STATE UNIVERSITY
OF TRADE AND ECONOMICS

ASSOCIATION
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OF CRIMEA

De-Occupation of Ukraine. Legal expertise

Kyiv 2022

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UKRAINIAN ASSOCIATION OF COMPARATIVE JURISPRUDENCE
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Presented here legal expertise is based on the conclusions and recommendations of the International expert round table "De-Occupation. Legal Front", held in Kyiv on March 18, 2022. They are revised and updated on April 4, 2022. They cover next issues: qualification of the hybrid war of the Russian Federation against Ukraine and responsibility for its conduct; qualification of annexation of the Autonomous Republic of Crimea and the city of Sevastopol; qualification of the status of ORDLO and recognition by the Russian Federation of the so-called "DPR" and "LPR" independence; qualification of the aggression of the Russian Federation against Ukraine in the sea; responsibility of the Russian Federation for terrorist and cyberterrorist actions against Ukraine; protection of human rights in the territories annexed and illegally controlled by the Russian Federation; protection of cultural heritage and environmental security in the territories annexed and illegally controlled by the Russian Federation; regimes of international sanctions against Russia in connection with the aggression against Ukraine; prohibition of pro-Russian political parties, public associations and the media, its legislative support; status and prospects of international peacekeeping activities in Ukraine; judicial front of the confrontation between Ukraine and the Russian Federation and the responsibility of the latter for the implementation of aggressive war and the commission of war crimes; responsibility for collaborationism in the territories annexed and illegally controlled by the Russian Federation. For each of issues analysis and legal qualifications are provided, specific proposals for law-making, law enforcement, political and administrative nature are determined. This document is the first comprehensive examination of the legal problems caused by Russia's aggression against Ukraine. The materials are presented by the mentioned authors on the basis of their own research and using the abstracts of various authors presented at the round table.

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PREFACE

International expert round table *De-Occupation. Legal Front*

The large-scale invasion of the Russian Federation to Ukraine became a new stage in the ninth year of war and hybrid aggression, rooted in the unwillingness of the Kremlin and considerable part of Russians to accept the independence of Ukrainian state and even the very existence of the Ukrainian people.

In these circumstances, the legal front of struggle against the aggressor becomes especially important. First, lawyers and political scientists are called to create new meanings, substantiating our right to exist, integrity and sovereignty in balanced scientific language – as opposed to the discourse of the aggressor, ready to justify his violation of all principles of law and morality. Secondly, by their generalization and legal qualification of a huge number of crimes, problems and situations caused by the war, by their conclusions and recommendations, lawyers and political scientists create a foundation for the protection and restoration of human rights and state interests. And while the law does not work as quickly and effectively as military force, political and economic pressure, in the long run it is not only more effective but also the only reliable means of restoring justice.

Therefore, for the first time in a full-scale war, as a new and tragic reality, it was decided to unite the efforts of many scientists to find legal answers to the problems before us. For this purpose, an experimental form of scientific and practical event was chosen, which combined the platform created on Facebook with the communication tools of the Zoom and Youtube platforms. All this helped to ensure the extraordinary efficiency, accessibility and interactive nature of the preparation and holding of the event.

International expert round table “De-Occupation. Legal Front” was organized by the State University of Trade and Economics together with the Ukrainian Association of Comparative Jurisprudence, the Ukrainian Association of International Law and the Association of Reintegration of Crimea. The author of the idea and round table coordinator became Prof.,

Dr. Hab. Oleksiy Kresin, Head of the Center for Comparative Jurisprudence of the Volodymyr Koretskyi Institute of State and Law, National Academy of Sciences of Ukraine, and Professor of the State University of Trade and Economics. It became the world's first forum dedicated to the legal assessment of problems caused by the new stage of Russia's aggression against Ukraine.

The materials of the round table were prepared and presented for discussion in advance. They covered twelve areas selected by the organizers:

- Qualification of the legal status of the Autonomous Republic of Crimea, Sevastopol and ORDLO,
- Responsibility for collaborationism in the territories annexed and illegally controlled by the Russian Federation.
- Protection of human rights in the territories annexed and illegally controlled by the Russian Federation.
- Protection of cultural heritage and environmental security in the territories annexed and illegally controlled by the Russian Federation.
- Qualification of the aggression of the Russian Federation against Ukraine in the sea.
- Judicial front of the confrontation between Ukraine and the Russian Federation and the responsibility of the latter for the implementation of aggressive war and the commission of war crimes.
- Responsibility of the Russian Federation for terrorist and cyberterrorist actions against Ukraine;.
- Regimes of international sanctions against Russia in connection with the aggression against Ukraine.
- Qualification of the hybrid war of the Russian Federation against Ukraine and responsibility for its conduct.
- Status and prospects of international peacekeeping activities in Ukraine.
- Prohibition of pro-Russian political parties, public associations and the media, its legislative support.

International expert round table “De-Occupation. Legal Front” took place on March 18, 2022 in the unconquered capital of Ukraine, Kyiv. In

total, 44 reports and 17 speeches prepared by researchers from all regions of Ukraine, as well as the United States, Poland, Italy, Moldova, Estonia, France and Lithuania were presented. In addition to the English and Ukrainian sessions, the round table also included a general discussion. In total, more than 90 participants took part in this forum on the Zoom platform, and some hundreds of scientists took advantage of the broadcast of the event on YouTube. More than 4300 readers got acquainted with the materials of the round table posted on the Facebook platform. Following the round table, a collection of materials has been published in a few days.

But the most important work of scientists were prepared separately detailed and concrete conclusions and recommendations for each of the identified areas, including analysis and legal qualifications, specific proposals for law-making, law enforcement, political and administrative nature. This document is the first comprehensive examination of the legal problems caused by Russia's aggression against Ukraine. It was sent for consideration and use to the authorities of Ukraine, as well as to foreign governments, international organizations and courts.

Chapter 1

QUALIFICATION OF THE HYBRID WAR OF THE RUSSIAN FEDERATION AGAINST UKRAINE AND RESPONSIBILITY FOR ITS CONDUCT (*Olha BUTKEVYCH*)

1. To qualify the Russian-Ukrainian armed conflict, the following accents are important should be emphasized in official policy and taken into account in decision-making: the armed conflict is a consequence of the crime of aggression of Russia against Ukraine, committed at least since February 21, 2014 (February 24, 2022 there started an armed escalation of the conflict, which has been going on since 2014); accordingly, the issue of international criminal responsibility of the Russian Federation, its leaders and servants of the armed forces, as well as collaborators from among Ukrainian citizens, should cover all crimes committed after February 21, 2014; Russian-Ukrainian armed conflict in the international legal sense has been going on since February 21, 2014, and Russia's "hybrid war" against Ukraine (a term that is not legally stable and covers a combination of political, force, economic, diplomatic, informational and other means of pressure to a sovereign state in order to subjugate or otherwise limit its sovereignty) has lasted since at least 1999. One of the manifestations of the "hybrid war" are "economic wars" waged by Russia against Ukraine since the early 2000s, especially the economic pressure to compel Ukraine refuse from the ratification of the Association Agreement with the EU. All manifestations of "hybrid war" must be taken into account when developing projects to counter the aggressor and bring him to justice.

2. Further foreign policy decisions should be based on the fact that the escalation of the armed conflict against Ukraine with subsequent mass war crimes and crimes against humanity is the result of insufficient sanctions against the aggressor state in 2014. From the point of view of general international law the main miscount of the existing word order system is the canonization of the principle of good faith. Due to the lack of building an effective mechanism for coercion to comply with international law for all, this system has been undermined. The policy of "appeasement of

the aggressor", the neglect by the international community of violations of erga omnes led to a humanitarian catastrophe in Ukraine in 2022.

As a victim of such a policy, Ukraine must initiate a project of change to the architecture of European and international security.

3. One of the first steps could be:

3.1. initiating the adoption of the "UN Convention on the Prohibition of the Crime of Aggression against a Sovereign State and the Punishment for this Crime" on the basis of the UN Resolution "Definition of Aggression" of 14.12.1974 (a draft document could be proposed at the next session of the 6th (Legal) Committee of the UN General Assembly);

3.2. presentation of the project of creating a system of European or universal security (could be based on the project "U-24" with refinement and institutional expansion);

3.3. presentation of the project of reforming the security component of the UN system, including: 1) regulatory and legal mechanism for unlocking the work of the UN Security Council; 2) amending the Statute of the International Court of Justice regarding its mandatory jurisdiction over issues of international peace and security and strengthening guarantees for the implementation of decisions; 3) creation of a permanent UN peacekeeping contingent for operative (within 24 hours) counteracting the threats to civilians and infrastructure.

