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# Unveiling the necessity for a new international criminal court (ICC). A personal perspective amidst 21st century international law crimes in Ukraine linked to Russian Federation aggression

O zasadności powołania nowego MTK. Zarys stanowiska własnego na tle zbrodni prawa międzynarodowego popełnionych na terytorium Ukrainy w XXI w. w związku z agresją Federacji Rosyjskiej

О целесообразности создания нового Международного уголовного суда (МУС). Изложение собственной позиции на фоне преступлений международного права, совершенных на территории Украины в XXI веке в связи с агрессией Российской Федерации

Щодо доцільності створення нового МКС. Зазначення власної позиції на тлі злочинів міжнародного права, скоєних на території України у 21 столітті у зв'язку з агресією Російської Федерації

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**Summary:** On 24 February 2022, troops of the Russian Federation crossed the borders of Ukraine, a sovereign and independent European country. The war that followed the coronavirus pandemic shook the foundations of the entire world, which suddenly ceased to exist in the way modern societies had known it by then. Russian aggression brought not only full-scale war, but also atrocities unknown since 1945 involving mass crimes under international law, including the crime of genocide – or at least a reasonable suspicion of its commitment. The spectre of a global conflict hung over the world again and the civilised part of it was faced with the challenge to account for the immeasurable harm and misery caused by officials of the Russian Federation and its allied forces. The response to the crimes committed in Ukraine was the issuing by the International Criminal Court in The Hague of an arrest warrant against those indisputably responsible for them. The Court took decisive action, but it is limited by the legal framework established for its competence. That framework; however, appears to be insufficient to prosecute those responsible for the war in Europe. For that reason, it is necessary to establish an international criminal court to try the crimes under international law committed in Ukraine, which would have the power to prosecute the crimes inspired by the Kremlin and the representatives of Vladimir Putin's regime more effectively. It is those crimes and the need to eradicate and counteract them more efficiently that this study is devoted to. Therefore, the subject of the research is the analysis of the current state of international criminal justice to determine its effectiveness and usefulness for judging the crimes committed in Ukraine and

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to present basic concepts, including the concept of genocide, as preliminary considerations. The purpose of the article is to demonstrate the need to establish a new criminal court. To achieve the research goal, the historical-legal method with elements of the historical-philosophical method, the method of logical and conceptual analysis of legal institutions (including functional exploration), the axiological method (including teleological exploration) and the systemic method were used. Due to the nature of the work, the dogmatic (formal-legal) method was applied to a limited extent, but sufficiently enough to achieve the research goals.

**Key words:** war, Russia, Ukraine, crime under international law, genocide, international criminal court/ICC

**Streszczenie:** W dniu 24 lutego 2022 r. wojska Federacji Rosyjskiej przekroczyły granice Ukrainy, suwerennego i samodzielnego państwa europejskiego. Wojna, która przyszła po pandemii COVID-19, wstrząsnęła podwalinami całego świata, który nagle przestał istnieć w takim wymiarze, w jakim współczesne społeczeństwa znały go wcześniej. Agresja rosyjska przyniosła nie tylko pełnoskalową wojnę, lecz także nieznane od 1945 r. okrucieństwa, obejmujące masowo popełniane zbrodnie prawa międzynarodowego, w tym zbrodnię ludobójstwa, a w każdym razie – uzasadnione podejrzenie ich popełnienia. Nad światem znów zawisło widmo globalnego konfliktu, a przed cywilizowaną jego częścią stanęło wyzwanie rozliczenia bezmiaru krzywd i nieszczęść wyrządzonych przez funkcjonariuszy Federacji Rosyjskiej i sił z nimi sprzymierzonych. Odpowiedzią na zbrodnie popełniane w Ukrainie stało się wydanie przez Międzynarodowy Trybunał Karny w Hadze nakazu aresztowania osób bezsprzecznie za nie odpowiedzialnych. Trybunał ten podjął stanowcze działania, są one jednak ograniczone prawnymi ramami wyznaczonymi dla jego kompetencji. Niemniej ramy te zdają się niewystarczające dla ścigania winnych pożogi wojennej w Europie. Z tego powodu konieczne jest powołanie międzynarodowego trybunału karnego dla osądzenia zbrodni prawa międzynarodowego popełnionych w Ukrainie, który zostałby wyposażony w uprawnienia służące skuteczniejszemu ściganiu zbrodni inspirowanych przez Kreml i zajmujących go przedstawicieli reżimu Władimira Putina. To właśnie tym zbrodniom oraz potrzebom efektywniejszego ich zwalczania i przeciwdziałania poświęcony jest tekst niniejszy. Przedmiotem badań jest zatem przeprowadzenie analizy aktualnego stanu międzynarodowego sądownictwa w sprawach karnych, ustalenia ich skuteczności i przydatności dla osądzenia zbrodni popełnionych w Ukrainie oraz przedstawienie podstawowych pojęć, w tym pojęcia ludobójstwa, tytułem rozważań wstępnych. Celem artykułu jest wykazanie konieczności powołania nowego trybunału karnego. W studium zastosowano metodę historycznoprawną z elementami metody historyczno-filozoficznej, metodę analizy logicznej i pojęciowej instytucji prawnych (z uwzględnieniem eksplanacji funkcjonalnej), metodę aksjologiczną (z uwzględnieniem eksplanacji teleologicznej) oraz metodę systemową. Ze względu na charakter pracy metoda dogmatyczna (formalno-prawna) wykorzystana została w ograniczonym, lecz wystarczającym dla osiągnięcia celów badawczych zakresie.

