



Rustam Atadjanov

PhD (Law), Associate Professor of Public and International Law,
Interim Dean of the School of Law at KIMEP University
(Almaty, Kazakhstan)
rustamatadjanov1@gmail.com

DOI: 10.33498/lowu-2024-02-015

УДК 341.322.5

INDIVIDUAL CRIMINAL RESPONSIBILITY OF THE RUSSIAN STATE REPRESENTATIVES FOR THEIR WAR CRIMES AND CRIMES AGAINST HUMANITY IN UKRAINE

ABSTRACT. The military invasion of Ukraine by the Russian Federation since February 2022 has led to widespread international condemnation and close scrutiny. Among the various key aspects of this phase of the conflict, one of the most pressing legal issues is the commission of war crimes and crimes against humanity. These acts represent not only egregious violations of international law but also pose significant threats to peace, security, and the sovereignty of Ukraine, a recognized subject of international law. The need to address and delineate the legal responsibility of those guilty of committing these violations is both urgent and critical. This scholarly article aims to analyze the individual criminal responsibility of Russian state representatives for their involvement in war crimes and crimes against humanity in Ukraine. By looking at specific cases and the framework of international criminal law, the article seeks to propose realistic avenues for bringing perpetrators to justice, thereby contributing to the broader discourse on accountability and the enforcement of international legal standards. The research methodology adopted in this article is characterized by a relevant analysis of international legal instruments, jurisprudence, and some international cases. Through a brief examination of the criminal acts committed by Russian troops in Ukraine, the article leverages both qualitative and quantitative data to categorize and assess the nature of these crimes within the ambit of modern international criminal law. The article's research elucidates the categorization of war crimes and crimes against humanity as defined by international law, providing their clear differentiation from one another. By systematically reviewing incidents since the military invasion of Ukraine, the article qualifies multiple acts by Russian forces as war crimes and crimes against humanity. Furthermore, the article provides a brief review of the individual criminal responsibility for the commission of core crimes such as war crimes and crimes against humanity and look at how it should apply to the Russian perpetrators. It concludes with a strong advocacy for the expedited identification and utilization of an appropriate judicial mechanism to address the criminal responsibility of Russian state representatives. It highlights the imperative need for swift action to prevent further impunity and ensure justice for the victims of these heinous crimes. Additionally, the article warns of the risks associated with delays in the judicial process, emphasizing the potential for prolonged suffering and instability in the region. Ultimately, it calls for a concerted international effort to uphold the principles of international law and human rights, thereby safeguarding the sovereignty and dignity of Ukraine and its people.

KEYWORDS: crimes against humanity; crimes under international law; individual criminal responsibility; International Criminal Court; international criminal law; Rome Statute; war crimes.

© Rustam Atadjanov, 2024

The ongoing conflict in Ukraine, precipitated by the Russian Federation's full scale military invasion in February 2022, has not only redrawn geopolitical lines but also highlighted the profound human costs of modern warfare. While some may claim – and the author has himself heard such claims back in 2022, that this war witnesses a return to the so-called “classical war” paradigm where battles are waged with the employment of obsolete equipment such as, e. g, tanks, and may thus be described as traditional international armed conflict, the reality shows us that those claims are far from the truth. The extensive use of artificial intelligence and autonomous weapons systems, the substantial damage caused by the deployment of military drones, and application of some modern technologies in the ways in which the military intelligence has been engaged by both sides as well as an intense informational war accompanying the ongoing hostilities out on the battlefield all demonstrate the complexities brought about by waging this type of war and show us how difficult it may be sometimes to quickly identify the exact information and gather proper evidence. However, what leaves no doubt is the extent of destruction, ruin and victimization caused as a result of the actions of the Russian Federation's representatives against the sovereign nation of Ukraine. The task of classifying and categorizing the violations of international law that have so far occurred during the war remains clear and fully feasible, and this work attempts to delineate some of the most notorious types of those breaches.

The present article endeavors to dissect the layered complexities of war crimes and crimes against humanity committed during this conflict, offering legal analysis within the framework of contemporary international law. By examining the actions of Russian state representatives, it seeks to articulate the individual criminal responsibilities and the broader implications for international legal standards and humanitarian principles.

The nature of this armed conflict is first reviewed; it is a necessary step dictated by the existing applicable legal framework and it informs the ensuing analysis of alleged war crimes. International humanitarian law (IHL), with its bifurcation between international armed conflicts and non-international armed conflicts, provides the terminology and legal criteria for such classification. Through carrying out the said legal analysis, I try to situate this war within the realm of international armed conflicts, thereby triggering the application of specific provisions of the Geneva Conventions and their Additional Protocols. This classification not only underscores the gravity of the accusations but also delineates the obligations and protections under the applicable law.

The structure of the article is deliberately designed to navigate the reader through the intricate legal landscape, beginning with an introduction that sets the stage for the importance of this research in today's global environment. The subsequent sections delve into the categorization of war crimes and crimes against humanity, utilizing a methodological approach that engages in qualitative analyses. Through the examination of documented / reported incidents and patterns of violence, the article offers a comprehensive categorization of the alleged war crimes, framed by the guiding principles of IHL, which is then followed by tackling the individual acts of crimes against humanity and corresponding legal qualification of the actions of

the Russian armed forces in Ukraine falling under this criminal category. This is followed by a consideration of the notion of individual criminal responsibility and of how it applies to the Russian perpetrators of the offences under review.

In its conclusion, the article does not merely recapitulate the findings but argues for the urgency of international action. It highlights the need for a concerted effort to identify and utilize the most effective judicial mechanisms to address these crimes. The work warns of the consequences of inaction or delay, emphasizing the risks to peace, security, and the rule of law. Ultimately, this scholarly endeavor aims not only to contribute to the academic discourse – in Ukraine and beyond – on war crimes, crimes against humanity and, in general, international criminal justice but also to advocate for the principles of humanity and the protection of the innocent in times of conflict. This work, through its structure, purposeful analysis, and aimed conclusion(-s), aspires to hopefully serve as a useful contribution to the ongoing efforts to understand and address the implications of the Ukrainian armed conflict within the purview of international law. It seeks to underscore the imperative of legal accountability and the role of the international community in safeguarding human rights and human dignity against the backdrop of war.

War Crimes

The classification of the nature of the ongoing armed conflict in Ukraine following the invasion by Russia in February 2022 is a preliminary step of high importance before delving into the categorization and analysis of war crimes committed within this context. Rules of international humanitarian law (IHL), also known as the law of armed conflict or the law of war, mandate this initial classification to apply the correct legal framework and principles. As is well-known, IHL distinguishes between international armed conflicts (IAC), which involve cross-border hostilities between States, and non-international armed conflicts (NIAC), which are confined to the territory of a single State involving governmental forces and non-state armed groups, or between such groups themselves¹. The distinction is crucial as it dictates the applicable legal regime, including specific protections afforded to victims and the obligations imposed on the parties to the conflict. Therefore, the importance of first qualifying the nature of the armed conflict in Ukraine can be set to be established. It is the linchpin for applying the correct legal framework, which in turn enables the systematic categorization and proper analysis of alleged war crimes.

In the case of Ukraine, the conflict triggered by Russia's invasion and use of armed force clearly qualifies as an international armed conflict given that it involves military engagements between the armed forces of two sovereign states.

¹ While distinguishing between IAC and NIAC (or, to use a technical term for the latter, “armed conflicts not of an international character”) has become somewhat outdated due to the ever-increasing tendency to reduce the difference between the two types and to converge the rules which apply to IAC and NIAC; however, it still remains relevant for this particular armed conflict since the qualification of war crimes during IAC does not raise any doubts or questions as to whether or not they can be committed in this type of conflict. See: Atadjanov R, ‘War Crimes Committed During the Armed Conflict in Ukraine: What Should the ICC Focus On?’ In: Sayapin S, Tsybulenko E (eds), *The Use of Force against Ukraine and International Law* (T.M.C. Asser Press 2018) 388. DOI: https://doi.org/10.1007/978-94-6265-222-4_18.

This classification has significant implications for the application of IHL, including the Geneva Conventions of 1949 and their Additional Protocols², which are cornerstone instruments of IHL that regulate the conduct of hostilities and aim to limit the effects of armed conflict for humanitarian reasons. Under these legal frameworks, individuals protected include wounded and sick soldiers, prisoners of war, and civilians, with specific rules governing their treatment. If we look at the relevant treaty law and compare it to the facts, it becomes clear that IHL rules governing the IAC situation fully apply to this war, be it during and since 2014, and after the military invasion in 2022. The governing law here would be the Geneva Conventions of 1949 on the Protection of Victims of War and the Additional Protocol I of 1977 which deal with IAC. Both Ukraine and the Russian Federation are State Parties to all four Conventions and the Protocol I.

