is consequential, and it only applies when an international legal norm providing for individual criminal responsibility and a sanction for the violation of this prohibition is combined with the violation of this prohibition that one can speak of an international crime for the trial of which an international criminal tribunal may be established. In international law, pinpointing the exact moment when the prohibition of acts of genocide took place and when the commission of that act turned into a crime of

20 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, §426.

21 Ibid., §166–7.

22 Krzysztof Masło, "Współpraca międzynarodowa państw w ściganiu najpoważniejszych zbrodni międzynarodowych," in *Współczesne problemy procesu karnego*, eds. Marcin Wielec et al. (Lublin: Wydawnictwo Episteme, 2021): 358.

genocide, giving rise to international individual criminal responsibility, is very difficult. Some guidance may be provided by Article 6 of the 1948 Convention, according to which persons accused of genocide may be tried, inter alia, by an international criminal tribunal. This provision does not statute international criminal responsibility for the commission of an act of aggression. However, since it provides for the possibility of establishing an international criminal tribunal with the power to try the perpetrator of an act of genocide, it can be concluded that the 1948 Convention confirmed that the prohibition of genocide was already well established at the time of its adoption and that international individual criminal responsibility was linked to this prohibition. Significantly, too, the concept of international criminal tribunal used in this provision means all international criminal tribunals established after the adoption of the Convention, which have a potentially universal reach and are competent to try the perpetrators of genocide or other acts listed in Article 3 of the Convention.[23]

The 1948 Convention, insofar as it defines and prohibits genocide, is declaratory in nature, i.e. it confirms the existing state of international law.[24] This interpretation is supported in particular by the wording of Article 1, according to which states have confirmed that genocide constitutes a crime under international law. The drafters of the 1948 Convention, therefore, did not define new conduct but confirmed in treaty form conduct considered prohibited by the international law in force in 1948. This interpretation of Article 1 of the 1948 Convention is also confirmed by earlier UN General Assembly resolutions on the issue of genocide. In 1946, during its first session, the UN General Assembly unanimously adopted Resolution 96(1),[25] which defined genocide as a crime of international law condemned by civilised nations and a denial of the right to exist of entire human groups, for which the perpetrators and accomplices face punishment. The resolution also recommends that states implement the necessary procedures to prevent and penalise this crime and cooperate with other states to accelerate its prevention and punishment. The term

23 Karolina Wierczyńska, *Komentarz do Konwencji w sprawie zapobiegania i karania zbrodni ludobójstwa (Dz.U.52.2.9),* LEX/el. 2008.

24 Karski, "The Crime of Genocide," 742.

25 A/RES/96(I), The Crime of Genocide, 11 December 1946.

used in the resolution (affirmation) shows that the General Assembly was aware that the recognition of genocide as an international crime is not constitutive and does not create or sanction a new prohibition in international law. The resolution recognized the prohibition of genocide and international criminal responsibility for its commission as existing international law. The UN General Assembly has been very consistent in this regard, as Resolution 180, adopted in 1947, included language confirming that genocide is a crime of international law and entails the international responsibility of individuals and states.[26]

Confirmation of the declaratory nature of the 1948 Convention's prohibition of genocide was also provided by the 1951 ICJ Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide.[27] The Advisory Opinion was initiated by request from the UN General Assembly, in which the court was asked a number of questions concerning the position of the states that had made reservations to the 1948 Convention. Referring to Resolution 96(1), the court pointed out two consequences of the special nature of the 1948 Convention. Firstly, according to the ICJ, the principles underlying the Convention are recognized by civilised nations as binding on states, even without any convention obligations. Secondly, the ICJ emphasised the universal nature of both the condemnation of genocide and the required cooperation "in order to liberate mankind from such an odious scourge". With this somewhat enigmatic formulation, the court indicated that states are not only bound by the prohibition of genocide when they bind themselves to the 1948 Convention. The obligation to comply with the prohibition of genocidal acts is linked to membership of the international community of civilised states and is part of the principles of international law recognised by those states regardless of their convention obligations. Some representatives of international law doctrine have expressed the view in relation to this part of the Advisory Opinion that the ICJ in 1951 confirmed that the prohibition of genocide is part of customary international law.[28] However, regardless of

[26] A/RES/180(II), Draft convention on genocide, 21 November 1947.

[27] *Reservations to the Convention on Genocide*, Advisory Opinion, I.C.J. Reports 1951, 15.

[28] Patrycja Grzebyk, "Mord katyński – problematyczna kwalifikacja," *Sprawy Międzynarodowe*, no. 2 (2011): 98; Karski, "The Crime of Genocide," 742.

whether the origins of the prohibition of genocide are to be found in customary international law or in general principles recognised by civilized nations, the ICJ reaffirmed in its 1951 Advisory Opinion that the prohibition of genocide is universal and not dependent on the fate of the Convention itself. This is also of particular relevance in the context of the clause in Article XV of the 1948 Convention that "[i]f, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force".

3.2. The Origin of Genocide from Crimes against Humanity and the Law of Armed Conflict

The predominant view in international law until the 1990s was that the crime of genocide was a qualified form of crime against humanity and derived from these crimes.[29] As late as 1950, the International Law Commission (ILC), working on a code of crimes against the peace and security of humanity, stressed that the distinction between the two international crimes was not easy to draw and that the two concepts could overlap.[30] This was the view of the ILC back in the early 1980s. In the *Fourth Report on the Draft Code of Crimes against Peace and Security of Humanity*, Special Rapporteur Doudou Thiam considered that there was no doubt that the concept of crimes against humanity consisted of genocide and other inhumane acts.[31] Genocide was also recognised as an aggravated form of crime against humanity in the 1968 Convention on the Non-Application of Statutes of Limitations to War Crimes and Crimes against Humanity.[32] It was not until the activities of the ad hoc criminal tribunals for the former Yugoslavia and for Rwanda,

29 Robert Cryer, *An Introduction to International Criminal Law and Procedure* (Cambridge: Cambridge University Press, 2012), 206; Mahmound Cherif Bassiouni, *International Criminal Law. Third Edition. Volume I. Sources, Subjects, and Contents* (Leiden: Brill, Nijhoff, 2008), 270.

30 Draft Code of Offences Against the Peace and Security of Mankind – Report by J. Spiropoulos, Special Rapporteur, *Yearbook of the International Law Commission (1950)*, vol. 2, para. 65.

31 Fourth report on the draft code of offences against the peace and security of mankind, by Mr. Doudou Thiam, Special Rapporteur, *Yearbook of the International Law Commission* (1986), vol. 2(1), para. 65.

32 Convention on the Non-Application of Statutes of Limitations to War Crimes and Crimes against Humanity, adopted by the United Nations General Assembly on 26 November 1968, OJ. 1970 no. 26 item 208.

established in the early 1990s, that genocide was singled out as a crime in its own right, although some of the earliest decisions of these criminal tribunals still presented a view of the qualified nature of genocide.[33]

Recognizing that genocide originated from crimes against humanity and was originally considered a particular form of it raises very serious implications.

First and foremost, the link between the two international crimes meant that at least some of the genocidal acts were criminalised in the Charter of the International Military Tribunal (IMT Charter)[34] under the heading of crimes against humanity. At the time, the most authoritative definition of crimes against humanity was contained in Article 6(c) of the IMT Charter, according to which crimes against humanity were

> murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population, before or during the war, or persecution on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.[35]

The jurisprudence of the Nuremberg Tribunal and the subsequent work on the Nuremberg Principles made it possible to distinguish two groups of crimes against humanity. The first category, so-called *murder crimes*, was defined as including murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population. The phrase "other inhumane acts" indicates that the list of explicitly listed acts is not exhaustive. One may venture to argue that genocidal behaviour such as causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group and the forced transfer of children of members of

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33 *Prosecutor v. Goran Jelisić*, A.Ch. ICTY, Judgment, 5.7.2001, IT-95-10-A, Partial Dissenting Opinion of Judge Wald, §2; *Prosecutor v. Kambanda*, ICTR TCh, Judgment and sentence of 4.8.1998, ICTR-97–23-S, §16.

34 Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal. London, 8 August 1945, UNTS vol. 82, 279.

35 Ibid.

the group to another group, all fall within this concept. Within the meaning of the IMT Charter, the first category of crimes against humanity was directed against any civilian population.[36] They could, therefore, be committed not only by belligerent forces against citizens of another belligerent state but also against the perpetrator's own countrymen.[37]

The second category of crimes against humanity included persecution on political, racial or religious grounds. Interestingly, the literal wording of the IMT Charter allowed for the assumption that persecution targeted not only civilians but also members of the armed forces of belligerent states.[38] In the 1940s, the belief was also expressed that the second category of crimes against humanity was closely related to the crime of genocide.[39]

The link between the two crimes also means that the origins of the prohibition of genocide – as well as crimes against humanity – should be sought in international humanitarian law and, above all, in those legal norms that restricted the freedom to conduct hostilities and the choice of methods of war.[40] Although the first binding rules of international humanitarian law on states appeared in the second half of the 19th century, the fundamental development of this branch of international law began with the Hague Conferences at the turn of the 20th century and the conventions adopted at that time on the laws and customs of war. It is in the legal regulations adopted at that time that the genesis of the crime of genocide should be sought.

The code of laws and customs of war regulated at the Hague Peace Conferences was certainly not exhaustive. It left outside the protection of, for example, victims of naval warfare and, as the International Military Tribunal pointed out, persons with the nationality of a belligerent state (who were not victims of war crimes). An often overlooked value of the Hague

36 Egon Schwelb, "Crimes Against Humanity," *British Yearbook of International Law* 23, (1946): 190; The Charter and Judgment of the Nürnberg Tribunal – History and Analysis: Memorandum submitted by the Secretary-General, 1949, A/CN.4/5, 67.

37 Schwelb, "Crimes Against Humanity," 190.

38 Ibid.

39 The Charter and Judgment of the Nürnberg Tribunal – History and Analysis: Memorandum submitted by the Secretary-General, 1949, A/CN.4/5, 68.

40 Cherif Bassiouni, *International Criminal Law*, 270.

Peace Conferences is the introduction of the so-called Martens Clause into the Fourth Hague Convention of 18 October 1907 on the Laws and Customs of War on Land.[41] According to the eighth indent of the preamble to this Convention:

> Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.[42]

The Martens Clause introduced the principles of humanity and the public conscience clause into the language of international law. The principles of humanity and the requirements of public conscience extended the protections afforded to civilians and members of the armed forces of belligerent states and to those matters that were not regulated in the Fourth Hague Convention and limited the freedom of states during the armed conflict by prohibiting those methods and means of warfare that are not compatible with them.[43] As a result of the enshrinement of the Martens Clause in the Fourth Hague Convention of 1907, international law began to limit not only the manner of warfare against a foreign state and against enemy armed forces. The Martens Clause subjected civilian populations to protections derived from the principles of humanity and marked a break with the hitherto prevailing rule allowing a state to act freely towards its own citizens. The freedom of states to treat their own citizens was thus limited, and its scope was defined precisely by the principles of humanity and the demands of public conscience. Since the Hague Peace Conferences, inhuman treatment of human beings has been forbidden, even if tolerated, encouraged or practised by their own state, and this ill-treatment has become internationally punishable. An example is provided by the massacres

41 Hague Convention of 18 October 1907 on the Laws and Customs of War on Land, OJ. 1927 no. 21 item 161.

42 Ibid.

43 Teodor Meron, "The Martens Clause, Principles of Humanity, and Dictates of Public Conscience," *The American Journal of International Law* 94, no. 1 (2000): 79.

of Armenians by the Turkish army during the First World War.[44] The Treaty of Sèvres, signed on August 10, 1920, did not, of course, call the massacres of Armenians genocide (nor did it call them crimes against humanity or war crimes), but "massacres" (Article 230). However, it is not the nomenclature that is at issue here but the fact that the mass murder of civilians in territory that was part of the Turkish Empire at the time was to be brought to account by a specially created court. The above view was also embodied in the concept of crimes against humanity enshrined in Article 6(c) of the IMT Charter and made possible the prosecution and conviction of Axis State criminals at Nuremberg and Tokyo. International law prohibited inhumane acts against any civilian population long before the start of World War II operations.

However, the Martens Clause was not unlimited, as it protected civilians and members of the armed forces in wartime and did not apply in peacetime. This meant that at the dawn of the formation of crimes against humanity and genocide, international law required that these crimes be linked to hostilities. Protection from these crimes did not extend to the civilian population in peacetime, although this conclusion may seem illogical or even inhumane from today's perspective. Therefore, Article 6(c) of the IMT Charter required that crimes against peace be committed in conjunction with any other crime falling within the jurisdiction of the Tribunal (i.e. war crimes or crimes against peace). This limitation has led de facto to the IMT only marginally addressing perpetrators of crimes against humanity. It is worth quoting at this point the Tribunal's general statement on crimes against humanity formulated in the verdict on major German war criminals, pronounced on September 30, and October 1, 1946 at Nuremberg.[45] The IMT stated that "political opponents were murdered in Germany before the war, and that many of them were kept in concentration camps in circumstances of great horror and cruelty" and that the "policy of persecution, repression and murder of civilians in Germany before the war

44 Jennifer Balint, "The Ottoman State Special Military Tribunal for the Genocide of the Armenians: 'Doing Government Business'," in *The Hidden Histories of War Crimes Trials*, eds. Kevin Heller and Gerry Simpson (Oxford: Oxford University Press, 2013): 80–2.

45 Tadeusz Cyprian and Jerzy Sawicki, *Materiały norymberskie: umowa – statut – akt oskarżenia – wyrok – radzieckie votum* (Warsaw: Spółdzielnia Wydawnicza „Książka", 1948), 139–347.

of 1939, who were likely to be hostile to the Government, was most ruthlessly carried out," and that the "persecution of Jews during the same period is established beyond all doubt."[46] Nonetheless, the IMT found that it had not been satisfactorily demonstrated that these acts had been committed before the outbreak of war in the execution of, or in connection with, any crime within the jurisdiction of the Tribunal. For this reason, the Tribunal stated that it was not in a position to "make a general declaration that the acts before 1939 were Crimes Against Humanity within the meaning of the Charter."[47] However, the Tribunal did not exclude the possibility that crimes against humanity had also been committed before 1 September 1939. On the contrary, in its activities, it dealt, inter alia, with crimes against humanity committed against Austrian Jews up to the *Anschluss* of Austria by the Third German Reich.

The jurisprudential practice of the IMT made it clear that even before the start of the Second World War, there was a prohibition in international law against the extermination and persecution of entire groups of people. These acts, although they were not yet called genocide, were treated as violations of international law, to which international criminal responsibility was attached. As an example, one of the co-defendants in the Nuremberg Trial, Baldur von Schirach, was found guilty of crimes against humanity committed during and before the Second World War.[48] The Tribunal found that von Schirach was not accused of committing war crimes in Vienna but of crimes against humanity. Austria was occupied in accordance with a common plan of aggression. Its occupation is, therefore, a crime within the jurisdiction of the Tribunal and consequently, the murders, exterminations, enslavements, deportations and other inhumane acts and persecutions on political, racial or religious grounds in connection with that occupation constitute a crime against humanity within the meaning of this article.[49] Julius Streicher was also a co-accused in the Nuremberg trials for crimes against humanity. The Tribunal noted that Streicher had organised a boycott of Jews on April 1, 1933 and had encouraged the promulgation

46 Ibid.
47 Ibid., 235–6.
48 Ibid., 315–6.
49 Ibid.

of the Nuremberg Laws in 1935. He was responsible for the demolition of the Nuremberg Synagogue on August 10, 1938 and had spoken publicly on November 10, 1938, encouraging a pogrom against the Jews. Later, in 1938, he began to call for the destruction of the Jewish race in general.[50] Streicher continued to incite murder and extermination during the war effort. The Tribunal considered this to be a classic example of persecution on political and racial grounds and found him guilty of crimes against humanity.[51] It is clear from the Trubunal's reasoning that it also took into account the persecution of Jews in Germany during peacetime.

4. Problem of the Legal Qualification of the Holodomor and the Katyn Massacre

The legal assessment of both the Holodomor and the Katyn Massacre is complicated. In Polish doctrine, there are clashing views recognising the Katyn Massacre as a war crime,[52] as well as a crime of genocide.[53] The arguments given by the doctrine for or against the adoption of one of the above concepts boil down not only to the time when both the Holodomor and the Katyn Massacre were committed. Indeed, it is clear from the considerations so far that the prohibition of the acts that the 1948 Convention called genocide had existed in international law since at least the 1930s. The problems discussed by the doctrine are also related to whether the Holodomor and the Katyn Massacre contain the necessary elements that the 1948 Convention defined as genocide.

Genocide requires, first and foremost, the demonstration of a specific *dolus directus*, i.e. the intention to destroy, in whole or in part, a national, ethnic, racial or religious group. In doing so, genocide cannot be directed against any other group (e.g. political), as the catalogue of protected groups listed in the Convention is closed.[54] In order to qualify conduct as genocide,

50 Ibid., 295.

51 Ibid., 296.

52 Grzebyk, "Mord katyński."

53 Karski, "The Crime of Genocide"; Kulesza, "Zbrodnia Katyńska"; Joanna Kurczab, "Zbrodnia katyńska jako ludobójstwo. Próba systematyzacji kwalifikacji prawnokarnej," *Dzieje Najnowsze [online]* 49, no. 3 (3 November 2017).

54 Payam Akhavan, *Reducing Genocide to Law. Definition, Meaning, and the Ultimate Crime* (Cambridge: Cambridge University Press, 2012), 43.

it must be proven that the accused knew or should have known that their conduct would destroy, in whole or in part, such a protected group.[55] Intent to destroy a protected group distinguishes it from ordinary crime and other crimes in violation of international humanitarian law. In doing so, it is clear that conduct that qualifies as the crime of genocide may be both a crime against humanity and a war crime.

The available sources leave no doubt that the highest political factors in the USSR were the initiators and executors of both the policy of the Holodomor and the Katyn Massacre. Both Joseph Stalin and Vyacheslav Molotov and Vyacheslav Menshinsky realised that the means of coercing the Ukrainian peasantry to accept collectivisation meant the biological annihilation of many people who were categorised as kulaks, shoeshiners and enemies of the people.[56] The victims of the Holodomor can be classified as a political group because they were not singled out on the basis of property, ethnicity or religion. They were considered enemies of the political system being built in the USSR based on the abolition of private property and religion. Breaking the resistance of the Ukrainian population to collectivisation was also to deprive Ukraine of the chance of independence.[57]

The Katyn Massacre is much better documented. The note condemning 22,000 Poles to death by firing squad bears the handwritten signatures of Stalin, Voroshilov, Molotov and Mikoyan, as well as notations of a "yes" vote by Kalinin and Kaganovich. It is problematic to determine to which group the Katyn victims belonged. Adopting the enumeration contained in the 1948 Convention, in order to consider the Katyn Massacre as genocide, one would have to classify the interned Poles as a national, ethnic, racial or religious group. It is argued in recent literature that the victims belonged to a national group.[58]

However, since genocide was a particular form of crime against humanity in the 1940s, the precise identification of the group to which the victims belonged is important, first and foremost, for proving the intent of the perpetrators, i.e. to show that the perpetrators did not act with the intention

55 Ibid., 44.

56 Dzwonkowski, "Głód i represje," 206.

57 Ibid.

58 Kurczab, "Zbrodnia katyńska jako ludobójstwo," 33.

of depriving a large number of random people of their lives, but sought to annihilate a particular group. Much more important for the recognition of the Katyn Massacre or the Holodomor as genocide was to establish whether the victims of this crime belonged to "any civilian population," as this was required by the international law of the time, embodied in the IMT Charter. While there is no doubt that the victims of the Holodomor fall within this term, the victims of the Katyn Massacre included members of the Polish armed forces (albeit those who did not take part in hostilities at the time), as well as officers of the State Police, the Border Protection Corps, the Border Guard and the Prison Service. In addition, civilians and police officers without prisoner-of-war status were among the victims. Back in the 1940s, it was rightly pointed out that the requirement to target crimes against any civilian population did not imply the targeting of mass murder or persecution acts against the entire population.[59] Moreover, since crimes against humanity could also have been committed before the start of the war, their victims could not only be civilians in the sense of the law of armed conflict. Already in 1946, commenting on the judgment of the IMT, Schwelb noted that members of the armed forces could be victims of persecution.[60] The jurisprudence of ad hoc international criminal tribunals had recognised as part of the inter-jurisdictional customary law such an understanding of the civilian population, which included former combatants who were not taking part in armed activities at the time of the commission of crimes against humanity because they had deserted the army and were not carrying weapons, whether or not they wore a uniform, and directed towards persons who had become incapacitated as a result of wounds or deprivation of liberty.[61] Indeed, it is the specific situation of the population under attack, assessed at the time the crime was committed and not its formal status, that determines whether the population under attack is

59 Schwelb, "Crimes Against Humanity," 190–1.

60 Ibid.

61 International Criminal Tribunal for the former Yugoslavia, Judgement of November 11, 1998, Prosecutor v. Blaškić, IT-95-14-T, §214; similarly International Criminal Tribunal for the former Yugoslavia, Judgment of February 26, 2009, Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, Sreten Lukić, IT-05-87-T, §147.

civilian.[62] In conclusion, it should be stated that members of the armed forces may also be victims of crimes against humanity and genocide, provided that they do not take part in armed activities as a result of their internment. There is, therefore, nothing to prevent the victims of the Katyn Massacre from being considered as "any civilian population."

As discussed above, in the years leading up to the Second World War, both crimes against humanity and genocide had to be linked to war crimes or crimes against peace. Indirectly, this meant linking the commission of these crimes to an armed conflict or wartime occupation. The Holodomor was perpetrated during a period of peace. In the 1930s, the Soviet Union had already come to terms with the civil war and entered a period of building an economy and society based on communist models, including the forced collectivisation of agriculture. Although this was achieved with violence and gave rise to social revolts, it is impossible to consider it as an armed conflict, all the more so because, at the time, international law understood only classical interstate war as a crime against peace and did not in any way regulate the situation of civilians during a non-international armed conflict.

The situation in the Polish lands was different, as, after the defeat of the September campaign in 1939, the eastern borderlands found themselves under Soviet occupation, which was the result of a breach of the 1928 Kellogg–Briand Pact and the 1933 Convention for the Definition of Aggression, binding in 1939 the Soviet Union. The linking of the Katyn Massacre to war crimes or crimes against peace is therefore not in doubt.

In conclusion, while the link between the Katyn Massacre and war crimes or crimes against peace is evident, the Holodomor was caused during a period of peace. Calling it a genocide is politically justifiable and morally right, but only the Katyn Massacre constituted a crime under the international law of the time.

4. Conclusion

The acts of genocide described in the 1948 Convention were prohibited by international law even before the date of adoption and entry into force of

[62] International Criminal Tribunal for the former Yugoslavia, Judgement of November 11, 1998, IT-96-21-T, §214.

the Convention and, moreover, constituted an international crime, giving rise to individual criminal responsibility. This was brought about by the development of the international law of armed conflict initiated by the Hague Peace Conferences, which subjected civilian populations and members of the armed forces and other armed formations of states fighting under the rule of humanity. Initially, however, the act of genocide had to be linked to an armed conflict. The adoption of the 1948 Convention began the process of extending the act of genocide to include attacks against protected groups committed in peacetime.

While the Katyn Massacre constituted genocide, the Holodomor can only be described as such in a political and moral sense. By calling it a genocide, we reflect the entire content of the unlawfulness of the conduct of the Soviet authorities and the actual intention of the Soviet authorities.