**Słowa kluczowe:** wojna, Rosja, Ukraina, zbrodnia prawa międzynarodowego, ludobójstwo, międzynarodowy trybunał karny

**Резюме:** 24 февраля 2022 года войска Российской Федерации пересекли границы Украины, суверенного и независимого европейского государства. Война, последовавшая за пандемией COVID-19, потрясла основы всего мира, который внезапно перестал существовать в том виде, в каком его знали современные общества. Российская агрессия принесла не только полномасштабную войну, но и невиданные с 1945 года жестокие преступления, влекущие за собой массовые преступления по международному праву, в том числе преступление геноцида, или, во всяком случае, обоснованные подозрения в их совершении. Над миром вновь нависла угроза глобального конфликта, и перед цивилизованными его частям встал вызов привлечения к ответственности за неизмеримый вред и страдания, причиненные должностными лицами Российской Федерации и союзных ей сил. Ответом на преступления, совершенные в Украине, стала выдача Международным уголовным судом в Гааге ордера на арест тех, кто без сомнений несет за них ответственность. Этот суд предпринял решительные действия, но они ограничены правовыми рамками, установленными для его компетенции. Однако этих рамок, как представляется, недостаточно для привлечения к ответственности лиц, виновных в развязывании войны в Европе. Поэтому для рассмотрения преступлений по международному праву, совершенных в Украине, необходимо создать международный уголовный суд, который был бы наделен полномочиями для более эффективного преследования преступлений, инспирированных Кремлем и занимающими его представителями режима Владимира Путина. Именно этим преступлениям и необходимости более эффективного противодействия им и борьбы с ними посвящен настоящий текст. Таким образом, объектом исследования является анализ современного

состояния международного уголовного правосудия, установление его эффективности и полезности для осуждения преступлений, совершенных в Украине, а также представление основных понятий, включая понятие геноцида – в качестве вступительных соображений. Цель статьи - показать необходимость создания нового уголовного суда. В исследовании использован историко-правовой метод с элементами историко-философского метода, а также метод логико-смыслового анализа правовых институтов (включая функциональное толкование), аксиологический метод (включая телеологическое толкование) и системный метод. В силу характера работы догматический (формально-юридический) метод использовался в ограниченном, но достаточном для достижения целей исследования объеме.

**Ключевые слова:** война, Россия, Украина, преступление международного права, геноцид, международный уголовный суд

**Резюме:** 24 лютого 2022 року війська Російської Федерації перетнули кордони України, суверенної та незалежної європейської держави. Війна, що послідувала за пандемією COVID-19, похитнула основи всього світу, який раптово перестав існувати в тому вигляді, в якому сучасні суспільства знали його раніше. Російська агресія принесла не лише повномасштабну війну, але й небачені з 1945 року звірства, що включають масові злочини міжнародного права, у тому числі злочин геноциду, або, в усякому разі, обґрунтовану підозру в їх скоєнні. Над світом знову нависла примара глобального конфлікту, а перед цивілізованою частиною світу постало завдання відповісти за незмірну шкоду і страждання, заподіяні посадовими особами Російської Федерації та союзними з ними силами. Реакцією на злочини, скоєні в Україні, стала видача Міжнародним кримінальним судом у Гаазі ордеру на арешт осіб, які несуть за них беззаперечну відповідальність. Суд вдався до рішучих дій, але вони обмежені правовими рамками, встановленими для його компетенції. Однак ці рамки не видаються достатніми для притягнення до відповідальності винних у розпалюванні війни в Європі. З цієї причини необхідно створити міжнародний кримінальний суд для розгляду злочинів за міжнародним правом, скоєних в Україні, який був би наділений повноваженнями для більш ефективного переслідування злочинів, інспірованих Кремлем і представниками режиму Володимира Путіна, що окупували її. Саме цим злочинам і необхідності більш ефективної боротьби та протидії їм присвячено цей текст. Об'єктом дослідження є, таким чином, аналіз сучасного стану міжнародного кримінального правосуддя, встановлення його ефективності та можливості засудження злочинів, скоєних в Україні, а також попередній розгляд основних визначень, зокрема геноциду. Мета статті – продемонструвати необхідність створення нового кримінального суду. У дослідженні використано історико-правовий метод з елементами історико-філософського методу, метод логіко-концептуального аналізу правових інститутів (у тому числі функціональний), аксіологічний метод (у тому числі телеологічний) та системний метод. Догматичний (формально-юридичний) метод використовувався обмежено, але в достатній мірі для досягнення поставлених завдань дослідження.

**Ключові слова:** війна, Росія, Україна, злочин міжнародного права, геноцид, міжнародний кримінальний суд

## Introduction

In a scientific text,[1] its lexical layer and among the methodological instruments, there is no place for affective language or any exalted expositions. Without pre-

[1] The article reports strictly academic ambitions. However, it adopts a general perspective, based on the outline of the author's own position on the establishment of a new ICC, closer to the philosophy of law than considerations from the purely dogmatic sphere. Such a deliberate and intentional approach to the topic has determined the choice of research methods, among which the formal-dogmatic method is used – only to a limited extent. The purpose of this text is not an exhaustive analysis of legal provisions but a certain general perspective concerning a new ICC, which it was intended to outline.

tentiousness; however, it is fair to say that the world definitely changed in March 2020.[2] The changes are neither temporary nor superficial, but permanent and fundamental. They have influenced almost all areas of life: from the subjectively perceived comfort of the societies of the West to objective geopolitical changes and the reorientation of the entire system of European security architecture. The changes follow the coronavirus pandemic and the war in the eastern part of Europe. They have affected all layers of society, regardless – to give just a few examples – of their wealth level, education, age or sexual orientation.

## 1. The war between the Russian Federation and Ukraine

It is assumed that the conflict between the Russian Federation (Russia) and Ukraine began in 2013, and that it grew against the background of Ukraine's accession aspirations to the European Union. In reality; however, Russia has always been in open or hidden conflict with Ukraine, or at least since its western borders came into its range after the Pereiaslav Agreement in 1654. Russia, regardless of its official name, system or reigning ruler (government), has never recognised the Ruthenian (Kyiv) lands as politically or territorially independent. The armed conflict, which began with Russian aggression on 24 February 2022, was only the culmination of Russia's centuries-old protective policy towards Ukraine. The conflict became the first full-scale war after 1945, which (indirectly) involved almost all European states. There is a well-founded suspicion that during the conflict, officials, or at least people acting under the inspiration of the Russian Federation, committed the crime of genocide.[3] Such an allegation; however, is not completely obvious to everyone in the normative layer. The conclusion that the acts committed by the Russian Federation

2 The symbolic end of prosperity and security in Poland in connection with the coronavirus epidemic was first marked by the Regulation of the Minister of Health of 13 March 2020 on the declaration of an epidemic threat in the territory of the Republic of Poland, consolidated text: Journal of Laws [Dziennik Ustaw] of 2020 item 433, and then, the Regulation of the Minister of Health of 20 March 2020 on the declaration of an epidemic state in the territory of the Republic of Poland, consolidated text: Journal of Laws of 2022 item 340.

3 This is also the main thesis of the article, from which arguments are derived in favour of the legitimacy (need) of establishing a new ICC.

constitute the crime of genocide is not a clear-cut issue, due to the interpretative ambiguity of basic concepts. Therefore, it is appropriate to begin with them in the remainder of the text and to return to the main thesis of the article later on.