The qualification of the conflict as an IAC activates a broad spectrum of legal obligations for both parties and provides the basis for identifying and categorizing war crimes. As to more specifically applicable legal sources, since both Russia and Ukraine are states, the armed conflict between them is governed by IHL of IAC, foreseen in particular in the four Geneva Conventions and Additional Protocol I to which they are both state parties, as well as the large body of customary international law rules applicable to such conflicts³.

As for the relevance of the Rome Statute of the International Criminal Court, on 2 March 2022 the Prosecutor of the International Criminal Court opened an investigation into the Situation in Ukraine on the basis of the collective state referrals from 43 States Parties – a unique referring precedent on its own⁴. The scope of the investigated situation encompasses any past and present allegations of war crimes, crimes against humanity or genocide committed on any part of the territory of Ukraine by any person from 21 November 2013 onwards⁵. While neither Ukraine nor Russia have ratified the Rome Statute of the ICC⁶, Ukraine

² Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 75 United Nations Treaties Series (U.N.T.S.) 31–83 (Geneva Convention I); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, Aug. 12, 1949, 75 U.N.T.S. 85–133 (Geneva Convention II); Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 75 U.N.T.S. 135–285 (Geneva Convention III); Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287–417; (Geneva Convention IV); Protocol I Additional to the Geneva Conventions of 12 Aug. 1949 and Relating to the Protection of Victims of International Armed Conflicts, Dec. 12, 1977, 1125 U.N.T.S. 3–434, reprinted in 16 International Legal Materials (I.L.M.) 1391 (1977); Protocol II Additional to the Geneva Conventions of 12 Aug. 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts, Dec. 12, 1977, 1125 U.N.T.S. 609–99.

³ Organization for Security and Cooperation in Europe (OSCE), “Report on Violations of International Humanitarian Law and Human Rights Law, War Crimes and Crimes against Humanity Committed in Ukraine since 24 February 2022”, by Wolfgang Benedek, Veronika Bílková and Marco Sassòli, published 13 April 2022, at 5.

⁴ Atadjanov R, ‘Holding the Aggressor Accountable’ [2022] 25 (2) Journal of International Peacekeeping 178–86. DOI: <https://doi.org/10.1163/18754112-25020006>.

⁵ International Criminal Court, Situation in Ukraine (ICC-01/22), available at <https://www.icc-cpi.int/ukraine>. Notably, warrants of arrest have been issued for several individuals, including the Russian President Vladimir Putin, for crimes like the unlawful deportation of children and directing attacks at civilian objects.

⁶ For the author’s arguments regarding the advantages for Ukraine flowing out from ratifying the Rome Statute of the ICC, see: Rustam Atadjanov, ‘До питання щодо ратифікації Україною Римського статуту / К вопросу о ратификации Украиной Рим. статута’ (Youtube) <<https://www.youtube.com/watch?v=UyTB7PiGQwQ&t=201s>> (accessed: 26.02.2024).

has lodged two declarations to the effect of accepting the Court's jurisdiction over alleged crimes under the Rome Statute occurring on Ukraine's territory, pursuant to article 12(3) of the Rome Statute. Subsequently, the Ukrainian Parliament, i.e., Verkhovna Rada adopted the Law "On Amendments to the Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine Concerning Cooperation with the International Criminal Court" (№ 7304), which regulates Ukraine's cooperation with the International Criminal Court⁷. These legal declarations necessitate a look into the applicable provision of the Rome Statute when carrying out research into core crimes such as was crimes and crimes against humanity.

Before moving on, it makes sense to provide a proper definition of war crimes. In order to avoid the confusion which sometimes happens in defining this type of crimes against international law (for example, labelling ALL violations of IHL as war crimes even if those violations are not criminal and do not entail criminal responsibility), the following short and more narrow definition seems best fitting the concept in accordance with modern ICL: 'war crimes are serious violations of rules of IHL which create direct criminal responsibility under international law'⁸. This definition allows one to see the existing link between IHL and international criminal law (ICL). Furthermore, the alleged conduct would fall under the above definition only if it is functionally connected to the armed conflict and took place in its context⁹.

These encompass a wide range of offenses, including but not limited to, targeting civilians, attacking undefended places without military necessity, taking hostages, and employing prohibited weapons. The obligation to prosecute individuals responsible for war crimes is a fundamental rule of IHL, aimed at ensuring accountability and preventing impunity. In the context of the armed conflict in Ukraine, identifying specific acts committed by Russian forces as war crimes requires an informed analysis of the conduct against the backdrop of IHL provisions applicable in international armed conflicts. This necessitates a careful examination of the intent, target, method, and impact of military operations to ascertain whether they constitute violations of IHL and, consequently, war crimes. That is a job for the future judicial bodies mandated to examine the alleged international crimes, or core crimes, of the aggressor state and its representatives, in order to properly mete out the fair and fully deserved legal punishment.

Due to the increasing convergence between the rules of IAC and NIAC in international law, it makes sense to classify war crimes based not on the principal two-type conflict distinction but rather on the crimes' substance, attacked

⁷ Лавренюк С, 'Верховна Рада врегулювала порядок співробітництва з Міжнародним кримінальним судом' (*Голос України*, 05.05.2022) <<http://www.golos.com.ua/article/359581>> (дата звернення: 26.02.2024).

⁸ Werle G, Jessberger F, *Principles of International Criminal Law* (3rd edition, Oxford University Press 2014) 391–2, para 1029; Atadjanov (n 1) 395. International Criminal Court (ICC) in its work is applying a long and complicated definition established in the Rome Statute's Article 8 which names as war crimes the grave breaches of the 1949 Geneva Conventions and other serious violations of the laws and customs applicable in IAC as well as serious violations of the laws and customs applicable in NIAC, with the ensuing detailed list of individual acts constituting the crimes. Rome Statute of the International Criminal Court, 17 July 1998, 2187 U.N.T.S. 90, Article 8.

⁹ Atadjanov (n 1) 395–6.

object and nature¹⁰. Accordingly, they can be divided into five main categories: 1) war crimes against persons; 2) war crimes against property and other rights; 3) employing prohibited methods of warfare; 4) use of prohibited means of warfare, and 5) war crimes against humanitarian operations¹¹. The first two groups of crimes constitute the so-called “Law of Geneva” while the third and fourth belong to the “Law of the Hague”. Based on the available materials and research as well as on the allegations and investigations conducted by international bodies and organizations, it appears that all five categories of war crimes have been implicated in the actions taken by Russian forces in Ukraine since the invasion began in February 2022¹². This sobering conclusion inevitably forms up after one looks into existing wide range of informative sources and evidence of the alleged crimes¹³.

More specifically, what would those crimes be? The following is the listing of the individual acts that, in the opinion of this author but also in accordance with modern applicable international law and to the best of his knowledge, legally qualify as war crimes under relevant legal sources:

1. *War Crimes against Persons*: Allegations in this category of crimes include torture, rape, and the execution of civilians and prisoners of war. Reports detail systematic torture in various types of detention facilities and horrific acts of sexual violence, alongside other forms of violence¹⁴.

Killing: this act constitutes a grave breach of all four 1949 Geneva Conventions (“willful killing”). Article 8(2)(a)(i) of the Rome Statute establishes a criminal responsibility for the commission of this breach¹⁵. As criminal lawyers and IHL experts know, the crime’s material elements require killing a person who is under the protection of the Geneva Conventions or causing his/her death¹⁶. Typical examples would include, among others, killing of prisoners of war (PoWs) or interned civilians without a prior fair trial or mistreatment of PoWs which led to their death¹⁷. In case of Ukraine, multiple reports confirm the carrying out

¹⁰ Atadjanov (n 1) 395.

¹¹ Ibid.

¹² For the legal scholarly analysis of war crimes committed by the Russian federation representatives before the invasion and after the start of the overall war in 2014, see Ibid., *passim*.

¹³ One highly useful and comprehensive online source of analytical information in English and other languages is the following Padlet collection of publicist / scholarly articles and pieces: Quenivet N, ‘Opinions of (Legal) Scholars on the Conflict in Ukraine’ (*Padlet*) <<https://padlet.com/noellequenivet/opinions-of-legal-scholars-on-the-conflict-in-ukraine-6nitzzw3i1ttgpt5>> (accessed: 26.02.2024) see section “War Crimes”.

