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# CONFLICT IN UKRAINE – LEGAL BATTLEFIELD. EDITORIAL

**Abstract:** Article describes unprecedented (in terms of scope, time framework, arguments) legal actions undertaken by Ukraine in response to Russian aggression which began in 2014 and which escalated in 2022. In the framework of lawfare conducted by Ukraine, article focuses on the allegations of genocide which appeared on both sides of conflict. In consequences, it addresses the current proceeding in the International Court of Justice: *Ukraine v. Russian Federation*, with 32 States intervening, in which Ukraine attempts to prove that Russia started intervention under the pretext of genocide allegedly committed in Eastern Ukraine. At the same time, article presents arguments concerning the possibility of classification of crimes committed by Russia in Ukraine as genocide. At the end the article presents the content of the volume 2 of PRIEL of the year 2023.

**Keywords:** Russian-Ukrainian conflict, genocide, Russian aggression, war crimes, International Court of Justice, European Court of Human Rights

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### 1. It began in 2014...

Aggression against Ukraine started in 2014 and with different intensity was continued through the ensuing years escalating in February 2022. Between 2014-2022, all acts of aggression indicated by the UN General Assembly (GA) Resolution 3314 (1974) on the definition of aggression were

committed by Russian armed forces.<sup>1</sup> In the mentioned period, allegations of crimes committed by both sides appeared and were verified e.g. by the International Humanitarian Fact Finding Commission (IHFCC) which was for the first (and so far also the last) time in history engaged at the request of the Organization for Security and Co-operation in Europe.<sup>2</sup>

In order to fight the impunity of individuals, Ukraine decided to extend the recognition of the jurisdiction of the International Criminal Court (ICC) to encompass ongoing alleged crimes committed on the territory of Ukraine from 20 February 2014 onwards.<sup>3</sup>

In reference to the responsibility of the Russian state, on 16 January 2017 Ukraine decided to initiate proceeding in the International Court of Justice (ICJ) against the Russian Federation based on the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination. Therefore, Ukraine followed the path already indicated and to some extent tested by Georgia<sup>4</sup> but with much better results as the ICJ in its judgment of 8 November 2019 rejected Russian preliminary objections and confirmed that it has jurisdiction in this case. However, the number of dissenting and separate opinions, as well as of declarations clearly indicates that this is not a clear-cut case.<sup>5</sup> Simultaneously, apart from thousands of individual

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1 Bilková, “The Use of Force by the Russian Federation in Crimea,” 27; Czaplinski, Dębski, Tarnogórski, Wierczyńska (ed.), *The Case of Crimea’s Annexation Under International Law*; Grant, *Aggression Against Ukraine. Territory, Responsibility, and International Law*; Grzebyk, “Classification of the Conflict between Ukraine and Russia in International Law (Ius ad Bellum and Ius in Bello),” 39; Sayapin, Tsybulenko (ed.), *The Use of Force against Ukraine and International Law - Jus ad Bellum, Jus in Bello, Jus Post Bellum*.

2 The investigation concerned the incident of 23 April 2017, when an OSCE armoured vehicle was struck by an explosion resulting in the death of an OSCE paramedic. In reaction to the engagement of the IHFFC, on 22 October 2019 the Russian Embassy in the Swiss Confederation sent a note to the Federal Department of Foreign Affairs on the withdrawal of the USSR’s declaration accepting the competence of the IHFFC.

3 On 9 April 2014 Ukraine lodged the first declaration in which it accepted ICC jurisdiction with respect to alleged crimes committed on Ukrainian territory from 21 November 2013 to 22 February 2014. The second declaration was submitted on 8 September 2015.

4 On 12 August 2008, the Republic of Georgia instituted proceedings before the Court against the Russian Federation relating to “its actions on and around the territory of Georgia in breach of CERD [the 1965 International Convention on the Elimination of All Forms of Racial Discrimination]”. The ICJ in its judgment of 1 April 2011 on preliminary objections (ICJ Reports 2011, 70) decided that the case is inadmissible due to the lack of engagement in negotiations required by CERD before the initiations of proceedings in the Court.