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Between Genocide and War Crime – Legal-Cultural Analysis of the Russian Aggression in Ukraine

Joanna Siekiera
Dr., Assistant Professor, Faculty of Law, University of Bergen, Norway, e-mail: joanna.siekiera@uib.no
https://orcid.org/0000-0003-0125-9121

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Abstract: The cultural context, where two neighboring Slavic nations are in a state of war and the Russian imperialistic approach has never gone away for good, must be taken seriously into consideration. The international legal analysis of the Russo-Ukrainian war is not enough to truly understand the essence – rationale – of this armed conflict and then to find a solution to how to solve it and punish the perpetrator – the Russian Federation. The arguments gathered here by the author come from her own experience during trips to Russia and Ukraine, as well as military courses facilitation where students are taught that in modern warfighting it becomes more and more valid to change the (Western) lens and begin thinking as the perpetrator does. Only then we are objectively able to see and understand if the atrocities committed by Russian troops in Ukraine bear the hallmarks of a war crime or an act of genocide.

1. Introduction

This article's aim is to shed light upon a deeply troubling and complex issue that demands our regional and global attention: the Russian aggression in Ukraine. The war *de iure* started in February 2022 when Russian troops illegally entered the sovereign territory of another state – Ukraine, yet *de facto* we must emphasize that Russian aggressive and unprovoked actions began already in March 2014 after the annexation of Crimea, an integral part of

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the Ukrainian territory[1]. Public opinion, mass media, and social media gave their opinions on such affairs, although for the Central-Eastern European countries, the situation looks far more complex and cannot be analyzed in isolation from the historical, socio-cultural context. While for nations such as Poland, the Baltic states, and other former Soviet republics, Russian rhetoric – both political and military – is predictable and well-thought-out, for some Western allies it remains a geostrategic riddle.

Here, the best example could be the quote by the U.S. Secretary of Defense Lloyd Austin during the Asia-Pacific Security Forum (International Institute for Strategic Studies (IISS) Shangri-La Dialogue). The 2023 event took place in Singapore on 2–4 June and gathered, as every year, the heads of ministries of defense/national security from the Indo-Pacific region, as well as a few key players from Europe. Secretary Austin reiterated the generally accepted and acknowledged theme in the West, namely, that the Russian act of aggression against Ukrainians was "shocking."[2] Yet, for the states that suffered under communism during the times of the Second World War and afterward, after the so-called "liberation" by the Red Army, the act of aggression against Ukraine was completely predictable.

Consequently, the cultural context, where two neighboring Slavic nations are in a state of war and the Russian imperialistic approach has never gone away for good, must be taken seriously into consideration. The international legal analysis of the Russo-Ukrainian war is therefore not enough to truly understand the essence – rationale – of this armed conflict and thus

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1 One of the major methods of lawfare used by the Russian Federation is influencing or forcing false election. Compare: П. УЦБС, *Falsifications and Intimidation: How Russia Held Illegitimate Election in the Occupied Luhansk and Donetsk Regions*, September 21, 2021, "Ukrainian Security & Cooperation Center," accessed June 20, 2023, https://uscc.org.ua/en/falsifications-and-intimidation-how-russia-held-illegitimate-election-in-the-occupied-luhansk-and-donetsk-regions/.

2 Andrew Jeong, Ellen Francis, and Justine McDaniel, "Ukraine Live Briefing: Austin Says War is a Warning for Asia; Kyiv Promises to Keep Shelters Open," *The Washington Post*, June 3, 2023, accessed June 20, 2023, https://www.washingtonpost.com/world/2023/06/03/russia-ukraine-war-news-austin/; "Opening Remarks by Secretary of Defense Lloyd J. Austin III at the 12th Ukraine Defense Contact Group (As Delivered)," U.S. Department of Defense, May 25, 2023, accessed June 20, 2023, https://www.defense.gov/News/Speeches/Speech/Article/3407082/opening-remarks-by-secretary-of-defense-lloyd-j-austin-iii-at-the-12th-ukraine/.

to find a solution on how to resolve it and punish the perpetrator – the Russian Federation.

Lastly, after a legal-cultural analysis of the Russian aggression in Ukraine, we will be able to determine whether crimes committed by the Russian troops against the Ukrainian nation, its civilians, and civilian infrastructure are to be legally classified as war crimes or genocide. To a layman, the targeted killing of the civilian population, as well as combatants defending their land, combined with torture and rape appear as a clear act of genocide. Yet, we must take into consideration the reasons behind those crimes and what the Russian government is trying to achieve through its armed forces. Additionally, what appears important and relevant, but is not sufficiently understood or deployed by journalists and the public, is the rationale of the perpetrator – in its eyes, not our own. This article is therefore an attempt to present the war in Ukraine how it is, not how we, the West, want to see and read it. The arguments gathered here by the author come from her own experience[3] during trips to Russia and Ukraine, long and very emotional conversations with academics, lawyers, and ordinary Russians and Ukrainians. Finally, the author's personal and professional mission is to spread the truth, no matter how bitter it is, as only by using pure facts are we able to make a change.

2. Legal Culture

We often encounter a lack of understanding of how and why the International Humanitarian Law of Armed Conflict (the proper and formal name of this branch of public international law according to the International Committee of the Red Cross, ICRC[4]) does not work. Well, it does, but the lack

[3] Yet, some analysts point to a cold calculation of business benefits of maintaining relations with Russia in the face of aggression in Ukraine, thus a well-thought-out strategy by some countries rather than a pure lack of understanding of the cultural context. The author is of the opinion that those attitudes are not mutually exclusive, nonetheless, this article is not about the economic profits in international relations, so this topic will not be addressed here.

[4] Commonly, lawyers differentiate between two sub-branches of International Humanitarian Law of Armed Conflict: International Humanitarian Law and Law of Armed Conflict. The former focuses on the protection of civilians and civilian infrastructure during the armed conflict, while the latter – on means and methods of warfighting accepted by law. Yet, according to many scholars and partitioners, including the author herself, we should

of legal awareness is immense. Therefore, at the beginning of this article it appears necessary to establish a common understanding of the definitions of both legal culture and legal awareness (sometimes also called legal consciousness,[5] which the author tends to use more in her research and thus in this article), terms we shall encounter throughout this paper.

The legal-cultural analysis of armed conflict explores the intricate relationship between legal culture and legal consciousness in the context of international law. Recognizing the diverse nature of legal systems across the globe, we delve into the multifaceted dimensions that shape legal cultures and influence individuals' legal consciousness. At the end of this academic delving, we will ultimately develop a deeper understanding of the complexities of international law and shed light on the challenges and opportunities presented by its diversity[6] for the benefit of ourselves, mainly those in need – the populace at war.

In general terms, not going into detail, in social science methodology, social scientists make cultural arguments about the law in three ways. They either make their observations by viewing culture as an independent variable to explain variations in law, by regarding law as an independent variable to explain culture, or lastly by considering law as culture itself[7].

As the world becomes increasingly interconnected, the significance of international law has grown exponentially. International law encompasses a vast array of legal systems, written norms, and customary principles that govern the interactions between states, still remaining the primal and main standard setters under the Westphalian system, as well as to some extent international organizations, and other non-state actors (NSAs) gaining more

not separate those two related branches of international law as they simply must be considered together.

5 Susan S. Silbey, "Legal Culture and Legal Consciousness," in *International Encyclopedia of the Social & Behavioral Sciences*, ed. James D. Wright, 2nd ed. (Cambridge, MA: Elsevier, 2015), 726–33, https://doi.org/10.1016/B978-0-08-097086-8.86067-5.

6 Cruz Reynoso and Cory Amron, "Diversity in Legal Education: A Broader View, a Deeper Commitment," *Journal of Legal Education* 52, no. 4 (2002): 491–505, http://www.jstor.org/stable/42898300; Paula J. Schauwecker, "Building Ecosystems of Legal Diversity," *Natural Resources & Environment* 28, no. 3 (2014): 56–8, http://www.jstor.org/stable/24426146.

7 Abigail C. Saguy and Forrest Stuart, "Culture and Law: Beyond a Paradigm of Cause and Effect," *The Annals of the American Academy of Political and Social Science* 619, (2008): 149–64, http://www.jstor.org/stable/40375800.

and more influence, and finally us – the individuals. Legal culture can be described as the lens through which we perceive. It constitutes a fundamental aspect of any legal system, serving as a lens through which individuals observe and interpret the law. We must therefore explore the concept of legal culture, highlighting its varied dimensions, including historical, social, economic, and political factors. By acknowledging the diversity of legal cultures around the world, we gain a deeper appreciation for the multifaceted nature of international law and its impact on different societies.[8]

Hence, legal culture refers to the shared beliefs, values, written norms and oral customs and practices that shape the legal system which influences the behavior and perceptions of individuals within a particular legal community. Those can be entire states or intrastate regions, like a region in France, a voivodship in Poland, a state in the USA, a canton in Switzerland, and so on. In 1975, Lawrence Friedman, an American law professor and historian of American legal history, introduced the concept of "legal culture" as a means of emphasizing the fact that law can be best understood and thus described as both a product of social forces and a conduit for those same forces. Here are five additional definitions of legal culture provided by scholars the author wishes to quote:

> Legal culture encompasses the fundamental assumptions, values, and practices that constitute a society's legal system. It includes the way the law is created, interpreted, enforced, and perceived by the members of that society.[9]

> Legal culture refers to the socially shared understandings and expectations that shape the attitudes, behavior, and actions of legal actors within a given legal system. It encompasses not only the formal legal rules but also the informal norms and practices that influence the operation of the legal system.[10]

> By legal culture, I mean professional sensibilities, habits of mind, and intellectual reflexes: What are the characteristic rhetorical strategies deployed by

8 Sally E. Merry, "Legal Pluralism," *Law & Society Review* 22, no. 5 (1988): 869–96, https://doi.org/10.2307/3053638.

9 Michael J. Broyde, "Editorial," *Journal of Law and Religion* 32, no. 1 (2017): 1–3, https://doi.org/10.1017/jlr.2017.24.

10 Susan S. Silbey, "Legal Culture and Cultures of Legality," in *Routledge Handbook of Cultural Sociology*, eds. John R. Hall, Laura Grindstaff, and Ming-Cheng M. Lo (New York: Routledge, 1997), 470–9, https://doi.org/10.4324/9781315267784.

> participants in a given legal setting? What is their repertoire of recurring argumentative moves? What counts as a persuasive legal argument? What types of arguments, possibly valid in other types of discourse (…) are deemed outside the professional discourse of lawyers?[11]
>
> The legal clarifications (…) may increase the level of stability of the application of law (its uniformity in the territory of Poland), transparency of administrative activities and legal certainty of entrepreneurs, thus increasing the degree of legal awareness and legal culture of entrepreneurs as a social group.[12]
>
> Legal culture refers to an aggregate level (macro or group) phenomenon; legal consciousness usually refers to micro-level social action, especially the ways in which individuals interpret and mobilize legal meanings and signs.[13]

These definitions highlight the complex nature of legal culture and its influence on legal systems, legal actors, and the wider society. Yet, legal culture is not limited to formal legal rules, but encompasses broader societal values and norms that shape the understanding and application of the law. The most controversial example here would be the slightly different legal approach to same-sex marriage. In some countries, homosexual couples are allowed to marry, in some they can also adopt a child, while in others it is codified in the penal code, even with capital punishment.[14]

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11 Murray Hunt, "The Human Rights Act and Legal Culture: The Judiciary and the Legal Profession," *Journal of Law and Society*" 26, no. 1 (1999): 86–102, http://www.jstor.org/stable/1410580.

12 Anna Piszcz and Halina Sierocka, "The Role of Culture in Legal Languages, Legal Interpretation and Legal Translation," *International Journal for the Semiotics of Law – Revue internationale de Sémiotique juridique*, no. 33 (2020): 533–42, https://doi.org/10.1007/s11196-020-09760-3.

13 Susan S. Silbey, "Legal Culture and Legal Consciousness," in *International Encyclopedia of the Social & Behavioral Sciences* (Elsevier Science Ltd., 2011).

14 The author wrote a few legal analyses on this topic for the Polish Ministry of Justice. The works are available in Polish at: Joanna Siekiera, "Depenalizacja zachowań homoseksualnych – ujęcie porównawcze," Fundacja Instytut Prawa Ustrojowego, accessed June 20, 2023, https://efektywne-prawo.org.pl/depenalizacja-zachowan-homoseksualnych-ujecie-porownawcze-dr-joanna-siekiera; Siekiera, "Międzynarodowe standardy tzw. praw LGBT," Fundacja Instytut Prawa Ustrojowego, accessed June 20, 2023, https://efektywne-prawo.org.pl/miedzynarodowe-standardy-tzw-praw-lgbt-dr-joanna-siekiera; Siekiera, "Pojęcie gender w prawie międzynarodowym," Fundacja Instytut Prawa Ustrojowego, accessed June 20, 2023, https://efektywne-prawo.org.pl/pojecie-gender-w-prawie-miedzynarodowym-dr-joanna-siekiera;

Legal consciousness in turn refers to the awareness, beliefs, and attitudes individuals hold toward the law. The formation and development of legal consciousness is about how personal experiences, education, media, and social norms shape individuals' perceptions of international (global or regional) and national (internal – whole state or local – territorial) law. By understanding the intricacies of legal consciousness, we can better comprehend how international law works/or does not work in various legal cultures[15].

Legal consciousness encompasses how individuals perceive and interpret the law, their attitudes towards legal authorities (although not only judges and lawyers, but also democratically elected representatives), and their sense of rights and obligations within a legal system ("Should I?", "Could I?", "What can I do for the state?" versus "What can my state do for me?"). Here, three definitions of legal consciousness will be provided to present this complex phenomenon, still neglected in (far too) many legal and military analyses:

> Legal consciousness refers to the ways in which people think and act in relation to law, including situations in which they view the law as relevant and useful and those in which they reject law or never consider it at all.[16]

> Legal consciousness refers to the ways in which people experience, understand, and act in relation to law. It comprises both cognition and behavior, both the ideologies and the practices of people as they navigate their way through situations in which law could play a role. Legal consciousness does not simply refer to legal awareness, nor is it meant to measure knowledge – or ignorance – of the law.[17]

Siekiera, "Regulacje zmiany płci w państwach skandynawskich," Fundacja Instytut Prawa Ustrojowego, accessed June 20, 2023, https://efektywne-prawo.org.pl/regulacje-zmiany-plci-w-panstwach-skandynawskich-dr-joanna-siekiera.

15 Joseph W. Singer, "The Player and the Cards: Nihilism and Legal Theory," *The Yale Law Journal* 94, no. 1 (1984): 1–70, https://doi.org/10.2307/796315.

16 Lynette J. Chua, David M. Engel, and Sida Liu, "Legal Consciousness," in *The Asian Law and Society Reader* (Cambridge: Cambridge University Press, 2023), 139–82, https://doi.org/10.1017/9781108864824.005.

17 Lynette J. Chua and David M. Engel, "Legal Consciousness Reconsidered," *Annual Review of Law and Social Science*, no. 15 (2019): 335–53, https://doi.org/10.1146/annurev-lawsocsci-101518-042717.

> Legal theoreticians viewed legal consciousness as a part of the law, in the broadest sense of the word (jurisprudence), which reflected the elements of jurisprudence. According to this definition, law could 'materialize' (e.g. legislation) and these 'materialized' forms of legal consciousness would reflect legal consciousness. Legal psychologists defined consciousness as a general term and viewed legal consciousness as a subfield of consciousness.[18]

The challenges of legal-cultural (or socio-legal) studies on the legal consciousness approach open up a whole spectrum of subjective experiences of the law, which are unfortunately still overlooked by scholars, decision-makers, and military commanders. The true insight into legal consciousness is that law is experienced in everyday life – during peacetime and war. It is indeed a real social phenomenon[19] that provides actual reasons behind human behaviors, whether legal and accepted or illegal, dehumanizing, and wrong.

The definitions provided in this part of the article emphasize the individual's subjective (!) understanding of and experiences with the law ("I always collect <<unnecessary>> parking fines" versus "social responsibility of business through high taxes"). Legal consciousness goes beyond mere knowledge of legal rules and incorporates individuals' perceptions of justice, fairness, and the role of law in society. It acknowledges the social, cultural, and personal (thus, of each and every one of us) factors that shape how individuals engage with and make sense of the legal system.

Certainly, the diversity of legal systems presents both challenges and opportunities in the field of international law. There are challenges arising from conflicting legal cultures, such as differences in legal terminology, interpretation, and enforcement (these differences have been exploited for political advantage throughout history up to the present day, because for one legal culture, even within one state or country, phenomenon "x" may be sacred, but for another it might be cursed, unwanted or even illegal). Yet, there are potential benefits that diversity brings, including the enrichment

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18 Silvia Kaugia, "Structure of Legal Consciousness," *Juridica International. Law Review. University of Tartu*, no. 1 (1996): 16–20, https://www.juridicainternational.eu/article_full.php?uri=1996_I_16_structure-of-legal-consciousness.

19 Dave Cowan, "Legal Consciousness: Some Observations," *The Modern Law Review* 67, no. 6 (2004): 928–58, http://www.jstor.org/stable/3698990.

of legal principles, cross-cultural dialogue, and the fostering of intercultural understanding.

Prof. Piotr Gliński, the Polish Minister of National Heritage and Culture, in an interview with the Polish Radio on June 2, 2023, said: "This war is a war for culture,"[20] referring to the Russian aggression on the territory of Ukraine. What the author usually builds upon when teaching military and civilian students is that "culture eats strategy for breakfast." In many geopolitical analyses in the first weeks of the war, but also even months after its outbreak, many Western analysts focused on the lack of military justification, any profitable rationale of war against Ukraine, or, finally, no large territorial gains from this act of aggression. But they forgot about the cultural mindset of the perpetrator – the mindset of Russian imperialism, so well-known to the nations in Central Eastern Europe. The remainder of this article will therefore be presented taking into account this mindset.

3. War Crimes

Since the beginning of the war – though we must count the beginning of the actual armed attack by the Russian Federation on the Ukrainian territorial integrity in February and March 2014 – there have been many examples of legal culture clashes. As the author's mission is to raise awareness of the different legal-cultural mindsets represented by us – the Western world, the "West" – and the perpetrator(s), we must stop expecting the war criminal(s) to follow international humanitarian law principles. Human rights will not be respected, they must be enforced, while compliance with international law during war by the aggressor must be put aside. The aggressor has already invaded a territory of another state and is killing and torturing a vulnerable population, which is *nomen omen* legally protected by a whole range of international conventions. Yet, our naïve – a strong but needed expression – expectation of the other side in the conflict to follow the Geneva Convention only leads to more casualties. Here are two of the most disgraceful examples.

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20 "Zrabowany z Polski obraz odzyskany w Japonii. Gliński: zaakceptowali fakt, że to strata wojenna," Trójka Polskie Radio, June 2, 2023, accessed June 20, 2023, https://trojka.polskieradio.pl/artykul/3181189,Zrabowany-z-Polski-obraz-odzyskany-w-Japonii-Glinski--zaakceptowali-fakt-ze-to-strata-wojenna.

The perpetrators intentionally fail to comply with their legal obligation to protect vulnerable groups, such as children, women, the disabled. Exactly contrary to that, Russian troops used one of the fundamental principles in international law and international relations – goodwill – to humiliate our civilization's sacred values. States enter into international relations through treaties or other formal or soft law mechanisms expecting all parties to comply with all the requirements and observe the agreed terms with due diligence. Probably the closest notion at the local level here would be the social contract as a trustworthy agreement between entities. The Ukrainian side, according to the International Humanitarian Law of Armed Conflict, was allowed to protect its own citizens who were not taking part in the hostilities and exclude these vulnerable groups of civilians from the potential armed attack of the adversary. In order to provide special, and thus efficient, protection for the minors hidden in urban areas, Ukrainians wrote large inscriptions with the Russian word Дети (Eng. children) on rooftops where the population was hiding from Russian bombardment or in front of such premises. What happened next? Clearly, for Russian troops, it was a well-defined target instead of a specially marked area under strict protection. They did not hesitate to take advantage of this, striking the targets marked in an act of goodwill and killing innocent people.[21]

A similar warfighting method was used sometime after. The Ukrainian side asked the International Committee of the Red Cross and other humanitarian organizations for help and aid. To do so, to get to the population most in need, the so-called humanitarian corridors had to be established. In order to protect the cargo, according to the norms of International Humanitarian Law, these "white truck" routes were notified in order to prevent illegal acts of sabotage, hijacking, or bombing. Again here, the expectation of one side – the one who has been suffering illegal and unprovoked

[21] This is then a severe example of perfidy. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1), Article 37 states: "Acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence, shall constitute perfidy."

attacks – was trying to follow the international law rules and customs.[22] But what did Russian troops do with such an excellent case of complying with the law? They mined those humanitarian corridors. Only a small portion of the international aid was delivered at that time.

"War crimes" is a combined term for the acts – most serious ones – taken within the international community against the general paradigm of international law established by the United Nations Charter in its very first article: "To maintain international peace and security."[23] Yet, war crimes, various ones among which genocide and crimes against humanity seem to be the most terrifying, are "a burgeoning field of study for a crime as old as humanity."[24] According to the Rome Statute of the International Criminal Court (ICC) based in the Hague, the Netherlands, international crimes are divided into 4 main categories (which are also the objective scope of the ruling by the Court): the crime of genocide, crimes against humanity, war crimes and the crime of aggression.[25]

The crime of genocide was first codified by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, also called the Genocide Convention. According to Article 2:

> 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.[26]

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22 Joanna Siekiera, "Legal Culture in Protection of Civilians," *The Center of Excellence for Stability Police Units Magazine*, no. 3 (2022): 9–13.

23 United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Art. 1.

24 Emily Sample, "Genocide and Crimes Against Humanity," in *Encyclopedia of Violence, Peace, and Conflict*, ed. Lester R. Kurtz, 3rd ed. (Academic Press, 2022), 707–17, https://doi.org/10.1016/B978-0-12-820195-4.00093-5.

25 UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92–9227–227–6, Art. 5.

26 UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, United Nations, Treaty Series, vol. 78.

The Rome Statute's Article 6 uses the exact same wording yet does not quote or refer to the Genocide Convention, but states "for the purpose of this Statute." We must remember here that while the United Nations Convention on the Prevention and Punishment of the Crime of Genocide was established for all its member states (now summed up to 193 states), among which 153[27] have ratified the Convention, officially accepting international criminal responsibilities into their national legal orders, the ICC functions outside of the UN family. The International Criminal Court includes 123[28] states parties, however, initially 137 states signed the Rome Statute, which is the treaty establishing this tribunal. Among the states who are not (anymore) parties to the ICC are both the Russian Federation and Ukraine – the first withdrew after the unflattering ruling against Russia to stop its illegal aggression against Ukraine in 2014 and to immediately withdraw its troops from Crimea (which never happened as it was not executed due to the lack of international legal tools and political will of the entire international community), while the latter signed but never ratified the Statute. The most probable explanation for why the government in Kyiv[29] never finalized its membership in the ICC was that Ukrainian politicians and decision-makers did not wish to upset the Russian neighbor and cause any tension. Also, Russian own interest was to keep Ukraine outside of the "Western" international tribunal system. Yet, such international acts of subordinance cannot take place, as Ukraine is a sovereign country and thus is allowed to enter into any international arrangements it desires.

"War crimes" is a much more capacious term than an act of genocide, a crime(s) against humanity, or a crime of aggression. Its definition can be found in the Rome Statute, which, according to the international law doctrine, is perceived as the primary source of definitions, clarifications,

27 See the United Nations Treaty Collection, Convention on the Prevention and Punishment of the Crime of Genocide, Paris, 9 December 1948, accessed June 20, 2023, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=4&clang=_en.

28 United Nations Treaty Collection, Rome Statute of the International Criminal Court, Rome, 17 July 1998, accessed June 20, 2023, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&clang=_en.