¹⁴ For some of the relevant sources, see, e. g.: OSCE Report (n 3) 9–16; Human Rights Council, ‘Report of the Independent International Commission of Inquiry on Ukraine’, published 15 March 2023; Ukraine: Russian Forces Fired on Civilian Vehicles. Civilians Killed Trying to Flee, Approaching Checkpoints (*Human Rights Watch*, 02.05.2022) <<https://www.hrw.org/news/2022/05/02/ukraine-russian-forces-fired-civilian-vehicles>> (accessed: 26.02.2024); O’Brien M, Quenivet N, ‘Sexual and Gender-Based Violence against Women in the Russia-Ukraine Conflict’ (08.06.2022, EJIL:Talk! Blog of the European Journal of International Law) <<https://www.ejiltalk.org/sexual-and-gender-based-violence-against-women-in-the-russia-ukraine-conflict>> (accessed: 26.02.2024). The reports and news pieces cover multiple situations in different regions and cities of Ukraine such as Kyiv, Chernihiv, Kharkiv, Bucha, Sumy and many more.

¹⁵ Geneva Convention I, Article 50; Geneva Convention II, Article 51; Geneva Convention III, Article 130; Geneva Convention IV, Article 147.

¹⁶ ICC Elements of Crimes, reproduced from the Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, 1st session, New York, 3–10 September 2002 (UN publication, Sales No. E.03.V.2 and corrigendum), part II.B. Article 8(2)(a)(i) of the Rome Statute, num. 1.

¹⁷ Werle, Jessberger (n 8) 432, para 1140, cited in Atadjanov (n 1) 396.

of willful killings, summary executions, attacks on the civilians on the move all clearly amount to war crimes¹⁸.

Acts of mistreatment: the offences of mistreatment constituting war crimes include several groups of acts such as torture, willfully causing great suffering or serious injury to health, inhuman or cruel treatment; mutilation, and performing biological, medical or scientific experiments¹⁹. For the context of war in Ukraine be it since 2014 or 2022, three of these five groups appear to be relevant: torture, willfully causing great suffering or serious injury to body or health, and inhuman or cruel treatment. All three constitute grave breaches of the four Geneva Conventions of 1949²⁰. The Rome Statute proscribes torture as well as inhuman treatment in its Article 8(2)(a)(ii). Available reporting information clearly and unambiguously indicate / formulate the directly applicable terminology here, i. e., “torture and inhuman treatment”, “torture and ill-treatment”. For example, the HRC’s Commission Report states the following:

The Commission has found a widespread pattern of torture and inhuman treatment committed by Russian authorities against people they detained in Chernihiv, Donetsk, Kharkiv, Kherson, Kyiv, Sumy, and Zaporizhzhia regions, in Ukraine, and in the Russian Federation. Torture has been prevalent against certain categories of people. Most victims were men; both civilians and prisoners of war were tortured²¹.

Unlawful confinement or transfer: these types of acts are grave breaches under Geneva Convention IV’s Article 147. According to the International Criminal Tribunal for the Former Yugoslavia, or ICTY, under no circumstance a civilian may be interned (confined, detained) solely because of his/her political opinion, nationality or gender²². The relevant provision in the Rome Statute for both acts is its Article 8(2)(a)(vii). Judging by the available report information, a pattern of widespread unlawful confinement in areas controlled by Russian armed forces, targeting broad categories of persons, has been established²³. Victims were men and women of all ages and children. Detention facilities where Russian authorities detained large numbers of people for long periods of time in Chernihiv, Donetsk, Kharkiv, Kherson, Kyiv and Zaporizhzhia regions, in Ukraine, and in the Russian Federation, were identified²⁴. Similarly, situations in which Russian armed forces transferred detainees within Ukraine or deported them to the Russian Federation, have been revealed. Victims were both men and women. In the Russian Federation, some of the detainees were confined in pre-trial facilities in Kursk and Bryansk regions. A large number of Ukrainians were detained there²⁵.

¹⁸ Human Rights Council Report (n 14) 8–9; see in general: Quenivet (n 13).

¹⁹ Atadjanov (n 1) 397.

²⁰ Geneva Convention I, Article 50; Geneva Convention II, Article 51; Geneva Convention III, Article 130; Geneva Convention IV, Article 147.

²¹ Human Rights Council Report (n 14) 11–2.

²² Prosecutor v. Mucić et al., Trial Chamber, Judgement, Case No. IT-96-21-T, 16 November 1998, paras 567, 577.

²³ Human Rights Council Report (n 14) 9.

²⁴ Ibid.

²⁵ Ibid 10.

2. *War Crimes against Property and Other Rights*: This category encompasses the deliberate targeting and destruction of civilian infrastructure, such as hospitals and the energy grid, indicate war crimes against property²⁶. Additionally, the forced deportation of children²⁷ and the destruction of cultural heritage sites in Ukraine fall under violations of rights protected in wartime²⁸.

Offences of destruction: Hospitals, medical units and transport can be objects of these types of acts to qualify as grave breaches. If military attacks are directed against targets such as hospitals, which are protected under IHL as such regardless of the presence of an occupation, they are objects for this purpose and such attacks would qualify as war crimes²⁹. These are, using the IHL specific terminology, the specially protected objects. Article 8(2)(a)(iv) of the Rome Statute criminalizes extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly. Available reports directly indicate towards a repeated occurrence of attacks against medical objects such as, for example, air strikes on hospitals in the cities of Iziium, Mariupol, Ovruch, Volnovakha, and Vuhledar in 2022³⁰.

Offences of expropriation: Other objects that fall under this category are nuclear power stations; these are called “installation containing dangerous forces” and they constitutes objects that are specially protected by IHL. Expropriation offenses in the law of war crimes are limited to specific objects that are especially endangered and in need of protection. Article 8(2)(a)(iv) of the ICC Statute, applicable only to international armed conflict, is based on the grave breaches provisions of Geneva Conventions I, II and IV³¹. While there was no destruction element of the attacks by the Russians on nuclear plants such as former Chernobyl nuclear power station and functioning nuclear powers stations situated in Zaporozhskaya region, these acts satisfy the requirements of offences of expropriation; their acts endangered the nuclear safety and security while also accompanying those acts with alleged threats to commit military attacks and destroy the plants³². While some reports are hesitant to call these acts “grave breaches of IHL” or “war crimes”, this author thinks otherwise. There appear to be enough evidence to qualify the expropriation and seizure of these nuclear objects by the Russians because the risks and dangers associated with those attacks were rather high for the population of the area as well as for the environment.

²⁶ Goodman J, Devlin K, Korenyuk M, Cheetham J, Tauschinski J, ‘Chernihiv: Are these Russia’s weapons of war?’ (*BBC News*, 10.04.2022) <<https://www.bbc.com/news/world-europe-61036880>> (accessed: 26.02.2024); Ukraine: Russian Forces Fired on Civilian Vehicles. Civilians Killed Trying to Flee, Approaching Checkpoints (n 14).

²⁷ The deportation of children by Russians will be dealt with in the next section that analyses crimes against humanity.

²⁸ Human Rights Council Report (n 14) 14–5.

²⁹ See also: Werle, Jessberger (n 8), para 1159, citing ICTY cases such as *Prosecutor v. Kordić and Čerkez*, ICTY (Trial Chamber), judgment of 26 February 2001, paras. 335 et seq.; *Prosecutor v. Naletilić and Martinović*, ICTY (Trial Chamber), judgment of 31 March 2003, para. 575; *Prosecutor v. Brđanin*, ICTY (Trial Chamber), judgment of 1 September 2004, para. 586.

³⁰ OSCE Report (n 3) 36–7.

³¹ Werle, Jessberger (n 8) para 1149.

³² OSCE Report (n 3) 37–8.

3. *Employing Prohibited Methods of Warfare*: Indiscriminate attacks on densely populated areas, are clear violations of IHL, representing prohibited methods of warfare. Such actions disregard the key principles of distinction and proportionality that represent some of fundamental tenets of the law of armed conflict³³.

Attacks against the civilian population and civilian objects: As a careful reader might have already noticed, this category repeatedly involves Russians' conduct since the start of the notorious invasion. The offence of attacking the civilians is dealt with in Rome Statute's Article 8(2)(b)(i) for IAC. This provision is based on the Additional Protocol I of 1977 to the Geneva Conventions (Article 51(2) of the Protocol)³⁴. There is serious evidence of the multitude of attacks against civilians which violate IHL and must entail individual criminal liability under ICL. One prominent example would be a pattern of attacks against civilians on the move in Kharkiv, Kyiv, and Sumy regions when they were under Russian armed forces' control; the pattern was found by the HRC Inquiry Commission. It documented 18 such cases in February and March 2022, in which 14 men, eight women, one girl and three boys were killed, and six other civilians were injured³⁵. In most of these instances, the Commission found enough evidence to conclude that Russian armed forces were responsible for these attacks³⁶. The Commission concluded that Russian armed forces have committed or are likely to have committed indiscriminate attacks against civilians and civilian objects³⁷.