5 I.C.J. Reports 2019, 558. Seven dissenting, separate opinions or declarations were submitted to the judgment.

complaints, Ukraine initiated in the European Court of Human Rights (ECtHR) several inter-state proceedings against Russia, including the one with the Netherlands concerning the shooting down of MH-17, or as the Security Council prefers – its downing,<sup>6</sup> in which the ECtHR (Grand Chamber) has already decided that it is partly admissible.<sup>7</sup> The question of responsibility for the MH-17 incident was also dealt in the Dutch national courts, the judgment of which was met with mixed reactions.<sup>8</sup>

Russia lodged its own application in the ECtHR against Ukraine on 22 July 2021 (app. no. 36958/21) accusing Ukraine of the violation of multiple rights<sup>9</sup> due to administrative practice since 2014 in Ukraine of, among other things, killings, abductions, forced displacement, interference with the right to vote, restrictions on the use of the Russian language and attacks on Russian embassies and consulates; cutting the water supply to Crimea via the North Crimean Canal after April 2014, and – what is particularly interesting in the light of proceedings in *Ukraine and the Netherlands v. Russia case* – non-closure of airspace in result of which the deaths of those on board Malaysia Airlines Flight MH17 in July 2014 occurred. Nevertheless, the Court decided on 4 July 2023 to strike the application out of its list of cases as in the opinion of the Court, the Russian Government no longer wished to pursue their application as they had repeatedly failed to reply to its correspondence.

Unfortunately, the military battlefield was expanded and so also were the legal measures used by Ukraine.

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6 S/RES/2166 (2014).

7 European Court of Human Rights, Grand Chamber, *Ukraine and the Netherlands v. Russia*, applications nos. 8019/16, 43800/14 and 28525/20, decision of 25 January 2023.

8 Gubrynowicz, “At the Crossroads of International Criminal Law, The Montreal Convention, International Humanitarian Law, and Human Rights: Some Remarks on the Interpretation of International Law by the Hague District Court in the MH-17 Judgments and their Potential Legacies,” 132.

9 It concerned alleged violations of Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security), 8 (right to respect for private and family life), 10 (freedom of expression), 13 (right to an effective remedy), 14 (prohibition of discrimination), 18 (limitation on use of restrictions of rights), and Article 1 of Protocol No. 1 (protection of property), Article 2 of Protocol no. 1 (right to education), Article 3 of Protocol No. 1 (right to free elections) and Article 1 of Protocol No. 12 (general prohibition of discrimination).

## 2. 2022 Escalation – also in Legal Bodies

Previous crimes appeared to be minor ones in comparison to the brutality of the conduct of hostilities which have erupted since February 2022. In the current phase of the conflict in Ukraine core crimes are being committed, such as the crime of aggression,<sup>10</sup> war crimes and crimes against humanity.<sup>11</sup> It is also debated whether the qualification of genocide should also be applied to the atrocities taking place (see comments below).<sup>12</sup>

In consequence, from the escalation of the conflict in February 2022 onwards, discussions have been taking place among scholars<sup>13</sup> and diplomats<sup>14</sup> about finding a proper way to grant justice to victims based on the rules of state and individual responsibility. As prohibitions of aggression, of crimes against humanity, at least of some of war crimes, and of genocide are considered as peremptory norms<sup>15</sup> and having in mind that Russia violated those prohibitions in a systematic manner, special obligations of third states and international organizations were activated i.e. the obligation to cooperate to bring to an end, through lawful means, those serious breaches and to not recognize as lawful the situation created by those serious breaches,

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10 GA Resolution ES-11/1 (2022); on the qualification of the use of force by Russia in 2022 as an aggression, see e.g. Green, Henderson, Ruys, “Russia’s attack on Ukraine and the *jus ad bellum*,” 6; Grzebyk, “Escalation of the conflict between Russia and Ukraine in 2022 in light of the law on use of force and international humanitarian law,” 148; Hoffmann, “War or peace? – International legal issues concerning the use of force in the Russia–Ukraine conflict,” 226.

11 ODIHR, *Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes against Humanity Committed in Ukraine since 24 February 2022*, ODIHR.GAL/26/22/Rev.1, 13 April 2022; ODIHR, *Report of the OSCE Moscow Mechanism’s mission of experts entitled ‘Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine (1 April – 25 June 2022)’*, ODIHR.GAL/36/22/Corr.1, 14 July 2022.