## 2. The concept of 'genocide' as a crime under international law

The concept of genocide was first introduced into the lexicon by a Polish jurist – Rafał Lemkin. Lemkin developed the term and its meaning based on the research and analysis of the Axis occupation forces, focusing mainly on German crimes committed in Europe during Second World War.[4] The concept of genocide was, and still remains, an ambiguous and vague term, to the scope of which there is no universal agreement. In such a setting, it is not surprising that, at the level of international law, the concept and meaning of genocide give rise to doctrinal disputes, especially when it comes to the qualification to that category of the war crimes in question. Thus, at the normative level, there is no agreement as to what exactly genocide is and what acts should be treated as meeting its characteristics. This assumption is not undermined by the adoption by the UN of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, where genocide is defined as a crime against humanity that consists in the planned and deliberate destruction of all or parts of national, ethnic, racial or religious communities, especially since the practice of applying that definition in subsumptive processes seems to be inconsistent. According to the provisions of the Convention, genocide includes acts such as: the attempt to kill members of a national group, causing serious bodily or mental harm to members of a national group, the deliberate introduction of living conditions designed to physically destroy members of a national group – in whole or in part, the use of measures designed to prevent a nation from reproducing, the forced transfer of children from one national group to another.[5]

At an intuitive level, genocide is associated with the destruction, or at least an attempt to destroy the existential foundations of a nation. In fact; however, it is a broader concept, since it may mean not only the destruction of a nation or an ethnic group by mass murder but also organised actions with the purpose of

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4 See: R. Lemkin, *Axis Rule in Occupied Europe. Laws of Occupation, Analysis of Government, Proposals for Redress*, New York 1944, pp. 79–95.

5 See: Convention on the Prevention and Punishment of the Crime of Genocide adopted by the General Assembly of the United Nations on 9 December 1948, ratified under the Act of 18 July 1950, consolidated text: Journal of Laws of 1952 no. 2, item 9.

destroying the foundations of life of a given nation or ethnic group combined with the annihilation of such a group.[6] In turn, there is no dispute that genocide does not refer to political groups. Similarly, it does not refer to linguistic groups, for a language cannot be annihilated in a public space.[7]

It is assumed that genocide can be committed by a state and by non-state groups. Genocide is always justified in some way as its purpose is to gain or maintain power, an area (territory), or it is committed to obtain other benefits, most often political or economic. In qualitative and quantitative terms (in terms of victims), the ideological factor seems to be decisive, as was the case during the Holocaust. Many scientific theories have been formulated to explain the phenomenon of genocide – its aetiology, justification and effects. Among the numerous concepts, it is usually indicated that the basis of genocide is an ethnic, political, territorial, economic, religious and, as mentioned above, ideological conflict. In terms of the aetiology of genocide, research also involves attempts to identify specific factors and events influencing the formation of genocidal ideology and the course of genocide, including the role of political leaders, propaganda and ideology, social culture, coincidence with armed conflict or the importance of the international community and international interventions as factors preventing genocide.[8]

## 3. The concept of 'genocide" in the Polish Penal Code of 1997

In the introduction to this article, it was mentioned that this is not a text dealing with classic issues of the so-called hard dogmatics of criminal law or even dogmatics as such. From the methodological point of view; however, it would not be appropriate to completely omit the analysis of the definition of the crime of genocide found in the Polish Criminal Act in force, since it provides for a type of prohibited act relevant to the topic under discussion and the basic premises of the article.

The Polish Penal Code of 1997 defines the crime of genocide in Article 118. In retrospect, it is apparent that the provision had no equivalent in the earlier

6 More in: A. Matulewska, D.J. Gwiazdowicz, *In Quest of Genocide Understanding: Multiple Faces of Genocide*, International Journal for the Semiotics of Law 2022, vol. 35, pp. 1425–1443.

7 More in: R. Blum, G.H. Stanton, S. Sagi, E.D. Richter, *"Ethnic Cleansing" Bleaches the Atrocities of Genocide*, European Journal of Public Health 2007, vol. 18, no. 2, pp. 204–209. The mere attempt to annihilate a language can at most be regarded as a kind of cultural genocide, but that category escapes even the broadest framework of genocide understood in strictly juridical terms.

8 Cf. A. Matulewska, D.J. Gwiazdowicz, *In Quest of Genocide*…, pp. 7 et seq.

codifications of Polish criminal law. However, Poland's obligation to prosecute genocide crimes results from the provisions of the aforementioned United Nations Convention of 9 December 1948 on the prevention and punishment of the crime of genocide. According to Article I, "The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish."

The individual object of protection, designated by the provision of Article 118 of the Penal Code, is the life and health of people during hostilities and in occupied or seized areas, as well as in other territories, provided that those people enjoy international protection. In turn, the generic object of protection remains an ethnic, national, racial, political or ideological group.[9]

The subject of genocide defined in Article 118 of the Penal Code, according to its elements, consists in killing or causing serious bodily harm to persons who belong to a specific group described in that provision. From the point of view of the criterion of effect, it is a material crime, and from the point of view of the form of the act – crime by action. The recognition of the set of elements makes genocide an attempted crime, punishable according to the rules set out in Article 14 and 15 of the Penal Code. The description of the subjective side of genocide indicates that it can only be committed with direct and specific intent, and its perpetrator may be anyone who exterminates a specific category of people and is capable of bearing criminal liability under general principles. The subject of the crime of genocide may be, in particular, its organiser and leader, but also a military commander executing an order or a commander of the armed forces in general who acts on own initiative or only follows an order. Finally, the perpetrator of the crime of genocide may be the head of a state running the extermination programme, who takes the decisions that constitute the impetus for extermination.[10] In that context, it seems obvious that, first and foremost, specific people should be held criminally responsible for all crimes committed in Ukraine – from a private soldier, through their commander, to the leader of the aggressor state.

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9 See: P. Hofmański, *Rozdział XVI. Przestępstwa przeciwko pokojowi, ludzkości oraz przestępstwa wojenne*, in: *Kodeks karny. Komentarz*, ed. M. Filar, Warszawa 2016, p. 852.