4. *Use of Prohibited Means of Warfare*: The employment of weapons that cause unnecessary suffering or fail to distinguish between combatants and non-combatants, such as, e.g., cluster munitions and incendiary weapons, are prohibited means of warfare. These actions have been documented in the reports of attacks against civilian areas and infrastructure³⁸.

Use of weapons which are by nature indiscriminate: Article 8(2)(b)(xx) of the ICC Statute criminalizes the use of means of warfare of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate. Weapons that are by nature indiscriminate are those that cannot be directed at a military objective or whose effects cannot be limited as required by international humanitarian law; the prohibition of such weapons is also

³³ See the discussion in: Werle, Jessberger (n 8) starting at para. 1167.

³⁴ While there is a similar provision in the Protocol II, I am purposefully avoiding dealing with this treaty since the article here involves the discussion of IAC that is covered and regulated by the Protocol I.

³⁵ Human Rights Council Report (n 14) 9.

³⁶ Ibid.

³⁷ Ibid. For further confirmation and more details see: OSCE Report (n 3) 34. While the Russian forces are known to have committed attacks of similar nature against Ukrainian civilian targets well before the invasion phase of the war: see, for example, the reporting sources cited in: Atadjanov (n 1) 401–2, now those attacks on their side have become much more intense and more widespread correspondingly ending in much higher numbers of casualties and victims.

³⁸ See, for example: Tondo L, Koshiw I, 'Ukraine destruction: how the Guardian documented Russia's use of illegal weapons' (*The Guardian*, 24.05.2022) <<https://www.theguardian.com/world/2022/may/24/ukraine-destruction-how-the-guardian-documented-russia-use-of-weapons>> (accessed: 26.02.2024); Human Rights Monitoring Mission in Ukraine. Update on the Human Rights Situation in Ukraine, reporting period: 24 February – 26 March 2022 <www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf> (accessed: 26.02.2024); Cluster Munition Monitor 2022 (ICBL-CMC, August 2022) <<https://www.the-monitor.org/en-gb/reports/2022/cluster-munition-monitor-2022.aspx>> (accessed: 26.02.2024).

supported by the general prohibition of indiscriminate attacks³⁹. There is a solid confirming information indicating towards a heavy use of particular types of such indiscriminate weapons as cluster munitions and incendiary weapons by the Russian forces in Ukraine. At a treaty law level, the use of cluster munitions are dealt with in the Convention on Cluster Munitions, or CCM, that prohibits all use, transfer, production, and stockpiling of cluster munitions⁴⁰. Whilst neither the Russian Federation nor Ukraine ratified the CCM, due to their wider area effects the use of cluster munitions in populated areas is incompatible with the IHL principles governing the conduct of hostilities that is binding on the parties to the conflict; furthermore, due to the large number of sub-munitions that fail to explode immediately, exposing civilians to risks for years afterwards, their use even outside of populated areas raises significant concerns of disproportionate and long-term indiscriminate effects⁴¹. Moreover, cluster munitions have been cited in state practice as being indiscriminate in certain or all contexts according to the ICRC⁴². They are prohibited under customary IHL as well, and so the Russian Federation is bound by it. Hence, the use of cluster bombs by the Russian Federation against Ukraine violates international law. There is plenty of confirming information on the Russians' extensive use of cluster munitions as well as incendiary weapons⁴³.

5. *War Crimes against Humanitarian Operations*: Article 8(2)(b)(iii) of the ICC Statute covers "intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict". This offense largely overlaps with criminal attacks on civilians and civilian objects and with war crimes against persons⁴⁴. It has been reported that in many cases, even when an agreement on the use of humanitarian corridors existed, humanitarian convoys have been either attacked or obliged by acts of violence within the corridor to withdraw for security reasons⁴⁵. This author completely agrees with the OSCE Report's conclusion claiming it unlikely that Ukraine hinders the provision of humanitarian assistance to its own population; this would be against simple logic⁴⁶. On the other hand, there is apparently credible information confirming that Russian forces carried out deliberate attacks against humanitarian operations⁴⁷.

³⁹ Henckaerts J-M, Doswald-Beck L, *Customary International Humanitarian Law* (Cambridge University Press 2005) 244.

⁴⁰ Convention on Cluster Munitions, 30 May 2008, 2688 U.N.T.S. 39.

⁴¹ Human Rights Monitoring Mission in Ukraine (n 38) 3.

⁴² Henckaerts, Doswald-Beck (n 39) 249–50.

⁴³ See: OSCE Report (n 3) 41–3 citing multiple sources of such use of indiscriminate weapons including the Human Rights Watch reports; Human Rights Council Report (n 14) 6; Human Rights Monitoring Mission in Ukraine (n 38) 3.

⁴⁴ Werle, Jessberger (n 8) para 1296.

⁴⁵ OSCE Report (n 3) 16–7.

⁴⁶ Ibid 17.

⁴⁷ See: 'Ukraine: Humanitarian Catastrophe in Iziium. The Plight of Civilians under Bombardment and Siege-like Conditions' (*Amnesty International*, 22.03.2022) <<https://www.amnesty.org/en/wp-content/uploads/2022/03/EUR5053822022ENGLISH.pdf>> (accessed: 26.02.2024); Ukrainian evacuation train was hit by debris during a Russian shelling (13.03.2022) (*Ukrainefrontlines*) <<https://ukrainefrontlines.com/news/conflict-zone/ukrainian-evacuation-train-was-hit-by-debris-during-a-russian-shelling>> (accessed: 26.02.2024); Russian

The conclusion that all five main categories of war crimes considered above have been committed in Ukraine by the Russians is significant, not merely for the purposes of academic discourse but for the practical pursuit of justice and accountability in international law. It underscores the comprehensive nature of violations committed by the perpetrators, from direct harm to individuals to the broader impacts on property, heritage, and the conduct of warfare. Furthermore, this more or less detailed categorization may form a good foundation for prosecutorial efforts, be it on the side of the ICC or domestically, enabling a systematic approach to indictments and trials, thereby ensuring that the full spectrum of war crimes is eventually addressed, reflecting the multifaceted humanitarian harm inflicted upon Ukraine.

Crimes against Humanity

Unlike the existing research on war crimes, there appears to be much less analysis with respect to crimes against humanity committed by the Russian perpetrators in Ukraine. This is all the more so surprising given the fact that the damage and devastation resulting from the commission of these massive crimes very often equals if not surpasses the humanitarian consequences stemming from the perpetration of war crimes⁴⁸. The importance of categorizing certain acts by Russian representatives in Ukraine as crimes against humanity, beyond their initial framing as human rights violations, lies in the gravity and international recognition these classifications carry. Crimes against humanity, unlike isolated human rights abuses, denote widespread or systematic attacks against civilians, recognized under international law for their severity and the imperativeness of global accountability. Such classification not only elevates the legal scrutiny of these actions but also underscores the necessity for an international response. By explicitly labeling these actions as crimes against humanity, the international community acknowledges the systematic or policy-driven nature of the atrocities, which goes beyond sporadic human rights violations to encompass a broader strategy of oppression or aggression.

This reclassification can – hopefully – catalyze or activate more concerted international legal actions, drawing upon mechanisms designed to address the most serious crimes impacting the international community as a whole. It highlights the need for more robust prosecutorial efforts within international jurisdictions, like the International Criminal Court. Furthermore, it raises the stakes for legal accountability, emphasizing not just the responsibility of direct perpetrators but also those in command or leadership positions who may

forces attack refugee evacuation train in Ukraine (*The Daily Observer*, 13.03.2022) <<https://www.observerd.com/news.php?id=357131>> (accessed: 26.02.2024); 'Ukraine says seven killed, including a child, after Russia fired at evacuation convoy' (*Reuters*, 12.03.2022) <<https://www.reuters.com/world/europe/ukraine-seven-civilians-dead-after-russia-fired-evacuation-convoy-2022-03-12>> (accessed: 26.02.2024).