12 Parliaments of various states stressed that Russian violence against Ukrainian nation should be treated as acts of genocide, statement made by Canadian House of Commons on 27 April 2022; Polish Sejm on 8 April 2022. Lithuanian Seimas on 10 May 2022 and many others.

13 One of the most known initiatives was the statement of numerous scholars calling for the creation of a Special Tribunal for the Punishment of the Crime of Aggression against Ukraine signed by Dapo Akande, Gordon Brown, Benjamin Ferencz, Mykola Gnatovskyy, Philippe Sands and many others,

14 The initiative of the Group of Friends of Accountability following the Aggression against Ukraine, co-founded by Albania, Colombia, Denmark, the Marshall Islands, the Netherlands, and Ukraine.

15 Annex to the International Law Commission (ILC), Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), 2022.

nor render aid or assistance in maintaining this situation.<sup>16</sup> Unfortunately, some states ignore those obligations and attempt to reinvigorate outdated concepts of neutrality laws as the UN Charter was never adopted.

Nevertheless, due to dozens of states' referrals of the situation in Ukraine to the ICC, the Prosecutor on 2 March 2022 proceeded with the opening of the investigation into the situation in Ukraine. The ICC issued warrants of arrests for Russian president Vladimir Vladimirovich Putin, and for Commissioner for Children's Rights in the Office of the President of the Russian Federation Maria Alekseyevna Lvova-Belova. Both are suspected of war crimes [unlawful deportation of the population (children) and that of the unlawful transfer of the population (children) from occupied areas of Ukraine to the Russian Federation (prejudiced against Ukrainian children)]. The ICC cannot exercise jurisdiction over crimes of aggression in the case of the Russian-Ukrainian conflict as according to amendments on crimes of aggression adopted in 2010 and based on the decision on the activation of the ICC jurisdiction over crimes of aggression taken in 2017, both states – aggressor and the victim of aggression – need to be parties to the Rome Statute and to the appropriate amendments on crimes of aggression.<sup>17</sup> The only option to activate the ICC jurisdiction over crimes of aggression committed by Russians in the current conflict is the referral of the situation to the ICC by the UN Security Council (SC) - Article 15*ter* - which is for obvious reasons excluded.

In result of the blockade of the SC by Russian veto, the eleventh emergency session of the General Assembly was initiated,<sup>18</sup> during which several significant statements were made as the confirmation of the qualification of the Russian operation as aggression (ES-11/2), suspension of the rights of the membership of the Russian Federation in the Human Rights Council (ES-11/3), condemnation of referendums in regions within the internationally recognized borders of Ukraine and its attempted annexation (ES-11/4), recommendation of the creation of an international register of damage (ES-11/5), a reminder about the need of applying international humanitarian law, human rights law and ensuring accountability for the most serious crimes (ES-11/2 and ES-11/6). From

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16 Article 41 of the ILC's Articles on Responsibility of States for Internationally Wrongful Acts (2001); Article 42 of the ILC's Articles on the responsibility of international organizations (2011).

17 Article 15bis(4) and (5)RC/Res.6 of 11 June 2010 (currently there are 45 states parties to the amendments); but primarily §2 of the ICC-ASP/16/ Res.5 of 14 December 2017.

18 S/RES/2623 (2022).

the beginning of the emergency session, Ukraine made attempts to gather support for the establishment of a Special Tribunal for Aggression. So far, without success, as the problem of the selectiveness of justice is raised by e.g. those states whose regions suffered from previous Western interventions.

Ukraine having in mind the non-binding status of GA resolutions, from the very beginning decided to once again engage the World Court and other international institutions.<sup>19</sup> Only two days after the beginning of the invasion, on 26 February Ukraine initiated proceeding in the International Court of Justice based on the Convention on the Prevention and Punishment of the Crime of Genocide with 32 States intervening (including Poland) – the number unprecedented in the whole history of the ICJ. Ukraine requested the Court to adjudge that no acts of genocide has been committed in the Luhansk and Donetsk oblasts of Ukraine and in consequence the Russian Federation cannot lawfully take any action under the Genocide Convention in or against Ukraine aimed at preventing or punishing an alleged genocide, on the basis of its false claims (including recognition of the independence of the Donetsk and Luhansk People’s Republics and the launching of the ‘special military operation’) and accordingly require that the Russian Federation provide assurances and guarantees of non-repetition and to order full reparation. In its application instituting proceedings, Ukraine also stressed that Russia’s lie is all the more offensive, and ironic, because it appears that it is Russia planning acts of genocide in Ukraine. Russia is intentionally killing and inflicting serious injury on members of the Ukrainian nationality – the *actus reus* of genocide under Article II of the Convention (§24).