4. The response to "hybrid aggression", like the "hybrid war" itself, must be multi-vector, and in this process no aspect of this war can be overlooked. Therefore, the adoption of relevant documents should take into account all the above projects, not just security, military or political: propaganda, trade and economic pressure, terror and intimidation, cyber-attacks, the use of satellite states and international terrorist groups, and so on.

5. Ukraine, as a victim of economic pressure from Russia, in order to prevent the departure from its political orbit (refusal to sign the Association Agreement with the European Union in 2013, which led to the Revolution of Dignity in Ukraine, took place, inter alia, under economic pressure from Russia, which can be regarded as economic coercion) should initiate the adoption of an international legal instrument that would explicitly invalidate any action taken under the threat of economic pressure (economic threat). As an example, we can propose additions to the wording

of Art. 52 of the Vienna Convention on the Law of Treaties "A treaty is void if its conclusion has been procured by the threat or use of force, *including economic*, in violation of the principles of international law embodied in the Charter of the United Nations."

6. Public authorities in Ukraine should continue to implement Ukraine's European and Euro-Atlantic course in accordance with the provisions of the Constitution; the proposal on the non-aligned or neutral status of Ukraine should be considered categorically unacceptable.

7. Criminal prosecution: criminal liability of the Russian Federation (and since 2022 also the Republic of Belarus for assistance in committing a crime) for the crime of aggression, war crimes, crimes against humanity, including liability for violations since 2014, of human rights in Crimea and in the occupied regions in the East of Ukraine, violations of property rights in these territories; adequate compensation for damage to victims of such crimes, etc.; criminal liability for violations of international law and gross human rights violations (both in the case of attempted annexation and occupation of Crimea and Russian aggression against Ukraine in Donbas the most severe punishment should be provided for civil, military and police servants responsible for treason in support annexation and occupation of Ukrainian territories because they violated the oath to the Ukrainian people); providing amnesty for minor offenses aims at post-conflict integration of Ukrainian society (taking into account that amnesty for international crimes is prohibited by international law and relevant international obligations of Ukraine). In order to properly implement criminal justice, all existing institutions should be involved and new ones created: the International Tribunal for Russian Aggression, the ICJ, the ICC, the ECtHR, and national courts with hybrid character (it is advisable to support the idea of the so-called Kharkiv Tribunal).

Chapter 2

QUALIFICATION OF ANNEXATION OF THE AUTONOMOUS REPUBLIC OF CRIMEA AND THE CITY OF SEVASTOPOL (*Oleksiy KRESIN*)

On March 16, 2014 on the territory of the Autonomous Republic of Crimea and the city of Sevastopol the so-called "referendum" was organized, which had illegitimate and stagy character. Its holding was a violation of the Constitution of Ukraine (Articles 71-73, 92) and the Constitution of the Autonomous Republic of Crimea (Articles 7). In addition, its illegality and insignificance, inconsistency with the principles of democracy are associated with the implementation by the Russian Federation at that time illegal control over these territories. After that, the self-proclaimed and also controlled by the Russian authority official authorities of these administrative entities declared the independence of the latter. It also violated the Constitution of Ukraine (Articles 2, 134, 157) and the Constitution of the Autonomous Republic of Crimea (Preamble, Article 2). The proclamation of independence of the Autonomous Republic of Crimea and Sevastopol fundamentally distorts the right of peoples to self-determination enshrined in international law and directly violates the principles of territorial integrity, political unity and inviolability of internationally recognized borders of states, refrain from the threat or use of force in international relations. This step and the subsequent illegitimate entry of the Autonomous Republic of Crimea and the city of Sevastopol into the Russian Federation were unequivocally condemned by resolutions of the UN General Assembly, acts of the Council of Europe, OSCE, EU, NATO, decisions of many countries. They are a form of armed aggression against Ukraine by the Russian Federation and necessitate their legal qualification.

Regarding the legal regime of the Autonomous Republic of Crimea and the city of Sevastopol in the conditions of Russian aggression, two main legal qualifications are used – annexation (or attempted annexation) and occupation (or temporary occupation).

Annexation, as a unilateral decision of a state to forcibly incorporate all or part of the territory of another state, i.e. to extend its sovereignty to this territory, differs from conquest and occupation as related forms of

gaining de facto control over the territory by officially declaring a change of sovereignty relative to the territory. And it also differs from cession in that it is violent and unilateral, rather than voluntary and contractual (or the result of international arbitration). The annexation usually follows the military occupation of the territory or the establishment of illegal control over it in another way. In itself, the implementation of annexation in international law does not create a new legal regime of the territory.

Modern international law declares annexations illegal because they violate the principle of refrain of the threat or use of force, as well as other principles of international law. Annexation is one of the forms of aggression and as such violates the provisions of the UN Charter (Articles 1, 2, etc.) and should be considered a threat to international peace and security. According to the Declaration on Principles of International Law of 1970, annexation can be attributed to actions aimed at "the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence", because "the territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal." According to UN General Assembly Resolution 3314 (XXIX) 1974, "Definition of Aggression" annexation with using the force, like military occupation, was declared a form of aggression – a crime against international peace. The annexations of the Golan Heights by Israel in 1981 and Kuwait by Iraq in 1990 were declared null and void by UN Security Council resolutions.

The annexation of the Autonomous Republic of Crimea and the city of Sevastopol was carried out by signing by the President of the Russian Federation Vladimir Putin of "Treaty between the Russian Federation and the Republic of Crimea on the admission of the Republic of Crimea to the Russian Federation and the formation of new entities within the Russian Federation" March 18, 2014, ratification of this document by the Federal Assembly of the Russian Federation March 20-21, 2014, amendments to the Constitution Russia on April 11, 2014. The fact of Russia's annexation of the Autonomous Republic of Crimea and the city of Sevastopol (as a committed crime) is recognized in acts of international law. For example, in the PACE

Resolution 2132 (2016) of October 12, 2016, "Political consequences of the Russian aggression in Ukraine."

The Autonomous Republic of Crimea and the city of Sevastopol should be considered annexed by the Russian Federation as a result of its aggression against Ukraine in the form of partial occupation of the latter, followed by declaring the occupied territories entry in the Russian Federation under an "treaty" with illegitimate Russian-controlled entities.

The qualification of "anticipated annexation" (or alleged annexation) in relation to these territories is not legally correct. It would be more accurate to qualify the situation regarding the Autonomous Republic of Crimea and Sevastopol as committed annexation, which is by definition illegal, because otherwise it would no longer be an annexation, but a cession or secession followed by voluntary entry into another state. At the same time, the phrase "anticipated annexation" emphasizes that according to international humanitarian law, during the conflict before the conclusion of a peace treaty between states, the regime of the occupied territory and the corresponding rights of its inhabitants as protected persons do not change even if the occupying state committing the annexation – in accordance with the Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War of 1949 and other acts of international law. Non-recognition of not only the legality of the annexation by the Russian Federation of the Autonomous Republic of Crimea and the city of Sevastopol, but also the very fact of its finalization is underlined by UN General Assembly resolutions 68/262 of April 27, 2014, 71/205 of December 19, 2016, 72/190 of December 19 2017 and others.

Occupation (military occupation, belligerent occupation) is a legal regime of a territory, a form of effective control of a state or group of states over the territory (all or part) of another state in the absence of sovereign rights to it. The main features of occupation are the establishment and the exercise control of the territory by the armed forces of another state or by irregular formations associated with another state, as well as the exercise of power on the territory by another state or by her authorized, guided or controlled entities (including pseudo-states). The qualification of occupation is not affected by the presence or absence of resistance by the armed forces of the sovereign state, the presence or absence of declared or

actual state of war between states, cessation or maintenance of diplomatic relations between them, proclamation or non-proclamation of occupation – occupation is defined as fact basing on its main features. The occupation is temporary, as it does not provide for the transfer of sovereign rights on the occupied territory.