29 Please mind the Ukrainian spelling of the country's own capital *Kyiv* as opposed to *Kiev*, which is the Russian spelling transcription. This mistake appeared in many English analyses and in media, which, given the Russian aggression and territorial claims, is unacceptable.

and methodology regarding war crimes despite its non-universal scope of membership. The list of war crimes is extremely long: more than 50 norms (Article 8, paragraph 2, letter a, letter (i) – (viii); letter b, letter (i) – (xxvi), letter c, letter (i) – (iv); letter d–e, letter (i) – (xv); letter f, finishing with paragraph 3 emphasizing the sovereign rights of each state to establish its own laws, which must be understood that this enumeration is not a closed list.[30]

The war crimes given as the main examples are willful killing; torture or inhuman treatment, including biological experiments; willfully causing great suffering, or serious injury to body or health; extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; compelling a prisoner of war or other protected person to serve in the forces of a hostile Power; willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial; unlawful deportation or transfer or unlawful confinement; taking of hostages,[31] as well as other serious violations of the laws and customs applicable in international armed conflict: intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; intentionally directing attacks against civilian objects, that is, objects which are not military objectives; attacking or bombarding, by any means, towns, villages, dwellings or buildings which are undefended and are not military objectives; 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; 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 gathered, provided they are not military objectives.[32]

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30 The exact wording of paragraph 3: "Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or reestablish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means."

31 Rome Statute of the International Criminal Court, Article 8, paragraph 2, letter a, letter (i) – (viii).

32 Rome Statute of the International Criminal Court, Article 8, paragraph 2, letter b, letter (i) – (ii); (v); (viii); (ix).

As one can see, when comparing the list of crimes understood as an act of genocide and this long list of acts of war crimes, much more acts can be put under the latter definition. The main distinction, therefore, will be made on the basis of the intention of the perpetrator to destroy, in whole or in part, a national, ethnical, racial or religious group.

4. War in Ukraine

So, is what we are observing in Ukraine, done by the Russian troops under the order of the President of the Russian Federation Vladimir V. Putin and decision-makers around him, supported by the vast majority of the Russian population in Russia and abroad, an act of genocide or a war crime?

The war in Ukraine has resulted in tragic acts of war, yet not unprecedented when we compare this conflict to other international and non-international conflicts, especially in Africa. The bombing of civilians in hospitals, schools, and train stations, the sieges of cities like Mariupol and the bombardment of its Azovstal steel plant, the kamikaze drone attacks on critical (water and electricity) infrastructures, the torture and rape of civilians, including minors, in Bucha, the mass graves discovered in reclaimed towns like Izyum, and finally the forced deportation of thousands (especially children) in the Donbas are the most dreadful and stark atrocities[33] under a UN investigation and a separate ICC investigation. Both these proceedings are "in the case" while not "against," so the first (initial, so perhaps not final) stage is to investigate the charges while not mentioning the possible guilt of the perpetrator – the Russian Federation.

As it was pointed out earlier in this article, Ukraine is not a party to the Rome Status and is therefore not bound by its norms nor can it put forward a motion to the ICC, especially when the accused party is also a non-member of the Court, thus outside of the scope of the ICC jurisdiction. Yet, there is a practical exception to this rule, as Ukraine has accepted the ICC's power to settle disputes by adopting the jurisdiction "on an unlimited basis," so the ICC can *ex officio* file a case for the crimes committed

[33] Cynthia M. Horne, "Accountability for Atrocity Crimes in Ukraine: Gendering Transitional Justice," *Women's Studies International Forum* 96, (2023), https://doi.org/10.1016/j.wsif.2022.102666.

on the Ukrainian territory.[34] On March 17, 2023, Pre-Trial Chamber II of the International Criminal Court issued warrants of arrest for two individuals in the context of the situation in Ukraine: Vladimir V. Putin and Maria A. Lvova-Belova, Commissioner for Children's Rights in the Office of the President of the Russian Federation.[35] They were both allegedly responsible for the war crime of unlawful deportation of the population (minors) and that of unlawful transfer of population (again minors) from the occupied areas of Ukraine to the Russian Federation, under Article 8, paragraph 2, letter (a), letter (vii) and Articles 8, paragraph 2, letter (b), letter (viii) of the Rome Statute quoted above.

Again, Russia, and so its citizens, is not a party to the Court and therefore it is not bound by its norms or rulings. In this legal scenario, the ICC hoped to exert international pressure, certainly to elevate Ukrainians' morale during the war, as well as, perhaps, to open a future proceeding before an *ad hoc* tribunal.

Another legal option could be the UN International Court of Justice (ICJ), which is an integral organ within the UN, one of its main bodies, responsible for upholding the UN Charter. The ICJ is notoriously confused with the ICC, whereas its origins, scope of jurisdiction, and membership are far different. Also, there is a Russian judge in the ICJ representing the interests of his own country, so we cannot expect his vote to go against his own motherland. That was exactly what happened in the case on March 16, 2022. The ICJ declared that the Russian attack on Ukraine was illegal and ordered an immediate halt to the invasion. Nonetheless, due to the greatest weakness of international law, such a judgment had no elements of a sanction (as sanction is an element of a national norm, not an international one[36]). As it was observed since the outbreak of the war, Russia, support-

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34 Joanna Siekiera, "The War in Ukraine and International Law – What Causes Its Ineffectiveness?," Institute of New Europe, April 25, 2022, accessed June 20, 2023, https://ine.org.pl/en/the-war-in-ukraine-and-international-law-what-causes-its-ineffectiveness.

35 "Situation in Ukraine: ICC Judges Issue Arrest Warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova," ICC, March 17, 2023, accessed June 20, 2023, https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and.

36 An international norm is composed on a hypothesis and a disposition, while a national norm has all three elements: a hypothesis, a disposition, and a sanction. This demonstrates

ed by China, has been blocking any resolution against Russia demanding from it the final withdrawal from Ukraine. With such an old, one might say colonial, Security Council system, effective perseverance in preventing war crimes, enforcing human rights, and judging the perpetrators of any acts of aggression remains a (legal) mirage.

As the subtitle of this article is "Legal-cultural analysis of the Russian aggression in Ukraine," we must not avoid discussing the cultural perception of Ukrainians and Russians in the eyes of Russians themselves. The political propaganda used first by the Russian tsars, then communist dictators Vladimir I. Ulyanov (better known as Vladimir Lenin) and Joseph V. Stalin has always emphasized the "civilizational" dominance[37] and thus the vital role of Russia – Orthodox[38] and "white," in contrast to the Asian parts of this large country. There were two main reasons for this – to polarize Russians against the rotten West along with other regions, such as the unbaptized Asians, but also to radicalize their own population, which would be deeply subordinate to the rulers, obey the order (undemocratic, of course) imposed on them, and never question the good intentions of those in power, who know better how to protect their own people against the external and internal threats to their heritage, religion, and statehood.

Thus, it is not, as is commonly claimed in the vast majority of Western analyses and media, "Putin's war" – this is the Russian imperialistic appetite towards a former Soviet nation, which is placed by them very low on the "civilizational ladder," just like other Slavic nations, including Poles. The author herself, during her travels to Russia, engaging in conversation with Russian professors, judges, academics, but also ordinary people, heard

the very essence of international law placing the principle of sovereignty of states above others, with international judiciary being obligatory and establishing and maintenance of international relations voluntary. Yes, one can argue that the war criminals can still be brought, against their will, before the international courts. But to do so, we would need a political consensus. Yet, since the beginning of the war, not 100% of states have supported Ukraine or claimed that Russia is guilty.

37 Isabelle Mandraud, "Russia's War in Ukraine is also a Culture War," *Le Monde*, June 3, 2023, accessed June 20, 2023, https://www.lemonde.fr/en/opinion/article/2023/06/03/russia-s-war-in-ukraine-is-also-a-culture-war_6028932_23.html.

38 Maria Domańska, "Putin's Article: 'On the Historical Unity of Russians and Ukrainians'," Center for Eastern Studies, July 13, 2021, accessed June 20, 2023, https://www.osw.waw.pl/en/publikacje/analyses/2021-07-13/putins-article-historical-unity-russians-and-ukrainians.

and witnessed many times the argumentation based on such civilizational superiority towards Ukrainians.[39] Such presumed superiority only mirrors the mindset of Russian soldiers, brought up with such propaganda of their nation's superiority and therefore a total and unlimited legal, religious, and cultural justification of treating Ukrainian civilians and military in a dehumanizing way. The military and political target is not to destroy the nation, as for Russians Ukrainians are nobodies, very low on the "civilizational ladder." Why? Because as was stated earlier in this article, the Russian goal in this war is not to destroy the nation that they do not see as a threat or enemy to their own civilization, but to simply regain power by reclaiming the territory. The Russian President wrote his (in)famous article "On the Historical Unity of Russians and Ukrainians,"[40] where he simply follows the same old propaganda, claiming that Ukraine must come back to "a single whole." The war crimes committed by the Russian troops in this war were carried out in order to rebuild the spheres of influence known and much-loved as "Balszaja Rossija," to control the larger territory with its resources – human, raw material, infrastructure – not to destroy a national group. The Russian side does not need to kill Ukrainians to achieve their military goal. Yes, they deliberately target civilians and break the law of armed conflict through torturing and killing the prisoners of war, but this is "just" a method of warfighting – not a factor that has a decisive impact on the nature or outcome of the war.

5. Conclusion

This war as never before has shown us, the international community of analysts, geostrategists, military leaders, politicians, and lawyers, that we must not forget about the cultural aspects of the fighting parties. In order to understand the true reasons behind an armed conflict, an unprovoked act of aggression of one country against another, we should always incorporate the social – human! – aspects of warfighting. Yes, military and strictly

[39] The most common sentences used by the interlocutors were: "Ukrainians are like cattle," "Crimea has always been Russian," "we must take back what is ours." The more dreadful presumptions will not be quoted.

[40] Vladimir Putin, "On the Historical Unity of Russians and Ukrainians," Kremlin, July 12, 2021, accessed June 20, 2023, http://www.en.kremlin.ru/events/president/news/66181.

logistical, economic (what is worth, at what cost) assessments are vital. Yet, the Russian war in the territory of Ukraine proves that (unfortunately, at the moment of writing this article, nothing indicates the war is about to an end) the cultural dimension must not be overlooked, as it influences the perception and understanding of these events. Cultural factors, including the historical context, national identity, and political narratives, can shape how these actions are perceived both within and outside Ukraine. The lens through which the international community views these events can influence the level of condemnation of the perpetrator, the pursuit of justice, and the commitment to preventing future atrocities.

The slow procedures of international criminal courts which usually take place decades after the atrocities have been committed must also be noted. So far, not a single political leader of the country (head of state) has been held criminally responsible in a trial before any international court for war crimes (regardless of the accusation of 4 of the war crimes enumerated in the Rome Statute). Also, it is institutionally difficult to link the head of state with crimes committed by the armed forces of his (or her) country. However, it should not be forgotten that war crimes are not subject to a statute of limitations. Yet, the memory of the act fades with the passage of time among other international affairs. One only needs to recall the absolute lack of international reaction (no *ad hoc* tribunal, no economic or political sanction on Russia) after other Russian acts of terrorism: internal actions against their own citizens, political opponents, journalists through abduction, torture, rape, defamation, deportation to a penal colony; killing 300,000 Chechnya civilians by Russians in the late 1990s; the 2008 war in Georgia – while to date 20% of its territory is occupied by Russian troops, just as Transnistria is *de iure* part of the Republic of Moldova, yet *de facto* a fully militarized Russian sphere since the Russian "peacekeeping operation"[41] after the 1990–92 Transnistria war; the 2014 Crimea annexation; the 2019 cyberattack on the government in Tallinn and the 2019 detonation of the Czech weapons depot by two Russian agents.

[41] The author's visit to Transnistria in fall 2021 proved how Russians are perceived there by the population – as friends, allies, liberators, economic providers (cheap natural resources and other products).

This list can be extended, but the reason for writing this article was to present the commonly neglected legal-cultural standpoint in which the Russian atrocities committed in Ukraine are deeply embedded in the Russian people's mentality, national pride, and massive propaganda supported by the centralized organs in Moscow (not only the president, as he can easily be replaced with another useful person prepared for this cause by the intelligence services), the Orthodox Church (which of course has nothing to do with Christian faith), and local communities, families, and friends. Of course, saying that every Russian thinks the same and accepts the official politics of the Kremlin would be untrue. Similarly, saying that every Russian is preoccupied with the war in Ukraine would also be untrue, as an incomparably large part of the Russian Federation has been struggling with the lack of access to basic infrastructure – sanitation, roads, access to basic education or clinics.

Therefore, when analyzing the war in Ukraine, we must stop thinking as we do, as the Western democratic states, but indeed change the lens and begin thinking like the perpetrator does. We are missing the point when we argue that Russia will abide by the international legal order, as it has proven so many times that it will not. We are missing the point if we assume that the war crimes committed by the soldiers, private contractors, released prisoners and whoever else is deployed in the territory of Ukraine are based on a nationalistic need of vanishing the other nation. No, the perpetrator does not need to do that, as its military goal is to regain power over the territory. This war is not over, and we might witness even more atrocities. What we need are better, more complex and comprehensive, analyses that extend beyond legal and military arguments. We must strive to see the entire picture, not only the part that we, the West, are capable of understanding. What is at stake is not the legal terminology of the allegations made, but the lives of innocent people.

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Russian Genocide in Ukraine as an Attempt to Destroy the Ukrainian Nation

Volodymyr Pylypenko
PhD, Associate Professor, Faculty of International Relations, Lviv University of Business and Law, correspondence address: Kulparkyvska 99, Lviv, Ukraine, e-mail: vpylypenko77@gmail.com
https://orcid.org/ 0000-0002-9560-2754

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Abstract: The article assesses the recent and ongoing criminal acts of the Russian Federation in terms of their compliance with existing international crimes, in particular with the crime of genocide, with the aim of correct criminal-law qualification. It provides an analysis of *actus reus* of genocide as an international crime under the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter: Convention). The illegal action of the Russian Federation is analysed in the context of the so-called "denazification," as the main goal of the full-scale aggression of Ukraine. The author attempts to show the distinction between the groups protected by the aforementioned Convention and the term "Nation," which seems to have much broader sense. The author also concludes that the *actus reus* of the Russian perpetrators is not aimed solely at the destruction of any of the groups of the Convention, but actually at the destruction of the Ukrainian nation, its culture, language, history and statehood. In this context, the views of Raphael Lemkin, the founder of the concept of genocide as an international crime, are analysed. The necessity of international legal qualification of the actions of the Russian Federation as a new international crime has been substantiated and its conditional name – "natiocide" is proposed.

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As we know, on February 24, 2022, the Russian Federation launched an open aggression against Ukraine. The main purpose of this so-called "special military operation," as to the Russian authorities, is the "denazification" of Ukraine.

Needless to say, the world was shocked by the atrocities committed by the Russians. I will not go deep into current situation concerning Russian aggression – you all know it perfectly. Just to mention – to date, the Office of the Attorney General is investigating tens of thousands of crimes committed by Russian invaders. Taking into account all atrocities, committed by the Russian troops in Ukraine, the Ukrainian Parliament adopted the Resolution on the Russian Federation's Genocide in Ukraine on 14 April 2022.[1]

The parliaments of Latvia, Estonia, Canada, Lithuania, Poland, the Czech Republic, and Ireland have already supported Ukraine and have adopted similar resolutions. Recently, the Parliamentary Assembly of NATO States has also adopted a resolution which mentions possible genocide in Ukraine.

The Joint Investigation Team along with Prosecutor's office of the ICC have issued a statement concerning Ukraine that they would focus not only on war crimes but also on the crime of genocide. The world community is beginning to understand that one of the most brutal and serious international crimes of genocide has been committed in Ukraine. However, the question is whether it is the crime of genocide, as we commonly understand it, or the Russians have been committing something much worse, something that goes beyond the existing meaning of genocide, as presented by the Convention.

The provisions of Article 2 of the Convention, define genocide as an act committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, including the killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group and forcibly transferring children of thee

[1] Resolution of the Verkhovna Rada of Ukraine of 14 April 2022 "On the Statement of the Verkhovna Rada of Ukraine "On the Russian Federation's Commitment of Genocide in Ukraine," No. 2188-IX, accessed June 16, 2023, https://zakon.rada.gov.ua/laws/show/2188-20#.

group to another group.[2] The concept of genocide is interpreted similarly in the Rome Statute.[3]

It is believed that the *actus reus* (objective side) of genocide is mostly formed by actions aimed at the physical extermination of members of a certain national (ethnic, racial) group. And only actions for the forcible transfer of children from one group to another do not involve direct *de facto* extermination but have the same goal with a view to the future. The object of genocide is the security (safety) of existence of a certain protected group.

Therefore, genocide, according to the Convention and the ICC Statute, is first and foremost the physical destruction of members of a particular group, both within and outside the territorial boundaries of the country of residence of such a group. This means that today the killing of Ukrainians by Russians in Ukraine is quite naturally interpreted by the world as genocide.

However, if we assume that the Russians, even without carrying out an aggressive war in Ukraine, would kill the Ukrainians in Russia for reasons of their nationality, this could also be interpreted as genocide of Ukrainians. As both – the first and the second case involve the destruction of a certain protected group.

At the same time, publicly available facts and official information, as well as the events of recent months, show that the military and political leadership of the Russian Federation commits a number of other socially dangerous acts in Ukraine that do not quite correspond to the features of international crimes, known to modern international law. These are primarily acts related to the so-called "denazification," as one of the reasons for the aggression. A number of such acts are extremely cruel and publicly dangerous, as they threaten the existing world order and therefore require a more detailed analysis for their international legal assessment.

In fact, the criminal acts committed by the Russian military forces in Ukraine in many respects correspond to the crime of genocide. However, the purpose of their commission, the intent of Russian leaders, their *mens*

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2 The General Assembly of the United Nations, Convention on the Prevention and Punishment of the Crime of Genocide, Paris, 12 January 1951.

3 The United Nations Diplomatic Conference, Rome Statute of the International Criminal Court, Rome, 17 July 1998.

rea, as well as a range of socially dangerous actions, and thus the *actus reus* as a component of this international crime, will differ significantly from a similar component of genocide.

Having analyzed Putin speeches during his addresses to the Russian people of 21 February 2022 and 24 February 2022, prior to the aggression, we reveal that, as it turned out, there is "[…] no such state as Ukraine and no such nation as the Ukrainian nation. They do not exist historically. Ukraine is an artificial state without its own history and territory created by communists. Therefore, it (Ukraine) needs to be "decommunized."[4] What it obviously means – is to be eliminated.

In addition, an article titled "Russia's Offensive and Coming of a New World" in the Russian state-owned media, RIA Novosti, which was scheduled to be published three days after the beginning of the active phase of armed aggression (just on the date of the referendum results in Belarus), states that "[…] Russia is rebuilding its unity, destroyed after 1991, […] bringing the Russian people together again, and Ukraine will no longer exist […]."[5] Thus, the purpose of the "special military operation" is very clear: Ukraine must be destroyed.

Here, we can also mention the statement of the Deputy Chairman of the Security Council of the Russian Federation, Medvedev, of 5 April 2022, or official statements of well-known pro-government political scientists, such as Sergeytsev, calling for the destruction of Ukrainian nation.[6]

Such erroneous declarations of Russian leaders still continue, showing the similar pattern of conduct. A few months ago, abovementioned Medvedev stated that "after the war Ukraine will no longer exist on the planet

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4 "Message from the President of the Russian Federation," February 24, 2022, Pupia News, accessed June 16, 2023, https://youtu.be/taYTXHsUU5w; Message from the President of the Russian Federation (21.02.22), accessed: 16 June 2023, http://kremlin.ru/events/president/news/67828/videos

5 Петр Акопов, "The Offensive of Russia and the New World," February 26, 2022, accessed June 16, 2023, https://web.archive.org/web/20220226051154/https://ria.ru/20220226/rossiya-1775162336.html.

6 "RIA News," April 5, 2022, accessed June 16, 2023, https://t.me/rian_ru/157214?fbclid=-IwAR23-OAfd2vrMwdf5h-3Ma8Y7YJGt9zEnUBenWjUxTI90W_wIxCFeRByNcc$; https://ria.ru/20220403/ukraina-1781469605.html.

Earth because this is historically Russia."[7] And a few weeks ago, Putin, during its official meeting with the head of Constitutional Court of Russia, stated that "Ukraine has never existed in the history of world civilization."

The elimination of the Ukrainian nation and even any single mention of it. This is the primary goal of Russia. The denial of the existence of Ukraine is the Russian state ideology. We are also witnessing multiply actions following this goal. I mean mass destruction of Ukrainian historical and fiction literature being performed by the so-called "ideological units" of the Russian military police.[8] The Ukrainians in the temporarily occupied territories are forbidden to study in schools in the Ukrainian language.

Additionally, we may mention the decision of the Russian Ministry of Education that Ukrainian textbooks "distort" true history, or the actions of the Investigative Committee of the Russian Federation to initiate a criminal case on the "falsity" of Ukrainian history.[9] All of these and other facts certainly complement the *actus reus* of a crime being committed, as they are attempting to erase and rewrite the official history of a separate nation.

It is especially worth emphasizing that abovementioned acts are committed by Russians with an intent to implement a separate plan and are manifestation of the policy of the Russian state, which is officially called "denazification" by their authorities. It is evident that such a policy of "denazification" in fact is just a disguise and has nothing to deal with its historical meaning.[10]

It is not hard to note that abovementioned actions, although not aimed at the direct physical extermination of Ukrainians, as is typical for the crime of genocide, still pose a significant public danger. They are a threat to the existence of the whole nation as one of the members of world civilization.

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7 Михаил Добрунов, "Медведев заявил, что Украины «не будет на планете»," April 8, 2022, accessed June 16, 2023 , https://amp.rbc.ru/rbcnews/politics/08/04/2023/6431074a9a7947826128c423.

8 "The Occupiers Are Destroying Ukrainian Literature and History Textbooks in the Occupied Territories, Gur of the Ukraine's Ministry of Defense," March 24, 2022, accessed June 16, 2023, https://m.day.kyiv.ua/uk/news/240322-okupanty-znyshchuyut-ukrayinsku-literaturu-ta-pidruchnyky-istoriyi-na-okupovanyh.

9 "Sledkom," March 30, 2022, accessed June 16, 2023, https://t.me/sledcom_press/977.

10 "Denazification," Wikipedia, accessed June 16, 2023, https://en.wikipedia.org/wiki/Denazification.

A nation not in a political sense as a group of people bound together by common citizenship, but a "nation," or "people," as a community of individuals who share a common and unique name, language, religion, culture, history, traditions, folklore and historical motherland. Thus, through all manifestations of Russian policy, it aims, in fact, to destroy the Ukrainian nation. Consequently, the Russian "denazification," *de facto*, is nothing but a deliberate, conscious, and premeditated attempt to destruct another nation. They are aimed at destroying the unique history of the nation, its appropriation, and at the destruction and appropriation of other nation cultural heritage, folklore, as well as the destruction of language as a unique identifier of the nation. They are aimed at the denial of the other nation's identity, the deprivation of its own historical territory and a statehood as a result of exercising of such a nation the right to self-determination.

There is no official legal definition of a term "nation" or "people" as a community of individuals in international law. As there is no unique Conventional definition of any group protected from genocide either.

It should be noted that since the signing of the Convention, the question of defining the concept of a "protected group" has remained open for dozens of years. But it did not constitute any serious problem for international law due to the fact that the Convention itself was not practically applied. Only in 1998, considering its first case on the crime of genocide, the International Criminal Tribunal for Rwanda (hereinafter: ICTR) published its judgement in the *Akayesu* case, in which the definition of the concept of "national group" was proposed. In this judgment, the concept of "national group" was defined as "a collection of people who are perceived to share a legal bond based on common citizenship coupled with reciprocity of rights and duties."[11]

By providing the above definition, the ICTR equated the concept of nationality with the concept of citizenship. Thus, according to the court's conclusion, the composition of the national group includes not representatives of one nationality, but citizens of one state, regardless of their national origin. And therefore, through the prism of such a definition, in the Ukrainian

[11] International Criminal Tribunal for Rwanda, Judgement of 2 September 1998, The Prosecutor v. Jean-Paul Akayesu (Trial Judgement), Case ICTR-96–4-T.

legal sense, the representatives of the "national group" are the Ukrainian people who are the citizens of Ukraine of all nationalities.