Nevertheless, Ukraine did not decide to ask the Court to verify whether Russia is planning or committing crime of genocide against Ukrainian nationals.

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19 On 23 June 2022 Ukraine decided to submit another application (no. 11055/22) against Russia (X) in the ECtHR which triggered an unprecedented number of interventions. According to the Press Release [ECHR o82 (2023)] of 17 March 2023, there are in total 31 third-party interveners in the joined case *Ukraine and the Netherlands v. Russia* (nos. 8019/16, 43800/14, 28525/20 and 11055/22). Aside from this joined case, there were three other Inter-State applications and over 8,500 individual applications pending before the Court concerning the events in Crimea, eastern Ukraine and the Sea of Azov. Those cases are still proceeded despite the resolution of the Council of Europe of 16 March 2022 on the cessation of the membership of the Russian Federation to the Council of Europe according to clarifications made by ECHR in its resolution of 22 March 2022 on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention.

As we could already observe in preliminary objections hearings in September 2023 Russia was repeating that Ukraine is abusing procedure in the ICJ as in fact its aim is to discuss the issue of the use of force based on Article 51 of the UN Charter – a treaty over which the Court has no jurisdiction.<sup>20</sup> Definitely, the issue of fairness of the proceeding and equality of both parties (having in mind that all intervening states support claims made by Ukraine) will be discussed by the Court and already separate opinions of some judges can be expected.

### 3. Genocide Label Abuse?

Ukraine argues that Russia abused the qualification of the alleged human rights violations in the Eastern parts of Ukraine as genocide in order to justify its military operation against Ukraine. At the same time, the accusations against Russia concerning its genocidal policy against Ukrainians were raised. Interestingly, William Schabas, who is an unquestionable authority on genocide,<sup>21</sup> very quickly offered a negative view of the possibility of the classification of the crimes in Ukraine as genocide in light of the 1948 Convention on Prevention and Punishment of the Crime of Genocide.<sup>22</sup> However, in my opinion, in the case of the Russian-Ukrainian conflict we should not jump to conclusions without understanding the context (also historic one).

It is now undeniable that Russian troops committed all the acts mentioned in the 1948 Genocide Convention, i.e. killings (evidence includes, but is not limited to, mass graves of people executed e.g. in Bucha),<sup>23</sup> causing serious bodily or mental harm (torture, rape targeting women, men and children),<sup>24</sup> deliberately inflicting poor conditions of life on people calculated to bring about its physical debilitation and annihilation (sieges of cities and denial of access to humanitarian aid, attacks on energy and agriculture infrastructure),<sup>25</sup> imposing measures intended to prevent births

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20 Verbatim record, 25 September 2023, CR 2023/18, 45-46.

21 Schabas, “Genocide and Ukraine: Do Words Mean What We Choose them to Mean?,” 843. Cf. Azarov, Koval, Nuridzhanian, Venher, “Understanding Russia’s Actions in Ukraine as the Crime of Genocide,” 233.

22 78 UNTS 277.

23 ODIHR.GAL/36/22/Corr.1 (2022), at 28.

24 Ibidem, at 28, 67 ff. (on torture); at 90 ff (on rape).

25 Ibidem, 36.

within the group (systematic rape),<sup>26</sup> forcibly transferring children from Ukraine to distant places in Russia.<sup>27</sup> However, in order to classify those acts as genocide, it needs to be demonstrated that they are directed against a national, ethnic, racial or religious group, and that all those acts are aimed at the physical destruction of the group.