⁴⁸ Some minimal research already carried out on this topic in general does exist: see, for example: Орлов Ю, 'Злочини проти людяності в контексті збройного конфлікту в Україні: визначення, проблеми розмежування із суміжними складами злочинів' [2023] 88 (1) *Право і безпека* 99–112. DOI: 10.32631/pb.2023.1.09; Тімфєєва Л, 'Протидія злочинам проти людяності в 21 сторіччі' [2022] 1 (19) *ScienceRise: Juridical Science* 30–6.

have ordered, facilitated, or failed to prevent such crimes. That becomes quite relevant when the discussion moves towards the applicability of the principle of individual criminal responsibility to the perpetrators of mass crimes. What follows is a brief description of crimes against humanity as a legal concept, with an ensuing short review of certain important aspects of this category of crimes, which is then followed by qualification of acts committed by the Russian forces in Ukraine since February 2022 as crimes against humanity; the qualification is carried out based on the list of individual acts figuring in the contemporary definition of crimes against humanity in the Rome Statute, i. e., in accordance with the modern logic of listing the acts constituting those crimes in the existing applicable treaty law.

Crimes against humanity, along with genocide, war crimes and the crime of aggression, constitute the so-called core crimes or crimes under international law as understood in contemporary international criminal law. They are mass crimes against civilian population⁴⁹. These crimes are not necessarily directed against a concrete group of people but against a civilian population as a whole and hence they constitute a wider category of crimes than genocide⁵⁰. The prohibited individual acts amounting to crimes against humanity include not only such extreme criminal acts as murder and extermination but also other serious forms: enslavement by way of forced labor, expulsion of people from their native places, torture of political opponents, mass raping of defenseless women, enforced disappearance and so on⁵¹. Further important elements to be noted here would be that crimes against humanity may include acts committed against the perpetrator's own citizens and that unlike war crimes these crimes may be committed during both peacetime and war time. One thing is for sure: crimes against humanity represent massive violations of human rights and human rights law, and similarly to international human rights law (IHRL) the law of crimes against humanity can apply both during peace and during armed conflict.

The modern treaty definition of crimes against humanity is found in Article 7 of the Rome Statute and it goes as follows:

<...> For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

⁴⁹ Werle, Jessberger (n 8) para 779.

⁵⁰ Ibid.

⁵¹ Ibid; see also: Atadjanov R, 'Crimes Against Humanity' in Sayapin S, Atadjanov R, Kadam U, Kemp G, Zambrana-Tévar N, Quéniwet N (eds), *International Conflict and Security Law* (T.M.C. Asser Press 2022) 1032.

- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in para 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health <...>⁵².

Furthermore, in its paragraphs 2 and 3 the article contains clarifications for different terms and elements of the crimes, and for the individual underlying acts constituting these crimes (“attack directed against any civilian population”, “extermination”, “enslavement”, “deportation”, “torture”, and so on)⁵³. The article is important because it is so far the only definition agreed upon and adopted by a relevant number of States; moreover, when States take measures to implement ICL in their domestic legislations dealing with crimes against humanity (even if those are not so numerous yet) they often look to Article 7 for guidance; it therefore already carries a significant authority⁵⁴. For these reason, it will be utmostly relevant if Ukraine ever decides to accede to the Statute in the future.

According to the meaning of Article 7(1) of the Rome Statute, crimes against humanity include only those crimes which are defined as “committed as part of a widespread or systematic attack directed against any civilian population”. This contextual element represents a necessary requirement in order for a crime to be qualified as a crime against humanity. It is the so-called chapeau element of the crime; it is what makes the crime truly international by distinguishing it from domestic crimes such as murder, torture, rape, enslavement and so on. Hence it may be called an international element of the crime⁵⁵.

As for the object of the crime, the definition’s phrase “civilian population” encompasses any group of people linked by shared characteristics that in turn make it the target of an attack; the nationality or affiliation of the victims is irrelevant⁵⁶. Hence, crimes against humanity are directed against a civilian population as such, not merely at an individual. In contrast to IHL, it is not significant to the protected status of civilians whether they are under the control of their own side or the opposing side. Therefore, present or former members of one’s own armed forces, in particular, who are not protected by international humanitarian law can become direct objects of a crime against humanity⁵⁷.

Regarding another important contextual element of the modern definition, i. e., “widespread or systematic attack”, it was accepted and included as a convenient formulation suitable for the contextual threshold of crimes against humanity which

⁵² Rome Statute (n 8) Article 7(1).

⁵³ Rome Statute (n 8) Article 7(2) and 7(3); see also: Atadjanov (n 51) 1038.

⁵⁴ Atadjanov (n 51) 1039. Currently, there is no one universal treaty dealing entirely with crimes against humanity, so the Rome Statute remains the only global treaty instrument containing the modern definition of these international crimes.

⁵⁵ Ibid 1042; Ambos K, *Treatise on International Criminal Law, Vol. II* (Oxford University Press 2014) 55.

⁵⁶ Atadjanov (n 51) 1049.

⁵⁷ Ibid; Werle, Jessberger (n 8) para 779.

would contribute to the clarity and consistency of the law⁵⁸. The first element of the trio “widespread or systematic attack”, the criterion of “widespread” represents a quantitative element: the relevant sources, authorities and case-law indicate that in order to decide that the nature of the attack was “widespread” its (large) scale and the number of its victims must be taken into account⁵⁹. The second element, the criterion of “systematic” constitutes a qualitative one. It denotes the organized nature of the acts of violence which are committed, and therefore it serves to make sure that isolated acts are not punishable (as crimes against humanity)⁶⁰. The third element, the “attack”, is defined in the Statute as ‘a course of conduct involving the multiple commission of acts referred to in paragraph 1 <...>, pursuant to or in furtherance of a state or organizational policy’⁶¹. This element describes a course of conduct involving the commission of acts of violence. The term “attack” is not used in the same sense as in the war crimes law; it does not necessarily have to involve the use of armed force. In other words, a military attack is not necessary which is explicitly stated in the Elements of Crimes. The attack may include any mistreatment of civilian population⁶².

As it flows out of the modern treaty definition, there are eleven individual prohibited acts of crimes against humanity including the “other inhumane acts”. The individual underlying acts do not need to be carried out against a big number of victims, in order to constitute a crime against humanity (with the exception of extermination). A single act directed against a limited number of victims, or even against a single victim, may constitute a crime against humanity, but on condition that it forms part of a widespread or systematic attack⁶³. Out of the total of eleven, the research shows that there are at least six individual acts listed in the definition of crime against humanity which appear to be firmly demonstrated to have been committed against Ukrainian civilians by the Russian troops since February 2022.

1. *Murder*: The individual act of murder is established in Article 7(1)(a) of the Rome Statute of the ICC. The crime’s material element requires the perpetrator to have caused the death of another person through his or her conduct; as for the requisite mental element, it is present if the perpetrator is aware of the substantial likelihood that his or her actions will result in the death of the victim⁶⁴. Accordingly, deprivation of the right to life in the form of murder of civilians, when committed as part of a widespread or systematic attack directed against any civilian population with the knowledge of this attack, amounts to a crime against humanity⁶⁵. In the context of the Russian-Ukrainian War, large overall number of persons killed in the conflict including among civilians have been reported. The OSCE has reported on numerous instances of killings of civilians by the

⁵⁸ Atadjanov (n 51) 1047.

⁵⁹ For a detailed listing of those sources see Ibid.

⁶⁰ Ibid 1049.

⁶¹ Rome Statute (n 8) Article 7(2)(a).

⁶² Atadjanov (n 51) 1049.

⁶³ Ibid 1055; Werle, Jessberger (n 8) para 882.

⁶⁴ Atadjanov (n 51) 1055.

⁶⁵ OSCE Report (n 3) 55.

Russian forces that reveal features of extrajudicial killings⁶⁶. One direct quotation from the report must be provided here:

Moreover, on 1 April 2022, the first reports about a very large number of civilians murdered in the village of Bucha in the Kyiv region, started to appear on the media. The Russian forces allegedly killed all local men aged 16-60 on their retreat from the village. If confirmed, this incident would amount not only to a violation of the right to life in the form of massive extrajudicial killing but would also, undoubtedly, constitute a crime against humanity⁶⁷.

2. *Extermination*: In accordance with Article 7(2)(b) of the Rome Statute, “extermination” includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine calculated to bring about the destruction of part of a population. This crime essentially consists in the creation of deadly living conditions amounting to widespread killings, and it targets groups of persons⁶⁸. While there is no information clearly showing that in the conflict in Ukraine, the starvation of the civilian population was used as a deliberate strategy, it must be nevertheless noted that a massive destruction of objects necessary for the survival of civilian population or a protracted siege of a town/city accompanied by the refusal to allow for the evacuation of civilian population through safe humanitarian corridors and to provide for or make possible safe delivery of humanitarian assistance to this population, may serve as indications that such a strategy has been resorted to⁶⁹. Accordingly, in such an indirect way these acts on the side of the Russian Federation representatives may amount to a violation of the right to food and water and a crime against humanity under Article 7(1)(b) of the Rome Statute⁷⁰.