Regardingthe definition of other protected groups in the case of genocide, the ICTR in the abovementioned *Akayesu* case considered a group of people, whose members share a common language and culture to be an "ethnic group," and a community of people who practice the same religion, values or cult as a "religious group."[12] The ICTR determination of a "racial group" is based on inherited physical traits that are often specific to a particular geographic region, regardless of language, culture, nationality, or religion.

All of these definitions of the protected groups were made by the ICTR during its first case prosecuting *Akayesu* for genocide, and they were based on the so-called objective criteria or approach to their formation. Therefore, such a group is considered as a social fact, as a stable and permanent reality. Individuals become members of such a group automatically and irrevocably through being born into the group.

However, there is also a subjective approach to the formation of such groups, according to which a group exists to the extent that its members perceive themselves as belonging to such a group (self-identification), or as such are perceived by the perpetrators of genocide (identification by others). Moreover, a mixed approach (a combination of these two options) can be applied.

Finally, already in the following year after the *Akayesu* judgement, when considering other cases (e.g. the cases of *Rutaganda, Kaishema and Ruzindana*), the ICTR emphasized that "the concepts of national, ethnic, racial and religious groups have been the subject of many studies, but at the time of considering the cases, the only accepted and internationally recognized there is no definition. Therefore, each of these concepts must be evaluated with regard to specific political, social or cultural circumstances."[13] Moreover, the court summarised that a person's belonging to a certain group is a subjective rather than an objective concept.

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12 Ibid.

13 International Criminal Tribunal for Rwanda, Judgement of 6 December 1999, The Prosecutor v. Georges Anderson Nderubumwe Rutaganda (Judgement and Sentence), Case ICTR-96–3-T.

It is important that the perpetrator of genocide perceives the victim as belonging to the group targeted for extermination. In some cases, the victim may perceive himself as belonging to a certain group[14].

Frankly speaking, different approaches in the cases of International Tribunals on Rwanda and Former Yugoslavia to the criteria of defining a national, ethnic, religious or racial group and the criteria for belonging to it do not prevent us from the following conclusion – the concept of a protected group in the Convention and the concept of the term "nation" are distinct and different from each other. Moreover, the nation is actually a certain kind of aggregate of all or several groups that are protected by the Convention.

Contrary to the definitions of the protected groups the word "nation" in its broad meaning has a much wider sense. That means that the object of the encroachment in the crime Russians commit in Ukraine is different from the object of the crime of Conventional genocide.

In view of such a conclusion, we can propose the concept of international legal responsibility, which is based on the destruction, elimination, even erasing of the entire nation. And the criminal acts of the Russian aggressors, which they are committing today, can serve as an example and as the vital necessity to do so. But, for greater persuasiveness of this approach to the assessment of the relevant crime and its difference from the crime of genocide, let us turn to the origins of the theory of genocide.

The "destruction of the nation" – this is what genocide primarily meant for its founder, Rafael Lemkin.

Genocide, according to Lemkin was not necessarily a mass killing of the members of the nation but a "plan of different actions aiming at the destruction of essential foundations of the life of such nation," as Lemkin wrote in his fundamental work "Axis Rule in Occupied Europe" in 1944[15].

Lemkin distinguished a much wider list of actions by which genocide could be committed than those that today constitute the *actus reus* of this crime, according to the Convention. Moreover, the result of genocide

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14 International Criminal Tribunal for Rwanda, Judgement of 21 May 1999, The Prosecutor v. Clément Kayishema and Obed Ruzindana (Trial Judgement), Case ICTR-95–1-T.

15 Raphaël Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (New York: Columbia University Press, 1944).

should not necessarily lead to the physical destruction of a nation, except through the mass murder of its representatives, he believed. According to him, genocide could be committed as a result of coordinated actions aimed at destroying the vital foundations of the existence of national groups with the aim of eliminating them as such. The plan must aim at the disintegration of political and social institutions, culture, language, national feelings, religion and economy, as well as at the destruction of the personal security, freedom, health, dignity, even life of the members of such a national group.[16] Genocide is aimed against the national community as a whole, and the actions through which it is committed are directed at members of such a community.

Moreover, in his research, the author uses both of the terms – a "nation" and a "national group," as synonyms, filling them with the same meaning. Taking into account the historical period in which Lemkin lived, it is quite natural that along with the nation, he also singles out an "ethnic group" as a victim of genocide. We can obviously assume that in this way he divides the nations that already used their right to self-determination through the acquisition of statehood, thus becoming a nation in political sense, and the nations that, as national minorities, are still part of other states and do not have political independence so far, being *de facto* "ethnic groups." For example, Jews, Gypsies or ethnic minorities of the Soviet Union (e.g. Ukrainians). This point of view is also approved by Lemkin's speech he gave in New-York, in 1953. The speech was dedicated to the 20th anniversary of Grate Famine of Ukrainians. "What I want to speak about is perhaps the classic example of Soviet genocide, its longest and broadest experiment in Russification – the destruction of the Ukrainian nation" – these were the first word of his speech.[17]

The Lemkin's vision of genocide, as a plan for the collective implementation of all the actions determined for its execution, suggests that he primarily considered genocide precisely as a crime against the entire nation, and not against individual groups specified later in the Convention according to separate criteria. This can be confirmed by the Lemkin's use

16 Ibid.

17 Raphael Lemkin, *Soviet Genocide in Ukraine. Article in 28 Language* (Kyiv: Maisternia Knyhy, 2009).

of the term "national formation" when characterizing genocide. Showing, in particular, that in genocide, the actions that are committed against individuals are not directed against them personally, but against the entire nation. He argued that the confiscation of property in the occupied territory from those who left it can be recognized simply as a crime against private property, on the other hand, the forced deprivation of property of people just because they are Poles, Jews or Czechs objectively leads to the weakening of their national formations.

Another proof of Lemkin's perception of genocide, precisely as a crime against the nation, is his understanding of the so-called stages of genocide. During the first stage, the national pattern of the oppressed nation is destroyed, and only later, during the second stage, the national pattern of the oppressor is imposed. Thus, as a result of genocide, there is a kind of replacement of all the attributes (features) of one nation with the attributes of another nation. In order to describe the destruction of national pattern he used the specific word "denationalization" (Does this not sound familiar to what Russians are doing in Ukraine now, but they call it "denazification"?).

What is important, Lemkin allowed for the replacement of such national models both when the oppressed population or part of it was left behind, and when the territory was completely emptied of its previous population. This position of Lemkin once again confirms that the main issue in genocide is the destruction of the foundations of the nation, its identifying features, and not only the physical destruction of its representatives (national or ethnic groups). He also provided many examples of how genocide, being a coordinated plan of the fascists, manifested itself in the political, social, cultural, linguistic and economic spheres.

Showing the horror of genocide, R. Lemkin comes to the conclusion that it is necessary to provide nations, which he considers an important element of the world community, with an international legal protection against this crime. The world exists with such great cultural and intellectual diversity precisely because of the nations that inhabit it. The importance of a nation's existence consists in its original contribution to the global cooperation, based on a unique culture and traditions. And, therefore, the destruction of a nation will lead to the loss of its future contribution to the world civilization.

Unfortunately, the further meaning of genocide was substantially narrowed from its original meaning during the drafting of Genocide Convention in 1948.[18] Thus, it placed the crime of destruction of the nations beyond the scope of international protection.

Needless to say, all the actions Russians are committing, are dangerous from the point of view of international law, as they encroach on the peaceful coexistence of states, nations and the world order. Therefore, there is a need for their further recording and evaluation so that they could be properly assessed. So, it seems there is a strong need to distinguish a more aggravated and more dangerous crime in modern international law, along with the already known genocide, which could be called, for instance, "natiocide" – the destruction of a nation. It is composed of two words – a "nation" and the Latin suffix "ceado" (killing). Such criminalization would not only help to condemn Russian authorities worldwide for the acts they are committing in Ukraine, but it also might help the world community to prevent such atrocious crimes in the future, as well as protect nations as members of the world civilization and bearers of unique historical, cultural, territorial and linguistic heritage.

The time has come to update our understanding of the crime of genocide. In other words, it is time to legitimise or restore its original meaning.

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Psychological and Ideological Basis of Collaboration in the Conditions of Russian Aggression in Ukraine

Pavlo Fris
Dr. hab., Professor, Educational and Scientific Legal Institute of Vasyl Stefanyk Precarpathian National University, correspondence address: Prutska Str., 18, 76009, Ivano-Frankivsk, Ukraine, e-mail: drpaull1949@gmail.com
https://orcid.org/0000-0003-4979-051X

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Abstract: Russia's aggression against Ukraine gave rise to many problems, including in the field of legislative regulation and protection of the most important social relations, interests, benefits and values recognized as such by the society. At the same time, actions to which the legislation did not pay due (and sometimes no) attention were included in the circle of interests. Among such objects of protection and regulation by criminal law was collaborative activity. It should be noted that not only the criminal law of Ukraine, but also the criminal law of almost all European countries did not form the concept of collaborative activity and did not determine responsibility for it. Most often, collaborative activity was covered by the concept of "treason" without any further differentiation. Even among legal theorists to this day, there is no unity in the understanding of this phenomenon. The author notes that this problem is outside the scope of this publication and is not the subject of the discussion. A number of scientific publications in the Ukrainian scientific space have been dedicated to it. This study focuses on the criminal-legal basis of the legal awareness of people who have committed the actions provided for in Art. 1111 of the Criminal Code of Ukraine, which defines its concepts as well as psychological and ideological foundations that define it.

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1. General Principles of Problem Analysis

The theory of criminal law in Ukraine defines legal awareness as a set of "subjective elements of a legal regulation: ideas, theories, emotions, feelings and legal guidelines, through which legal validity is reflected, attitudes towards law and legal practice are formed, value orientation towards legal behavior, vision of prospects and directions of development of the legal system."[1] At the same time, one may conclude that based on the complexity of the country's legal system and its division into separate branches, it is absolutely possible to distinguish sectoral components (subsystems) in the general legal consciousness, i.e. constitutional-legal, civil-legal, criminal-legal consciousness etc.

Each of the branch subsystems has its own unique ideas and theories, which are formed on the basis of emotions, feelings, and legal guidelines inherent in this subsystem. Of course, legal consciousness in each of them should be divided into positive legal consciousness and negative legal consciousness – inherent in persons who violate, do not adhere to generally accepted ideas, theories, feelings and legal guidelines inherent in the law-abiding majority of citizens.

Based on a sufficiently large number of people who committed collaborative acts during Russia's aggression, the author will try to analyze the basic factors underlying the formation of negative legal awareness of collaborators. At the same time, despite the similarity of the actions committed by the collaborators, the factors that led to this illegal behavior vary in different regions of occupied Ukraine, although the element that they have in common is rejection of Ukraine as an independent sovereign country with the right to choose its own vector of socio-political development. This difference in formation is due to the difference in the historical path of these regions. To facilitate the analysis, the author will consider these factors separately for the region of Eastern Ukraine and Crimea.

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1 "Legal awareness," in *Great Ukrainian Legal Encyclopedia: in 20 volumes. Volume 3: General Theory of Law*, eds. Oleksandr V. Petryshyn et al. (Kharkiv: Pravo, 2016), 593. National Acad. rights Sciences of Ukraine; Institute of State and Law named after V.M. Koretsky National Academy of Sciences of Ukraine; National law Yaroslav Mudry University.

The factors that determined the formation of collaborative legal awareness of citizens can be divided into three groups:
- ethno-social;
- socio-political;
- socio-economic.

2. The Effect of the Factors Forming the Ideological and Psychological Basis of Collaboration

The entire Ukrainian history after the actual annexation of Ukraine by Russia clearly testifies to Russia's attempts to destroy Ukrainians as a nation, to assimilate them into the Russian national space. There are many examples of this, ranging from legal prohibitions on language and belief to direct destruction. It was actually a policy of genocide in its modern sense. It did not end even after the Bolsheviks seized power in Russia, because they perfectly understood its role and importance in ensuring the potential development of the USSR.

The eastern region of Ukraine, historically always connected to the center, was essentially the cradle of the Ukrainian nation. It was where the Ukrainian Cossacks were born and existed, and in the XVI–XVII centuries formed a powerful Cossack state on these territories. After the actual annexation of Ukraine by Russia and the liquidation of the Cossacks, these territories nevertheless continued to be inhabited by Ukrainians.

2.1. The Effect of the Factors Forming the Ideological and Psychological Basis of Collaboration in Eastern and Southern Regions of Ukraine

The stormy events of the 20th century significantly influenced the national composition of the population of Eastern Ukraine. It should first be noted that as of 1931, Ukrainians exceeded Russians in terms of population (Ukrainians – 81,195,000, Russians – 77,791,000).[2] However, the "machine" deployed by Stalin to destroy the Ukrainian population by arranging an artificial Holodomor significantly affected the national composition in these lands. At the same time, it should be emphasized that it primarily affected the Eastern and Southern regions of Ukraine – the breadbasket of the country and the largest concentration of industry. This led to a change in

[2] "On a Large Construction," http://zolotapalanka.blogspot.com/2013/05/blog-post.html.

the ratio between Ukrainians and Russians on the scale of the USSR and Soviet Ukraine, as recorded by the 1937 census. Thus, during the inter-census period, the share of Russians increased (from 52.9 to 58% in the USSR and from 9.2% to 11.3% in the USSR), while that of Ukrainians decreased (from 21.21% to 16.3% for the USSR and from 80% to 78.2% for the USSR).[3] These significant negative changes in the population of Ukraine caused the need for an appropriate response from the authorities, which consisted in the forced resettlement of the population from Russia to the Eastern and Southern regions of the country. Only individual indicators will be given. Thus, only from the middle to the end of 1933, 109 echelons with immigrants and their stores were sent from the Western region of the RSFSR to the Dnipropetrovsk region, from the Central Black Earth region of Russia to the Kharkiv region – 80 echelons, from Ivanovo to Donetsk – 44 echelons, at the same time from the Byelorussian SSR to 61 echelons were sent from the Odessa region, 35 echelons with people from the Gorky region. Entire collective farms, entire villages were resettled. This significantly undermined national identity in the most economically developed regions of Ukraine at the time.

The next blow to the national structure of Ukraine was the "Great Terror" policy of 1937–1938, which cost Ukraine millions of lives of its citizens. At the same time, the main "blow" of terror was aimed, first of all, at the Eastern and Southern regions.

The Second World War dealt another blow to the population of Ukraine – millions of Ukrainian men died on the war fronts, sustained injuries that rendered them unfit for work at industrial enterprises, and millions of women were sent to forced labor in Germany against their will. Again, in order to restore the economic potential, the authorities applied the already justified method of resettlement to Ukraine from various regions of Russia, especially from the regions of Kuzbass and Siberia.

In the 70–80s of the 20th century, in connection with the demographic crisis and the lack of labor force (especially in the mines of the Donbas), the labor of people convicted of crimes and sentenced to conditional

3 Ярослав Гирич, " Табуйований перепис-1937: похована правда про Голодомор," January 1, 2022, accessed June 16, 2023, https://novynarnia.com/2022/01/06/perepys-1937/.

imprisonment with referral to work in the national economy, as well as the labor of people released on parole with referral to work at the same places were used. Donbas once again received a significant contingent of the newly-arrived population, and it was far from the best in terms of moral and legal characteristics. All these events significantly affected the national composition of the population of Eastern and Southern Ukraine.

Today, in the Donetsk and Luhansk regions, Ukrainians constitute only 56–58% of the population. They prevail in most districts and cities, with the exception of Donetsk (46.7%), Yenakiev (45.3%), Makiivka (45.0%), Alchevsk and some other cities, as well as the southeastern districts of Stanichno – Luhansk, Krasnodonsk, Sverdlovsk. At the same time, a significant part of those who refer to themselves as Ukrainians are actually assimilated descendants of immigrants from the 1930s and have been connected to Ukraine for only 2–3 generations.[4] They, for obvious reasons, consider Ukrainians and Russians to be one people, maintaining ethnic, cultural and other ties with Russia. A large part does not know and does not want to know the Ukrainian language, does not know the history of Ukraine.

A prominent lawyer Rafal Lipkin, the author and creator of the theory of genocide, who paid special attention to the Ukrainian genocide carried out by the Bolsheviks against Ukrainians, identified among its main characteristics: the destruction of the Ukrainian intelligentsia – the brain or mind of the nation; liquidation of the Ukrainian Orthodox Autocephalous Church – "the soul of Ukraine"; The Holodomor of the Ukrainian peasantry – the custodian of Ukrainian culture, language, traditions, etc. He especially highlighted the settlement of Ukraine by non-ethnic elements for a radical change in the composition of the population.[5]

As a result of this policy, a large part of the population of Eastern and Southern Ukraine (especially, and this should be emphasized separately, the urban population) is mentally oriented towards Russia, considers Russians and Ukrainians to be one nation or brother nations, and believes that

4 https://uk.wikipedia.org/wiki, accessed June 16, 2023.

5 Рафал Лемкін, "Радянський геноцид в Україні," accessed June 10, 2023, https://chtyvo.org.ua/authors/Lemkin_Rafal/Radianskyi_henotsyd_v_Ukraini/.

the existence of an independent Ukraine as a state, a political entity, is unnecessary and even harmful to the interests of Russia.

The presented facts (far from complete) give every reason to claim that Russia's policy in relation to Ukraine has been purposeful, aimed at Russification of its population, deprivation of national self-identity. According to their political and legal characteristics, Russia's actions cannot be recognized as anything other than a policy of genocide, the purpose of which was the liquidation of the Ukrainian nation. This policy continues today, as evidenced by the known facts related to the activities of both the top state political leadership of the aggressor country, as well as individual units of the Russian armed forces and individual officials, which were carried out and are carried out in the temporarily occupied territories of Ukraine (Bucha, Irpin, Gustomel, Borodyanka and other settlements).

2.2. The Effect of the Factors Forming the Ideological and Psychological Basis of Collaboration in Crimea

Crimea, which historically was the cradle of the Crimean Tatar people, was annexed to the Russian Empire in the second half of the 18th century as a result of direct annexation. The national composition of the peninsula's population after the Civil War was as follows: Russians – 301,400 (42.2%); Tatars – 179.1 thousand (25.1%); Ukrainians – 77.4 thousand (10.8%); Germans – 43.6 thousand (6.1%). Other national groups covered from 0.6% to 5.6%. As can be clearly seen, the population of Russians was almost four times bigger than that of Ukrainians.[6]

The policy of terror employed by the leadership of the USSR in the 1930s and 1940s, and the consequences of World War II, significantly affected the quantitative and national composition of the population – in 1939 its population was 1 million 126 thousand people, but by 1944 it had decreased to 379 thousand (!).[7] In the years 1941–1945, the German population (1941) and Crimean Tatars (1944) were deported from Crimea.

6 "«Русский Крым»? Національний склад регіону у 1897, 1926, 2001 рр.," ІСТОРИЧНА ПРАВДА, November 20, 2011, accessed June 18, 2023, https://www.istpravda.com.ua/blogs/2011/11/20/62567/.

7 Danylenko Viktor, "How Did the National Composition of the Crimean Population Change in the Second Half of the 20th Century?," http://history.org.ua/LiberUA/978-966-02-7228-6/110.pdf

In the post-war period, Crimea was part of the Russian Federation, based primarily on its military-strategic position (Sevastopol as the base of the Black Sea Fleet of the USSR, and Crimea itself as an "unsinkable aircraft carrier"). The population of Crimea, for obvious reasons, was dominated by Russians. However, from an economic point of view, a catastrophic situation developed on the peninsula: the lack of water did not give the opportunity to develop agriculture, there was virtually no industry.

After the transfer of Crimea to Ukraine (April 26, 1954),[8] in order to eliminate the catastrophic demographic situation, a flow of immigrants from densely populated regions of Ukraine was organized in Crimea, which did not bring the desired consequences – only 8% of the immigrants settled on the peninsula.[9]

The long-term policy of economic development of Crimea employed by Ukraine brought positive results. Thanks to the construction of the North Crimean Canal, the issue of water supply to the peninsula was solved, huge investments were made in the development of industry, in recreation infrastructure, etc.

Crimea's affiliation in Ukraine has always been determined at the international level and has not been contested by anyone, including Russia. This was confirmed in a number of international agreements. This situation continued until 2014, the year of the beginning of Russia's aggression against Ukraine.

However, despite all the steps taken by Ukraine to develop the economic and cultural potential of Crimea, its national composition remained dominated by the Russian population. As a result of these processes, according to the 2001 census, 2,024,000 people lived in Crimea. The population consisted of Russians – 58%, Ukrainians – 24%, Crimean Tatars – 12%, Belarusians – 1.4%.[10]

This national composition of the population was the result of a number of processes. Firstly, even in the independent Ukraine, Crimea remained

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8 The state-political status of Crimea as a part of sovereign Ukraine has never been questioned at the international level, which is recorded in a number of international documents that were also recognized by Russia.

9 Danylenko, "How Did the National Composition of the Crimean."

10 Ibid.

the base of the Russian fleet. And this is the infrastructure with the "army" of many thousands of civilian employees, and the families of military personnel, etc. Secondly, a large number of military personnel (mainly officers) remained to live in Crimea after retirement. It should also be mentioned that the filling of Crimea with former military personnel also took place during the times of the USSR, as there was a provision according to which, after retirement, a former officer had the right to choose the place of permanent residence where he was provided with housing. Many chose Crimea as their place of residence. Thirdly, the infrastructure of the Crimea required specialists in certain fields who were not trained in the higher education institutions of Ukraine , but were dispatched there via distribution.

Preparations for the annexation of Crimea, according to various sources, began already in the early 1990s. It was carried out in various directions: by placing branches of educational institutions (Lomonosov Moscow State University, Moscow State Technical University, MIFI, etc.), organizing tours of leading creative groups and performers, active work of Russian mass media, etc. In the 1990s and 2000s, the Russians carried out a number of provocations (Tuzla Spit, etc.) that were repelled by Ukraine. They were, in essence, combat reconnaissance.

To conclude, it is worth noting, that the analyzed purposeful actions of Russia led to the situation when the national composition of the Crimean population was not and could not be oriented towards Ukraine. Those actions had been performed for a certain time and, therefore, enabled reorientation of the ideological and psychological components of legal awareness of the population of the peninsula, and its involvement in separatist actions. Being politically, ethnically, and mentally Russia-oriented, the majority of the population considered themselves Russians. It played a significant role in the processes of Russification, both in the Donbass and in the Crimea in the 1990s, organized crime, the activities of which were carried out in close contact with large organized criminal entities of Russia. Powerful criminal communities in Ukraine actively cooperated with well-known organized Russian criminal associations – Solntsevsky, Dolgoprudnensky, Izmailovsky, etc. which invested significant funds in the economy of Ukraine.

3. General Conclusions

The analysis of sufficiently representative material allows one to draw the following conclusions and confirm the existence of a long-term purposeful activity of Russia in preparation for the annexation of Ukraine, its liquidation as an independent subject of international legal relations, as a sovereign, independent state.

These and other processes became the basis for the spread of the psychology of collaborationism, the formation of relevant legal interests, values and attitudes that lie at the core of the criminal-legal consciousness of collaborative orientation, the main characteristics of which are related to:

- denial of independence of Ukraine as a state;
- hatred towards legitimate government in the state, its rejection as an institution;
- love for the aggressor state, recognition of its dominance over Ukraine;
- national issues – humiliation attitude and hatred directed at the Ukrainian people;.
- perceiving the Ukrainian people as the "younger brother" of the Russian people, denial of their right to independence in choosing their own path of development, to national identity;
- non-acceptance of the pro-Western vector of Ukraine's development;
- denial of the independence (and existence in general) of the Orthodox Church of Ukraine and the Greek Catholic Church.

Of course, the details given above are only the main characteristics that determine the criminal-psychological component of legal awareness of collaborators. However, it should be emphasized that this is the foundation on which the criminal-political ideology of collaborationism is formed, the ideology that defines it, that justifies it.