In the case of the current conflict, the identity of the attacked group is somewhat debatable. The paradox lies in the fact that Vladimir Putin as well as Dmitry Medvedev have denied the existence of the Ukrainian state and nation. Putin denied Ukraine's statehood, arguing that Ukraine is an artificial construct ('Let's start with the fact that modern Ukraine was entirely created by Russia, more precisely, by Bolshevik, communist Russia').<sup>28</sup> Medvedev – one of the persons closest to Putin – threatened that the whole of Ukraine will burn,<sup>29</sup> and did nothing to hide his hatred for Ukrainians ('I tell you, I hate them. They are scum and bastards. They want death for us, Russia. And as long as I'm alive, I will do everything to make them disappear').<sup>30</sup> Then, there are also the Russian propagandists like Roskosmos Dmitry Rogozin, who openly argue in favour of the destruction of Ukraine and the Ukrainian nation.<sup>31</sup> This is not classic war rhetoric, but they are clear statements based on hatred and on the desire to physically destroy the enemy. It needs to be also taken into account that Russian policy and the notion of 'Russkiy Mir,'

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26 Ibidem, 90 ff.

27 Yale School of Public Health, A Conflict Observatory Report, Humanitarian Research Lab, *Russia's Systematic Program for the Re-Education & Adoption of Ukraine's Children*, 14 February 2023; European Parliament resolution on human rights violations in the context of the forced deportation of Ukrainian civilians to and the forced adoption of Ukrainian children in Russia (2022/2825(RSP), 15 September 2022; Bisset, "Ukraine Symposium – Russia's Forcible Transfer of Children," *Articles of War Blog*, 5 October 2022,

28 Address by the President of the Russian Federation, 21 February 2022.

29 *Ukrainska Pravda*, "All Ukraine will burn": Medvedev threatens nuclear strikes for attacking Crimea, 4 February 2023.

30 <https://www.ukrinform.net/rubric-politics/3501611-medvedev-threatens-to-kill-all-ukrainians.html>; Holly Ellyatt, 'Putin's supporters call for the liquidation of Ukraine as 'genocidal rhetoric' swells', *CNBC*, 25 November 2022; Oxford Analytica, "Emigre dissent focuses Russian elite rage", *Expert Briefings*, 24 January 2023.

31 [https://twitter.com/Rogozin/status/1536418115550171137?ref\\_src=twsrc%5Etfwl](https://twitter.com/Rogozin/status/1536418115550171137?ref_src=twsrc%5Etfwl), tweet of 13 June 2022; cf. Timofey Sergeytsev, 'What should Russia do with Ukraine?', *Ria Novosti*, 3 April 2022, where the author clearly states that denazification means de-ukrainization and the notion of Ukraine needs to disappear, article translated in English by Mariia Kravchenko, 4 April 2022, 4. Clara Apt, 'Russia's Eliminationist Rhetoric Against Ukraine: A Collection', *Just Security Blog*, 14 February 2023; Finkel, "What's happening in Ukraine is genocide. Period." *The Washington Post*, 5 April 2022.



as espoused by the Russian authorities, hand in hand with Russian Orthodox Church,<sup>32</sup> is rooted in nationalism and chauvinism.<sup>33</sup>

If according to the Russian authorities, Ukraine and the Ukrainian nation are artificial concepts, and all the people in Ukraine are Russian, then it could be argued that those who are attacked should be treated mainly as a political group, not a national one. If that were the case, the narrow definition of genocide (agreed upon in binding international law) does not apply. Bitterly, we might recall that the USSR (which had had a huge impact on the final wording of the 1948 Convention)<sup>34</sup> deliberately excluded political and social groups from the scope of the Convention.<sup>35</sup>

However, if it is taken into account that the nation is a truly political concept,<sup>36</sup> separate from the notion of ethnicity, then fighting against those who identify as members of the Ukrainian nation (even if the opponent denies its existence, but nonetheless still classifies them as targets) is in fact attacking a national group as defined by the International Criminal Tribunal for Rwanda in the *Akayesu case* ('a national group is 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').<sup>37</sup> A further argument to support the view that the attack is targeting the Ukrainian national group could also be found in the consistent policy of Russian troops to destroy symbols and artefacts of Ukrainian culture.<sup>38</sup>

In the occupied southern and eastern parts of Ukraine, Russians attacked and destroyed Orthodox churches (which once again brings up the need to take into account how closely the Russian authorities coordinate their actions with the Moscow Patriarchate)<sup>39</sup> and libraries; replaced the Ukrainian education system with the Russian one; forced people to accept

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32 Curanović, "Guided by a 'Symphony of Views'", 205-206.