In the conditions of occupation, the powers of the legitimate authority factually pass into the hands of the occupying state, which is obliged to take all available measures to preserve and ensure public order and security, ensure the rights of residents (protected persons), while preserving and respecting, except when this is completely impossible, the law of the occupied country is in force. The legal regime of occupation lasts until the end of the occupying power rule execution, liberation, repatriation and restoration of the rights of the inhabitants of the territory. Illegal occupation (carried out in the absence of the will of the state or the decision of the UN Security Council) is a form of aggression and as such is a crime for which the occupying power is responsible – even if the occupation is not executed directly but by entities, authorized, guided or controlled by the occupying power, accompanied by changes in the order of the territory administration, agreements of the occupying power with the authorities of the occupied territory or annexation of the territory.

These norms in their evolution are revealed in acts of general international law (the UN Charter, the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation between States in accordance with the Charter of the United Nations of 1970, UN General Assembly Resolution 3314 (XXIX) 1974 "Definition of Aggression", CSCE Final Act of 01.08.1975, ICJ Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory in 2004), international humanitarian law (IV Hague Convention respecting the Laws and Customs of War on Land of 1907 and annex to it, Regulations respecting the Laws and Customs of War on Land, Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 1949 and Additional Protocol (Protocol I) thereto 1977, ICRC Commentary thereto 1958), international criminal law (for example, the Judgement of the International Criminal Tribunal for the Former Yugoslavia in The Prosecutor v. Tihomir Blaškić case in 2000, etc.). Condemnation of

the occupation of the Autonomous Republic of Crimea and the city of Sevastopol is contained in numerous acts of the UN, OSCE, Council of Europe, EU and other intergovernmental organizations bodies.

The qualification of the Autonomous Republic of Crimea and the city of Sevastopol as occupied territories leaves no doubt. Their qualification as "temporarily occupied territories" contains a semantic repetition (occupation is by definition temporary). Thus, given that the annexation of the Crimea and Sevastopol by the Russian Federation does not in itself determine the legal regime of these territories, and the legislation of Ukraine and acts of international intergovernmental organizations not only condemns but also does not recognize as a fact the annexation, these administrative-territorial units of Ukraine has to be legally more correctly defined as occupied territories.

Chapter 3

QUALIFICATION OF THE STATUS OF ORDLO AND RECOGNITION BY THE RUSSIAN FEDERATION OF THE SO-CALLED "DPR" AND "LPR" INDEPENDENCE (*Oleksiy KRESIN*)

On February 21, 2022, the President of the Russian Federation Vladimir Putin signed decrees recognizing the independence of the so-called "Donetsk People's Republic" and "Luhansk People's Republic" – pseudo-states that factually and according to international law should be considered as occupation administrations of the Russian Federation in certain districts of Donetsk and Luhansk regions (ORDLO) of Ukraine, formed with partial involvement of collaborators. The reasons for this step were declared by Putin: Ukraine's unwillingness to implement the Minsk agreements of 2014–2015, the military threat to the mentioned pseudo-states by Ukraine, the implementation by the latter of policy of genocide against them. Prior to this step, the decision was initiated and approved by the State Duma and the Security Council of Russian Federation. On February 22, the Federal Assembly of the Russian Federation ratified the treaties on friendship and mutual assistance with the "DPR" and "LPR", which provided, in particular, for military assistance, the possibility of establishing Russian military bases in the ORDLO, and others. After that, the leaders of the "DPR" and "LPR" turned to Vladimir Putin for military assistance against Ukraine.

Putin's proclamation of a "special operation" on February 24, and in fact the transfer of a low-intensity international military conflict disguised as an internal, civil conflict in Ukraine, to a state of full-scale war, is in a single set of decisions with the recognition of "DPR" and "LPR" by Russia. In his address to Russians, Putin, accusing Ukraine of militarization and aspirations to join NATO, said that it posed a threat to Russia – in particular, it would seek to reintegrate ORDLO by military means. But the immediate reason for the "special operation" against Ukraine was named the desire to ensure the security and territorial integrity of the "DPR" and "LPR". In later speeches by Putin, statements on his behalf by Spokesman Dmitry Peskov

and Foreign Minister Sergei Lavrov, it was demanded Ukraine's recognition of the independence of the "DPR" and "LPR", their borders embracing whole Donetsk and Luhansk regions, while other demands directly related to the above.

In this regard, it is important to give a legal qualification of the nature and status of pseudo-state (or quasi-state) entities, and in particular the so-called "DPR" and "LPR", in international law.

1. International law for more than a century provides for the possibility of separate regulation of the sovereignty and legal rights of the state to the territory, on the one hand, and the implementation of the regime of illegal control over the territory – on the other. The loss of government control over certain territories as a result of an international conflict does not in any way mean the loss of state sovereignty over them. At the same time, the temporary legal regime of the latter in this situation should be defined and classified to define the status of the population and applicable legal means of protection of its rights.

Illegal control of the territory can be seen as a legal regime, one of the forms of which is occupation, while others are defined as effective, overall, general, de facto control and related to undeclared actions and informal means used by aggressor states. This regime is characterized by the exercise of power over the territory with the will of a foreign state, and the forms of implementation of the regime differ depending on whether such a will is officially recognized or concealed.

2. Notwithstanding the differences between occupation and effective or other control of a territory, international law in all these cases recognizes the extension to the occupied or otherwise illegally controlled territory of the jurisdiction of the State exercising that control. Accordingly, on this territory, in particular, the effect is actual of international treaty legal instruments, the parties to which are both the sovereign state and the state, which exercises illegal control over the territory. The occupation does not provide for a change in the state affiliation of the occupied territory, and the entire civilian population is recognized as protected persons, its minimum rights are determined. The transformation of international humanitarian law after the Second World War erased the boundaries between recognized and officially unrecognized occupation, the dependence of the rights of the

population in the occupied territories of the presence or absence of diplomatic relations between the occupying and victim states, the linking the occupation regime to hostilities. It is also important that the occupation is associated with the performance of government functions on the occupied territory, but the status of the latter does not change from the introduction of changes in its administration or the conclusion of agreements between the occupying state and formally proclaimed authorities. This is indicated by: IV Hague Convention respecting the Laws and Customs of War on Land of 1907 and annex to it, Regulations respecting the Laws and Customs of War on Land, Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 1949 and Additional Protocol (Protocol I) thereto 1977, decisions of the ICJ, international tribunals and others.

3. Effective, overall, general, de facto control are forms of illegal control of the territory, separated from the occupation, but not clearly delineated among themselves. Unlike occupation, which effectuation fact may be obvious, effective or other illegal control of the territory effectuation requires the establishment by international courts. The main indicators here are the implementation by a foreign state of financial support, military items and equipment supplies, training, coordination or participation in action planning of armed groups that control all or part of the territory of another state and exercise de facto power there. This is indicated, in particular, by a number of decisions of the International Criminal Tribunal for the Former Yugoslavia and the ECtHR, the 1983 Resolution of the UN General Assembly "Responsibility of States for Internationally Wrongful Acts" (has an authoritative doctrinal character) and others.

4. The qualification of the status of ORDLO in international law is ambiguous. In particular, the Minsk agreements of 2014 avoided defining the other side of the conflict (the first is Ukraine), and in 2015 the armed entities of the ORDLO were named the second side. It is not specified to whom they are subordinated and who can be considered representatives of ORDLO.

5. The qualification of the conflict in eastern Ukraine and the related status of the ORDLO is also contained in the decisions of international

organizations and the legislation of Ukraine. In particular, the UN Security Council Resolution recognizes the Ukrainian government's loss of control over certain territories, and PACE resolutions and Ukrainian legislation recognize the dual fact that Russia is temporarily occupying the ORDLO and exercising effective control over illegal armed entities on the territory. It is important that the PACE points to the applicability to the armed conflict in Ukraine, and in particular to the situation in the ORDLO, of IV Geneva Convention of 1949.

6. Full recognition of Russia's illegal control over the ORDLO (in the form of occupation, effective or other control) should be expected in the process of considering a number of cases before the ICJ, the International Criminal Court and the ECtHR.