The above and other psychological and legal views, emotions and feelings constitute the basis of the formation of an ideology called "russism." Russism is an independent type of totalitarian ideology and practice built on recognition of superiority of the Russian nation over other nations, a symbiosis of the basic principles of fascism and Stalinism; therefore it

is, like the ideology of the Russian world associated with racism, a type of syncretic politics.[11]

The most significant ideological ideas, theories, and concepts that lie at its core include the following:

- the Russian world is a special, higher historical form of existence of a community of people;
- the Russian world needs constant protection from various encroachments;
- the ideas of the Russian world should receive constant support in their proliferation, especially among Russian-speaking people.

The ideology of racism in relation to Ukraine is most vividly formulated in the writings of Oleksandr Dugin, who asserted the need for the annexation of Ukraine by Russia because Ukraine does not have geopolitical significance, special cultural importance or universal significance, geographical uniqueness, ethnic exclusivity, its certain territorial ambitions pose a huge danger for all of Eurasia, and without solving the Ukrainian problem any talk about continental politics is generally meaningless. Ukraine cannot be allowed to remain independent if it is not a sanitary border, which would be unacceptable.[12]

The ideology of racism found "fertile soil" among Ukrainian citizens who did not feel their genetic connection with the country. The psychological characteristics of this part of the population are strengthened by the active Russian propaganda in the media, which actively contributed to this mindset.

In connection with this, a specific criminal and political legal consciousness was formed in the specified environment, which excluded the vision of cooperation with Russia as collaboration. The bearers of this legal consciousness believed that cooperation with Russia is useful both for them and for those around them, as well as for Ukraine, and cannot be

11 Decree of Ukrainian Parliament "On the Statement of the Ukrainian Parliament About the Use of Political Regime of the Russian Federation, of Ideology of Russism, Condemnation of the Principles and Practices of Russims as Totalitarian and Misanthropic" adopted on May 2, 2023.

12 Aleksandr Dugin, *Fundamentals of Geopolitics*, 3rd ed. (Moscow: «ARKTOGEA-CENTR», 1999).

recognized as a criminal activity. According to the data received from the Office of the Prosecutor General of Ukraine and the Department for the Execution of Criminal Punishments of the Ministry of Justice of Ukraine, for the period from February 2022 to September 2023, 6,426 people were held accountable for committing crimes provided for in Article 111–1 of the Criminal Code of Ukraine "Collaboration". However, this number absolutely does not reflect the full picture of the deformation of the ideological and political components of the criminal and political legal awareness of individual citizens of Ukraine in matters of cooperation with the enemy. The above indicator should be increased by the number of those who committed criminal offenses that by their characteristics are close to collaboration (e. g. crimes provided for in Articles: 111–2 "Assistance to an aggressor state", 114–2 "Unauthorized dissemination of information on the transfer, transfer of weapons, armaments and military supplies to Ukraine, the movement, transfer or placement of the Armed Forces of Ukraine or other military formations formed in accordance with the laws of Ukraine, committed under conditions of war or a state of emergency", 436–2 "Justification, recognition as legitimate, denial of the armed aggression of the Russian Federation against Ukraine, glorification of its participants"). For committing these crimes, 3,672 people were held accountable for the specified period. The deformation of criminal and political legal awareness under the influence of purposeful activities of the aggressor country also led to other particularly serious crimes committed in cooperation with the enemy, which form components of other crimes of Articles: 109 "Actions aimed at a violent change or overthrow of the constitutional order or at the seizure of state power," 110 "Encroachment on the territorial integrity and inviolability of Ukraine," 111 "State treason" and others. 35,350 people have been charged with the crimes provided for by these articles of the Criminal Code of Ukraine since the initial active phase of Russia's aggression against Ukraine. It is clear to everyone that, unfortunately, as the occupied territories are liberated, these indicators will only increase over time.

The preliminary results of the study, which is being carried out today by scientists from Poland and Ukraine (the Academy of Justice of the Republic of Poland and the Vasyl Stefanyk Prykarpatsky National University), with more than 100 people arrested for collaborative activity surveyed to date, fully confirm the expressed theoretical positions.

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Acts Committed by Russian Citizens in Ukraine after 24 February 2022 that May Constitute the Crime Of Genocide

Iryna Kozak-Balaniuk
Dr., Research Associate, Institute of Legal Sciences, Faculty of Law, Canon Law and Administration, John Paul II Catholic University of Lublin, correspondence address: Al. Racławickie 14, 20–950 Lublin, Poland, e-mail: iryna.kozak-balaniuk@kul.pl
https://orcid.org/0000-0002-5946-7882

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Abstract: Russian military aggression against Ukraine is the most flagrant violation of Article 2(4) of the United Nations Charter in recent years. Crimes committed by the Russian armed forces on the territory of Ukraine constitute the most serious crimes of international concern, as confirmed by the ICC's arrest warrant for Vladimir Putin and Maria Lvova-Belova in regard of particular acts identified by the ICC as war crimes. The crime of genocide requires a special *means rea* element to be met – an intent to destroy a protected group in whole or in part. The aim of this article is to analyze definition of genocide along with its elements established in the document "Elements of Crime" in the context of two forms of genocide that were committed by Russian armed forces – killing Ukrainians and forcible transfer of children of the group.

1. Introduction

The crime of genocide is one of the most serious crimes of international law. The importance of its prevention and punishment resulted in the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide,[1] which was the first international agreement that established the definition of genocide. Subsequently, the Statute of the *ad hoc*

[1] United Nations, Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, adopted on 9 December 1948.

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International Criminal Tribunal for the Former Yugoslavia[2] and the Statute of the *ad hoc* International Criminal Court for Rwanda[3] were adopted. These documents where the first that enabled the exercise of jurisdiction over the crime of genocide, along with criteria for the territorial and temporal jurisdiction, which allowed the prosecution of individuals only in narrowly defined circumstances. As a result, the international community initiated the discussion on an international criminal institution, with much broader territorial and temporal juri sdiction, not limited to particular country or period. The solution seemed to be the establishment of the International Criminal Court (hereinafter – ICC), whose Statute was signed in 1998.[4] Nevertheless, not every country signed and ratified the Statute, which means that there are countries whose citizens will not be prosecuted by the Court or whose territory cannot become the subject of an investigation launched by the ICC Prosecutor. In such cases, additional declaration on accepting the jurisdiction of the Court is required.[5] Ukraine submitted such declaration, which concerns crimes that have been currently committed by the Russian armed forces.

After more than a year of a full-scale military aggression against Ukraine[6] that started on February 24, 2022, which according to Russian President was a "special military operation", it has become clear that, apart from political ambitions, there was a clear intent to eliminate part of the Ukrainian nation. The full-scale military aggression caused the unprecedented mass influx of Ukrainians (and citizens of other countries) into

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2 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, UN Security Council Resolution 827, adopted on 25 May 1993.

3 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 Neighboring States, between 1 January 1994 and 31 December 1994, UN Security Council Resolution 955, adopted on 8 November 1994.

4 The Statute of the International Criminal Court, adopted on 17 July 1998, 2187 U.N.T.S. 3 (hereinafter – Rome Statute).

5 Article 12 of the Rome Statute.

6 Russian acts against Ukraine were recognized as aggression by UN General Assembly (resolution A/ES-11/1, adopted on 2 March 2022) or UN Human Rights Council (resolution A/HRC/RES/49/1, adopted on 7 March 2022).

EU members states, which triggered the introduction of the EU mechanism of temporary protection for the first time in recent history.[7] Evidence gathered by the Ukrainian prosecutors in cooperation with the Office of the Prosecutor of the ICC undoubtedly supports the claim of deliberate killing Ukrainian citizens with the sole reason of their nationality. However, killing members of a particular national group is not the only form of committing the crime of genocide. The international community and international organizations recognize acts committed by Russian armed forces since February 24, 2022 as the most serious international crimes, including genocide, and recognizes Russia as a state sponsor of terrorism, emphasizing the need for establishing a special international tribunal for crimes that Russian armed forces are committing in Ukraine.[8] Nonetheless, political declarations or resolution do not provide legal reasoning and therefore there is still the need for factual analysis in conjunction with legal definitions.

The aim of the paper is to analyze the legal definition and elements of the crime of genocide in the context of particular crimes committed by the Russian armed forces on the territory of Ukraine as a consequence of full-scale military aggression and to provide justification as to why certain crimes committed by Russian armed forces on the territory of Ukraine may constitute genocide. In order to accomplish the aforementioned aim, the legal dogmatic method was applied.

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7 Iryna Kozak-Balaniuk, "UE wobec agresji Rosji na Ukrainę. Ochrona czasowa dla obywateli państw trzecich przybywających z terytorium Ukrainy – przykład Polski," in *Unijny system ochrony praw człowieka wobec współczesnych wyzwań*, eds. Edyta Krzysztofik, Magdalena Maksymiuk, and Dominik Tarczyński (Lublin: Wydawnictwo Naukowe Episteme, 2022), 3–4.

8 NATO Parliamentary Assembly Declaration no. 482 adopted on 22 May 2023; European Parliament Resolution on recognizing the Russian Federation as a state sponsor of terrorism, 2022/2896(RSP), adopted on 23 November 2022; United States Congress Resolution (S.Res.713) recognizing Russia's actions in Ukraine as a genocide, adopted on 20 July 2022; Parliamentary Assembly of the Council of Europe Resolution no. 2433 – consequences of the Russian Federation's continued aggression against Ukraine: role and response of the Council of Europe, adopted on 27 April 2022.

2. Definition and Elements of the Crime of Genocide in the Statute of International Criminal Court

According to Article 5 of the Rome Statute the Court's jurisdiction is limited to the following most serious crimes of concern to the international community as a whole: the crime of genocide, crimes against humanity, war crimes and the crime of aggression. Rome Statute defines the crime of genocide as:

> 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.[9]

This definition should be divided into two elements – *mens rea* and *actus reus*. The *mens rea* element of genocide should not be identified as general intent of committing that crime, but as a special one – *dolus specialis*.[10] *Mens rea* consists therefore of two elements: a general one that could be called "general intent" or *dolus*, and an additional "intent to destroy."[11] There are at least several judgements of international criminal tribunals, where the judges explained the meaning of the intent to destroy. The judgement that has a pivotal meaning for the interpretation of the "intent to destroy" is the ruling in the *Akayesu* case, where the International Criminal Tribunal for Rwanda provided that "intent to destroy" as a "special intent"

9 Article 6 of the Rome Statute.

10 Sandra Fabijanić Gagro, "Mental and Material Elements of Genocide," *The Lawyer Quarterly* 11, no. 1 (2021): 45.

11 Kai Ambos, "What Does "Intent to Destroy" in Genocide Mean?," *International Review of the Red Cross* 91, (2009): 834. See also: International Commission of Inquiry on Darfur, Report of the International Commission of Inquiry on Darfur to the UN Secretary-General, pursuant to SC Res. 1564, 18 September 2004, Annex to letter dated 31 January 2005 from the UN Secretary-General addressed to the President of the Security Council, S/2005/60, 1 February 2005, para. 491; Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, Prosecutor v. Omar Hassan Ahmad Al Bashir, 4 March 2009, ICC-02/05–01/09, para. 139.

(or *dolus specialis*) means "the specific intention, required as a constitutive element of the crime, which demands that the perpetrator clearly seeks to produce the act charged."[12] Additionally, it is important to prove that the perpetrator with his actions intents to destroy a protected population group.[13] Ukrainian scholars argue that Putin's language (for instance denying the existence of Ukrainian state and nation) proves the genocidal intent of every act committed by Russian armed forces on the territory of Ukraine and reflects Russia's aims, among others forcible transfer along with the process of "Russification" of Ukrainian children and the deliberate infliction of conditions of life aimed at the physical destruction of the Ukrainian nation.[14] It is important to emphasize that *ad hoc* tribunals' and the ICC's case law confirms that the judicial assessment of genocide is subject to the facts of the individual situation – particularly, contextual embedding of the crime of genocide is formed by its application in individual cases and adapted to the actual legal, political and historical realities.[15]

Actus reus elements of the crime of genocide represent the forms[16] in which that crime can be committed, therefore killing, causing serious bodily or mental harm, inflicting on the group conditions of life intended to bring about its physical destruction in whole or in part, imposing

12 International Criminal Tribunal for Rwanda, Trial Judgement of 2 September 1998, Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96–4-T, para. 498. See also: International Criminal Tribunal for Rwanda, Trial Judgement of 13 December 2006, Prosecutor v. Athanase Seromba, Case No. ICTR-2001–66-I, paras. 175, 319; International Criminal Tribunal for Rwanda, Trial Judgement of 1 December 2003, Prosecutor v. Juve´nal Kajelijeli, Case No. ICTR-98–44A-T, para. 803; International Criminal Tribunal for Rwanda, Trial Judgement of 7 June 2001, Prosecutor v. Ignace Bagilishema, Case No. ICTR-95–1A-T, para. 55. International Tribunal for the Former Yugoslavia followed similar approach towards the interpretation of "intent to destroy", "special intent" for instance in the case Prosecutor v. Goran Jelisic, Prosecutor's Pre-Trial Brief, Case No. IT-95–10-PT, 19 November 1998, para. 3.1.

13 Martin Shaw, "Russia's Genocidal War in Ukraine: Radicalization and Social Destruction," *Journal of Genocide Research* 25, (2023): 5–6.

14 Denis Azarov, Dmytro Koval, Gaiane Nuridzhanian, and Volodymyr Venher, "Genocide Committed by the Russian Federation in Ukraine: Legal Reasoning and Historical Context," *SSN Papers*, (2022): 27.

15 Marjolein Cupido, "The Contextual Embedding of Genocide: A Casuistic Analysis of the Interplay between Law and Fats," *Melbourne Journal of International Law* 15, no. 2 (2014): 35.

16 Elizabeth Santalla Vargas, "Una mirada al crimen de genocidio en las jurisdicciones latinoamericanas," *Criminal Law Review* 10, no. 4 (2010): 63.

measures intended to prevent births within the group, forcibly transferring children of the group to another group – including deportation to another country.

For the purpose of this study, the following forms of committing genocide will be analyzed in the context of acts of Russian armed forces on the territory of Ukraine after February 24, 2022:

1. killing Ukrainians, and
2. forcibly transferring Ukrainian children to Russia and Ukrainian territories temporary occupied by Russia.

This study has been limited to those two forms of committing genocide, since at this point those two are well documented and there is enough data to at least provide the justification whether they may constitute genocide.

According to the document "Elements of Crime,"[17] which explains the structure of crimes that fall under the jurisdiction of the ICC, the crime of genocide committed by killing members of the particular group includes the following elements:

a) the perpetrator killed one or more persons;
b) such person or persons belonged to a particular national, ethnical, racial or religious group;
c) the perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such;
d) the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.[18]

As regards genocide committed by forcibly transferring children of one group to another, the following elements have to be taken into account:

a) the perpetrator forcibly transferred one or more persons;
b) such person or persons belonged to a particular national, ethnical, racial or religious group;

[17] Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3–10 September 2002 (United Nations publication, Sales No. E.03.V.2 and corrigendum), part II.B (hereinafter – Elements of Crimes).

[18] Elements of Crimes, 2.

c) the perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such;
d) the transfer was from that group to another group;
e) the person or persons were under the age of 18 years;
f) the perpetrator knew, or should have known, that the person or persons were under the age of 18 years;
g) the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.[19]

It has become evident that abovementioned forms of committing genocide have a common element to be proven by the prosecutor – the act must have occurred in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction. Thus, an emerging pattern has to be identified. This element should not be considered as an additional *actus reus* element, however rather as objective point of reference for determination of the intent that accompanied the crime of genocide.[20] Additionally, in order to be found guilty of genocide it is sufficient that the perpetrator merely intended "to destroy, in whole or in part, a group, as such." As a result, perpetrator must only intend to obtain what he intends and it does not matter whether he was successful in this regard or not.[21]

For instance, the International Criminal Tribunal for the former Yugoslavia in the case *Prosecutor v. Tolimir* identified an emerging pattern in the facts of the case by concluding that:

> the Majority recalls that at least 5,749 Bosnian Muslim men from Srebrenica were killed by Bosnian Serb Forces in a period of only several days. These killings followed a pattern. Bosnian Serb Forces were deployed to specifically selected remote locations to take part in these killings. The vast majority of the killings occurred in an efficient and orderly manner; following some of

19 Elements of Crimes, 3.

20 Claus Kreß, "The Crime of Genocide and Contextual Elements: A Comment on the ICC Pre-Trial Chamber's Decision in the *Al Bashir* Case," *Journal of International Criminal Justice* 7, no. 2 (2009): 299–302.

21 Otto Triffterer, "Genocide, Its Particular Intent to Destroy in Whole or in Part the Group as Such," *Leiden Journal of International Law* 14, no. 2 (2001): 401–2.

> the largest mass executions in Bratunac and Zvornik between 13 and 16 July 1995, machinery and manpower were swiftly put in place to remove, transport and bury thousands of bodies. These bodies were later dug up and reburied in a further effort to conceal what had occurred. There is no doubt in the Majority's mind, Judge Nyambe dissenting, and indeed the evidence has demonstrated, that several layers of leadership were involved in the organization and coordination of the killing operation."[22]

The acknowledged sequence of actions proved that the perpetrator acted with the intend to destroy the particular group. As a result, the defendant Zdravko Tolimir was convicted of genocide, conspiracy to commit genocide and other crimes.

3. Actions of Russian Army on the Territory of Ukraine That May Constitute the Crime of Genocide

Before analyzing if particular crimes committed by Russian armed forces on territory of Ukraine constitute crime of genocide, it is essential to discuss whether those acts fall within the jurisdiction of the ICC. Ukraine is not a State Party to the Rome Statute (nor is Russia), nevertheless this does not preclude the jurisdiction of the ICC. According to the provision of Article 4(2) of the Rome Statute, the Court may exercise its functions and powers on the territory of any State Party and, by special agreement, on the territory of any other state. Article 12(3) provides for the possibility of recognizing the Court's jurisdiction by a State not party to the Statute, which may, by declaration to the Secretary, recognize the Court's jurisdiction over a particular crime. Ukraine submitted two declarations. First declaration was submitted by the Ukrainian government in April 2014 and regarded crimes against humanity and war crimes that were committed on its territory between November 21, 2013 and February 22, 2014.[23] Subsequently, on September 8, 2015, the Minister of Foreign Affairs of Ukraine lodged a second declaration, in which the Ukrainian government agreed on the ICC's

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22 International Criminal Tribunal for the former Yugoslavia, Trial Judgement of 12 December 2012, Prosecutor v. Tolimir, Case No. IT-05–88/2, para. 770.

23 The text of the declaration available on the following website: https://www.icc-cpi.int/sites/default/files/itemsDocuments/997/declarationRecognitionJuristiction09–04–2014.pdf, accessed April 28, 2023.

jurisdiction towards international crimes that were committed on the territory of Ukraine since February 20, 2014 without an end date.[24] As a result, the ICC's jurisdiction regarding crimes committed on the territory of Ukraine covers the period from November 21, 2013.

3.1. Killing Members of the Group

From February 21, 2022 till May 7, 2023 Russian army killed over 8,791 civilians in Ukraine.[25] For obvious reasons, the actual figures may be considerably higher, as the receipt of information from some locations, especially those where intense hostilities have been going on, has been delayed and a number of reports are still pending corroboration. Russian armed forces killed hundreds of civilians while occupying settlements in Kyiv, Chernihiv, Sumy and Kharkiv regions in February and March 2022.[26] The number includes victims of shelling, bombardments, artillery firing or weapon fire.[27] Nevertheless, this number includes not only Ukrainians, but also other nationalities, and as a consequence this general number cannot be considered as a number of victims of the crime of genocide.

On March 4, 2022, the Independent International Commission of Inquiry on Ukraine was established by the Human Rights Council.[28] The Commission was supposed to investigate all alleged violations and abuses of human rights, violations of international humanitarian law and related crimes in the context of the aggression against Ukraine by the Russian Federation. The Commission issued a report regarding different locations, however the city where the biggest number of killings and execution took place is Bucha.

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24 The text of the declaration available on the following website: https://www.icc-cpi.int/sites/default/files/iccdocs/other/Ukraine_Art_12–3_declaration_08092015.pdf#search=ukraine, accessed April 28, 2023.

25 Official figures available on the website of United Nations High Commission for Human Rights: https://www.ohchr.org/en/news/2023/05/ukraine-civilian-casualty-update-8-may-2023, accessed May 1, 2023.

26 United Nations Office of the High Commissioner for Human Rights, Report on the human rights situation in Ukraine – 1 February – 31 July 2022, 27 September 2022, 9.

27 Official figures available on the website of United Nations High Commission for Human Rights: https://www.ohchr.org/en/news/2023/05/ukraine-civilian-casualty-update-8-may-2023, accessed May 3, 2023.

28 United Nations General Assembly resolution A/HRC/RES/49/1 adopted on 7 March 2022; United Nations General Assembly resolution A/HRC/RES/52/32 adopted on 11 April 2023.

Bucha is a small city five kilometers northwest of Kyiv, with a population of about 40,000 people. From the first days of full-scale Russian invasion on Ukraine, Bucha was involved in armed activities. As of March 5, 2022, Russian troops have established full control over the city and remained there until March 30. At that time, about 5000 inhabitants remained in the city. After entering the city on April 2, 2022, Ukrainian armed forces saw dozens of corpses first on the streets, and then in other places: in yards, apartments, basements, vehicles, forests lanes and improvised single and mass graves. There were signs of arbitrary executions on many of the bodies: bruises, cuts, bullet wounds, tied hands and burns. Two mass graves containing more than 100 bodies were found near the city church. Dozens of bodies were exhumed from improvised graves throughout the city. As of April 7, more than 300 civilian bodies have been found and as of September 13, their number reached 422 bodies.[29] The Independent International Commission of Inquiry on Ukraine concluded the killings in Bucha as deliberate executions. Witnesses, including an official who was one of the first who entered the city after it was de-occupied, saw dead bodies in the backyard of houses where the soldiers had established their base. Some of them had their hands tied behind their backs and presented signs of torture. More than 10 dead bodies of civilians were found on the street. In another incident, five bodies were found in a basement, with their hands tied behind their backs and gunshot wounds. A woman confirmed that her adult son was among the five bodies.[30] The Commission, whose members where working *in situ*, established also the following facts, which also concern other provinces and cities as well:

1. executions took place in numerous other localities;
2. there is reliable information about similar executions in 16 other cities and settlements, involving 49 victims;
3. the majority are men of fighting age;

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[29] Головне управління Національної поліції в Київській області, «422 тіла вбитих окупантами мирних жителів виявили в місті після деокупації. Місця масових страт поліцейські Київщини знаходили в підвалах, на вулицях, в гаражах», 13 вересня 2022 року, доступне за посиланням https://www.facebook.com/watch/?v=766527297938115, accessed May 6, 2023.

[30] United Nations Independent International Commission of Inquiry on Ukraine – report, A/77/533, 2022, 13.

4. cases are located in all four provinces under the Commission's initial focus (that is provinces of Kyiv, Chernihiv, Kharkiv and Sumy), suggesting a wide geographical pattern of committed executions;
5. executions confirmed by the Commission occurred in places occupied by Russian armed forces for longer period of time, close to the front lines;
6. the Commission had not have an access to particular areas of Kharkiv Province due to security reasons;
7. a common element was that victims were last seen in the custody or presence of Russian armed forces;
8. the bodies of the victims were exhumed from separate or mass graves or recovered from houses or basements that the Russian armed forces had occupied; some victims' dead bodies were found with hands tied behind their back, a clear indication that the victim was in custody and posed no threat at the time of death.[31]

Another city where mass graves were found by the Ukrainian armed forces is the city of Izyum (city in the Eastern part of Ukraine, located in Kharkiv province). Mass graves contained 445 bodies buried next to each other.[32] The condition in which bodies were found, manner of burials and wounds correspond to those that were discovered in Bucha.