10 T. Bojarski, *Przestępstwa przeciwko pokojowi, ludzkości oraz przestępstwo wojenne*, in: *Kodeks karny. Komentarz*, ed. T. Bojarski, Warszawa 2016, p. 334. See also: M. Budyn-Kulik, *Rozdział XVI. Przestępstwa przeciwko pokojowi, ludzkości oraz przestępstwa wojenne*, in: *Kodeks karny. Komentarz*, ed. M. Mozgawa, Warszawa 2014, pp. 325–327. Cf. M. Szewczyk, *Rozdział XVI. Przestępstwa przeciwko pokojowi, ludzkości oraz przestępstwa wojenne*, in: *Kodeks karny. Część szczególna*, vol. 2. *Komentarz do art. 212–277d*, ed. A. Zoll, Warszawa 2008, pp. 21–25. See more: D. Dróżdż, *Rozdział XVI. Przestępstwa przeciwko pokojowi, ludzkości oraz przestępstwa wojenne*, in: *Kodeks karny. Część szczególna*, vol. 1. *Komentarz do art. 117–221*, eds. M. Królikowski, R. Zawłocki, Warszawa 2013, pp. 9–18.

In the literature on the subject, it is indicated that in Article 118 of the Penal Code the legislator provided for two forms of genocide, with its scope being broader than in the conventional definition. Such a conclusion already follows from a cursory comparison of Article 118 § 1 and 2 of the Penal Code with Article II of the Convention.[11] The definition of genocide can also be found in Article 6 of the ICC Statute. In its basic framework, it is consistent with the primary criminalisation of genocide as defined in Article 118 of the Penal Code, the formulation of which is derived from the entire body of international law. With reference to the Convention provisions discussed above, Article 6 of the ICC Statute defines genocide as an act committed with the intent to destroy, in whole or part, a national, ethnic, racial or religious group, e.g. the murder of members of a group; causing serious bodily or mental harm to members of a group; the deliberate introduction of living conditions designed to physically destroy members of a group, in whole or part; the use of measures designed to prevent a group from reproducing; the forced transfer of children from one group to another.[12]

Given the principles of application of the Polish Criminal Act in terms of time, place and persons, it could become an independent basis for prosecuting crimes committed in Ukraine. For political reasons; however, it should be assumed, or rather stated unambiguously, that it is not going to happen.[13]

## 4. Is genocide one of the crimes under international law committed on the territory of Ukraine in the 21st century in connection with the aggression of the Russian Federation? An attempt to give a categorical answer

It is beyond the scope of this text to analyse in detail the essence and normative meaning of genocide. However, there is no doubt that any discourse on that topic must begin with a reference to Lemkin and often, despite the passage of years, may end at that point. This article, although not without possible reservations, accepts the validity of Lemkin's proposal assuming that its general framework can still be maintained as correct. In that view, genocide is a crime against humanity that consists in the planned and deliberate destruction of national, ethnic, racial or religious

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[11] Cf. K. Wierczyńska, *Konwencja w sprawie zapobiegania i karania zbrodni ludobójstwa. Komentarz*, 2008 [LEX database], Commentary on Article II.

[12] See: T. Hofmański, *Rozdział XVI*…, pp. 853 et seq.

[13] *Sit venia verbo*, which only emphasises the need for the establishment of a new ICC.

communities, in whole or in part.[14] Moreover, the definition of genocide developed by the UN remains valid, as does (in the legal sense) the definition contained in the Polish Criminal Act, as well as the principles of the prosecution of genocide. Still, it was necessary to perform the dogmatic analyses as they were important for the verification of the main research thesis, which, in a way, determines the postulated need of the establishment of a new ICC, and therefore justifies the sense of the entire argument presented here.

Having presented the dogmatic analyses of the definition of genocide, it is necessary to relativise them to the possible subsumptions of the factual circumstances found in war-torn Ukraine. The first step is to remind what was stated at the beginning of this article, i.e. that there is a reasonable suspicion that the Russian Federation (or at least persons acting on its inspiration) committed the crime of genocide during the full-scale aggression on the territory of Ukraine, pointing out at the same time that such a qualification in the normative layer is not completely obvious to everyone. However, it must be admitted that the restraint in the legal assessment of the acts committed by the Russians (and their allies) results rather from the caution derived from the procedural and constitutional principle of the presumption of innocence (see Article 5 Code of Criminal Procedure and Article 42 of the Constitution of the Republic of Poland) than from justified conclusions based on the provisions and definitions referred to above. Indeed, in the light of the provisions and definitions presented here, even if their dogmatic analysis was not the basic research task of the text, it can be said that the Russian crimes, revealed and already well documented, meet the assumptions of genocide. Obviously, doubts can be raised about such subsumption (which is natural in any legal discourse), particularly given the reservations raised earlier regarding the way of approaching the set of elements that constitute the definition of genocide. At the level of subsumptive processes, it may even be difficult to indicate exactly which group of the population the genocide was committed against and in which categories to view such a group – national?, ethnic?, other? Such doubts and difficulties are an immanent feature of almost every interpretation of the law; however, in the case of the conduct discussed here, they do not exclude its qualification as the crime of genocide.

If the reports from the front are true, and their veracity is confirmed not only by the accounts of war correspondents but also by captured video and audio recordings of verified authenticity, then there is no doubt that the genocide committed against the inhabitants of Ukraine goes far beyond the mere deportations of the population. Bucha, Irpin, Motyzhyn or Hostomel have become eloquent symbols

[14] R. Lemkin, *Axis Rule*…, passim.

of the extermination of Ukrainians. However, those are only symbolic examples as there are many more such places throughout Ukraine. It is irrelevant whether one uses Lemkin's concept or the definitions of genocide derived from UN legal acts or the Polish Criminal Act as proof of the truthfulness of the thesis about genocide against Ukrainians. It does not matter, because in all cases the outcome of factual research juxtaposed with the results of dogmatic analyses determines the truthfulness of the thesis about the Russian genocide committed against Ukrainians. Coordinated actions undertaken with the intention of destroying a nation or ethnic group -in whole or part, such as killing Ukrainians; causing serious bodily harm and disruption to health, including mental health; introducing conditions that devastate even the flimsiest existential basis of the Ukrainian population, including blocking humanitarian corridors and bombing entire cities, cannot be considered otherwise. The world saw the bodies of murdered civilians, often previously tortured, mutilated or raped. Morevover, the veracity of the genocide thesis is confirmed by the reactions of countries such as Poland,[15] Lithuania,[16] Latvia,[17] Estonia and the Czech Republic,[18] which were among the first to recognise the actions of the Russian military forces as genocide against the Ukrainian people.