33 Mälksoo, "The Postcolonial Moment in Russia's War Against Ukraine," online 11 May 2022.

34 Weiss-Wendt, *The Soviet Union and the Gutting of the Genocide Convention*.

35 Schabas, *Genocide in International Law. The Crime of Crimes*, 71, 74 156-157, 160; Akhavan, *Reducing Genocide to Law. Definition, Meaning, and the Ultimate Crime*, 145

36 Schabas, "Groups Protected by the Genocide Convention: Conflicting Interpretations from the International Criminal for Rwanda," 375, 377.

37 ICTR, Judgment, *Akayesu* (ICTR-96-4-T), Trial Chamber, 2 September 1998, § 512.

38 "As of 8 February 2023, UNESCO has verified damage to 238 sites since 24 February 2022–105 religious sites, 18 museums, 85 buildings of historical and/or artistic interest, 19 monuments, 12 libraries" Ukrainian portal Destroyed Cultural Heritage of Ukraine, <https://culturecrimes.mkip.gov.ua>; and statements of Alexandra Xanthaki, UN Special Rapporteur on cultural rights,.

39 Papkova, *The Orthodox Church and Russian Politics*; Curanović, *The Religious Factor in Russia's Foreign Policy*.

Russian passports; and devastated monuments. The 1948 Convention rejected the idea of cultural genocide,<sup>40</sup> but the fact that cultural goods were attacked could be taken into account as evidence of the aim of the attacker to annihilate the group as such, evidence of intent that the perpetrators, because of their hatred, want all signs of existence of the attacked national group to vanish.<sup>41</sup>

The definition of genocide extends to the above-mentioned acts even if their aim is the destruction not of the whole group but only of its part. There is no consistent jurisprudence of the international courts as to how this ‘part’ should be understood. Schabas argues that Ukrainian losses are not large enough to warrant talk of genocide.<sup>42</sup> Yet genocide was never about numbers – it was always about the intent,<sup>43</sup> which definitely applies here, as demonstrated above. It needs to be emphasized that the requirement introduced in Article 6 of the Rome Statute, Elements of Crimes, according to which genocidal conduct needs to take place ‘in the context of a manifest pattern of similar conduct’ is not a reflection of customary law<sup>44</sup> and could

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40 Interestingly, as Schabas emphasizes “Soviet Union argued for coverage of measures and actions aimed against the use of the national language or national culture. It called this ‘national-cultural genocide’, giving as examples the prohibition or restriction of the use of the national tongue in both public and private life, the destruction or prohibition of the printing and circulation of books and other printed matter in the national tongues, and the destruction of historical or religious monuments, museums, documents, libraries and other monuments and objects of national culture or of religious worship”, Schabas (2009), 208.

41 It is worth recalling the excerpt from Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*, where the author explained: “By ‘genocide’ we mean the destruction of a nation or of an ethnic group (...) genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group. (...) Genocide has two phases: one, destruction of the national pattern of the oppressed group; the other, the imposition of the national pattern of the oppressor.”

42 Schabas, “Genocide and Ukraine: Do Words Mean What We Choose them to Mean?,” 851.

43 Akhavan, *Reducing Genocide to Law. Definition, Meaning, and the Ultimate Crime*, 45.

44 ICTY, Judgment, *Krstić* (IT-98-33-A), 19 April 2004, § 223.

be considered an expression of the will to limit the ICC's jurisdiction to avoid less grave examples of genocide.<sup>45</sup>