Ad hoc tribunals agreed in their judgements that genocidal intent is conditional to the acts, utterances and position of the accused and from the "pattern of purposeful action."[33] The latter category includes circumstances such as: the general policy underlying the acts; the methodical way of planning; the systematic manner of killing; the number of victims; the scale of atrocities; and the use of derogatory language towards members of

[31] United Nations Independent International Commission of Inquiry on Ukraine – report, A/77/533, 2022, 13.

[32] Information available on the following website: https://www.nytimes.com/2022/09/18/world/europe/izium-mass-grave-ukraine.html, accessed May 20, 2023.

[33] International Criminal Tribunal for Rwanda, Trial Chamber Judgement of 21 May 1999, Prosecutor v. Kayishema, Case No. ICTR-95–1-T, para. 93; International Criminal Tribunal for Rwanda, Trial Chamber Judgement of 6 December 1999, Prosecutor v. Rutaganda, Case No. ICTR-96–3-T, para. 61; International Criminal Tribunal for Rwanda, Trial Chamber Judgement of 27 January 2000, Prosecutor v. Musema, Case No. ICTR-96–13-A, para. 167; International Criminal Tribunal for the former Yugoslavia, Judgement of 12 December 2012, Prosecutor v. Tolimir, Case No. IT-05–88/2-T, para. 121.

the targeted group.[34] According to the Trial Chamber in *Prosecutor v. Jelisić*, Genocide Convention "did not discount the possibility of a lone individual seeking to destroy a group as such."[35] Taking the above into account, the aforementioned executions and killings in Bucha and Izyum were committed in a similar pattern, with the same intent.

The analysis of the killings and executions of Ukrainian civilians discovered by Ukrainian armed forces in Bucha and Izyum after those cities were occupied by Russian armed forces is only an example, since only after full recovery of Ukrainian territories, that are currently occupied by Russia (including the Crimean Peninsula), a complete documentation and corroboration of crimes committed by Russian armed forces will be possible. Nonetheless, crimes in Bucha and Izyum may[36] constitute the crime of genocide, as most of the criteria from the definition provided in the Rome Statute and Elements of Crime are met. First of all, killings were committed with a clear intent to destroy in part national group – Ukrainians. All of the killings and executions were committed by members of Russian armed forces (soldiers). In addition, there were particular military-controlled killing sites, for instance in Bucha.[37] Moreover, the majority of civilians executed or killed in Bucha and Izyum were men of so-called fighting age. Therefore, additional aim was to eliminate those, who potentially could join the Ukrainian armed forces and fight against the aggressor state. Secondly, the perpetrator killed more than one person in an identifiable pattern

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34 International Criminal Tribunal for Rwanda, Judgement of 7 June 2001, Prosecutor v. Bagilishema, Case No. ICTR-95–1A-T, para. 62; International Criminal Tribunal for Rwanda, Judgement and Sentence of 15 May 2023, Prosecutor v. Semanza, Case No. ICTR-97–20-T, para. 313; International Criminal Tribunal for Rwanda, Judgement and Sentence of 1 December 2003, Prosecutor v. Kajelijeli, Case No. ICTR-98–44A-T, paras. 804, 806; International Criminal Tribunal for the former Yugoslavia, Judgement of 9 May 2007, Prosecutor v. Blagojević, Case No. IT-02–60-A, para. 123.

35 International Criminal Tribunal for the former Yugoslavia, Trial Chamber Judgement of 14 December 1999, Prosecutor v. Jelisić, Case No. IT-95–10-T, para. 100.

36 It is impossible to unequivocally state whether those acts constitute genocide, since available sources do not cover all the facts and circumstances. However, some findings may be concluded with high degree of probability.

37 Military-controlled killing sites were well-known in other genocides, for instance in Indonesian genocide. See: Jess Melvin, "Mechanism of Mass Murder: A Case for Understanding the Indonesian Killings as Genocide," *Journal of Genocide Research* 19, no. 4 (2017): 498.

(common elements can be established), which confirms that the acts were committed deliberately and purposely. As a result, the conduct of acts (crimes in Bucha and Izyum) occurred in the context of a manifest pattern of similar conduct against Ukrainians that lived in those cities.

3.2. Forcible Transfer of Ukrainian Children to Russia

On March 17, 2023, the ICC Pre-Trial Chamber issued arrest warrants for Vladimir Putin (President of the Russian Federation), and Maria Lvova-Belova (Commissioner for Children's Rights in the Office of the President of the Russian Federation). The arrest warrants were the response to the Prosecution's applications of February 22, 2023. According to the Pre-Trial Chamber, there are reasonable grounds to believe that each suspect is responsible for the war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation, in prejudice of Ukrainian children.[38] The ICC qualified those acts as war crime in the form of deportation of population and unlawful transfer to another country. The legal issue is therefore whether those acts may constitute also the crime of genocide.

Ad hoc tribunals referred in a number of cases to deportation and forcible transfer. The Trial Chamber of ICTY delivered that the prohibition against deportation serves to provide civilians with a legal safeguard against forcible removals in time of armed conflict and the uprooting and destruction of communities by an aggressor or occupant of the territory in which they reside.[39] The only exception to the absolute prohibition concerns evacuations, required to ensure the "security of the population" or dictated by "imperative military reasons."[40] Deportation means a transfer with crossing

[38] Press release available on the following website: https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and. Further information about the investigation into the situation in Ukraine available on the website: https://www.icc-cpi.int/situations/ukraine, accessed May 26, 2023.

[39] International Criminal Tribunal for the former Yugoslavia, Trial Chamber of 31 July 2003, Prosecutor v. Stakić, Case No. IT-97–24-T, para 681.

[40] Etienne Henry, "The Prohibition of Deportation and Forcible Transfer of Civilian Population in the Fourth Geneva Convention and Beyond," in *Revisiting the Geneva Conventions: 1949–2019*, eds. Md. Jahid Hossain Bhuiyan and Borhan Uddin Khan (Leiden: Brill Nijhoff, 2020), 75.

an international border from one country to another, whereas transfer occurs within the territory of one country[41] or, in the case of Russian military aggression, within occupied Ukrainian territories, which are internationally recognized as Ukrainian sovereign territory. Analogous interpretation was applied by the ICTY: deportation may be defined as a forced displacement of persons by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law. Deportation requires a displacement of a persons across the national border, to be distinguished from forcible transfer which may take place within national borders.[42]

Ukrainian authorities have received over 20,000 complaints of missing Ukrainian children.[43] However, there are reliable grounds to believe that real number may be much higher, as children were taken from orphanages, residential institutions or families. The Organization for Security and Co-operation in Europe (OSCE) has launched the investigation on forcible transfer of children within parts of Ukraine temporarily controlled by Russia, and deportations to the Russian Federation. In May 2022, the Ukrainian Commissioner for Children's Rights claimed that more than 180,000 children were illegally transferred to the occupied territories and Russia.[44] In October 2022, the United States estimated that around 260,000 Ukrainian children were taken to Russia.[45] Around the same period,

41 Vincent Chetail, "The Transfer and Deportation of Civilians," in *The Geneva Conventions: A Commentary*, eds. A. Clapham, P. Gaeta, and M. Sassoli (Oxford: 2015), 1189.

42 International Criminal Tribunal for the former Yugoslavia, Trial Chamber Judgement of 15 March 2000, Prosecutor v. Krnojelac, Case No. IT-97–25-T, para. 474; International Criminal Tribunal for the former Yugoslavia, Trial Chamber Judgement of 2 August 2001, Prosecutor v. Krstic, Case No. IT-98–3, para. 521; International Criminal Tribunal for the former Yugoslavia, Trial Chamber Judgement of 1 September 2004, Prosecutor v. Brdanin, Case No. IT-99–36, para. 540.

43 Information available on the following website: https://www.hrw.org/news/2023/04/06/investigation-launches-forcible-transfer-children-ukraine, accessed May 27, 2023.

44 Information available on the following website: https://mediacenter.org.ua/the-russians-illegally-deported-or-transported-181–000-ukrainian-children-to-the-occupied-territories-commissioner-of-the-president-of-ukraine-for-children-s-rights-and-rehabilitation/, accessed May 23, 2023.

45 Yale School of Public Health – Humanitarian Research Lab, "Russia's Systematic Program for the Re-Education and Adoption of Ukrainian Children – A Conflict Observatory Report," New Haven 2023, 10.

it is reported that the Ukrainian Ombudswoman for Human Rights, Lyudmyla Denisova, declared that Russia had relocated more than 1.2 million Ukrainians against their will, including more than 210,000 children.[46] Parliamentary Assembly of the Council of Europe called for an immediate halt to the forced deportation and transfer of Ukrainian civilians, including children, to Russia and their safe return to Ukraine.[47]

The ICC issued arrest warrants for Vladimir Putin and Maria Lvova-Belova suspecting they are responsible for the war crime of unlawful deportation of population (children) and that of unlawful transfer of population. Therefore, the legal issue is whether these acts, apart from constituting war crimes, may constitute genocide. First of all, forcible transfer of Ukrainian children was committed with a clear intent to destroy a national group – Ukrainians – in part, especially children. In a vast majority of cases Ukrainian children after arriving to Russia or occupied Ukrainian territories undergo special procedures – filtration, "re-education" with Russian propaganda and "patriotic adaption," not to mention the risk of being a victim of human trafficking, sexual abuse or exploitation, illegal adoption into Russian families.[48] These procedures that children were subjected to after arriving to the occupied Ukrainian territories or Russia prove that the ultimate purpose of those forcible transfers was and still is to erase their Ukrainian identity as much as possible, not only mentally and psychologically, but also physically, easing the procedure for Russian citizenship or adoption to Russian families.[49] The latter falls within the notion of destroying a national group in part. Secondly, the perpetrator forcibly transferred more than one person – actually thousands of Ukrainian children under 18 years of age, who belonged to particular national group. Thirdly, the transfer took place from one group to another, including deportation from Ukraine to Russia. The perpetrator unquestionably knew that the children were under 18 years

46 Information available on the following website: https://www.reuters.com/world/europe/exclusive-ukraine-investigates-deportation-children-russia-possible-genocide-2022–06–03/, accessed May 23, 2023.

47 Parliamentary Assembly of the Council of Europe, Resolution 2482 (2023).

48 Maria Mentzelopoulou, "Russia's War on Ukraine: The Risk of Trafficking in Human Beings," European Parliamentary Research Service, PE 729.410, Brussels 2022, 1–2.

49 Commissioner for Human Rights of the Council of Europe, "Memorandum on the Human Rights Consequences of the War in Ukraine," CommDH(2022)18, 8 July 2022, 13.

of age. The fact that the forcible transfer occurred with the involvement of the Commissioner for Children's Rights in the Office of the President of the Russian Federation, that served as the ground for issuing an arrest warrant for her, proves that Russian authorities had knowledge of the age of Ukrainian children being transferred or deported. Additionally, the conduct took place in the context of a manifest pattern of similar conduct directed against Ukrainians and Ukrainian children.

4. Conclusion

Russian military aggression against Ukraine is probably one of the most significant events in recent history, as it constitutes the most flagrant and evident violation of fundamental principles of international law and the UN Charter directly. Russia is one of the permanent members of the UN, which enables to undertake any possible action by the UN Security Council under Articles 41–42 of the UN Charter, thus addressing threats to the peace, breaches of the peace and acts of aggression. As a result, the only international institution that is competent to introduce particular actions is ineffective.

Crimes of Russian armed forces on the territory of Ukraine as a result of its military aggression against Ukraine, undeniably constitute the most serious crimes of international concern that fall within the jurisdiction of the ICC. Due to jurisdictional exception, it may not be possible to prosecute individuals for the crime of aggression, since according to Article 15 *bis*, in respect to a State that is not a party to this Statute, the Court shall not exercise its jurisdiction over the crime of aggression when committed by that State's citizens or on its territory. Therefore, the ICC cannot exercise jurisdiction over the crime of aggression in the case of acts committed by Russian citizens. Nevertheless, the ICC can exercise jurisdiction over other crimes enlisted in its Statute, thus crimes against humanity, war crimes and genocide. Acts that have been subject of this article, such as killing members of the group and forcible transfer of children of one group to another, may constitute the crime against humanity or war crime, however in the case of meeting additional criteria, especially *mens rea* elements, it may constitute the crime of genocide. The killings and executions in such cities as Bucha, Izyum meet the criteria established in the "Elements of Crime," as they were committed with a clear intent to destroy Ukrainians.

The perpetrator – Russian soldiers – is clearly identified, along with its role in the ongoing international military conflict on the territory of Ukraine.[50] Some of the executions and killings were conducted in particular military-controlled killing sites. Moreover, the majority of civilians executed or killed in Bucha and Izyum were men of so-called fighting age. The perpetrator killed more than one person in an identifiable pattern (common elements can be established), which confirms that acts were committed deliberately and purposely. The abovementioned mean that the conduct of acts perpetrated by Russian armed forces (crimes in Bucha and Izyum) occurred in the context of a manifest patter of similar conduct against Ukrainians that lived in those cities.

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[50] According to the Article 2 of the Geneva Conventions of 1949, the ongoing military conflict on the territory of Ukraine as a result of Russian military aggression is an international military conflict. See: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted on 12 August 1949, 75 U.N.T.S. 31.

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The Response of the International Community to the Genocide in Rwanda and the War in Ukraine

Magdalena Maksymiuk
Dr., Assistant Professor, Faculty of Law and Administration Cardinal Stefan Wyszyński University in Warsaw, Poland, correspondence address: ul Wóycickiego 1/3 building 17, 01–938 Warsaw, e-mail: m.maksymiuk@uksw.edu.pl
https://orcid.org/0000-0001-5711-4920

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Abstract: The present thesis aims to describe the response of the international community to the genocide in Rwanda, and to assess current actions in the context of the war in Ukraine. It defines what genocide is, how it happened in Rwanda, and what proves that the incidents in Ukraine can be referred to as genocide.

1. Preface

Genocide. A tragedy of thousands of people that the world is watching. The scale of atrocity makes it seem too remote and even unreal, and yet it happens even in the modern world. Despite the development of civilisation, as well as international regulations, it is not being prevented. On the contrary, it is carried out on an even larger scale with the use of new technologies. Roman Kuźniar pointed out that this is linked to the occurrence of the so-called "moral vacuum". The main objective is to win in a conflict, and the use of force against civilians, violations of human rights and actions based on bestiality and cruelty are the norm and even a means to victory.[1]

The present thesis aims to describe the response of the international community to the genocide in Rwanda and to assess current actions in the context of the war in Ukraine.

[1] Roman Kuźniar, *Prawa człowieka. Prawo, instytucje, stosunki międzynarodowe* (Warsaw 2000), 287–89.

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At this point, it is worth putting forward the thesis that the international community has been carrying out activities aimed at proving that since the beginning of the war in Ukraine, there have been a number of incidents that bear the hallmarks of genocide or are, in fact, genocide. In order to achieve this, a number of subsidiary questions are worth posing. What characterized the genocide in Rwanda? Are there any similarities with Russian actions regarding the war in Ukraine? What actions were taken by the international community concerning Rwanda and what actions are being taken in relation to the incidents in Ukraine?

In the present analysis, the comparative method, the dogmatic-legal method and the historical method were applied.

2. Genocide as a Concept in International Law

The term "genocide" was coined by Rafał Lemkin, who not only provided its characteristics but also began the process of criminalising it in international law.[2]

The main international legal regulation against genocide is the *Convention on the Prevention and Punishment of the Crime of Genocide*, which in Article II indicates:

> 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.[3]

[2] See: Rafał Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Washington, D.C.: Carnegie Endowment for International Peace, 1944), 79–95, accessed June 19, 2023, http://www.preventgenocide.org/lemkin/AxisRule1944–1.htm; Ryszard Szawłowski, "Rafał Lemkin – twórca pojęcia 'ludobójstwo' i główny architekt Konwencji z 9 XII 1948 (w czterdziestolecie śmierci)," *Państwo i Prawo*, no. 10 (1999): 74.

[3] *Convention on the Prevention and Punishment of the Crime of Genocide* (Journal of Laws of 1952 No. 2, item 9), hereinafter referred to as the "Convention".

In addition, Gregory Stanton described the first eight stages of genocide in 1996 and then, in 2016, distinguished 10 of them. They may occur simultaneously. Not all of them can function throughout, either. He emphasized that the response of the international community at each stage can lead to the prevention of genocide.[4] The first seven stages are the so-called "early warnings," which include:

1. classification – the division of society into "us and them," based on ethnicity, race, nationality or religion (e.g. Hutu, Tutsi);
2. symbolisation – the imposition of symbols, names specific to a particular group (e.g. the use of code terms in Burundi in the 1980s in relation to the prohibition of using the words "Hutu" and "Tutsi";
3. discrimination – exploitation of position by the dominant group/state. The use of political power, laws and customs to deprive others of their rights;
4. dehumanisation – propaganda, defamation, hatred of the other group, treating its members in a way that demeans their dignity;
5. organisation – the organisation of genocide by the state or subordinate groups that are used for this purpose. This involves, i.a., the training of military troops or groups to commit it and also the purchase of weapons, espionage, arrests, murder of people suspected of not favoring a group, a party, or a person in power;
6. polarisation – separating groups, dismembering, inciting aggression, passing laws that give a sense of total domination, disarming the target group so that it cannot defend itself;
7. preparation – planning events, preparing equipment, armies, training the army, but also indoctrinating the population. Instilling fear in public opinion of the victim group with the idea: "If we don't kill them, they will kill us". Justifying genocide by the need for self-defence, to counter a rebellion;

   The subsequent three already point to the core phase:
8. persecution – identification of victims and their separation from the society. Frequent expropriation of property, robbery, order to wear

[4] Dominika Dróżdż, *Zbrodnia ludobójstwa w prawie międzynarodowym* (Warsaw: Wolters Kluwer Polska, 2010), 266.

certain symbols, deprivation of resources to sustain life. As the organisation Genocide Watch points out:

> At this stage, a genocide emergency should be declared. If the political will of the great powers, regional alliances, the UN Security Council or the UN General Assembly can be mobilised, armed international intervention should be prepared, or heavy assistance should be provided to the victim group to prepare for its self-defence. Humanitarian assistance should be organised by the UN and private relief groups for the inevitable tide of refugees to come.

9. extermination – which becomes the mass killing legally called "genocide", rape, dehumanisation of victims, destruction of cultural, religious property. At this stage, only rapid and overwhelming armed intervention can stop genocide. Genocide Watch already points here to the need for the UN forces to step in;
10. denial – always follows genocide. It lasts permanently. The perpetrators of genocides deny that they committed any crimes, dig up massive graves, dismember corpses, erase traces, and intimidate witnesses. They block possible investigations and blame the victims.[5]

3. Genocide in Rwanda

At the outset, it should be emphasized that the Belgians played a role in provoking the war and the ethnic conflict, which then resulted in genocide. They are the ones who are accused of dividing society into two tribes: Hutu and Tutsi, on the basis of allegedly distinctive physical criteria. Also, it was the Belgians who were responsible for fostering ethnic hatred and favoring the Tutsis, in whom they saw the stability of their power in the country. In 1932, they introduced the "proof of ethnic identity" by which tribal affiliations were distinguished.[6] Moreover, Tutsis were recruited to the staff through which the Belgians could manage their colony. This separation was justified by racist theories about superior and inferior populations.

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5 David R. Arendale, *Online History Simulation: Contemporary Genocide Investigative Report Curriculum,* Genocide Investigative Report Revised May 11, 2019; Gregory H. Stanton, "The Ten Stages of Genocide," Genocide Watch, accessed June 27, 2023, http://genocidewatch.net/genocide-2/8-stages-of-genocide/.

6 Karolina Wierczyńska, *Pojęcie ludobójstwa w kontekście orzecznictwa międzynarodowych trybunałów karnych ad hoc* (Warsaw: Wydawnictwo Naukowe Scholar, 2010), 113–5.

The trigger point for the conflict was the shoot-down, on April 6, 1994, of a plane near Kigali airport with President Habyarimana on board. Hutu activists were blamed for his death, which allowed the event to be used as a pretext for launching the planned genocide. The first victims were politicians belonging to the Hutu tribe, including Prime Minister Agathe Uwilingiyimana, but also the soldiers protecting her as part of the UNAMIR operation.[7] Théoneste Bagosora, a direct supporter of the Hutu Power movement, took charge of the army. The successful propaganda resulted in the significant participation of civilians in the genocide. They were armed with machetes, knives and axes, which they used to murder their victims. The numerous murders were accompanied by violence, rape and robbery. It was not, however, a grassroots initiative in its nature, as it was the government that purchased about 600,000 machetes from China a year before the conflict began. Moreover, emotions and antagonism were stimulated by the *Radio of the Thousand Hills*, which in its broadcasts compared Tutsis to vermin to be exterminated.

In addition, on the air of the RTLM, the presenters indicated addresses where Tutsi would hide. The victims were also those Hutu who refused to participate in the genocide. The comparisons of Tutsi numbers before and after the massacre, lead to the conclusion that a specific ethnic group was the target of the attacks. According to the estimates, approximately 800,000 victims were killed within three months.[8]

Particularly genocidal acts were committed in the town of Butare, where, even though Tutsis accounted for around a quarter of the population there, only those who fled to Burundi survived. In the absence of a reaction of the international community, Paul Kagame (leader of the RPF), decided to restart the civil war. His troops reached Kigali and halted the extermination of the Tutsis. The fear of a counter-attack resulted in a mass escape of Hutus to the then Zaire (now Democratic Republic of Congo).

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7 The mission is discussed in Chapter 3.

8 Gérard Prunier, *The Rwanda Crisis. History of a Genocide, 1959–1994* (London: C. Hurst & Co., 1995), 265–6; Alison Des Forges, *Leave None to Tell the Story. Genocide in Rwanda* (New York: Human Rights Watch, 1999), 15; Tor Sellström and Lennart Wohlgemuth, *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience. Study 1. Historical Perspective: Some Explanatory Factors* (Uppsala: Overseas Development Institute, 1997), 5.

The group that decided to flee included the activists responsible for committing the genocide.[9]

4. The Response of the International Community

The Convention recognizes genocide as a crime under international law. Its signatories have an obligation to counter it. Therefore, according to its provisions, the incidents in Rwanda should have triggered an immediate response, but the strongest UN states have not shown the will to engage militarily. This indicates that the above legal regulations remain apparent, and their implementation depends on the contracting states.

The first response of the international community to the worsening conflict in Rwanda was the establishment of the special mission UNAMIR. Its purpose was to help adhere to the Arusha Peace Agreements, which were intended to end the civil war between Hutu and Tutsi. However, as the Head of the Mission, General Roméo Dallaire, pointed out, it was underfunded, poorly staffed and ineffective in the context of the impending next escalation of the conflict.[10] Its expansion was not allowed by the Americans, due to events in Somalia, which affected the UN decision. Belgium, faced with the death of soldiers protecting Prime Minister Uwilingiyimana, decided to withdraw its troops from Rwanda, which significantly weakened UNAMIR. Despite appeals to the UNAMIR by General Dallaire to increase the peacekeeping mission's mandate, eventually, its forces were completely disempowered and reduced to 500 soldiers in order to focus only on protecting civilians, evacuating foreigners or undertaking negotiations.[11]

In this conflict, it is also important to emphasize the role played by France, which had cooperated with Rwanda since as early as the 1970s, incorporating it into the network of francophone states. Already during

9 Jacek Reginia-Zacharski, *Rwanda. Wojna i ludobójstwo* (Warsaw: Wydawnictwo Naukowe PWN, 2013), 119.

10 UNAMIR – United Nations Assistance Mission for Rwanda, proclaimed by Resolution 872 (1993), adopted by the Security Council at its 3288th meeting on 5 October 1993, accessed June 27, 2023, https://digitallibrary.un.org/record/197341.