## 5. International criminal courts – general characteristics

Just as Lemkin is a constant point of reference for all considerations on the concept of genocide, the International Military Tribunal in Nuremberg is an enduring model in the discourse on the functions, principles and actual meaning of transnational prosecution in criminal cases, including the effectiveness and efficiency. It was the experience of the Nuremberg Tribunal, despite its ephemeral existence,

15 See press release (without the author's data) concerning the Resolution adopted by the Sejm of the Republic of Poland on 7 April 2022 during the 52 session, https://www.sejm.gov.pl/sejm9.nsf/komunikat.xsp?documentId=F1C8C323BBE5152BC125881D007641CA [access: 31.07.2023].

16 See press release (without the author's details): *The Verkhovna Rada of Ukraine Officially Recognises Russian Crimes as Genocide*, Wprost, 14.04.2022, https://www.wprost.pl/polityka/10688815/rada-najwyzsza-ukrainy-oficjalnie-uznala-rosyjskie-zbrodnie-za-ludobojstwo.html [access: 31.07.2023].

17 See press release (without the author's details): *Estonia Recognises Russia's Actions in Ukraine as Genocide*, Rzeczpospolita, 21.04.2022, https://www.rp.pl/polityka/art36118711-estonia-uznaje-dzialania-rosji-na-ukrainie-za-ludobojstwo [access: 31.07.2023].

18 See press release (without the author's details): *Czech Senate Recognises Russia's Crimes in Ukraine as Genocide*, Rzeczpospolita, 11.05.2022, https://www.rp.pl/konflikty-zbrojne/art36275871-czeski-senat-uznal-zbrodnie-rosji-na-ukrainie-za-ludobojstwo [access: 31.07.2023].

that provided the basis for the development of standards, rules and principles in the field of criminal liability for crimes under international law. The Nuremberg Principles, taught in university departments of criminal law, even as part of basic course lectures,[19] became the normative and axiological foundation for defining the category of crimes under international law, the rules of criminal liability at the international legal level, as well as the standards of protection of the individual subject to criminal liability for committing crimes under international law. Irrespective of the passage of time, the principles formulated then remain valid to this day, at least in their basic framework.[20]

Over the past decades, there was no need to form new criminal courts with the competence to try crimes against humanity and related ones. Only the experience of the 1990s and the change in the way of approach to human rights brought about a reorientation of previous axioms and needs, which led to the creation of the International Criminal Tribunal for the Former Yugoslavia (1993), the International Criminal Tribunal for Rwanda (1994),[21] the permanent International Criminal Tribunal (1998) or the Special Court for Sierra Leone (2002).[22]

Contemporary international criminal courts, from the point of view of the criterion of their establishment, can be divided into the following groups: (I) tribunals established on an *ad hoc* basis by the UN Security Council to try perpetrators (individuals) accused of crimes committed in a specific conflict (e.g. the International Criminal Tribunal for the Former Yugoslavia[23] or the International Criminal Tribunal for Rwanda[24]); (II) mixed (hybrid) tribunals, established based on international agreements between states (e.g. the ECCC[25]) or the Special Tribunal for Lebanon;[26] a permanent tribunal established by a statute adopted by the States Parties at an

19 See, e.g.: L. Gardocki, *Prawo karne*, Warszawa 2021, p. 4. More details: idem, T. Gardocka, Ł. Majewski, *Prawo karne międzynarodowe. Zarys systemu*, Warszawa 2017, particularly pp. 30–153.

20 See: T. Dubowski, *Czynnik czasu w funkcjonowaniu międzynarodowych trybunałów karnych – wybrane aspekty*, Białostockie Studia Prawnicze 2010, no. 7, p. 135.

21 Both of the tribunals will be discussed later in the text.

22 See: D. Heidrich, *Przyszłość międzynarodowych trybunałów karnych ad hoc. Strategie zakończenia oraz rozwiązania rezydualne, ze szczególnym uwzględnieniem Międzynarodowego Trybunału Karnego dla byłej Jugosławii*, Studia Europejskie 2013, no. 3, pp. 159–184, particularly pp. 159–160.

23 The International Criminal Tribunal for the Former Yugoslavia was established by the United Nations Security Council by Resolution 808 of 22 February 1993 (SC/Res/22.02.1993) and Resolution 827 of 25 May 1993 (SC/Res/25.05.1993).

24 The International Criminal Tribunal for Rwanda was established by the United Nations Security Council by Resolution 955 of 8 November 1995 (SC/Res/08.11.1995).

25 Extraordinary Chambers in the Courts of Cambodia.

26 See more: M. Płachta, *Międzynarodowe trybunały karne: próba typologii i charakterystyki*, Państwo i Prawo 2004, no. 3.

international conference. In turn, from the point of view of the temporal criterion, international criminal courts (tribunals) can be divided into courts (tribunals) established on a temporary basis (*ad hoc* and mixed tribunals) and permanent ones.[27] To date, only one international court of a permanent nature has been established – the International Criminal Court in The Hague.

## 6. The International Criminal Court in The Hague – a critical analysis

From the point of view of the topic of this article, of fundamental importance is the status of the International Criminal Court in The Hague, established on 17 July 1998, which – as a permanent court – is to prosecute crimes under international law committed around the world. By virtue of the Rome Statute,[28] its jurisdiction does not extend to crimes committed before 1 July 2002, which; however, remains irrelevant to criminal liability for crimes committed in Ukraine. Instead, its *ratione materiae* jurisdiction covers the most drastic violations of international law, including crimes against humanity, war crimes, crimes of aggression and genocide. On the subjective side, the jurisdiction of the International Criminal Court in The Hague covers natural persons, not states as such. The Court's jurisdiction is complementary to national bodies. This means that the Court's jurisdiction to adjudicate becomes effective only in the event of the inactivity of state authorities responsible for prosecuting crimes under international law. The International Criminal Court in The Hague, despite its permanent nature, is not a universal court. It derives its power to administer criminal justice from the Rome Statute, which has not been ratified by many states, and a lot of states that had ratified the Statute are free to withdraw from it.[29] This makes the Court non-global and it seems that this state of affairs is not going to change. Those are the imperfections of the Hague Court that restrict its freedom of action in response to the situation in Ukraine, which will be discussed further down in the text.