In particular, the International Criminal Court in a 2016 report on its previous investigations noted that the reciprocal shelling of the military positions of the parties and the capture of Russian military servants by Ukraine and vice versa "suggest the existence of an international armed conflict in the context of armed hostilities in eastern Ukraine from 14 July 2014 at the latest, in parallel to the non-international armed conflict", which has lasted at least from April 30, 2014 and the parties to which are Ukraine, "LPR" and "DPR". At the same time, this statement and its context do not in themselves give grounds to claim that this is an established fact. Also in 2016 and later, the ICC reports indicated the consideration of information on "allegations that the Russian Federation has exercised overall control over armed groups in eastern Ukraine" during part or all of the armed conflict.

Conclusions:

1. "DPR" and "LPR" cannot be considered as states. Despite the fact that their status is now determined almost exclusively by decisions of international organizations, mostly of a recommendatory nature, there is every reason to define them as pseudo-states (quasi-states), which are in fact administrations created by the Russian Federation.

2. The territory of the ORDLO in accordance with international law is under the effective control of the Russian Federation, which provides for the preservation of Ukraine's sovereign rights to it.

3. The recognition of the "DPR" and the "LPR" by the aggressor State, as well as by any other third State, does not change the mentioned status of them and the territory of the ORDLO in international law. The same applies to their agreements with the Russian Federation, which can serve only as an additional qualifying element of the latter's effective control on the territory of ORDLO.

4. The official introduction of Russian troops into the territory of ORDLO, which has not yet been confirmed and refuted by Russian leadership, will significantly change the qualification of Russian actions: from effective control, which must be proved in court – to the occupation, which does not require such proof. This will make the decision-making process easier by international organizations and international courts. And the established practice of qualifying such entities as "DPR" and "LPR" as a pseudo-states will be decisive.

5. Accordingly, Vladimir Putin's appeal when declaring a "special operation" to Art. 51 part 7 of the UN Charter (the right to individual self-defense) is false, because the sovereign rights to the territory of ORDLO belong to Ukraine and are not changed by the establishment of pseudo-states here under the effective control of Russia.

Chapter 4

QUALIFICATION OF RUSSIAN AGGRESSION AGAINST UKRAINE IN THE SEA (*Borys BABIN*)

Russia's aggression in the Black and Azov Seas is another gross violation of the 1982 UN Convention on the Law of the Sea, the 1978 International Convention on Standarts of Training, Certification and Watchkeeping for Seafarers, the 1979 International Convention on Maritime Search and Rescue, the 1998 Agreement on Cooperation Regarding Maritime Search and Rescue Services among Black Sea Coastal States, the 2000 Black Sea Memorandum of Understanding on Port State Control, the V, VI, VII and IX Hague Conventions of 1907, and the II Geneva Convention of 1949 and means the aggressor's disregard for the San Remo Manual on International Law Applicable to Armed Conflicts at Sea and Russia's waiver of all bilateral agreements on the status of the Sea of Azov, including the 2003 Agreement on Cooperation in the Use of the Sea of Azov and the 1993 Kerch Strait and the Interagency Fisheries Agreement on the Sea of Azov. These violations have already received a legal assessment from the International Maritime Organization, the Danube Commission, the EU, UN bodies and maritime nations.

Recommendations to state authorities of Ukraine:

1. Denunciation of the 2003 Agreement on Cooperation in the Use of the Sea of Azov and the Kerch Strait and the 1993 Interdepartmental Agreement on Fisheries in the Sea of Azov.

2. Commencement of proceedings against Russia at the International Tribunal for the Law of the Sea concerning captured, damaged and destroyed merchant ships under the flag of Ukraine; initiation of such proceedings by third countries, under the flag of which ships were damaged, blocked or seized.

3. Interaction with the maritime administrations of all civilized countries of the world on the strict implementation of IMO Resolution C/ES.35 and the decision of the Danube Commission to suspend membership of the Russian Federation; cooperation with EU countries on the implementation of sanctions against Russia in the maritime sector

against Russian shipping and insurance companies and Russian Maritime Register of Shipping, promoting the expansion of these sanctions.

4. Discussion of Russian aggression at sea with the aim to adopt of relevant resolutions by specialized UN agencies, such as FAO (on violations of the rights of Ukrainian fishermen), ILO (on violations of the rights of Ukrainian seafarers), the World Telecommunication Union (on violations in the field of maritime communications and communication systems) and the Paris Memorandum of Understanding on Port State Control; immediate ratification of the 2006 UN Maritime Labor Convention is important for this.

5. Informing the Office of the ICC Prosecutor about war crimes of the Russian Federation at sea, committed in violation of the requirements of V, VI, VII and IX Hague Conventions of 1907, II Geneva Convention of 1949.

6. Lobbying of humanitarian "blue" corridors to the ports of Ukraine under the flags of the UN and the ICRC for the delivery of humanitarian goods, including basic necessities and food, medicines.

Chapter 5

RESPONSIBILITY OF THE RUSSIAN FEDERATION FOR CYBERTERRORIST ACTIONS AGAINST UKRAINE (*Natalia MAZARAKI*)

The Russian Federation has actively resorted to cyberattacks (defined in the Law of Ukraine "On Basic Principles of Cyber Security of Ukraine" № 2163-VIII of 05.10.2017) against Ukrainian infrastructure, computer resources of government and administration in recent years. The next stage of the hybrid war against Ukraine, which began in 2014, was characterized by intensified cyberattacks. That is why, at the beginning of the Russian invasion in February 2022, Ukraine had considerable experience in countering cyberattacks and established effective cooperation with foreign partners, which allows to limit the losses from cyberattacks during the war.

Russia's activity in conducting cyberattacks against the United States, Ukraine and other countries was one of the main factors in the development of international legal measures to influence and prosecute customers and direct perpetrators of cyberattacks. However, this process was limited to the development of methodological documents, in particular The Tallin Manual 1.0 and 2.0, Report of the Group of Governmental Experts on Advancing responsible State behavior in cyberspace in the context of international security[1].

Prior to the new phase of the aggressive war against Ukraine in February 2022, cyberattacks by other states were part of a hybrid war and were in the "gray zone" of international law, due to the changing nature of cyberattacks and methods, involving state and non-state perpetrators, problematic identification of direct organizers and performers and determination of their nationality.

Cyberattacks cause significant economic damage, disrupt public and private relations. At the same time, economic losses, which are often measured in huge sums, are among the most problematic consequences of cyberattacks, as they often remain irreversible. Victims of cyberattacks

[1] The 2001 Budapest Convention on Cybercrime is largely a framework document aimed at harmonizing national legislations in the field of combating cybercrime, ensuring international cooperation in the investigation and prosecution of cybercrime.

suffer from the destruction of cyber infrastructure and data, incur recovery costs and lose revenue.

Defining and proving a state's involvement in a cyberattack is the cornerstone of bringing to justice and compensating for the losses caused by a cyberattack. The international community has taken some steps to identify approaches for proving a country involvement in cyberattacks, including in the above-mentioned documents. The US government uses the following forms of determining the involvement of a particular state or individuals in cyberattacks: 1) criminal charges; 2) economic sanctions; 3) technical warnings; 4) official statements or press releases on behalf of state bodies. Such forms are mostly used in combination. In its GGE Report, a group of international experts points out that determining a state's involvement in a cyberattack requires consideration of: the technical characteristics of the cyberattack, its scale and impact; the broad context of the cyberattack, including its implications for international peace and security; the results of consultations between the States concerned. As part of a hybrid war, a state that became the victim of cyber-attack may resort to extrajudicial measures such as retorsion, countermeasures and sanctions.

On March 16, 2022, the ICJ ruled that "the Russian Federation must, pending the final decision in the case, suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine… must also ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of these military operations". This decision, among other things, makes it possible to argue that the cyberattacks of the Russian Federation against Ukraine are in the sphere of regulation of international humanitarian law. At the same time, the insufficient effectiveness of international law in the Russian-Ukrainian war makes it expedient:

- careful documentation of cyberattacks and their consequences with the provision of evidence base on the organizers and perpetrators of cyberattacks, the amount of material damage to citizens and the state for further claims to international courts for damages redress;
- ensuring sufficient funding for the activities of relevant state bodies to combat cyberattacks against Ukraine;
- continuing effective cooperation with cyber units of partner countries.