11 See: Walter Clarke and Jeffrey Herbst, "Somalia and the Future of Humanitarian Intervention," *Foreign Affairs* 75, no. 2 (1996); Marcin Wojciech Solarz, *Francja wobec Afryki subsaharyjskiej. Pozimnowojenne wyzwania i odpowiedzi* (Warsaw: Wydawnictwo Aspra, 2004), 236–8.

the civil war, the French financed and trained the Presidential Guard, thus sustaining the Habyarimana regime, disregarding the claims that the regime was responsible for torture, murder or the imprisonment of oppositionists. Human Rights Watch points out that the French government, during the genocide, supplied weapons to the Rwandan army in violation of an embargo imposed by the UN Security Council. France also evacuated some members of the Hutu Power. France even sent its troops as part of Operation "Turquoise" (authorized by the UN), which was officially supposed to be a humanitarian mission, but researchers indicate that its purpose was to sustain the regime and French interests.[12]

France, China and Russia were all able to block proposals for changes concerning UNAMIR because of internal interests, and the US President forbade his officials to use the term "genocide" in the context of Rwanda.[13]

4.1. Establishment of the International Criminal Tribunal for Rwanda and the Gacaca Courts

After the end of the conflict, Rwanda faced an administrative problem. It asked the UN to help it bring to trial the criminals guilty of genocide. The UN Security Council proclaimed Resolution No. 955 of 8 November 1994, which established the International Criminal Tribunal for Rwanda. Its substantive jurisdiction covered the crime of genocide and the crime against humanity committed between January 1 and December 31, 1994.[14] Rwanda appealed for the jurisdiction to include the civil war period. The cases of Akayesu, Rutaganda, Musema and Bagilishema provided the basis for the trials of the perpetrators of the genocides of the 20th century. The Tribunal's action was intended to be subsidiary in the event that Rwanda could not cope with bringing suspects to trial. The judicial system as a result of

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12 See: Linda Melvern, *A People Betrayed. The Role of the West in Rwanda's Genocide* (London–New York: Human Rights Watch, 2009); see also: Anna Rosiak, „Operacja „Turkus", czyli blaski i cienie francuskiej misji humanitarnej w Rwandzie (VI–VIII 1994)," in *Czarny Ląd i świat arabski. Obrona pokoju czy interesów?*, ed. Bartłomiej Pączek (Gdynia: Akademia Marynarki Wojennej, 2013), 223–44.

13 Aleksandra Spychalska, "Mechanizmy zbrodni ludobójstwa na przykładzie Rwandy," in *Varia doctrinalia, praca zbiorowa*, ed. Łukasz Machaj (Wrocław: Prawnicza i Ekonomiczna Biblioteka Cyfrowa, 2012), 97–8.

14 Reginia-Zacharski, *Rwanda*, 120; Solarz, *Francja*, 236–53.

the purges was, and still is, very weakened, trial backlogs were arising, and the prison infrastructure was overloaded. In the face of such a growing problem, it was decided to revert to the Gacaca people's court system. The trials consisted of local elders judging the defendants, who were given a punishment. The system, operating in this way, was implemented throughout the state in 2005, which caused considerable controversy in the international community. Attention was drawn to the violation of international standards for a fair trial, as the people's courts were staffed by individuals without legal training, family or friends of genocide victims, who were not impartial towards the accused.[15]

5. Has Genocide Taken Place in Ukraine?

On February 24, 2022, from the day Russian troops crossed the border of Ukraine, a large-scale war was launched at the borders of the European Union and NATO. The Budapest Memorandum,[16] as well as the Minsk Protocols of 2014 and 2015,[17] were thus violated. The war conducted by Vladimir Putin is ruthless, and its operations are frequently directed against civilians. The aim of the so-called "special operation" was de-Ukrainianisation. Apart from the physical elimination of Ukrainians, its goal was also the destruction of their sense of national distinctiveness, culture or language. Putin has repeatedly indicated that Russians and Ukrainians are one nation,

15 Reginia-Zacharski, *Rwanda*, 130–6; see: "Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts," Human Rights Watch, accessed June 23, 2023, http://www.hrw.org/sites/default/files/reports/rwanda0511webwcover.pdf; Katarzyna Głowacka, "Ludobójstwo w Rwandzie i jego polityczne konsekwencje," *Poliarchia* 4, no. 1 (2015): 39.

16 The memorandum was intended to guarantee the security of Ukraine in exchange for the transfer of the nuclear weapons on its territory to Russia. See: *Ukraine, Russian Federation, United Kingdom of Great Britain and Northern Ireland and United States of America Memorandum on security assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons*, Budapest, December 5, 1994, accessed June 22, 2023, https://treaties.un.org/doc/Publication/UNTS/Volume%203007/Part/volume-3007-I-52241.pdf

17 The agreements signed in Minsk on September 5, 2014 and February 12, 2015 aimed at ending the conflict in eastern Ukraine. Protocol on the results of consultations of the Trilateral Contact Group, signed in Minsk, 5 September 2014, https://www.osce.org/home/123257, https://www.osw.waw.pl/pl/publikacje/analizy/2015–02–12/minsk-2-kruchy-rozejm-za-miast-trwalego-pokoju.

challenging Ukraine's right to self-determination and calling Ukrainian authorities "fascists". The RIA Novosti agency even published a plan for the destruction of Ukraine, which included the elimination of the political elite and a new education of the population. In order to demonstrate that genocide has taken place, it is necessary to indicate not only the intentions but also their implementation.[18]

Due to Russia's strong political and economic position, the international community will not directly engage in the conflict and the military forces of other states or organizations will not help Ukraine to defend its sovereignty. Indirect actions, on the other hand, are sanctions imposed on the Russian state and its individual citizens, as well as the transfer of weapons to the fighting Ukrainian troops.[19]

International organizations, countries in the region and the general public all point out that Russia has committed genocide. Examples of its genocidal actions include the operations in Bucha, Irpin and Mariupol, where civilians were slaughtered, brutal beatings, rape or looting were committed, similar to the events in Rwanda, which have also been described as forms of genocide by the International Criminal Court. Their aim was to take revenge on, and intimidate, the population that resisted. This action is typical of the Russian army, which carried out its operations in a similar manner, for instance in Afghanistan.[20]

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18 Emilia Świętochowska, „Ludobójstwo w Ukrainie? Hinton: Nie skupiajmy się tylko na zabójstwach, Rosjanie robią też inne rzeczy [WYWIAD]," *Dziennik Gazeta Prawna*, April 22, 2022, accessed June 22, 2023, https://www.gazetaprawna.pl/wiadomosci/swiat/artykuly/8406027,wojna-w-ukrainie-ludobojstwo-rosyjskie-wojska-zbrodnie-putin.html.

19 Jakub Majmurek, "Putinowi trzeba postawić jasną granicę. A „świat milczy, nie będzie retorsji"," WP Wiadomości, April 24, 2022, accessed June 22, 2023, https://wiadomosci.wp.pl/putinowi-trzeba-postawic-jasna-granice-a-swiat-milczy-nie-bedzie-retorsji-6763471080360768a.

20 Jude Sheerin, "Bucha 'Isn't a One-off Atrocity'," BBC News, April 4, 2023, accessed June 19, 2023, https://www.bbc.com/news/live/world-europe-60949706?ns_mchannel=social&ns_source=twitter&ns_campaign=bbc_live&ns_linkname=624a92984f71af55b4616b3a%26Bucha%20%27isn%27t%20a%20one-off%20atrocity%27%262022-0-04T06%3A57%3A46.716Z&ns_fee=0&pinned_post_locator=urn:asset:e8c9bf51-8aad-4494-bf2d-fb4ab35cd8d8; "Казни входили в план Путина по вторжению в Украину – глава британской разведки MI6 Ричард Мур," The Insider, April 4, 2022, accessed June 19, 2023, https://theins.ru/news/249961.

Human Rights Watch described those cases in Ukraine and collected evidence to prove war crimes.[21] Forced relocation of the population to Russia was also repeatedly committed, access to drinking water, gas or food was cut off in besieged areas, and evacuation through humanitarian corridors was not allowed by opening fire on civilians trying to escape the line of fire through them.[22]

Faced with these incidents, neighboring states issued recognitions that genocide had occurred in Ukraine. The first state was Poland. On March 23, 2022, the Sejm adopted a resolution indicating that Russia had committed "war crimes, crimes against humanity and acts of genocide."[23] Similar acts have been issued by Ukraine, Latvia, Estonia and Lithuania. Furthermore, the aforementioned Genocide Watch issued a warning on the threat of genocide.[24]

The next step for the recognition of Russian actions as genocide seems to be the establishment of a Joint Investigation Team (JIT). Apart from investigators from Ukraine, Poland, Lithuania, Latvia, Estonia and Slovakia, the Office of the Prosecutor of the International Criminal Court and the US Department of Justice have joined the cooperation. Its representatives indicated in the very first days that "the massive and systemic nature of the war crimes committed in the occupied territories of Ukraine bears the hallmarks of the persecution of Ukrainians as a national group."[25]

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21 "Ukraine: Apparent War Crimes in Russia-Controlled Areas. Summary Executions, Other Grave Abuses by Russian Forces," Human Rights Watch, April 3, 2022, accessed June 19, 2023, https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas.

22 This was emphasized by the International Federation for Human Rights: "Forcible Transfer of Ukrainian Population to Russia Constitutes a War Crime," March 31, 2022, accessed June 27, 2023, https://www.fidh.org/en/region/europe-central-asia/ukraine/forcible-transfer-of-ukrainian-population-to-russia-constitutes-a-war.

23 Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 23 marca 2022 r. w sprawie popełniania zbrodni wojennych i zbrodni przeciw ludzkości oraz łamania praw człowieka przez Rosję w Ukrainie; M.P. 2022 poz. 367

24 "Genocide Watch Warning: Russian Invasion of Ukraine," February 1, 2022, accessed June 19, 2023, https://www.genocidewatch.com/single-post/genocide-emergency-update-ukraine.

25 "National Authorities of the Ukraine joint investigation team sign Memorandum of Understanding with the United States Department of Justice," European Union Agency for

The International Criminal Court also launched an investigation into the situation in Ukraine "since 21 November 2013, thereby covering all past and present allegations of war crimes, crimes against humanity or genocide committed on any part of Ukrainian territory by any person."[26] On March 4, 2022, the UN Human Rights Council established the International Commission of Inquiry on Ukraine to investigate violations of human rights and humanitarian law. The Commission has so far issued two reports in October 2022 and March 2023, which concluded that "war crimes, violations of human rights and international humanitarian law have been committed in Ukraine since 24 February 2022."[27]

6. Conclusion

Despite international alliances, international law and bilateral agreements, armed conflicts continue to take place in the world in which civilians are the main victims. Genocides, war crimes or crimes against humanity are still part of our reality and are committed before the eyes of the civilised world. The incidents in Rwanda and Ukraine demonstrate that international society first calculates its own interests and only later does it take care of human lives. Despite declarations and legal and institutional instruments, interventions either are taken too late or are not strong enough to stop the aggressor.

The genocide in Rwanda was the most dramatic in the post-Cold War era. It became a meaningful symbol of inaction on the part of international organizations and major powers. The massacre, slaughter and death of thousands of people whose lives were put on the line against political interests were happening before the eyes of the whole world. Unfortunately,

Criminal Justice Cooperation, March 4, 2023, accessed June 19, 2023, https://www.eurojust.europa.eu/news/national-authorities-ukraine-joint-investigation-team-sign-memorandum-understanding-usa.

26 "Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation," International Criminal Court, March 2, 2022, accessed June 23, 2023, https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-receipt-referrals-39-states.

27 "A/77/533: Independent International Commission of Inquiry on Ukraine – Note by the Secretary-General," United Nations, October 22, 2022, accessed June 19, 2023, https://www.ohchr.org/en/documents/reports/a77533-independent-international-commission-inquiry-ukraine-note-secretary.

it was not the last in the modern world. There is a war in Ukraine, and the Russians have committed numerous atrocities, rapes and murders of civilians that bear the hallmarks of genocide. They are based on hatred of this nation and a desire to eradicate its culture and national unity. The international community has already taken the first steps to prove the alleged acts, however, the very process is a long one, requiring time and collecting detailed evidence, which may allow the criminals to be judged in the future.

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"Inter Arma Silent Musae". Destroying Museums, Historical Buildings, and Monuments during the War in the Ukraine as War Crimes within the Meaning of International Law

Aleksandra Główczewska
M.A., Research Associate, Faculty of Law and Administration, Department of Administrative Law, Nicolas Copernicus University, correspondence address: Gagarina 11, 87–100 Toruń, Poland, e-mail: apensz@umk.pl
https://orcid.org/0000-0002-3898-8822

Dominika Zawacka-Klonowska
M.A., Research Associate, Faculty of Law and Administration, Department of Administrative Law, Nicolas Copernicus University, correspondence address: Gagarina 11, 87–100 Toruń, Poland, e-mail: d.zk@umk.pl
https://orcid.org/0000-0003-3434-0129

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Hague Convention

Abstract: The article summarizes the situation related to the armed conflict in Ukraine in the context of the destruction of monuments and cultural objects as a war crime. The considerations relate to the provisions of international and European law, as well as to the positions developed by international case law. The stands of the international organization and community alongside the bodies of the European Union have been indicated. Poland's efforts to help Ukrainian monuments are also discussed. Reference is made to the activities of the Polish Support Center for Culture in Ukraine established in Poland, within the structure of the National Heritage Institute and the Committee for Aid to Museums of Ukraine.

1. Introduction

"Inter arma silent Musae", said Cicero. Targeting and plundering cultural property during armed conflicts have been noted all over the world for centuries, from the time of the ancient wars, through the crusades and medieval conflicts, to the most recent bloody battles of the First and the Second World Wars. Particularly during the last-mentioned war, an extensive

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rescue of monuments took place. Hardly was the mentioned quote relevant when the next huge conflict started. On February 24, 2022 Russia launched a full-scale invasion of Ukraine.

The ongoing aggression of Russia against Ukraine has compelled people to face the need to rescue not only their lives and possessions, but also their heritage and identity. Rarely has any government faced such a challenge. Although it is commonly known that rescuing people is the most important task during armed conflicts, it should be considered what would happen to the cultural heritage when it was endangered by wars and terrorism. This question is much more topical and relevant in the context of the aggression of Russia against Ukraine. People connected with the art society, such as museum workers and volunteers, have been working so far on evacuating and hiding works of art and movable monuments. There is such a huge ongoing dilemma about what to do with historical buildings. It is not new that buildings such as libraries, archives, or museums are destroyed during war conflicts, either deliberately or unintentionally. It is significant to emphasize that destroying monuments and historical buildings can be perceived as a war crime, especially when they are not military objects.

Such issues were already being considered by the International Criminal Court (hereinafter: ICC or the Court),[1] e.g. in the Prosecutor v. Ah-

[1] The United Nations Rome Statute of the International Criminal Court. International Organizations [hereinafter Rome Statute or Statute], Preamble, para. 1: The Court was founded on the recognition "that all peoples are united by common bonds, their cultures pieced together in a shared heritage and concern," and "that this delicate mosaic may be shattered at any time." The Statute confers upon the Court jurisdiction over crimes against or affecting cultural heritage, complementing international law governing the protection of cultural heritage and associated human rights (Statute, Articles 8(2)(b)(ix), 8(2)(e)(iv)). See, e.g., Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977: Article 53; International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 UNTS 609, accessed July 23, 2023, https://www.refworld.org/docid/3ae6b37f40.html, Article 16; Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention ("1954 Hague Convention" as amended), Article 4; 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict ("1999 Second Protocol"), Article 15.

mad Al Faqi Al Mahdi case.[2] The Court's decision was a landmark in gaining recognition for the importance of heritage for humanity as a whole. The judgment would be a starting point for further discussion of war crimes under the rules of international law connected with cultural heritage protection.[3] Moreover, the first binding international obligations for the protection of cultural heritage were held in 1899 and 1907. The Regulations annexed to the Convention (II) with Respect to the Laws and Customs of War on Land (1899 Hague II Convention) and Convention (IV) respecting the Laws and Customs of War on Land (1907 Hague IV Convention). Owing to those documents, the comparable case occurred in 1941, in accordance with the Hague Convention of 1907.[4]

First of all, it is essential to provide a definition of the term *cultural heritage* for a better understanding of the issue of the manuscript. There are two crucial documents for this issue, signed in the Hague and in Paris respectively. The provisions of the Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution

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2 International Criminal Court, Judgement and Sentence of 27 September 2016, the Prosecutor v. Ahmad Al Faqi Al Mahdi, Case ICC-01/12–01/15. On September 27, 2016, Ahmad Al Faqi Al Mahdi was convicted by the Trial Chamber of the International Criminal Court of the crime of intentionally directing an attack against buildings dedicated to religion and historic monuments, including nine mausoleums and a mosque in Timbuktu, Mali, which were not military objectives (pursuant to Article 8(2)(e)(iv) of the Rome Statute), in June and July 2012. See: "ICC Case Information Sheet," accessed March 16, 2022, https://www.icc-cpi.int/CaseInformationSheets/al-mahdiEng.pdf; also: William Schabas, "Al Mahdi Has Been Convicted of a Crime He Did Not Commit," *Case Western Reserve Journal of International Law* 49, no. 1 (2017): 75–102, accessed March 16, 2022, https://scholarlycommons.law.case.edu/jil/vol49/iss1/7; Katherine Lessing, "Commencement of Cultural Destruction Reparations Orders in Criminal Warfare: Precedence of the ICC Al Faqi Al Mahdi Judgment," *City University of Hong Kong Law Review* 6, no. 99 (2017), http://dx.doi.org/10.2139/ssrn.3111924; Katarzyna Stanik-Filipowska, "A Crime against Cultural Heritage in the Aspect of the Intangible Value of a Monument," *Gdańskie Studia Prawnicze* 50, no. 2 (2021): 242–3, accessed June 15, 2023, https://scholar.archive.org/work/grhrk5vl4bchfn2qerie6dzuni/access/wayback/https://czasopisma.bg.ug.edu.pl/index.php/gdanskie_studia_prawnicze/article/download/6066/5311.

3 Birgitta Ringbeck, "World Heritage and Reconciliation," in *50 Years World Heritage Convention: Shared Responsibility – Conflict & Reconciliation. Heritage Studies*, eds. Marie-Theres Albert, Roland Berneckerm Claire Cave, Anca Claudia Prodan, and Matthias Ripped (Cham: Springer Nature, 2022), 21–30.

4 "Trial of Karl Lingenfelder," accessed June 15, 2023, https://www.legal-tools.org/doc/69fe7b/pdf/.

of the Convention (The Hague, 14 May 1954, hereinafter: the Hague Convention) indicated that

> the term "cultural property" shall cover, irrespective of origin or ownership:
>
> (a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books, and other objects of artistic, historical, or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;
>
> (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries, and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);
>
> (c) centres containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as "centres containing monuments."[5]

Preliminarily, "cultural heritage" is defined in the Convention Concerning the Protection of the World Cultural and Natural Heritage adopted by the General Conference at its seventeenth session (Paris, 16 November 1972, hereinafter as: the Paris Convention) as:

> – monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;
>
> – groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art, or science;

[5] Full text of the Hague Convention, accessed March 16, 2023, https://en.unesco.org/sites/default/files/1954_Convention_EN_2020.pdf.

– sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical aesthetic, ethnological or anthropological point of view.[6]

The above provisions clarify the broad scope of the concept of cultural heritage, which should be a facilitation for classifying buildings or works of man as a part of cultural heritage. Nevertheless, in the past few years it has become clearer that the international conventions relating to the preservation of the heritage are, in their current form, not efficient enough.[7] It has not been possible to enforce the norms and prove that attacks against historic buildings are war crimes, although they lead to irreparable loss of cultural and national heritage.

It is crucial to make clear in this essay that the Russians' attacks and acts against Ukrainian cultural objects are war crimes. The article is divided into five parts. In the introduction the author clarifies what a monument and the cultural heritage are and why the issue should be considered. The second part explains the term "war crime." The author indicates whether acts such as destroying monuments, and plundering and destroying museums could be classified as war crimes. The concept was explained based on the examples from the Russian-Ukrainian war. The next two parts concern the ongoing war in the Ukraine and a few cases associated with the cultural heritage destruction there, as well as the Committee for Aid to Museums of Ukraine recently established in Poland. At the end of the article there is a conclusion summarising all the considerations and providing some assumptions.

2. Destroying Monuments and Museums as a War Crime – The Position of International Communities

World heritage has become a privileged category. The intentional attacks have gained attention from the international community and tribunals. It is

6 Full text of the Paris Convention, accessed March 16, 2023, https://whc.unesco.org/archive/convention-en.pdf.

7 Gideon Koren, "Limitations in enforcement of international conventions: implications for protection of monuments and sites," in *Estrategias relativas al patrimonio cultural mundial. La salvaguarda en un mundo globalizado. Principios, practicas y perspectivas.* 13th Icomos General Assembly and Scientific Symposium. Actas (Comité Nacional Español Del Icomos, 2002), 90–3, accessed March 16, 2023, https://www.icomos.org/madrid2002/actas/90.pdf.

not only about the potential of heritage attractive for tourism and the popularity of the country, but also about the increasing awareness of the public on the subject of the preservation of monuments.[8] This is one of the reasons why communities and international organizations have adopted definitions of war crimes, classifying the destruction of heritage as one of them in order to protect monuments from the consequences of armed attacks.

First, "war crime" is defined in Article 8 of the Statute. It can be explained as a violation of the international law that acquires individual criminal responsibility under terms of the international law. A war crime must take place during an armed conflict, contrary to the crime of genocide. It must also contain the intent and knowledge of the belligerent party. There is no doubt that the Russian invaders are deliberately destroying Ukrainian monuments. According to the Ukrainian Ministry of Culture, the Russians have so far destroyed or damaged so many historical objects that it cannot be a coincidence. It should be indicated that this is a deliberate action, and, what is more, intensifying action. The premeditation of these acts may be evidenced by the least understandable destruction discovered by Ukrainian soldiers, when they liberated the Izium area. On Mount Kremenets stood massive stone figures, dated from the 9th to the 13th century, called "The Polovtsian Stone Babas." They are stone figures which represent warrior men and women and they are a part of the memorial cult of ancestors. The sculptures are placed in the resting place of the Polovts tribal chiefs. Their faces are looking east, and from this side they were fired. One of them was smashed into a fine powder. The Russians fled the city to the east and it was they who probably shot the thousand-year-old figures. The act cannot be rationally explained.[9] Similarly, the National Museum of Literature and Memory of G. S. Skovorod, which was located in the Kharkiv region, in the middle of the park and was not associated with any military objective, was brutally trampled and destroyed.

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8 Oumar Ba, "Contested Meanings: Timbuktu and the prosecution of destruction of cultural heritage as war crimes," *African Studies Review* 63, no. 4 (2020): 743–62. https://doi.org/10.1017/asr.2020.16.

9 Tetiana Fram, "Cumans Stone Women of IX–XIII Centuries Destroyed Near Izium," accessed June 15, 2023, https://gwaramedia.com/en/polovtsian-stone-women-destroyed-near-izium/.

There are a few categories in Article 8 that constitute war crimes, mostly connected with grave breaches of the Geneva Conventions of 12 August 1949.[10] War crimes can be divided into five categories: a) war crimes against persons requiring particular protection; b) war crimes against those providing humanitarian assistance and peacekeeping operations; c) war crimes against property and other rights; d) prohibited methods of warfare; and e) prohibited means of warfare.[11] Crimes against monuments can be classified as acts relating to the last three points.