Ukrainians are being killed and raped in a systematic manner on the territory occupied by Russia. The territory is limited geographically, but that does not undermine the possibility of the classification of those atrocities as genocide.<sup>46</sup> Losses would have to be assessed: new mass graves are being discovered of people who were clearly not collateral damage of the hostilities but who were simply executed, with their hands bound. Russians, in old-school Soviet style, draw up proscription lists and use them to find and execute local leaders, politicians, and activists, to ease the way for occupation and the assignment of new citizenship to people living in the occupied territories.<sup>47</sup> On these grounds, it stands to reason that those who are executed and attacked could be viewed as a 'significant' part of the group the existence of which is essential for the survival of the group as such.<sup>48</sup> That is why perhaps, with regard to the crimes committed in Ukraine, it is advisable to think not of the destruction of the group as a whole, but of the destruction of a part of the group: specifically, of the most significant part of that group. That would classify the situation as genocide. Bearing in mind the history of Russia and the USSR, this pattern of the perpetration of genocide could be considered the Eastern-European variant of this atrocity, explaining why some of the states of the region decided to adopt an altered version of the definition of genocide in their criminal codes and

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45 Akhavan, *Reducing Genocide to Law. Definition, Meaning, and the Ultimate Crime*, 46.

46 ICTY, Judgment, *Krstić* (IT-98-33-T), 2 August 2001, § 589-590, 595; ICTY, Judgment, *Jelisić*, IT-95-10-T, 14 December 1999, § 83; I.C.J., *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, 26 February 2007, I.C.J. Reports (2007) 43, § 199.

47 It could be noticed that in the Polish declaration of intervention of 15 September 2022 in the proceedings before the ICJ on Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (*Ukraine v. Russian Federation*), Poland referred to Soviet practices ("Therefore, the Republic of Poland's views on the present case before the Court are further informed by its long history of supporting efforts to prevent and punish genocide. Our taking such a position is also a consequence of the genocide perpetrated on Polish nationals during World War II by Nazi Germany and the Soviet Union (the predecessor of the Russian Federation). In particular, Soviet individuals responsible for the 1940 Katyń massacre, both the direct perpetrators as well as political leaders, including Joseph Stalin and Lavrentiy Beria, were never held to account for this crime.").

48 ICTY, Judgment, *Krstić* (IT-98-33-A), 19 April 2004, § 12, where the Court used such expressions like "prominence within the group" or "emblematic". Cf. Final Report of the Commission of Experts, Un Doc. S/1994/674 (1994), § 94. Nersessian, *Genocide and Political Groups*, 44-45; Quigley, *The Genocide Convention. An International Law Analysis*, 181.

in consequence they encompassed not only national, ethnic, racial, and religious groups, but also social and political groups (Poland – Article 118 of the Criminal Code of 1997; Lithuania – Article 99 of the Criminal Code of 2000; Estonia - § 99 of the Criminal Code of 2001 which also refers to groups resisting occupation) or any other identified based on arbitrary criterion (Belarus – Article 127 of the Criminal Code of 1999); (Georgia – Article 407 of the Criminal Code of 1999), class or other similar group of people (Czechia – Section 400 Code of 2009). The number of states which implemented an ‘enhanced’ definition of genocide is too small to claim that a regional norm encompassing political groups within the notion of genocide has emerged. Nonetheless, it demonstrates a growing awareness of then problems related to the classification of crimes committed in the region.

#### **4. Unbearable Abundance of Legal Problems – Invitation to Current PRIEL Volume**

From the remarks above, the reader of the current volume would learn how many different and complicated legal problems have appeared because of the armed conflict in Ukraine or were exposed due to the conflict. It is impossible to deal with them all extensively in one volume but we have managed to gather together extraordinarily experienced and renowned authors who prepared some thought-provoking papers on the burning questions related to the war in Ukraine.

Jennifer Trahan in her article deals with the recurring problem of the paralysis of the Security Council because of the veto of one of its permanent members and the role of the General Assembly in this situation. Carrie McDougall explains why Ukraine was opting for an international tribunal to prosecute those responsible for the crime of aggression, raising among others the problem of immunities which obviously appears in the case of the prosecution of the leaders of the state. The question of the identification of those who could be prosecuted for the crime of aggression against Ukraine is analysed by Gleb Bogush who does not hesitate to point out specific persons with explanations on their roles in shaping and influencing Russia’s aggressive policy. Aleksandra Mężykowska discusses the legal problems related to the expulsion of Russia from the Council of Europe, especially related to the refusal of participation in the proceedings and with the need to grant justice to war victims. Finally, Andrzej Jakubowski discusses the obligation of third states and organizations to protect Ukraine’s

cultural heritage from threats caused by Russian aggression, with a focus on the European Union. All the problems discussed in reference to the war in Ukraine have a universal character and may prove to be relevant for all regions in the world.