The International Criminal Court in The Hague opened the proceedings on the Russian Federation's aggression against Ukraine on 2 March 2022, and on 17 March 2023, an arrest warrant was issued for Vladimir Putin and Maria Lvova-Belova,

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27 See: T. Dubowski, *Czynnik czasu…*, pp. 133–134.

28 Rome Statute of the International Criminal Court, drawn up in Rome on 17 July 1998, Journal of Laws 2003 no. 78, item 708.

29 Cf. K.E. Smith, *Acculturation and the Acceptance of the Genocide Convention*, Cooperation and Conflict 2013, vol. 48, no. 3, pp. 358–377.

the Plenipotentiary to the President of the Russian Federation for the Rights of the Child, charging them with the crime of deporting children from occupied Ukraine. There is no doubt that enforcing the liability of Putin or Lvova-Belova will be the most serious challenge for the Court since its creation and will be the basis for assessing its actual usefulness for trying crimes under international law. The fundamental issue is the voluntary nature of ratification of the Rome Statute, and yet neither Russia nor Ukraine is a party to the founding treaties. The Court's jurisdiction would result from Ukraine's voluntary submission to the Court's jurisdiction with the simultaneous accession of Russia. However, the latter condition is not fulfilled. Moreover, the International Criminal Court in The Hague, unlike the International Military Tribunal in Nuremberg, has no power to try in absentia. This means that unless Vladimir Putin voluntarily comes before the tribunal or is arrested on the territory of a country that recognises the jurisdiction of the Hague Court, his liability will not be enforced.

Moreover, in terms of the proceedings of the International Criminal Court in The Hague, a fundamental question arises: why did the Court issue an arrest warrant for the deportation of children from the territories of occupied Ukraine, even though the world had seen the Bucha massacre and other mass murders of civilians? Even if both acts, i.e. the deportations and murders, fall into the category of genocide, there is – without diminishing the immensity of the tragedy of the displaced population and their families – a clear asymmetry of goods between murder and deportation. The answer to that question arises from the nature of the evidentiary proceedings before the International Criminal Court in The Hague. Namely, in the case of Russia and Putin, the Court decided to issue arrest warrants choosing the relatively easiest crime to conduct under evidentiary proceedings, which is the deportation of Ukrainian children.[30] This not only fails to capture the full content of the criminal lawlessness contained in the Russian acts committed in Ukraine but also drastically narrows the category of prosecuted acts, including their perpetrators. Contrary to intuitive perceptions, it is not about the Court's fear of blasphemy resulting from the impotence in the actual implementation of prosecution, but a realistic calculation at the level of assessing the capacity of evidentiary proceedings, which, in the case of actual genocide, could fail. This, of course, does not

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[30] Obviously, this is not just a question of evidence as that would be an oversimplification. In fact, it is accurate to note that the acts committed against Ukrainians, especially the deportation of children, undoubtedly fall within the conventional definition of genocide. It is also right to note that the evidentiary proceedings are only a consequence of correct subsumption (but the effectiveness of prosecution is measured not only by the correctness of the legal qualification, but also by the possibility of actually apprehending and judging the perpetrator to execute the punishment).

exclude the possibility of a later expansion of the brought charges, but it proves the current limitations of the Court. Invariably; however, the fundamental difficulty, in the absence of competence to try in absentia, will be the actual bringing of the defendants before the Court to judge them. For this, at least in the current climate in Russia, seems absolutely out of the question. Furthermore, the International Criminal Court in The Hague is not part of any international organisation, but an independent international court. This means that, by issuing arrest warrants, it has undoubtedly strengthened its position as an organ of international criminal justice. However, if it does not enforce the liability of those being prosecuted, it will be left with nothing but a façade and the label of a court for Black African states.

In view of the above, the question arises whether the International Criminal Court in The Hague is a body capable of trying crimes under international law committed in Ukraine (?). The answer to that question seems to be negative. Political correctness aside, one must conclude that international criminal courts have ultimately proven to be inefficient in general. Such a conclusion also applies to Nuremberg, even if it is considered a model for that type of court, after all, no more than 2% of German Nazi criminals were held criminally liable for the committed crimes, and the number of those sentenced within that 2% includes not only those tried by the IMT.[31]

Likewise, still rejecting political correctness, one must honestly admit, thus putting forward the fundamental thesis of this text, that the International Criminal Court in The Hague is not suitable to try crimes under international law committed in Ukraine. The Court has neither the legal nor the factual tools to do it effectively. Obviously, the issuing of the arrest warrants for Putin and Lvova-Belova was necessary from the point of view of public expectations and adequate to the legal capability of the Court, but it was rather a voice crying in the wilderness than an announcement of real action.

The veracity of the above diagnosis is evidenced by several critical features of the International Criminal Court in The Hague, which justify the assumption that it is not and cannot be an effective body to judge the crimes that have happened and are still happening in Ukraine. First, as has already been mentioned, a necessary condition for the activation of the repressive apparatus administered by the International Criminal Court in The Hague is voluntary submission to its jurisdiction – the Russian Federation is not a party to the Rome Statute and, as such, it is not subject to the jurisdiction of the Court. From the point of view of international law, voluntary membership in any supranational organisation is understandable, but from the

[31] This acronym means the International Military Tribunal at Nuremberg.

point of view of strictly understood criminal law, it is completely incredible. Indeed, in practice, this means the requirement to obtain a criminal's consent to be tried, while it is clear, even on a common-sense level, that there will be no such consent. Second, as has also been mentioned, the Court's jurisdiction is complementary to the national one. In the current political situation in Russia, there is no possibility of any initiative on the part of the national criminal justice authorities, which are, after all, absolutely subordinate to President Putin's administration, to start prosecuting acts committed by the regime of which they remain a part. At this point, it is necessary to break with the false axiom that in Russia only the apparatus of power remains criminal and completely detached from European traditions. All media reports and opinion polls conducted by credible bodies clearly indicate that Vladimir Putin enjoys consistently high support from citizens. That support is not shaken, at least not visibly, neither by reports of failures on the front nor by news of crimes committed by Russian soldiers. Russia, in its historical identity, was and remains a criminal state which, in pursuit of a policy of Pan-Slavism, has always sought, under various pretexts, to subjugate neighbouring states and people. In that context, as has also already been mentioned, the armed aggression against Ukraine should not come as a surprise as it is a natural consequence of Russia's way of approaching geopolitical arrangements. At the same time, third, the experience of previously established courts shows that proceedings before such tribunals are lengthy, complicated – especially at the level of evidentiary procedure, and, simply speaking, expensive. A clumsy symbol of the above remains the prosecution ordered by the International Criminal Court in The Hague – for deportation instead of extermination. Fourth, as has already been mentioned, and what is surprising – especially in the light of the Nuremberg experience, the International Criminal Court in The Hague does not have the authority to judge in absentia. From the perspective of criminal law, this is surprising. That astonishment cannot be nullified by any slogans formulated under the banner of the specificity of international law, and the best evidence of the possibility of trial in absentia is the trial of Martin Bormann by the International Military Tribunal at Nuremberg. Finally, fifth, the International Criminal Court in The Hague does not have the competence to hold the state, but only individual persons, accountable. At the level of a collective entity, that limitation may be understandable; however, it does not facilitate criminal prosecution procedures.