It is crucial to mention that such actions of the Russian army should qualify as war crimes in accordance with Article 8 (2)(b)(ix) of the Rome Statute, not only because of the definition, but also for the elements of the crime that they include. Firstly, the perpetrator has struck. Crimes committed by the Russians on monuments have been confirmed, not only by Ukraine, but also by other states and international organizations. Secondly, one or more buildings intended for religious purposes, education, art, science, or charity, historical monuments, hospitals, or places of mass gathering of the sick and wounded, provided that they are not military facilities, were the aim of the attack. There is a list prepared by UNESCO indicating all the losses and destroyed buildings. This topic will be further discussed in the following section of the article. Then, the perpetrator deliberately chose such sites for the attack. However, it can be admitted that some of the attacks were unintentional, made by coincidence. As an example, there can be indicated the destruction of paintings by the Ukrainian artist Maria Prymachenko, which were burned as a result of an attack by Russian forces on the Ivankiv museum. Although, the missile attack was initially targeted at the TV tower in Kyiv, it can be considered that it could only have been a change of trajectory. Most of them, though, were carried out intentionally, with great premeditation, just to destroy cultural objects (e.g. the Polovtsian Stone Babas or stolen pieces of art) or to destroy buildings which were shelters for civilians (e.g. the dreadful bombing of the Mariupol drama theatre, in which several hundred people were sheltering). Obviously, the attack

10 Full text of the Conventions, accessed June 15, 2023, https://www.icrc.org/en/doc/assets/files/publications/icrc-002–0173.pdf.

11 "War Crimes," United Nations, accessed June 15, 2023, https://www.un.org/en/genocideprevention/war-crimes.shtml.

took place in the context of an international armed conflict and was related to it and the offender was aware of those circumstances.

Thirdly, the Security Council of the United Nations (UN) in Resolution 2347 from 24 March 2017 reminded the UN member states that "unlawful attacks against sites and buildings dedicated to religion, education, art, science, or charitable purposes, or historic monuments," are war crimes.[12] It also emphasizes, that illicit trafficking of cultural property may constitute a serious crime.[13] The resolution was adopted unanimously. The resolution was particularly the result of the ISIS attacks and destroying historical buildings in Syria.

Finally, it is essential to mention that the members of the European Parliament's Committee on Culture and Education have no doubts that attacks against Ukrainian monuments contain all of the mentioned elements. The European Parliament adopted the Resolution of 20 October 2022 on cultural solidarity with Ukraine and a joint emergency response mechanism for cultural recovery in Europe.[14] In this document, Parliament convicts Russia of deliberate destruction of Ukraine's cultural heritage and defines it as war crimes under the 1954 Hague Convention. Both countries, Russia and Ukraine, are signatories of the Convention. "Russia's war against Ukraine is an attempt to erase the identity and culture of a sovereign nation, including through strategic and targeted acts of destruction of cultural heritage sites," said Sabine Verheyen MEP, Chair of the European Parliament's Committee on Culture and Education.[15]

In order to prove that such acts against monuments and historical buildings are war crimes, it is crucial to provide evidence that targeting the buildings intended for religious purposes and historical monuments

12 Para. 9, full text of The Resolution: https://www.un.org/securitycouncil/s/res/2347-%282017%29, accessed June 15, 2023.

13 David Crowe, *War Crimes, Genocide, and Justice: A Global History* (New York: Palgrave Macmillan, 2014), 291.

14 Full text: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022IP0374, accessed June 15, 2023.

15 "Destruction of Cultural Heritage Is a War Crime," EPP Group, accessed June 17, 2023, https://www.eppgroup.eu/newsroom/news/destruction-of-cultural-heritage-is-a-war-crime.

was deliberate, provided that they were not military targets,[16] as they may be if they are weapons stores or military shelters.

At the same time, it is impossible not to mention the theft of works of art, which Russian soldiers commit not only for themselves, but also on commission. Some of the stolen collections from the looted museums in Mariupol, Melitopol, or Kherson are in Russian museums in Crimea.[17] The documented damage to Ukraine's infrastructure after February 24, 2022 is estimated at total USD 137.8 billion. Russia bears full responsibility for the great damage in Ukraine that has been committed due to its unjustified and unprovoked act of aggression. Moreover, according to international precedent, there is a general obligation to make full reparations for the injury caused by an internationally wrongful act.[18]

The protection of monuments has a solid basis in the international legal system. It is significant to indicate that Russia is a signatory to almost all the conventions connected with the protection of the heritage. Violation of the provisions of the Convention will result in sanctions against the conflicting party which has committed the prohibited acts. It is forbidden not only to destroy monuments, but also to detain them and take them outside the occupied territory. After the end of the occupation, according to the Hague Convention of 1957, all objects must be returned. Although the President of Russia sanctioned the looting of Ukraine's cultural heritage,

16 There is a documentary film that should be mentioned: *Erase the nation*, directed by Tomasz Grzywaczewski. In the production there were shown the deliberate destruction of Ukrainian monuments from Lviv, through Chernikhov, Ivanov, Kiev, Kharkiv, to Izium and Bohorodiche in the east of Ukraine; accessed June 17, 2023, https://www.youtube.com/watch?v=K8_uyckc6qE.

17 Hanna Arhirova, "'War Crime:' Industrial-Scale Destruction of Ukraine Culture," The Associated Press, accessed June 19, 2023, https://apnews.com/article/russia-ukraine-kyiv-travel-museums-7431f2190d917f44f76dff39b4d5df54.

18 Brooks Newmark, "Crime and Punishment? Financing Ukraine's Reconstruction with Russian State Assets," in *Designed in Brussels, Made in Ukraine. Future of EU–Ukraine Relations*, ed. Maria Alesina (Elf Study 5, 2023), 59–67, https://doi.org/10.53121/ELFTPS5; Ana Filipa Vrdoljak, "The Criminalisation of the Intentional Destruction of Cultural Heritage," accessed June 17, 2023, https://www.ohchr.org/sites/default/files/Documents/Issues/CulturalRights/DestructionHeritage/NGOS/A.P.Vrdoljak_text1.pdf; Europa Nostra, "Europa Nostra Strongly Condemns the Ongoing Deliberate Destruction of Cultural Heritage in Ukraine," May 13, 2022, accessed June 19, 2023, https://www.europanostra.org/europa-nostra-strongly-condemns-deliberate-destruction-of-cultural-heritage-in-ukraine/.

allowing its "evacuation" from the temporarily occupied territories in Ukraine, there are no negotiations connected with the methods, time, or way of evacuation. Any damage to cultural objects during the evacuation cannot be documented.[19]

Destruction of heritage should be treated as a war crime also for another reason. The right of access to monuments is an inalienable human right and part of humanitarian law. It has been so named by the UN General Assembly. Elements of the national heritage are evidence of the identity and achievements of a given nation. National heritage consists of the cultural heritage of mankind. It is the duty of every country to ensure respect and protection for such sites. This is particularly important after the tragic experiences of the Second World War, when the national heritage of all countries involved suffered terrible consequences in the form of destruction, looting, and deportation. International organizations are focusing on preventing such a scenario from happening again. Unfortunately, every subsequent armed conflict carries the same consequences for monuments. Sabine von Schorlemer, Chair of International Law, EU Law and International Relations at the Technical University of Dresden, and a former Minister of Saxony in Germany, indicates that thoughtful and regular acts against cultural heritage have spread to a significant range since the destruction of the Bamiyan Buddha statues by the Taliban in Afghanistan in March 2001.[20] Every subsequent conflict causes such destruction.

The European Parliament argues that since Russia's invasion of Ukraine on February 24, 2022 the Russian army has targeted cultural assets intentionally to erase Ukrainian culture. Therefore, international initiatives to safeguard the cultural heritage in Ukraine are numerous and focused not only on the monitoring of damages, but also on supporting the cultural sector in Ukraine by delivering protective or storage materials to cultural institutions. However, at present the aid system is not enough.

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19 Evelien Campfens et al., "Research for Cult Committee – Protecting Cultural Heritage from Armed Conflicts in Ukraine and Beyond, European Parliament," Policy Department for Structural and Cohesion Policies, Brussels 2023, accessed June 19 2023, https://www.europarl.europa.eu/RegData/etudes/STUD/2023/733120/IPOL_STU(2023)733120_EN.pdf.

20 Nicole Winchester, "Targeting Culture: The Destruction of Cultural Heritage in Conflict," House of Lords, accessed June 19, 2023, https://lordslibrary.parliament.uk/targeting-culture-the-destruction-of-cultural-heritage-in-conflict/.

3. Destroyed Cultural Property in Ukraine since May 2023

In a report published by the Ukrainian Ministry of Culture and Information Policy on November 21, 2022, eight hundred objects of cultural heritage are listed as damaged by occupants since the beginning of the war.[21]

> Collection of Scythian gold from Melitopol Local History Museum was looted. More than 2 000 unique items from museums in Mariupol were robbed. In November 2022, the Oleksiy Shovkunenko Kherson Art Museum lost nearly 15 000 artworks that accounts for 80% of the museum's collection. Another museum in Kherson, the Kherson Regional Museum, was emptied by the withdrawing Russian troops. According to preliminary estimates, around 40 museums have been looted since the beginning of the war. Yet, the damage for culture is much bigger. By way of example, nearly 12 000 documents related to Stalinist repressions against the Ukrainian people were burnt in Ukraine's Archives of the Security Service in the Chernihiv region. Through resorting to a scorched earth strategy, unique archaeological resources that provide scientific evidence of the ancient cultures were depleted or permanently destroyed. On 6 September 2022, the Mariupol City Council reported that the Russians had destroyed the "Kalmius Settlement" archaeological site and published pictures of the ruins. The ruins bring back the memories of the World War II – we are again irreparably losing a part of our European heritage and sources of knowledge about our past.[22]

The Ministry of Culture and Information Policy of Ukraine collects information on the damage to monuments on an ongoing basis, for example via the portal https://culturecrimes.mkip.gov.ua. By clicking on the appropriate link, everyone can go to the page with the losses, where not only monuments, but also objects of historical value and sacral buildings are registered. It is possible to add a photo of the destroyed object. The government of the occupied state has also created an online platform through which all crimes committed by the Russian aggressors can be reported, including crimes against heritage.[23] Furthermore, the Ukrainian Cultural

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21 Accessed May 20, 2023, https://culturecrimes.mkip.gov.ua/.

22 Katarzyna Zalasińska and Aleksandra Brodowska, "Saving Ukraine's Culture. Polish Support Center for Culture in Ukraine. Activity Report February 2022 – December (2022)," 21, accessed May 20, 2023, https://ukraina.nid.pl/wp-content/uploads/2023/03/saving-ukraines-culture-pscreport.pdf.

23 More information: accessed May 27, 2023, https://dokaz.gov.ua/.

Foundation has created an internet map of destruction, on which it places updated reports of places deliberately destroyed by the Russians.[24] Another action aimed at documenting the crimes committed is the map of destroyed sacral buildings, divided into religions, created by the State Service of Ukraine for Ethnic Policy and Religious Freedom.

Irrespective of the activities of the Ukrainian side, research on damage and losses in cultural heritage is conducted by UNESCO.[25] On May 17, 2023, a report appeared on the UNESCO website containing a list of verified damage done by Russian troops. Since 24 February 2022, one hundred and ten sacral sites, twenty-two museums, ninety-two buildings of historical and/or artistic significance, nineteen monuments, twelve libraries, and one archive have been damaged. "UNESCO is also developing, with its partner organizations, a mechanism for independent coordinated assessment of data in Ukraine, including satellite image analysis, in line with the provisions of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict."[26] UNESCO has verified losses in thirteen regions. Most of them, as many as seventy-one, were recorded in the Donetsk region. One of the most affected cities is Mariupol. Ukrainian President Volodymyr Zelensky said in an interview that 95–98 percent of all Mariupol buildings, including temples, museums, historic houses, and streets, as well as cultural and sports centres, had been destroyed. The list of destroyed cultural property is long, for example: the Church of St. Nicholas of Myrlikiysky Wonderworker, Chapel of the Holy Martyr Tatiana, Church of Christ the Saviour (Tserkva Khrysta Spasytelya), The Drama Theatre in Mariupol, Our Lady of Kazan Orthodox Cathedral in Marinka, Monument to Metropolitan Ignatium of Mariupol in Mariupol, St. Archangel Michael Church in Mariupol, Church of the Icon of the Mother of God "Joy of All Mourners", Palace of Culture "Molodizhny" in Mariupol (built between 1887–1910), Volodymyrska Baptismal Church, Mariinsky Women's

24 More information: accessed May 27, 2023, https://uaculture.org/culture-loss/

25 United Nations Educational, Scientific and Cultural Organization.

26 "Damaged Cultural Sites in Ukraine Verified by UNESCO," UNESCO, accessed May 20, 2023, https://www.unesco.org/en/articles/damaged-cultural-sites-ukraine-verified-unesco?hub=66116.

Gymnasium (built in 1894) and others.[27] To date, no UNESCO World Heritage site appears to have been damaged.

On March 23, 2023, the World Bank posted a report on its website titled "Updated Ukraine Recovery and Reconstruction Needs Assessment" which shows that:

> A new joint assessment released today by the Government of Ukraine, the World Bank Group, the European Commission, and the United Nations, estimates that the cost of reconstruction and recovery in Ukraine has grown to US $411 billion (equivalent of €383 billion). The estimate covers the one-year period from Russia's invasion of Ukraine on 24 February 2022, to the first anniversary of the war on 24 February 2023. The cost of reconstruction and recovery is expected to stretch over 10 years and combines both needs for public and private funds.[28]

Unfortunately, the war is still going on, and will result in further destruction, entailing even greater financial needs related to the reconstruction of Ukraine.

4. The Committee for Aid to Museums of Ukraine

In order to protect the national heritage of Ukraine, collections that are part of the culture of Ukraine and the whole world, Polish cultural institutions have taken a step to create a committee that will support Ukrainian museums in protecting and securing museum exhibits. On March 3, 2022, the Warsaw Rising Museum's website published an announcement about the establishment of the Committee for Aid to of Museums of Ukraine.[29] Polish cultural institutions have decided to join forces "to prevent a disaster and support colleagues from Ukraine."[30] It included nearly fifty representatives of Polish cultural institutions. As the creators of the Committee point out:

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27 Ibid.

28 "Updated Ukraine Recovery and Reconstruction Needs Assessment," World Bank Group, accessed May 20, 2023, https://www.worldbank.org/en/news/press-release/2023/03/23/updated-ukraine-recovery-and-reconstruction-needs-assessment.

29 Hereinafter: Committee.

30 "Komitet Pomocy Muzeom Ukrainy," Muzeum Powstania Warszawskiego, accessed May 19, 2023, https://www.1944.pl/artykul/komitet-pomocy-muzeom-ukrainy,5251.html.

> Right now, Ukrainian museums are confronted with extreme challenges. What can be done to protect and save collections that reflect the heritage of past generations? In Poland we understand it all well enough. The acts of looting and destroying our cultural property were unprecedented during WWII. The finale of pillage and annihilation of Warsaw took place during the Warsaw Rising and right after its end. No other nation and state should ever have to face such loss again. Today, unfortunately, such a threat hangs over Ukraine.[31]

Pawel Ukielski, Deputy Director of the Warsaw Rising Museum, emphasizes:

> It is no coincidence that the Committee was established in Poland and that it was the Poles who were the first to think about this aspect of the war, which is the safeguarding of cultural property and heritage. At the Warsaw Rising Museum, just a few days after the outbreak of war, we realized that the experience of what happened to Polish cultural goods and national heritage during the occupation and the Warsaw Uprising could be useful in supporting Ukrainians for the preservation of their cultural heritage[32].

The Office of the Committee is open at the Warsaw Rising Museum at 79 Grzybowska Street in Warsaw.

The Committee's primary tasks include:

- to support all the museums and cultural institutions in Ukraine to protect their collections, most valuable items and the monuments of the Ukrainian culture,
- to provide materials needed to protect and hide the collections,
- to provide support when it comes to document, digitalize and take stock of their collections,
- to share experiences with Ukrainian partners,
- to document the acts of looting and destruction of Ukrainian cultural property.[33]

Polish museum professionals established contact with their Ukrainian counterparts just days after the Russian aggression began. The Committee

31 Ibid.
32 Ibid.
33 Ibid.

responds on an ongoing basis to the needs of Ukrainian museums, both the largest ones and those local ones. In early March 2022, the Committee organized the collection and purchase of materials for packing, protecting, and preserving collections. Local coordinators who are committed to helping distribute these funds to cultural institutions that have expressed a need for support.[34]

At the same time, the Paweł Włodkowic Institute has launched a fundraising campaign on behalf of the Committee. The money raised is being used by the Institute to purchase cardboard boxes, security film, tape, and other packaging materials.[35] To date, more than one hundred and forty thousand zlotys have been donated, with the money primarily used to purchase computer equipment, as well as to rebuild the Chernigov Regional Museum.[36] A communication of December 29, 2022, posted on the website of the Warsaw Rising Museum, indicated that since the inception of the Committee for Aid to Museums of Ukraine, eighty tons of specialized accessories for packing collections, dehumidifiers, digitizing equipment, plastic and cardboard packaging, conservation tools and other equipment have been donated to help secure exhibits. A total of 155 pallets of needed aid went to Ukraine. More than ninety museums from all over the country were assisted, including the National Museum in Kiev, the Natural History Museum in Lviv, the National Historical and Cultural Reserve "Hetman's Capital" in Baturyn, the Museum of Folk Art of Hutsul and Pokutia, the National Historical Museum in Dnipropetrovsk, and the the National History Museum in Vinnitsa.[37]

In supporting Ukrainian cultural institutions, the Committee for Aid to Museums of Ukraine cooperates with various institutions, such as the European Parliament, the International Council for the Preservation of Monuments and Historic Sites (ICOMOS), the Metropolitan Museum of Modern Art, Stiftung für Kunst, Kultur und Geschichte, the National

34 Ibid.

35 Ibid.

36 "Podsumowanie prac Komitetu Pomocy Muzeom Ukrainy w 2022 r.," Muzeum Powstania Warszawskiego, accessed May 19, 2023, https://www.1944.pl/artykul/podsumowanie-prac-komitetu-pomocy-muzeom-ukrainy,5349.html.

37 Ibid.

Library of Estonia, the National Library of Latvia, the University Museum of Bergen and Blue Shield Danmark.[38]

On the Ukrainian side, the Centre for the Salvage of National Heritage in Lviv was established, which, working with the Committee, is responsible for distributing the collected aid to institutions that have registered to receive it.

The Committee is also active in social media, especially on Facebook and Twitter (Platform X). Posts are published in three languages, Polish, Ukrainian, and English, which relate not only to sharing information about the donated aid, but above all promote Ukrainian culture, inform about the activities of Ukrainian artists and creators, inform about important dates in Ukraine's cultural calendar, such as the day celebrated on May 19, "Wyszywanka Day," the traditional costume of Ukrainian citizens.

The Committee for Aid to Museums of Ukraine is not the only entity dedicated to providing assistance to endangered cultural institutions in Ukraine. Another noteworthy one is the Polish Support Center for Culture in Ukraine, established by the Ministry of Culture and National Heritage in Poland at the National Heritage Institute, whose task is to coordinate all initiatives taken to save Ukraine's cultural resources.[39] It is a governmental entity coordinating assistance to the cultural sector in Ukraine, including conducting information and educational activities about Ukrainian cultural heritage, its threats and losses to date. The Polish Support Center for Culture in Ukraine consists of staff responsible for coordinating aid activities for cultural assets located on Ukrainian territory. The Institute supports such cultural centres as museums, libraries, archives, cultural reserves, and religious sites. The Institute's website published in English the report "Saving Ukraine's culture. Polish Support Center for Culture in Ukraine. Activity report February 2022 – December 2022," summarizing aid activities, with the additional goal of strengthening awareness of the threat of deliberate destruction of Ukrainian culture by Russian troops.[40]

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38 Ibid.

39 "Centrum Pomocy dla Kultury na Ukrainie," Narodowy Instytut Dziedzictwa, accessed May 19, 2023, https://nid.pl/centrum-ukraina/.

40 For more information on aid and the damage done as a result of Russian aggression against Ukraine, see the report "Saving Ukraine's culture. Polish Support Center for Culture in

"Heritage is the memory of generations"[41] – all the measures taken are aimed at protecting and safeguarding the cultural assets located on Ukrainian territory, which are the legacy of Ukrainian and European culture, as well as saving from oblivion the enormity of the losses and suffering inflicted on the Ukrainian people by the Russian invaders.

It is worth mentioning that on the initiative of the Polish foundation Gremi Personal the Museum of War Trophies was established in Gdańsk. Tomasz Bogdziewicz, the general director of Gremi Personal and a member of the board of the Gremi Personal Foundation, indicated in an interview that the idea of opening such a museum arose spontaneously:

> The Foundation has been helping Ukrainian soldiers since the first day of the war. We focus on permanent assistance, for which we have spent over PLN 4 million so far. We buy, among other things, night vision goggles, drones, but also SUVs. Over time, we have begun to receive return gifts from Ukrainian soldiers in the form of war trophies. One of the first was part of a K-52 helicopter - a supposedly indestructible flying tank. We didn't know what to do with it at first, but more trophies started coming in and there are a lot of them.[42]

Among the exhibits are uniforms, helmets, rocket launchers, downed drones, as well as military food kits. All exhibits are put up for auction, the proceeds of which are used to support the Ukrainian army. At the moment, the War Trophies Museum houses about a hundred exhibits from the war front. One of the most spectacular is a part of K-52 helicopter, a part of a burst Iskander missile, as well as a parachute from which cluster munitions were dropped, which are prohibited for use by international organizations. This is another initiative that allows for the documentation of the ongoing war in Ukraine.

5. Conclusion

War – this is a word that makes everyone shudder. Every war brings heavy losses. It disturbs peace, and takes away hope and a sense of security. Every

Ukraine. Activity report February 2022 – December 2022," accessed May 20, 2023, https://ukraina.nid.pl/wp-content/uploads/2023/03/saving-ukraines-culture-pscreport.pdf.

41 Author unknown.

42 Aleksandra Nietopiel, "Trofea z wojny rosyjsko-ukraińskiej do kupienia w mini-muzeum," June 6, 2023, accessed June 28, 2023, https://www.trojmiasto.pl/wiadomosci/Muzeum-Trofeow-Wojennych-otwarto-w-Gdansku-n178866.html.

war destroys everything that generations of people have worked for. The effects of the war are felt at all levels: economic, moral, as well as those that build culture and national heritage. Armed conflicts threaten human life and health, but not only. The silent victim of war is cultural heritage that is difficult to protect against missile attacks, bombings, or artillery shells. Almost every day Russian missiles attack Ukrainian territory. Every day there are battles on the front, which cause huge losses. The targets of Russian aggression are not only Ukrainian strategic military facilities, but above all civilian facilities, such as houses, residential buildings, educational institutes, universities, as well as memorial sites and cultural institutions.

Historical, religious and cultural objects located in the territory of Ukraine, are an integral part of the World and European heritage. Before the Russian aggression, Ukraine had carried out a lot of activities aimed at organising the protection of its national, cultural heritage. The scale of the destruction of Ukrainian monuments shows how drastic and terrible the crimes committed by the Russians in the ongoing war are. The destruction of monuments is a war crime, following the example of the Russian-Ukrainian war. Violation of the provisions of the Hague Convention, the Geneva Conventions, and other provisions of international law entails the responsibility of the invader and should be stigmatized by the international community. UNESCO, realizing the scale of the destruction of Ukrainian cultural objects, has implemented a strategy of reconstruction of the heritage of Ukraine. The activities consist primarily of ongoing financial support, material support, and training of staff who are supposed to take care of the monuments. These activities are carried out in cooperation with other organizations such as ICCROM, ALIPH, SCRI[43].

It should be emphasized that just as the crimes committed against monuments in Syria were considered war crimes, the actions of the Russian army should also be categorically considered war crimes within the meaning of international law. The violation of the provisions of the Convention, to which Russia is also the party, must be condemned and it must be hoped that the international courts and the international community will take action against the invaders, starting with a trial before the ICC.

[43] Campfens et al., "Research for Cult Committee," accessed June 19, 2023, https://www.europarl.europa.eu/RegData/etudes/STUD/2023/733120/IPOL_STU(2023)733120_EN.pdf.

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