### Bibliography

1. Akhavan, Payam. *Reducing Genocide to Law. Definition, Meaning, and the Ultimate Crime*. Cambridge: Cambridge University Press, 2012.
2. Azarov, Denys, Koval, Dmytro, Nuridzhanian, Gaiane, Venher, Volodymyr. "Understanding Russia's Actions in Ukraine as the Crime of Genocide." *Journal of International Criminal Justice* 21, no. 2 (2023).
3. Bílková, Veronika. "The Use of Force by the Russian Federation in Crimea." *Heidelberg Journal of International Law* 75 (2015).
4. Curanović, Alicja. "Guided by a 'Symphony of Views.'" In *The Russian Orthodox Church's Role in Building Russia's Symbolic Capital, Orthodox Religion and Politics in Contemporary Eastern Europe. On Multiple Secularisms and Entanglements*, edited by Koellner, Tobias. London: Routledge, 2018.
5. Curanović, Alicja. *The Religious Factor in Russia's Foreign Policy*. London-New York: Routledge, 2012.
6. Czapliński, Władysław, Dębski, Sławomir, Tarnogórski, Rafał, Wierczyńska, Karolina (ed.). *The Case of Crimea's Annexation Under International Law*. Warsaw: WN Scholar, 2017.
7. Grant, Thomas D. *Aggression Against Ukraine. Territory, Responsibility, and International Law*. London: Palgrave Macmillan, 2015.
8. Green, James A., Henderson, Christian, Ruys, Tom. "Russia's attack on Ukraine and the jus ad bellum." *Journal on the Use of Force and International Law* 9, no. 1 (2022).
9. Grzebyk, Patrycja. "Classification of the Conflict between Ukraine and Russia in International Law (Ius ad Bellum and Ius in Bello)." *Polish Yearbook of International Law* 34 (2014).
10. Grzebyk, Patrycja. "Escalation of the conflict between Russia and Ukraine in 2022 in light of the law on use of force and international humanitarian law." *Polish Yearbook of International Law* XLI (2022).
11. Gubrynowicz, Aleksander. "At the Crossroads of International Criminal Law, The Montreal Convention, International Humanitarian Law, and Human Rights: Some Remarks on the Interpretation of International Law by the Hague District Court in the MH-17 Judgments and their Potential Legacies." *Polish Yearbook of International Law* XLII (2023).
12. Hoffmann Tamas. "War or peace? – International legal issues concerning the use of force in the Russia–Ukraine conflict." *Hungarian Journal of Legal Studies* 63 (2022).
13. Lemkin, Rafał. *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*. New York: Columbia University Press, 1944.

14. Mälksoo, Maria. "The Postcolonial Moment in Russia's War Against Ukraine." *Journal of Genocide Research*, online 11 May 2022.
15. Nersessian, David L. *Genocide and Political Groups*. Oxford: Oxford University Press, 2010.
16. Papkova, Irina. *The Orthodox Church and Russian Politics*. Oxford: Oxford University Press, 2011.
17. Quigley, John B. *The Genocide Convention. An International Law Analysis*. Aldershot, 2006.
18. Sayapin, Sergey, Tsybulenko, Evhen (ed.). *The Use of Force against Ukraine and International Law - Jus ad Bellum, Jus in Bello, Jus Post Bellum*. The Hague: Springer, 2018.
19. Schabas, William. "Genocide and Ukraine: Do Words Mean What We Choose them to Mean?" *Journal of International Criminal Justice* 20, no. 4 (2022).
20. Schabas, William. *Genocide in International Law. The Crime of Crimes*. 2nd edn. Cambridge: Cambridge University Press, 2009.
21. Schabas, William. "Groups Protected by the Genocide Convention: Conflicting Interpretations from the International Criminal for Rwanda." *ILSA Journal of International & Comparative Law* 6 (2000).
22. Weiss-Wendt, Anton. *The Soviet Union and the Gutting of the Genocide Convention*. Madison: University of Wisconsin Press, 2017.