Chapter 6

PROTECTION OF HUMAN RIGHTS ON THE TERRITORIES ANNEXED AND ILLEGALLY CONTROLLED BY THE RUSSIAN FEDERATION

(*Oleksiy KRESIN, Natalia MELNYCHENKO*)

As a result of aggression against Ukraine in various forms, the Russian Federation is exercising temporary illegal control over part of Ukrainian territory. In particular, in 2014 it annexed the territory of the Autonomous Republic of Crimea and the city of Sevastopol, established effective control over certain districts of Donetsk and Luhansk regions (ORDLO). As a result of large-scale hostilities in 2022, the Russian Federation occupied the territory of Kherson and parts of a number of other regions of Ukraine. The qualification of the status of part of these territories in other sections of this document, as well as the undoubted and not denied Russian occupation of the rest, allow us to establish the features of human rights protection of their inhabitants and those responsible for such protection and violations.

International law recognizes the unconditional responsibility of a state that exercises illegal control over a territory in the form of occupation or other effective control for the human rights protection of the territory population, and in particular the civilian population, as protected persons. These are, first of all, the IV Hague Convention respecting the Laws and Customs of War on Land of 1907, the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 1949 and Additional Protocol (Protocol I) thereto 1977, the 1970 Declaration on Principles of International Law, UN General Assembly Resolution 3314 (XXIX) 1974 "Definition of Aggression", 1983 Resolution of the UN General Assembly "Responsibility of States for Internationally Wrongful Acts", a number of decisions of the International Criminal Tribunal for the Former Yugoslavia, the ECtHR and others. Such liability exists independently of the personal liability of the representatives (agents) of that State. In this case, the state, which exercises control over the territory, is automatically responsible for any actions of organizations under its control.

If the fact of control of the territory by another state is not established, then the sovereign state, which has constitutional and international legal obligations towards its population, and non-state actors may be recognized as responsible for the observance of human rights. It is clear that the existence of the non-state actors, despite the formal institutionalization of the occupation administrations in the ORDLO as "DPR" and "LPR", is excluded, but the control on armed entities and the factual power of ORDLO by Russia has yet to be proven in international courts. With regard to other illegally controlled parts of Ukraine's territory, Russia's control is not disputed.

At the same time, it is quite difficult to determine the share of responsibility of a sovereign state for the implementation of human rights on a territory over which that state does not exercise control. The Minsk agreements in 2015 indicated Ukraine's partial responsibility, in particular for the realization of certain social rights of the population. Similarly, PACE resolutions, pointing to the responsibility of the Russian Federation, which exercises illegal control over the ORDLO, at the same time made Ukraine responsible for the implementation of certain social human rights and the right to an effective remedy (access to justice). In addition, PACE Resolution 2198 of 23 January 2018 called on Ukraine to ensure the minimum humanitarian needs of the civilian population on the occupied territories, which calls into question the very understanding of the occupation essence and the responsibility of the occupying State in international humanitarian law to which this Resolution undoubtedly resort.

The legislation of Ukraine imposes responsibility for the observance and violations of human rights in the Crimea and the ORDLO on Russia under both international humanitarian law and international human rights law. International humanitarian law obliges the occupying state to ensure all the minimal humanitarian needs of the population, its basic rights related to the preservation of life, health and dignity (with special emphasis on the rights of women and children), private property, effective protection of these rights and protection from any unlawful violence, preservation of the infrastructure of the territory. The occupying State cannot be absolved of responsibility for serious human rights violations, including war crimes and crimes against humanity. Decisions of international courts

unequivocally extend these obligations, as well as obligations under international human rights law, to all forms of illegal control effectuation of the territory of another state. Of course, all these norms apply to the population of all parts of Ukraine illegally controlled by Russia, including those that were temporarily occupied by it during the new stage of the war in 2022.

At the same time, the Constitution and legislation of Ukraine do not provide for the refusal of the state to ensure and protect human rights on its territory, even in conditions of martial law or state of emergency. Ukraine ensures the realization of the rights of the population of the territories illegally controlled by Russia in other regions of Ukraine. In particular, it is the right to access to justice, as well as a number of social rights, the right to education (with preferential regime), acquisition and termination of property, inheritance, free expression of will during the election of President of Ukraine and People's Deputies of Ukraine, all-Ukrainian referendum.

Ukraine also reserves the right to participate in the protection and restoration of human rights on the territories illegally controlled by Russia due to: non-recognition of automatic change of citizenship; constant monitoring and documentation of violations; disclosure of information and its provision to international organizations in the sphere of protection of human rights and freedoms; appeal to these organizations in order to restore the territorial integrity, protection and restoration of human rights on these territories; assistance in compensating by Russia of material and non-material damage; providing legal and humanitarian aid to the population.

It is important that in accordance with the Resolution of the Verkhovna Rada of Ukraine № 462-VIII of 21.05.2015, Ukraine derogated from certain obligations set out in the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms. Such a derogation is provided for in these international legal acts in cases that threaten the existence of the nation, has temporary (cessation of the Russian armed aggression and restoration of constitutional order on the de-occupied territory of Ukraine) and territorial (area of the Anti-Terrorist Operation in ORDLO, now Operation

of the United Forces) restrictions. In particular, this derogation provides in exceptional cases: preventive detention of persons involved in terrorist activities for a period of more than 72 hours, but not more than 30 days, with the consent of the prosecutor and without a court decision; transfer of powers of investigating judges to the relevant prosecutors, who acquire additional procedural rights; change of territorial jurisdiction of court cases and jurisdiction of criminal offenses committed in the area of the anti-terrorist operation; establishment of military-civil administrations as temporary state bodies operating in Donetsk and Luhansk oblasts, with powers, in particular, to establish restrictions on staying on the streets and in other public places without certain documents during a certain period of time, temporarily restricting or prohibiting the movement of vehicles and pedestrians on the streets, roads and areas, organize the verification of identity documents of individuals, and if necessary – inspection of things, vehicles, luggage and cargo, office spaces and housing, except for restrictions established by the Constitution of Ukraine. These may include a waiver of the rights to: freedom and personal integrity, free movement and freedom of choice of residence, respect for private and family life, an effective remedy, a fair trial (Articles 2, 9, 12, 14, 17 of the International Covenant on Civil and Political Rights; Articles 5, 6, 8, 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms).

The increase in the territories illegally controlled by Russia and the impossibility of clearly defining their changing borders depending on the course of hostilities, the expansion of the zone of such actions, as well as the imposition of martial law and anti-diversionary measures on the territories controlled by the Government of Ukraine call for changes in Ukrainian legislation. *First,* the Resolution of the Verkhovna Rada of Ukraine № 462-VIII of 21.05.2015 on the derogation of certain obligations under the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms should be extended to the entire territory of Ukraine. *Secondly*, a single law should be developed on the peculiarities of ensuring human rights and freedoms on the temporarily occupied part of Ukraine or at least unify the provisions and expand the territory of application of the legislation on protection of human rights and freedoms on the occupied territories (Law of Ukraine "On

Justice and Criminal Procedure in Connection with the Anti-Terrorist Operation" № 1632-VII of 12.08.2014, Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" № 1207-VII of 15.04.2014, Law of Ukraine "On Features of the State Policy to Ensure the State Sovereignty of Ukraine on the Temporarily Occupied Territories in Donetsk and Luhansk Regions" № 2268-VIII from 18.01.2018, etc.). *Thirdly* , to refuse to define in the legislation the list of settlements on the territory of which public authorities temporarily do not exercise their powers and the list of settlements located on the line of military contact ("List of Settlements on the Territory of Which Public Authorities Temporarily do not Exercise Their Powers", approved by the Order of the Cabinet of Ministers of Ukraine dated 07.11.2014 № 1085-p, Resolution of the Verkhovna Rada of Ukraine "On Recognition of Certain Rayons, Cities, Towns and Villages of Donetsk and Luhansk Regions as Temporarily Occupied Territories" № 254-VIII of 17.03.2015, Decree of the President of Ukraine № 32/2019 of 07.02.2019, etc.) and provide for the development and adoption of unified criteria for determining the date of loss and return of government control over settlements. *Fourth*, to ratify the Rome Statute of the International Criminal Court or at least clearly and unequivocally extend the ICC's jurisdiction over crimes against humanity and war crimes by senior Russian officials and leaders of all entities controlled by it throughout Ukraine (expansion of the action of the Resolution of the Verkhovna Rada of Ukraine "On Recognition by Ukraine of the Jurisdiction of the International Criminal Court on Crimes against Humanity and War Crimes Committed by Senior Officials of the Russian Federation and Leaders of Terrorist Organizations "DPR" and "LPR", which Caused the Especially Severe Consequences and the Mass Murders of Ukrainian Citizens № 145-VIII of 04.02.2015).