## 7. Nuremberg 2.0 – is it possible?

Obviously, the above theses are critical of the International Criminal Court in The Hague. However, the negative assessment is not related to the activity of the Court's judges, for they have done as much as they could within their power. This; however, is not enough. Therefore, it is a criticism of the very normative foundations of the Court. The foundations restrict its freedom of action and limit its real significance. It seems that the Nuremberg Tribunal was better suited to the goals set before it than the Hague Tribunal is adapted to the current needs of judging crimes in Ukraine. Does this mean that Nuremberg 2.0 is possible? Definitely not. The International Military Tribunal could exist in its form only in the conditions of the disintegration of the state and the collapse of the entire system of the Third Reich. It could only be created on the ruins of national socialism, and in the very heart of its ideology – in Nuremberg, under the conditions of control of the whole territory of a criminal and defeated country, completely dependent on the will of the victorious powers. It was not only about the general (although not obvious and easy to obtain) agreement of the allies on the method of settling German crimes and the general social legitimacy to convict the guilty, but also about the actual possibility of apprehending and prosecuting them. The International Military Tribunal at Nuremberg was not free of flaws, also at the level of its axiology or the general principles of criminal law, but it definitely was a triumph of law over primitive retaliation and, on many levels, a model worthy of emulation.

## 8. International criminal court for judging crimes under international law committed in Ukraine – basic assumptions of own proposal

Given what has been written above, including the circumstances and climate in which the International Military Tribunal at Nuremberg was formed, the current political and military situation in Europe rules out Nuremberg 2.0. Even if Russia loses the war in Ukraine, its statehood is not likely to collapse, as was the case with the Third Reich. Since Nuremberg cannot be repeated, does the International Criminal Court in The Hague remain the only judicial body empowered to prosecute Russian crimes under international law? The answer to this question is affirmative: yes, at the moment it is the only body.[32] Should that state of affairs be

[32] In this context, doubt may arise as to whether, given the existence of the Hague Tribunal as an international court, it is even possible to establish a new *ad casum* tribunal. This is, of course, an issue worthy

accepted? In the opinion of the author of this article: no, it should not. So what instead? It seems that only *an ad hoc* tribunal could be appropriate for the current geopolitical situation in Europe. The International Criminal Court in The Hague may not be an anachronism; however, the legal foundations determining the scope and modes of its proceedings do not guarantee judgment of what is happening in Ukraine. Obviously, establishing a new court is not possible immediately and without obstacles, as this would require the consent of Russia and China in the UN Security Council. However, to say (write) that this cannot be done is to give consent to further murder and humiliation of Western civilisation, unable to properly respond to a war going on not somewhere at the far end of the world – but here: in Europe, on the border of the European Union and NATO. Therefore, if the establishment of a new tribunal were to encounter (obviously expected) resistance from Russia (and China?), then the removal of Russia (and China) from the UN Security Council should be considered. There is no shortage of reasons why that option was already taken into account. The author of this article is a researcher at a Polish university and a practising lawyer who understands the nuances, complexity and sensitivity of international politics; therefore also understands the difficulties and possible consequence of removing Russia (and China?) from the Security Council. If the above, for one reason or another, were to prove impossible, then the very institution of the veto would need to be changed so that Russia (and China?) could not block the establishment of a new court. There is also another option apart from that involving changes in the Security Council – establishing an international criminal court to try crimes under international law committed in Ukraine outside the UN mandate. Russia's aggression against Ukraine, contrary to Putin's expectations and initial difficulties, united the entire Western European world in defence of its fundamental values. In such a situation, the new court could be legitimised not by a UN mandate, but by a general consensus of the countries forming the anti-Russian coalition. The number and importance of the countries constituting a coalition against the war are sufficient to create the basis for the functioning of a new court. After all, the International Military Tribunal in Nuremberg did not draw its strength, vitality or formal powers from the discredited League of Nations, but from the consent of other states to judge unprecedented German crimes.

What should such a court be like if it were actually established? There is no doubt that it should be multinational in terms of its composition of judges. There

of broader consideration; however, it cannot be accommodated within the limited framework of this work. Suffice it to say that there is no provision of positive law or, at least it seems, no other norm or custom that would oppose such a new tribunal.

is no consent to exclude the "smaller" ones, including Poland and the Baltic states, which played a key role in building a global support system for fighting Ukraine. Such a tribunal should be competent to judge in absentia. The above-mentioned example of Martin Bormann, tried in absentia in Nuremberg, is sufficient to demonstrate the truth of the thesis that this can be done. Learning from the experience of earlier tribunals, including Nuremberg, although, sadly, those are rather grim conclusions, the selectivity of prosecution should be reduced as much as possible. Modern technology facilitating the collection of evidence, a correspondingly smaller group of perpetrators than was the case with the officers of the Third Reich and the rejection of the possibility of subsequent cooperation with detained Russian criminals, as was the case after Second World War in the face of the arms race with regard to German criminals, make it unjustifiable to narrow down the categories of perpetrators subject to prosecution. Two rules would serve to implement such an idea: the adoption of the well-known criminal law principle of chain-incitement with the simultaneous adoption of the well-established rule of "thinking bayonets", and the principle of commander's responsibility. The first rule would make it possible to extend criminal liability for crimes even to a private soldier, while the second would cover the very top of power, headed by Vladimir Putin.