3. *Deportation or Forcible Transfer of Population*: Article 7(2)(d) of the ICC Statute defines deportation and forcible transfer of population as the “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law”. Generally, “deportation” is regarded as referring to displacement across a border while “forcible transfer” refers to internal displacement⁷¹. In both cases – in deportation and in forcible transfer, the material element requires the physical transfer of persons from one territory to another (forced displacement); at that, the transfer of even one single person from a territory can be sufficient⁷². The reported instances of massive displacement of Ukrainian civilians to the areas under the effective control of Russia or, even, the territory of Russia, affect the enjoyment of the right to freedom of

⁶⁶ Ibid 55–6.

⁶⁷ Ibid 56; see also: Ganezer D, ‘Russian Army Executes Hundreds of Civilian Men in Bucha, Other Kyiv Suburbs. Bodies Litter the Streets with Hands Tied behind Backs’ (*Santa Monica Observer*, 03.04.2022) <<https://www.smobserved.com/story/2022/04/01/news/russian-army-shot-all-men-aged-16-to-60-in-bucha-7000-civilians-killed-if-true-biggest-warcrime-of-the-war/6642.html>> (accessed: 26.02.2024).

⁶⁸ Ambos (n 55) 84.

⁶⁹ OSCE Report (n 3) 74.

⁷⁰ Ibid.

⁷¹ Atadjanov (n 51) 1057.

⁷² Ibid 1058.

movement and may constitute a crime against humanity (Article 7(1)(d) of the Rome Statute)⁷³. OSCE claimed it has received numerous consistent reports from Ukrainian official and NGO sources and from private individuals on social media on forced deportations from occupied territories to Russia; according to the Human Rights Ombudsperson of the Ukrainian Parliament, 500,000 civilians have been deported from Ukraine to Russia⁷⁴. Furthermore, both the Ukrainian and Russian officials have declared that hundreds of thousands of children have been transferred from Ukraine to the Russian Federation since 24 February 2022, with figures that vary greatly⁷⁵.

4. *Imprisonment or other severe deprivation of physical liberty*: This act means that the perpetrator imprisoned one or more persons of physical liberty, and the gravity of the conduct was such that it was in violation of fundamental rules of international law⁷⁶. In order to constitute a crime against humanity, imprisonment must be arbitrary which is present if there was no proper legal procedure⁷⁷. In the context of the Ukrainian War, multiple indications of the commission of this crime exist. Around 220 cases of arbitrary arrests and abductions of Ukrainian civilians have been reported for the period of March to May 2022 alone⁷⁸.

5. *Torture*: The crime of torture represents a *ius cogens* prohibition and a recognized customary law norm that has been well established in numerous international legal instruments⁷⁹. The Rome Statute's definition of torture as a crime against humanity goes as follows: '<...> "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions; <...>'⁸⁰. No specific purpose needs to be proven for this crime; moreover, there is also no specific capacity requirement which corresponds to the relevant case law⁸¹. The physical or mental pain or suffering must attain a minimum level of severity. It is this severity which distinguishes torture from other forms of inhumane treatment which do not "attain a minimum level of severity"⁸². Multiple cases of torture or other forms of mistreatment against civilians in many locations in Ukraine have been reported⁸³. The reporting sources have found a widespread pattern of torture and inhuman treatment committed by Russian

⁷³ OSCE Report (n 3) 67.

⁷⁴ Ibid 23.

⁷⁵ Human Rights Council Report (n 14) 14; see also: Bilkova V, Hellestveit C, Šteinerte E, 'The Moscow Mechanism Expert Report on the Forcible Transfer and Deportation of Ukrainian Children' (*EJIL:Talk!*, 17.05.2023) <<https://www.ejiltalk.org/the-moscow-mechanism-expert-report-on-the-forcible-transfer-and-deportation-of-ukrainian-children>> (accessed: 26.02.2024).

⁷⁶ Rome Statute (n 8) Article 7(1)(e).

⁷⁷ Atadjanov (n 51) 1058 citing Werle, Jessberger (n 8) para 858.

⁷⁸ See: OSCE Report (n 3) 60 for more details.

⁷⁹ Atadjanov (n 51) 1059.

⁸⁰ Rome Statute (n 8) Article 7(2)(e).

⁸¹ Atadjanov (n 51) 1059 citing ICTY, *Prosecutor v. Kunarac et al.*, Judgment, 22 February 2001, IT-96-23-T, para 496.

⁸² Ambos (n 55) 92; Atadjanov (n 51) 1059.

⁸³ OSCE Report (n 3) 57–8.

authorities against people they detained in Chernihiv, Donetsk, Kharkiv, Kherson, Kyiv, Sumy, and Zaporizhzhia regions, in Ukraine, and in the Russian Federation. Torture has been prevalent against certain categories of people. Most victims were men; both civilians and prisoners of war were tortured⁸⁴.

6. *Sexual crimes*: Under Article 7(1)(g) of the Rome Statute, this category of underlying acts includes several distinct crimes: rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity. Thousands of cases of sexual and gender-based violence occurred since start of the invasion. Cases of sexual and gender-based violence involving women, men, and girls, aged from 4 to 82, have been documented in nine regions of Ukraine, as well as in the Russian Federation⁸⁵. It was found that Russian authorities have committed sexual violence in two main situations: during house searches and against victims they had confined; in addition, situations in which Russian authorities imposed forced nudity, in detention, at checkpoints, and filtration points, have been documented as well⁸⁶. Sources report the extreme brutality which often accompanied these cases.

This preceding review conclusively identified six types of underlying individual acts from the Rome Statute's list of total of eleven individual acts of crimes against humanity as having been or being committed in the armed conflict between the Russian Federation and Ukraine. This distinction is not just academic; it crystallizes the systematic or widespread attacks against civilians as international crimes, shedding light on the severity and scope of the atrocities. By categorizing these violations explicitly within the realm of crimes against humanity, the section tries to underscore the imperative for global legal scrutiny and paves the way for a hopefully more comprehensive research in a field that unfortunately remains significantly under-explored. Highlighting the scholarly method employed, this analysis aims to serve as a helpful basis for future analysis, enhancing the understanding of international crimes' dynamics. What follows next is a brief review of the individual criminal responsibility for the commission of core crimes like war crimes and crimes against humanity and how it should apply to the Russian perpetrators.

Individual Criminal Responsibility for the Commission of Core Crimes

The International Criminal Court is concerned with trying and punishing individuals, not States⁸⁷. It is about individual, and not state, responsibility. 'Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced', wrote the Nuremberg Tribunal in 1946⁸⁸.

⁸⁴ Human Rights Council Report (n 14) 11–2.

⁸⁵ Ibid 12.

⁸⁶ Ibid; see also: O'Brien, Quenivet (n 14).

⁸⁷ Schabas W, *An Introduction to the International Criminal Court* (3rd ed, Cambridge University Press 2007) 210.

⁸⁸ Ibid, citing *France et al. v. Goering et al.*, (1946) 22 IMT 203; (1946) 13 ILR 203; (1946) 41 American Journal of International Law 172, p. 221 (AJ IL).

This famous statement's main philosophy is reflected in Article 25 of the Rome Statute which goes as follows:

- The Court shall have jurisdiction over natural persons pursuant to this Statute.
2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.
3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:
- (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
 - (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
 - (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
 - (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
 - (ii) Be made in the knowledge of the intention of the group to commit the crime; <...>⁸⁹.

The International Criminal Court, like its earlier models at Nuremberg, The Hague and Arusha, is targeted at the major criminals responsible for large-scale atrocities; most of its 'clientele' will not be the actual perpetrators of the crimes, soiling their hands with flesh and blood⁹⁰. Rather, they will be 'accomplices', those who organise, plan and incite genocide, crimes against humanity and war crimes⁹¹. As it is very correctly sustained by Werle and Jessberger, typically a large number of persons cooperate in committing crimes under international law – as the case is, indeed, in the Russian-Ukrainian War. This generally occurs by way of a more or less established network, which is often part of the state or the military, but is in any case organized⁹². However, the collective nature of crimes under international law does not absolve us of the need to determine individual responsibility. In this process, international criminal law faces more than simply the task of establishing individual contributions to crimes within a network of collective action⁹³. A major additional challenge is weighing the individual contribution to the crime. It must be kept in mind that the degree of criminal responsibility does not diminish as distance from the actual act increases; in fact, it frequently grows; a typical example is the case of armchair killer Adolf Eichmann, who sent thousands to their deaths without ever laying a hand on a single victim himself⁹⁴.

⁸⁹ Rome Statute (n 8)

⁹⁰ Schabas (n 87) 211.