Chapter 7

PROTECTION OF CULTURAL HERITAGE AND ECOLOGICAL SAFETY ON THE TERRITORIES ANNEXED AND ILLEGALLY CONTROLLED BY THE RUSSIAN FEDERATION (*Olesia TRAGNIUK, Liliana TYMCHENKO*)

Neglecting the lives of people (Ukrainians and citizens of other countries who suddenly or in the course of their professional duties found themselves in a situation of war in Ukraine), Russian aggressors care even less about the cultural heritage of the Ukrainian people, the ecological conditions in the Ukrainian state. The aggressor's intention is obvious – to destroy the Ukrainian people not only physically, but also by causing irreparable damage to the land due to man-made disasters, destroying any mention of material culture and life of our people.

Such actions are a violation of international law in the field of cultural heritage protection:

- Art. 4 and 5 of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict; Protocol to it of 1954; Art. 6-8, 12 of the Second Protocol to it of 1999;
- all articles of Chapter III of Part III of the Additional Protocol to the Geneva Conventions of 1949, relating to the protection of victims of international armed conflicts.

The main environmental hazards on the territories that are annexed, controlled by the Russian Federation and where hostilities are taking place, include the following: 1) radiation, chemical, explosive hazards; 2) pollution of surface and ground waters: increase in water content of harmful substances (non-radioactive strontium, barium used in industry and as well as standard components of modern ammunition, nitrogen, phosphorus, chlorides, sulfates, other mineral salts and heavy metals), salinization groundwater drinking waters with mine water; flooding of mines used as waste storage facilities; 3) air pollution, increasing the concentration of mercury in soils; 4) pollution of the soil cover, which occurs during large-scale spillage and combustion of fuels and lubricants (maneuvers of large military equipment, military training and construction of fortifications, disposal of ammunition, scattering of chemicals also reduce the quality of soil cover); 5) infliction of damage to forest plantations and nature reserve

fund; 6) the danger of epidemics, in particular in connection with the arrangement of mass and spontaneous burials in unsuitable places without compliance with sanitary and hygienic requirements, with interruptions and suspension of water supply, water treatment and drainage systems, non-disinfection of water; 7) fires, arsons and explosions of ammunition, etc.

The foundations of environmental protection in the event of armed conflict are laid by the principles of international humanitarian law, the Additional Protocols to the Geneva Conventions, customary IHL norms and norms of the so-called "environmental" conventions. The main principle in IHL regarding environmental protection is the principle of distinction, which requires that attacks be directed only at military objects and, in exceptional cases, at civilian objects, if urgent military necessity so requires. The principle has a customary nature, but its individual nuances are also embodied in Art. 23(g) of the 1907 Convention (IV) respecting the Laws and Customs of War on Land and the Regulations concerning the Laws and Customs of War on Land attached to it, Art. 53 of the IV Geneva Convention, Art. 48 and 52 of Additional Protocol I (AP I). Other IHL principles also provide guidance on how military action should be conducted when there is a threat that it may harm the environment. Such principles are: prohibition of indiscriminate attacks, the principle of proportionality, taking precautionary measures. Special IHL regulation of environmental protection is concentrated in several articles of AP I and a special international treaty – the 1976 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Technique (so-called ENMOD Convention).

Additional Protocol I to the Geneva Conventions of 1949 (Part 3, Articles 35, 55) prohibits the use of methods or means of warfare which are intended or may be expected to cause widespread, long-term and severe damage to the natural environment and thereby to prejudice the health or survival of the population.

Now we can without exaggeration talk about the creation of a state in our country, which falls under the signs of "ecocide". At the same time, it should be noted that the damage caused by the aggressor's military actions on our territory, which experts trying to roughly estimate, does not take into account the damage to the environment, which in the long run may

appear much greater than the damage caused to material objects, for it endangering the very existence of a human population.

Suggestions:

1. To the Verkhovna Rada of Ukraine: a) to ratify the Rome Statute; b) review the provisions of Art. 298 of the Criminal Code (Illegal executing of search works on archeological heritage sites, destruction, ruining or damage of cultural heritage sites) in order to further qualify and strengthen measures of punishment or to qualify the intentional destruction, ruining or damage of cultural heritage sites among the crimes in Chapter XX of the Criminal Code of Ukraine (Crimes against peace, security of mankind and international legal order); b) to create an appropriate legal basis for combating ecocide as an international crime and to develop a mechanism for bringing officials to justice for making criminal decisions that result in harm to the environment; c) adopt normative legal acts aimed at protecting nuclear facilities and objects from military attacks and their lawful use (in particular, legislatively regulate the special legal regime for the protection of nuclear facilities and objects during hostilities, ensuring the environmental safety of nuclear objects in the conditions of military actions, the bases and the order of compensation of the damage caused to nuclear objects as a result of military invasion of the Russian Federation); d) adopt laws of Ukraine "On Compensation for Damage Caused to Ukraine by the Aggression of the Russian Federation" and "On Criminal Punishment of Individuals for Aggression, Crimes against Humanity and War Crimes Committed during the Russian Aggression against Ukraine" (this idea was expressed in 2014 by V.A. Vasylenko); e) make changes and additions to the criminal legislation of Ukraine to specify the content of Art. 438 of the Criminal Code of Ukraine and bring it into line with modern practice of formulating the composition of a war crime.

2. To relevant ministries and services:

– to develop and approve a technique of documenting and calculating the damage to the environment and objects of material culture of Ukrainians (cultural values), caused by hostilities;

– to introduce a modern centralized network for monitoring the state of the environment, taking into account the peculiarities of access to objects and further use of the data obtained on the following types of objects: a) in areas where hostilities are/were conducted; b) in areas affected by high-risk objects and objects that are sources of potential risks of man-made

emergencies; c) critical infrastructure objects, in particular water supply facilities, for further use of monitoring data as evidence of damage to the environment by the Armed Forces of Russian Federation;

– to develop a comprehensive program of proper conservation of environmentally hazardous facilities (including on the temporarily uncontrolled territories), restoration of elements of the environment;

– with the help of international organizations to train special personnel (military and civilians) who will monitor the proper state of cultural values.

3. To prosecutor offices and other law enforcement agencies: using the sum of available evidences, when required qualifying features are present, to introduce the practice of proper qualification of war crimes against the environment and protection of cultural heritage.

4. To the command of the Armed Forces of Ukraine: to organize the withdrawal (in the absence of military necessity) of military positions and battle points from infrastructure and industrial facilities, damage to which may pose a threat to the environment.

5. To international intergovernmental organizations: increase pressure on the Russian Federation to ensure access to objects with environmental danger potential located on territories temporarily not under the control of the Government of Ukraine, primarily of International Atomic Energy Agency representatives to audit facilities with high level of radioactive damage, in particular, emphasizing that the pollution would be transboundary by its character and threaten the environment of the Russian Federation itself; to start active work on monitoring the state of cultural values on the territories annexed and illegally controlled by the Russian Federation, to disseminate objective information about their state. It should be recommended for UNESCO to take a principled position on discussing the real state of educational programs and the content of the strategy for the development of national educational systems, which should meet the main statutory goal of this organization – the cultivation of a culture of peace

6. To non-governmental organizations: continue to actively monitor the environmental situation in the war zone, promote the dissemination of complete and reliable information about its current state.