There is no doubt that the new international criminal court should be based on completely new principles and, at least to some extent, a new axiology forced by the new situation. This does not mean; however, that it should be completely detached from the experience and rules developed by previous *ad casum* tribunals. Drawing conclusions in that area should include both negative experience that should not be repeated and patterns worth repeating. In that respect, particularly interesting are the models developed by the above-mentioned International Criminal Tribunals: for the Former Yugoslavia and Rwanda. In both cases, the following should be assessed as positive: (I) the priority of jurisdiction over national courts combined with the right to demand that national courts transfer their competence at every stage, (II) the definition of the concepts of genocide and crimes against humanity in the statutes of both tribunals – in accordance with the political and criminal needs of the time; (III) the expansion of the catalogue of basic acts subject to prosecution to include rape and torture; (IV) granting competence to prosecute violations of legal interests in the event of an infringement; (V) acknowledging that an order is not a circumstance excluding criminal liability; (VI) allowing tribunal judges to establish norms regulating the principles of operation of tribunals.[33] Not all of the princi-

[33] See: S. Karowicz-Bienias, *Standardy międzynarodowego procesu karnego a polskie postępowania karne w sprawach o zbrodnie przeciwko ludzkości popełnione w latach 1939–1956*, Białystok 2021

ples governing the two tribunals were entirely innovative (non-exculpatory order), indisputable (new definitions of crimes in the context of the prohibition of retroactivity of law to the detriment of the perpetrator) or obvious (lack of competence to pronounce the death penalty). They should certainly be taken into account in the discourse on the possible establishment of a new ICC.

Obviously, the above assumptions are of a general nature and the author of this text is aware of the enormity of normative doubts and political difficulties in establishing a new tribunal. However, in the face of what happened in Ukraine, the world cannot remain silent, for extraordinary situations justify extraordinary responses. As was written at the beginning of the article, the world known before the year 2020 has changed completely. The principles and axiology of law developed after Second World War need to be revised under changed conditions as the system has been re-evaluated. Its basic assumptions were formed under the "no more war" slogan in the 1950s, and in the 1990s – on the wave of euphoria following the collapse of the USSR. Today, the world is once again on the brink of war and the empire of the Red Tsar[34] is being reborn before the eyes of Europe. Thus, the two circumstances open a discourse on the catalogue of penalties that can be imposed by the new court and on the manner of their execution.

Regarding the first issue, it should be noted that the author of this text, neither as a scientist nor as a lawyer, is a supporter of the death penalty at the level of state legislation. Leaving aside the moral and ethical layer of the discourse on the admissibility of the death penalty, it can be said (written) that there are many arguments against its application, in particular the correctly diagnosed excessive risk of a miscarriage of justice with the simultaneous lack of possibility of restitution for the damage caused by the conviction and doubts as to the preventive significance of such a punishment. However, in the case of the death penalty for crimes under international law, all arguments derived from the level of state law either fade or lose their relevance. In the case of a mass murderer, the risk of a miscarriage of justice is essentially zero. In that case, it is also not about rehabilitation but about elimination. Obviously, the arguments from the aforementioned sphere of morality and ethics remain valid. However, have morals and ethics changed so much over the last 80 years to justify dividing genocidaires into superior (Russo-genocidaires unworthy of the ultimate punishment) and inferior (Nazi-genocidaires worthy of the ultimate punishment)? Is the European sense of justice, especially that of the Ukrainian people, so drastically different from

[unpublished doctoral thesis], pp. 30, 45, 84. See also: L. Gardocki, T. Gardocka, Ł. Majewski, *Prawo karne*…, pp. 194–203.

34 The similarity of this expression to the title of the work by S. Montefiore *Stalin. The Court of the Red Tsar*, Warszawa 2021, is not coincidental as the crimes of Putin, eagerly referring to Stalin, including his imperialist ideology, are comparable.

the justice demanded by the suffering of the millions of people who had everything taken away by Adolf Hitler so that it could be satisfied in another way? Those are, of course, unanswered questions, and the author of this article certainly does not provide affirmative answers to them, from which one could derive the postulate of equipping a possible new court with the competence to pronounce the death penalty. However, it seems that the old abolitionist trends in this regard have lost their relevance and the discourse on that issue should be opened anew, taking into account the position of the authorities and the people of Ukraine. At the same time, the author of this article is aware of the European normative achievements in the field of abolition of the death penalty, including Poland's international legal obligations. Nevertheless, those achievements stem from positive law and certain norms established by people. If the norms lose their axiological justification, they may be subject to change. Whether Europe is ready for such changes today remains an open question, and the question certainly should not be automatically rejected.

In any arrangement, the question also arises about the actual possibility of implementing the sentence imposed by the international criminal court established to judge crimes under international law committed in Ukraine. This is a fundamental difficulty already faced by the tribunals for Yugoslavia and Rwanda, inter alia. The limited volume of that text does not allow for an extended discussion on that issue, therefore it is enough to point to, out of necessity – in a somewhat simplified form – previous historical experience proving the real possibility of trying the perpetrators of such crimes. Let us recall the example of Israel, which – despite the understandable outrage of international opinion – brought in and tried Adolf Eichmann on its territory, or the domestic example of the Polish Underground State, which was able to carry out sentences under the conditions of German occupation.[35]

Therefore, a new *ad hoc* tribunal to try crimes of international law committed in Ukraine is a necessity that can be implemented in the current legal state and social climate despite the normative and factual difficulties that its establishment could certainly pose.

## Conclusions

Every generation is accompanied by the conviction of the uniqueness of the times in which it lives; many fear an impending cataclysm and are convinced that the

35 Regarding the sentences on the so-called "blackmailers", see: P. Szopa, *Wyroki na szmalcowników*, Przystanek Historia, 24.01.2021, https://przystanekhistoria.pl/pa2/tematy/polskie-panstwo-podziem/78076,Wyroki-na-szmalcownikow.html [access: 31.07.2023].

generation following it is degenerate, or at least worse, whatever that means. Whatever one's theory of history, the fact is that Europe has awakened from its dream of prosperity and universal peace. There is war in Europe again, and the present generations have lived to see exceptional times and the cataclysm prophesied by some. The uniqueness of these times and the fear of the cataclysm of global conflict force contemporary generations to take actions that were thought to never be necessary again. Among the primary actions of that type is the settlement of Russian crimes in Ukraine. The currently functioning International Criminal Court in The Hague does not have sufficient competence to effectively judge those responsible for such crimes, despite the most commendable efforts of the Judges, including the Pole who heads it. What is needed is a new court, established outside the UN mandate if necessary, which would be capable of dealing efficiently with crimes that no one expected to be committed in Europe, just beyond the borders of Poland. What happened a few decades ago must not be forgotten, otherwise everything will be repeated.

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