⁹¹ Ibid.

⁹² Werle, Jessberger (n 8) para 508.

⁹³ Ibid.

⁹⁴ Ibid.

As it Article 25 of the Rome Statute establishes the foundation for individual criminal responsibility under the jurisdiction of the ICC. It clarifies that the Court has jurisdiction over natural persons, emphasizing the principle of individual responsibility for crimes recognized under the Statute, namely war crimes, genocide, crimes against humanity, and the crime of aggression. The article outlines various modes of participation, making it clear that not only those who commit the crimes directly but also those who order, enable, assist, or in any way contribute to the commission of these crimes can be held liable. This broad spectrum of liability is crucial for addressing the complex nature of modern warfare and state-sponsored crimes, where the chain of command and the web of responsibility often extend far beyond the individuals on the ground.

When applying Article 25 to the actions of Russian state representatives and soldiers, particularly in contexts that may or do involve war crimes and crimes against humanity, several key points emerge. First, direct perpetrators – those who commit the crimes on the ground – can be held individually responsible under subsection (a). This is straightforward in cases where evidence of direct participation in atrocities exists. However, the reach of Article 25 extends further to include those at higher levels of command or in political power who may order or enable such crimes, covered under subsections (b) and (c). This means that Russian military commanders, politicians, or other officials who played a role in ordering, facilitating, or aiding and abetting the commission of crimes could be subject to prosecution. This principle of “command responsibility” is crucial in holding higher-ups accountable for their roles in orchestrating or permitting systematic abuses including the highest management of the state⁹⁵.

The practical complexity of prosecuting state representatives for core crimes lies in proving the chain of command and the explicit or implicit orders given for the commission of those crimes. Subsection (d) of Article 25 addresses those who contribute to the commission of crimes by a group acting with a common purpose, which could include a wide array of actors within the state apparatus or the military hierarchy. The intentional contribution to crimes, whether through planning, supporting, or executing actions that lead to war crimes or crimes against humanity, underscores the ICC’s mandate to prosecute individuals regardless of their official capacity or rank.

The application of Article 25 to Russian perpetrators presents both opportunities and challenges for international justice. One could claim that the significant challenge is the ICC’s jurisdiction and the principle of complementarity, which means that the Court can only intervene when national jurisdictions are unwilling or unable to prosecute and all the more so that Ukraine is still not a state party to the Rome Statute. A careful reader will counter-argue by referring to Ukraine’s second declaration of accepting the jurisdiction of the ICC. Given the unlikely scenario of Russia prosecuting its own state representatives or soldiers for these crimes, the ICC represents a crucial avenue for accountability in this case. However, as it is already well known, the enforcement of ICC warrants (such as

⁹⁵ For a proper analytical review of the concept of command / superior responsibility see: Ibid, paras. 578–614.

the one already issued by the Court against Putin and Lvova-Belova) relies heavily on international cooperation, which can be politically charged, especially when it involves high-ranking officials or a permanent member of the United Nations Security Council as the case of Russia is.

A more practical problem would be the process of gathering evidence, especially for crimes committed in conflict zones or under the authority of a state that may not cooperate with ICC investigations, is fraught with difficulties. The requirement for evidence to be both substantial and direct, particularly when implicating higher-level officials in the command chain, adds another layer of complexity to ensuring legal accountability under Article 25.

In conclusion, Article 25 provides a comprehensive contemporary framework for holding individuals criminally responsible for core crimes, including those committed by Russian state representatives and decision-makers. Its application underscores the importance of individual accountability in international law, presenting a path to justice for victims of war crimes and crimes against humanity. However, as a realistic observer would say, the successful prosecution of these crimes understandably requires overcoming significant legal, evidential, and political hurdles, highlighting the need for robust international cooperation and support for the ICC's mandate.

CONCLUSION. In drafting a scholarly and nuanced conclusion to this article, which tackles the complex issue of individual criminal responsibility for core crimes committed during the ongoing armed conflict in Ukraine, I tried to underscore not just the legal imperatives but also the broader humanitarian and justice-oriented outcomes that should guide humankind's collective actions. This analysis, based on the main principles of ICL, particularly as established in the Rome Statute of the ICC, has sought to delineate the scope and nature of war crimes and crimes against humanity perpetrated by Russian state representatives and decision-makers since February 2022. It has systematically reviewed the manifestations of these crimes within the conflict, asserting the feasibility and necessity of holding individuals accountable under modern international law.

The article's arguments not only reinforce the need for a judicial reckoning but also highlight the urgent need for an effective and expedited legal process. I believe that the Rome Statute provides a solid legal framework for addressing the individual criminal responsibility of those implicated in these egregious acts. And the Office of the Prosecutor must successfully complete its ongoing investigation in Ukraine, with a resulting criminal case opened at the Pre-Trial Chamber. However, the application of this judicial framework in a manner that achieves justice for the victims while also adhering to the principles of fairness and due process presents a formidable challenge, as partially noted above in the preceding section. This challenge is compounded by the intricate web of political, evidential, and jurisdictional hurdles that often hinder the proper path to prosecution. The author contends that these obstacles, though daunting, are not insurmountable with concerted international effort, confirmed political will as well as a steadfast commitment to the rule of law, as idealistic as it may sound.

The discussion throughout this article has been driven by a deep-seated conviction that the pursuit of justice for the victims of war crimes and crimes against humanity in Ukraine is not merely a legal obligation but a moral imperative. The systematic analysis of incidents and patterns of violence found in the reporting information from various organizations and used in this article, has laid bare the harrowing impact of these crimes on individuals but also on relevant communities. As such, I argue for the expedited identification and utilization of an appropriate judicial mechanism, be it through the ICC or other viable avenues (e. g., ad hoc and/or domestic tribunals)⁹⁶, to address the criminal responsibility of Russian state representatives. The failure to act swiftly and decisively risks emboldening perpetrators and promoting a culture of impunity, with grave implications for international peace, security, and the (international) rule of law.

Furthermore, this author warns of the dire consequences associated with delays in the judicial process. The protraction of legal proceedings, often bogged down in geopolitical considerations and procedural complexities, not only prolongs the suffering of victims but also exacerbates instability in the region. It is imperative, therefore, that the international community, supported by robust legal scholarship and advocacy, rallies behind the cause of justice for Ukraine. This includes not only prioritizing the prosecution of war crimes and crimes against humanity but also reinforcing the structures and mechanisms that safeguard human rights and uphold the human dignity of all individuals affected by the conflict.

At the risk of sounding way too solemn or immodest, I maintain that, ultimately, the discourse laid out in this scholarly endeavor serves – or at least hopefully serves, as a call for a renewed and concerted international effort to uphold the principles of international law and human rights. The atrocities committed against the people of Ukraine demand nothing less than a resolute and unified response aimed at ensuring accountability, delivering justice, and restoring the sovereignty and dignity of Ukraine. As the author of this analysis, I believe that such a response is not only feasible but essential. Behaving otherwise will only encourage the commission of new acts of war crimes and crimes against humanity by the representatives of the aggressor state against the people of a sovereign nation. In wrapping up, it is clear that achieving justice for Ukraine will not be easy at all. There are many hurdles along the way, but that does not mean one should not try. By supporting the principles of international law and tackling the obstacles to holding the perpetrators of international crimes accountable, we do our part in recognizing the suffering of the victims and inching closer to a world that is fairer and at peace. The task is grand but it is also noble.

⁹⁶ For legal analysis of possible judicial venues for the commission of another type of core crimes, i. e., the crime of aggression against Ukraine, see *passim*: Atadjanov (n 4) 178–86.

REFERENCES

Bibliography

Authored books

1. Ambos K, *Treatise on International Criminal Law*, vol II (Oxford University Press 2014).
2. Henckaerts J-M, Doswald-Beck L, *Customary International Humanitarian Law* (Cambridge University Press 2005).
3. Schabas W, *An Introduction to the International Criminal Court* (3rd ed., Cambridge University Press 2007).
4. Werle G, Jessberger F, *Principles of International Criminal Law* (3rd ed, Oxford University Press 2014).

Edited books

5. Atadjanov R, 'Crimes Against Humanity' in Sayapin S, Atadjanov R, Kadam U, Kemp G, Zambrana-Tévar N, Quénivet N (eds), *International Conflict and Security Law* (T.M.C. Asser Press 2022) 1032.
6. Atadjanov R, 'War Crimes Committed During the Armed Conflict in Ukraine: What Should the ICC Focus On?' in Sayapin S, Tsybulenko E (eds), *The Use of Force against Ukraine and International Law* (T.M.C. Asser Press 2018). DOI: https://doi.org/10.1007/978-94-6265-222-4_18.