7. To Ministry of Foreign Affairs of Ukraine: to use diplomatic efforts (within the UN General Assembly and its committees) to reduce the

requirements of the Draft Principles on Protection of the Environment in Relation to Armed Conflicts, developed by the UN Commission on International Law, in determining the threshold of international responsibility for damage to the environment during armed conflicts; to establish a special commission within the UN similar to the UN Compensation Commission, as a tool to recover from the Russian Federation compensation for damage to the environment and other damage caused by the Russian aggression against Ukraine; as an alternative – to achieve the inclusion of a provision on the establishment of a commission for the settlement of claims and compensation in the future agreement with Russia and to provide the powers of such a commission in dealing with cases of environmental damage;

– use the mechanisms provided for by other international environmental treaties (Convention on Long-Range Transboundary Air Pollution (1979), Convention on Transboundary Effects of Industrial Accidents (1992), Convention on Environmental Impact Assessment in a Transboundary Context (1991), etc.);

– to develop an evidence base to substantiate claims to the Russian Federation concerning its environmental damage caused in Ukraine in the framework of arbitration proceedings in accordance with Annex VII of the UN Convention on the Law of the Sea;

– prepare a consolidated claim to the Russian Federation, which should include a requirement to compensate Ukraine for environmental damage caused by the Russian aggression; include in this claim provisions for reimbursement of demining costs and the elimination of other remnants of war;

– in case of impossibility to prosecute the leadership of the Russian Federation or the command staff of the Armed Forces of the Russian Federation for a separate crime under Article 8.2.b.iv of the Rome Statute, Ukraine should: 1) make efforts to recognize environmental crimes as a means or instrument of other crimes – war crimes and (or) crimes against humanity; 2) to argue that the destruction of the environment during the armed conflict in Ukraine of objects of the nature reserve fund and other elements of the environment are part of the crime "Destruction of civilian objects", as it stated in the Statement of the ICC Prosecutor on Preliminary Examination in the Situation in Ukraine.

Chapter 8

REGIMES OF INTERNATIONAL SANCTIONS AGAINST RUSSIA IN CONNECTION WITH THE AGGRESSION AGAINST UKRAINE

(*Natalia KAMINSKA, Maria POZHIDAYEVA*)

With the beginning of Russia's aggression against the Ukrainian state, encroachment on its territorial integrity and inviolability of state borders, violation of human rights and freedoms, seizure of state property of Ukraine since March 2014 on universal and regional international levels were introduced anti-Russian sanctions, relevant sanctions regimes, sanctions policies. According to many foreign and domestic experts, they remain the only means of putting pressure on Russia's foreign policy and at the same time limiting its destructive potential for international security. Of course, they are flexible, dynamic and wide-ranging, but the key drawback is the small impact on the decision-making process of senior Russian officials and authorities. Eight years of experience in applying sanctions against Russia by almost fifty states, a number of international organizations, as well as the specifics of mechanisms for implementing various types, modes and regimes of international legal sanctions confirm that in modern conditions sanctions have established a reputation for measures "between war and words".

Obviously, only increased coordinated pressure from the international community on Russia could stop Russian aggression. The political and financial and economic sanctions imposed by the United States, the United Nations, the European Union, NATO and other entities from March 2014 in response to Russia's aggression against Ukraine were necessary and in fact the only way in conditions of UN Security Council work blocked by Russia. However, they turned out to be insignificant, had a selective and fragmentary nature, temporary effect and did not exclude the possibility of ignoring them. Thus, the sanctions did not have the effect of radically changing Russia's policy, but the latter continued its aggression, risking to begin the Third World War, the consequences of which are inevitable for other countries in the region and around the world.

All this gives grounds for the following conclusions and recommendations.

1. It is important that sanctions against Russia be imposed on behalf of all mankind, the world community, be comprehensive, systematic and lasting, because terror, aggression, genocide, mass destruction of cultural heritage of global importance caused catastrophic damage to the Ukrainian state and certain losses for third countries, which are forced to terminate political, financial, trade, military, scientific, technical and other cooperation with Russia as an aggressor state.

2. It seems effective to impose targeted or "intelligent" sanctions, comprehensive or undifferentiated, broad international legal sanctions of a general nature against Russia as a guilty state as a whole, along with differentiating the recipients of targeted sanctions by subject composition (targeted sanctions for certain circle of influential persons with simultaneous application in both foreign and domestic affairs) based on the principles of international humanitarian law, international criminal law, rule of law, protection of human rights, justice, inevitability of punishment, without the possibility of avoiding or circumventing all sanctions, etc.

3. Given the violation of the UN Charter, it is necessary to immediately convene a session of the UN General Assembly to cancel Russia's membership in the UN on the grounds of violation of the procedure for becoming a member of this organization and taking a permanent membership to the UN Security Council (Articles 4, 18 of the UN Charter).

4. Sanctions imposed by the European Union and its bodies are natural. In particular, by approving EU Council Regulation 2022/394, sanctions against the Russian Maritime Register of Shipping not only impose restrictions on Russian commercial shipping and shipbuilding, but also deprive Russia of at least tens of millions of dollars in revenue each year. This also destroy the net of Russian secret services working under umbrella of "offices" of the Register in many European countries.

5. It is necessary to introduce a ban on any transactions with all enterprises, institutions, organizations of the Russian Federation of various forms of ownership; a ban on investment in various sectors of the Russian economy, a ban on the supply of weapons and other military goods; freezing of public and private assets; embargo on Russian goods; increasing sanctions pressure on all spheres of life of the aggressor state without

exception, primarily IT, financial, agricultural, energy, maritime, air and other industries.

6. Sanctions against only seven Russian banks (Bank Otkrytie, Novikombank, Promsviazbank, Russia Bank, Sovcombank, VTB, Vnesheconombank) imposed by the relevant updated Decision and Regulation of the EU Council of March 1, 2022 and imposed by amending EU Regulation 765/2006 of 10.03.2022 sanctions against three Belarusian banks (Belagroprombank, Bank Dabrabyt, Development Bank of the Republic of Belarus) and their Belarusian subsidiaries disconnecting them from the international interbank system SWIFT (Society for Worldwide Interbank Financial Telecommunications) are not effective as it will not significantly affect Russia's and Bielorus' export potential. After all, any Russian or Belarusian business entity can open a new current account in another bank, which is not included in this "black" list of ten banks prohibited from providing specialized service of financial messaging in SWIFT. After disconnecting the entire banking system of the aggressor state (Central Bank and all other banks of Russia) from SWIFT in Russia for 3–4 months there may be a default – the state will not be able to pay for imports and receive payments for exports.

In modern conditions, there is no full-fledged alternative to the international interbank payment system SWIFT. But from October 2015, the China International Payments System (CIPS) officially began its functioning, which provides clearing and other cross-border payments services in yuan. CIPS is actively developing the use of international standards. Therefore, an agreement was signed between CIPS and SWIFT, which allows the global community of SWIFT users to join CIPS. Given this, it is important to avoid circumventing sanctions through third countries, including China.

7. International payment systems such as Visa, Mastercard, American Express, JCB and PayPal have already expressed their principled position in support of Ukraine and have publicly announced the termination of cooperation with banks in Russia. Due to this, the demand for the widespread Chinese international payment system UnionPay, whose payment cards are used in 180 countries and accepted by almost 22 million online retailers, has intensified in Russia. Therefore, on March 17, 2022, the

National Bank of Ukraine officially appealed to the Chinese payment systems China UnionPay and UnionPay International to withdraw from the Russian payment market, namely to stop servicing all transactions with China UnionPay and UnionPay International payment cards both in Russia and issued by banks of the Russian Federation abroad.

8. Despite the suspension of international payment systems Visa and Mastercard in Russia, Russian citizens are inventing ways to circumvent EU and US sanctions and use payment cards of these systems while in the EU, namely – through opening accounts in the Swiss Internet bank Dukascopy Bank SA. Ukrainian lawyer Artem Afyan has filed a complaint with the Swiss Financial Market Supervisory Authority (FINMA) alleging Swiss Dukascopy Bank SA's failure to comply with Swiss Confederation anti-money laundering legislation and sanctions against the Russian Federation. During the review of the complaint, Dukascopy Bank announced that it had stopped issuing Visa / Mastercard cards to Russian residents. However, another Swiss bank, CIM Banque, allows Russian citizens to open multi-currency accounts and issue virtual and plastic cards of Visa/Mastercard international payment systems to make international transfers and pay for goods and services abroad. These cases indicate the imperfection of such sanctions: any foreign bank cannot but accept funds if it believes that it is normal for it to work with Russian citizens. After all, transactions (transfers of funds) occur from the current account of the client, which he opened in a bank in Russia, to the current account of a foreign bank, which is opened in a foreign country. Therefore, in this case, payment systems are not used, and the banking system with banking operations is involved.