Journal articles

7. Atadjanov R, 'Holding the Aggressor Accountable' [2022] 25 (2) *Journal of International Peacekeeping* DOI: <https://doi.org/10.1163/18754112-25020006>.
8. Orlov Yu, 'Zlochyny proty liudianosti v konteksti zbroinoho konfliktu v Ukraini: vyznachennia, problemy rozmezhuвання iz sumizhnymy skladamy zlochniv' [2023] 88 (1) *Pravo i bezpeka*. DOI: 10.32631/pb.2023.1.09.
9. Timofieieva L, 'Protydiia zlochnam proty liudianosti v 21 storichchi' [2022] 1 (19) *ScienceRise: Juridical Science*.

Newspaper articles

10. Ganezer D, 'Russian Army Executes Hundreds of Civilian Men in Bucha, Other Kyiv Suburbs. Bodies Litter the Streets with Hands Tied behind Backs' (*Santa Monica Observer*, 03.04.2022) <<https://www.smobserved.com/story/2022/04/01/news/russian-army-shot-all-men-aged-16-to-60-in-bucha-7000-civilians-killed-if-true-biggest-warcrime-of-the-war/6642.html>> (accessed: 26.02.2024).
11. Goodman J, Devlin K, Korenyuk M, Cheetham J, Tauschinski J, 'Chernihiv: Are these Russia's weapons of war?' (*BBC News*, 10.04.2022) <<https://www.bbc.com/news/world-europe-61036880>> (accessed: 26.02.2024).
12. 'Russian forces attack refugee evacuation train in Ukraine' (*The Daily Observer*, 13.03.2022) <<https://www.observerbd.com/news.php?id=357131>> (accessed: 26.02.2024).
13. Tondo L, Koshiw I, 'Ukraine destruction: how the Guardian documented Russia's use of illegal weapons' (*The Guardian*, 24.05.2022) <<https://www.theguardian.com/world/2022/may/24/ukraine-destruction-how-the-guardian-documented-russia-use-of-weapons>> (accessed: 26.02.2024).
14. Ukraine says seven killed, including a child, after Russia fired at evacuation convoy (*Reuters*, 12.03.2022) <<https://www.reuters.com/world/europe/ukraine-seven-civilians-dead-after-russia-fired-evacuation-convoy-2022-03-12>> (accessed: 26.02.2024).
15. Ukrainian evacuation train was hit by debris during a Russian shelling (*Ukrainefrontlines*, 13.03.2022) <<https://ukrainefrontlines.com/news/conflict-zone/ukrainian-evacuation-train-was-hit-by-debris-during-a-russian-shelling>> (accessed: 26.02.2024).

16. Lavreniuk S, 'Verkhovna Rada vrehuliuvava poriadok spivrobotnytstva z Mizhnarodnym kryminalnym sudom' (*Holos Ukrainy*, 05.05.2022) <<http://www.golos.com.ua/article/359581>> (accessed: 26.02.2024) (in Ukrainian).

Websites

17. Bilkova V, Hellestveit C, Šteinerte E, 'The Moscow Mechanism Expert Report on the Forcible Transfer and Deportation of Ukrainian Children' (*EJIL:Talk!* 17.05.2023) <<https://www.ejiltalk.org/the-moscow-mechanism-expert-report-on-the-forcible-transfer-and-deportation-of-ukrainian-children>> (accessed: 26.02.2024).
18. 'Cluster Munition Monitor 2022' (*ICBL-CMC*, August 2022) <<https://www.the-monitor.org/en-gb/reports/2022/cluster-munition-monitor-2022.aspx>> (accessed: 26.02.2024).
19. O'Brien M, Quenivet N, 'Sexual and Gender-Based Violence against Women in the Russia-Ukraine Conflict' (*EJIL:Talk!*, 08.06.2022) <<https://www.ejiltalk.org/sexual-and-gender-based-violence-against-women-in-the-russia-ukraine-conflict>> (accessed: 26.02.2024).
20. Quenivet N, 'Opinions of (Legal) Scholars on the Conflict in Ukraine' <<https://padlet.com/noellequenivet/opinions-of-legal-scholars-on-the-conflict-in-ukraine-6nitzzw3i1ttgpt5>> (accessed: 26.02.2024).
21. 'Ukraine: Humanitarian Catastrophe in Iziium. The Plight of Civilians under Bombardment and Siege-like Conditions' (*Amnesty International*, 22.05.2022) <<https://www.amnesty.org/en/wp-content/uploads/2022/03/EUR5053822022ENGLISH.pdf>> (accessed: 26.02.2024).
22. 'Ukraine: Russian Forces Fired on Civilian Vehicles. Civilians Killed Trying to Flee, Approaching Checkpoints' (*Human Rights Watch*, 02.05.2022) <<https://www.hrw.org/news/2022/05/02/ukraine-russian-forces-fired-civilian-vehicles>> (accessed: 26.02.2024).
23. Atadjanov R, 'Do pytannia shchodo ratyfikatsii Ukrainoiu Rym'skoho statutu/K voprosu o ratyfykatsyy Ukrainoi Rym. statuta (*Youtube*)' <<https://www.youtube.com/watch?v=UyTB7PiGQwQ&t=201s>> (accessed: 26.02.2024).

Рустам Атаджанов

ІНДИВІДУАЛЬНА КРИМІНАЛЬНА ВІДПОВІДАЛЬНІСТЬ ПРЕДСТАВНИКІВ РОСІЙСЬКОЇ ДЕРЖАВИ ЗА ВЧИНЕННЯ ВОЄННИХ ЗЛОЧИНІВ І ЗЛОЧИНІВ ПРОТИ ЛЮДЯНОСТІ В УКРАЇНІ

АНОТАЦІЯ. Збройне вторгнення Російської Федерації в Україну у лютому 2022 р. призвело до широкого міжнародного засудження та пильної уваги. Серед різних ключових аспектів цієї фази конфлікту однією з найгостріших правових проблем є вчинення воєнних злочинів і злочинів проти людяності. Ці діяння є не лише кричущими порушеннями міжнародного права, а й становлять значну загрозу миру, безпеці та суверенітету України, яка є визнаним суб'єктом міжнародного права. Необхідність розгляду та визначення юридичної відповідальності осіб, винних у скоєнні цих порушень, є нагальною та критично важливою. Ця стаття має на меті проаналізувати індивідуальну кримінальну відповідальність представників російської держави за їхню причетність до воєнних злочинів і злочинів проти людяності в Україні. Розглядаючи конкретні випадки та рамки міжнародного кримінального права, стаття прагне запропонувати реалістичні шляхи притягнення винних до відповідальності, тим самим сприяючи ширшому дискурсу про відповідальність і дотримання міжнародних правових стандартів. Методологія дослідження, прийнята в цій статті, характеризується релевантним аналізом міжнародних правових інструментів, судової практики та деяких міжнародних справ. На основі короткого аналізу злочинних дій, скоєних російськими військами в Україні, стаття використовує як якісні, так і кількісні дані для класифікації та оцінки характеру цих злочинів із точки зору сучасного міжнародного кримінального права. У дослідженні висвітлено класифікацію воєнних злочинів і злочинів проти людяності, визначену

ПРАВО УКРАЇНИ • 2024 • № 2 • 15-38

Rustam Atadjanov

міжнародним правом, та їх чітке розмежування між собою. За допомогою систематичного аналізу подій, що відбулися з моменту військового вторгнення в Україну, у статті кваліфікуються численні дії російських військ як воєнні злочини і злочини проти людяності. Надається короткий огляд індивідуальної кримінальної відповідальності за вчинення основних злочинів, таких як воєнні злочини і злочини проти людяності, і розглядається, як вона повинна застосовуватися до російських порушників. У висновку міститься рішучий заклик до якнайшвидшого визначення та використання відповідного судового механізму для притягнення до кримінальної відповідальності представників російської держави. У ній підкреслюється нагальна потреба у швидких діях для запобігання подальшій безкарності та забезпечення правосуддя для жертв цих жахливих злочинів. Крім того, стаття попереджає про ризики, пов'язані із затримками в судовому процесі, підкреслюючи, що це може призвести до тривалих страждань і нестабільності в регіоні. Зрештою, вона закликає до узгоджених міжнародних зусиль, спрямованих на підтримання принципів міжнародного права і прав людини, тим самим захищаючи суверенітет і гідність України та її народу.

Ключові слова: злочини проти людяності; злочини за міжнародним правом; індивідуальна кримінальна відповідальність; Міжнародний кримінальний суд; міжнародне кримінальне право; Римський статут; воєнні злочини.