To increase the effectiveness of counteracting and preventing the financing of Russia's armed aggression with the participation of Belarus against Ukraine, the National Bank of Ukraine and the Committee of Finance, Tax and Customs Policy of the Verkhovna Rada of Ukraine appealed to the central banks of Canada, Japan, Great Britain, USA, Switzerland and the European Central Bank for the termination of correspondent relations with all Russian and Belarusian banks. Also, due to the possibility of avoiding financial sanctions outside Russia to continue the implementation by subsidiaries of Russian and Belarusian financial

institutions of the Russian state strategy abroad, there is a need to apply such sanctions also to foreign branches of Russian and Belarusian banks.

9. Given the gross violation by Russia and Belarus of a number of basic principles of the FATF (Financial Action Task Force on Money Laundering) as states financing the terrorism (or facilitate such a financing), it is necessary to include Russia and Belarus in the FATF blacklist and expel them from the FATF as soon as possible. The Verkhovna Rada of Ukraine, the Ministry of Foreign Affairs of Ukraine, and the State Financial Monitoring Service of Ukraine addressed such an initiative to the FATF, members of the European Parliament, and members of parliaments of FATF member states.

10. Sanctions are a long-term instrument and can have the maximum political, economic and other effect in the long run after implementation, as well as ambiguous and negative consequences are possible. It is extremely necessary to assess the illegal actions of the Russian Federation in all international organizations, their bodies, specialized institutions, etc., the introduction of a modern network to monitor the implementation of international sanctions against Russia in connection with aggression against Ukraine, their consequences.

11. Gaps in the multilateral international sanctions regime against Russia and the aggressive war on the part of Russia, its commission of terror and genocide, and other international crimes have highlighted the need to end the war immediately and bring Russia to justice for the crime of aggressive war in Ukraine. The introduction of sanctions is one of the forms of international legal responsibility. In this context, a new stage in the application of sanctions is related to the order of the International Court of Justice (ICJ order in dispute over the interpretation of the Convention on the Prevention and Punishment of the Crime of Genocide) of 16.03.2022. It is clear that the order gives the grounds for the further effective individual and collective, numerous other coercive measures aimed to force the Russian Federation to implement the decision, as well as, in the future, to the responsibility for the most serious international crimes.

Chapter 9

PROHIBITION OF PRO-RUSSIAN POLITICAL PARTIES, PUBLIC ASSOCIATIONS AND MASS MEDIA, ITS LEGISLATIVE SUPPORT

(*Iryna KRESINA, Serhiy DEREVYANKO, Mykhaylo KHODAKIVSKYI*)

1. Proposals to prohibit political parties in Ukraine

The full-scale war waged by the Russian Federation against Ukraine has highlighted the need for a clear identification of the attitude of Ukrainian political parties. This question is fundamental, because political parties are called to promote the formation and expression of political will of citizens. According to the Ministry of Justice, there are 370 political parties in Ukraine.

Despite the condemnation of Russian aggression in general (by citizens of Ukraine, foreign countries, numerous international organizations), many parties and their leaders have not made public their position. This is a confirmation of the fact that the vast majority of political parties do not actually conduct any public activities, and therefore the problem of their re-registration is long overdue. However, the formal grounds for their formation and cessation of activities, as well as the real lack of control over their observance, did not contribute to this. All the same it will not be resolved by the adoption by the parliament of the updated Law of Ukraine "On Political Parties in Ukraine", the draft of which has been expertly discussed, and in particular in the Venice Commission.

At the same time, the activities of individual parties, rather the leaders and members of their governing bodies, have a clear anti-Ukrainian character, in martial law conditions – anti-state character, and therefore should be prohibited. First of all, it is necessary to create a representative evidence base of illegal actions. An analysis of the programs of political parties, many of which were renewed after the Revolution of Dignity, suggests that only some of them clearly reflect their attitude to the Russian-Ukrainian war. Instead most party programs do not express a position on the war.

The pro-Russian parties in Ukraine include, first of all, the parliamentary party "Opposition Platform – For Life", as well as political parties "Nashi", "Nash Krai", "Opposition Bloc", Party of Shariy and others.

In particular, the "Opposition Platform – For Life" in its foreign policy priorities in program declares a guarantee of "return to the policy of multi-vector" and "cessation of mutual sanctions and the restoration of mutually beneficial trade and economic ties with Russia and the CIS countries." It is known that the Party of Shariy has a pro-Russian ideology, promotes pro-Russian and Ukrainophobic content. The process of prohibition of this party has been going on for almost two years, but there is no final decision. This approach can be traced in the election programs of representatives of political parties in the last elections of the President of Ukraine (2019), the elections of People's Deputies of Ukraine (2019) and local elections (2020). A careful analysis of these documents could be one of the grounds for identifying and defining certain political parties in Ukraine as pro-Russian. An additional argument for this is provided by the analysis of transcripts of sessions of the Verkhovna Rada of Ukraine, which contain, in particular, arguments for the position of political parties on the recognition of the so-called "LPR" and "DPR", as well as the so-called "Special military operation" of the Russian Federation in Ukraine. An even more important factor in identifying pro-Russian parties has been the actions of their leaders and activists in recent weeks. The fact that almost a dozen deputies fled Ukraine during last weeks is an eloquent confirmation. All this can be a sufficient basis for the identification of individual political parties as pro-Russian and will require appropriate political and legal qualifications.

The issue of criminal liability of leaders and individual members of these political parties for their actions is beyond doubt and is regulated by law. It will be strengthened by the application of the laws “On Amendments to Certain Legislative Acts (on Ensuring Liability of Persons Who Carried Out Collaborative Activities)” (Reg. № 5143) and “On Amendments to Certain Legislative Acts (on Establishing Criminal Liability for Collaborative Activities)”. (Reg. № 5144). Law of Ukraine № 5143, in particular, prohibits political parties whose authorized representatives have been convicted of collaborationism.

The Ministry of Justice must immediately file an administrative lawsuit to prohibit these political parties. It is important to show that the party threatens the foundations of a free democratic system or even the existence of the Ukrainian state.

Important in this context are the recommendations of the Venice Commission "Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures", adopted at its 41st plenary session (Venice, 10–11 December 1999). The Venice Commission recommends that the member states of the Council of Europe adhere to a number of principles. In particular, "5. The prohibition or dissolution of political parties as a particularly far-reaching measure should be used with utmost restraint. Before asking the competent judicial body to prohibit or dissolve a party, governments or other state organs should assess, having regard to the situation of the country concerned, whether the party really represents a danger to the free and democratic political order or to the rights of individuals…" In the current war conditions, we are witnessing exactly the level of danger that determines the application of such an extreme measure. According to the practice of the ECtHR, bans on parties must be provided by the relevant law, pursue the legitimate goals listed in Art. 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and to be necessary in a democratic society, i.e. to respond to an urgent social need and to be proportionate to the legitimate aims pursued. According to the Law "On Amendments to Certain Legislative Acts (on Ensuring Liability of Persons Who Carried Out Collaborative Activities)" (Reg. № 5143), a party may be banned in court at the administrative suit of a central executive body *if its authorized persons are convicted of criminal offense against the foundations of national security of Ukraine* under Art. 111-1 of the Criminal Code of Ukraine.

That is, in addition to qualifying the party's activities as those whose activities pose a threat to the democratic order, state sovereignty and territorial integrity of Ukraine, the condemnation of its authorized persons for taking appropriate actions is added. Given the criminal proceedings against V. Medvedchuk, the head of the "Opposition Platform – For Life", the case can and should move very quickly. This also applies to other pro-Russian parties, which should be prohibited now without waiting for the war to end.

The decision of the National Security and Defense Council of Ukraine to suspend the activities of 11 pro-Russian political parties should be continued in the court's decision to prohibit them.

Proposals to prohibit and terminate the activities of the Ukrainian Orthodox Church (Moscow Patriarchate) in Ukraine

The Ukrainian Orthodox Church of the Moscow Patriarchate is an active participant in the Russian-Ukrainian war of 2014-2022 on the side of the aggressor state. The list of facts of its cooperation with the aggressor state is huge and constantly growing. It is important that Art. 7 of the Law of Ukraine "On Fundamentals of National Security of Ukraine" relegates to the main actual and potential threats to national security of Ukraine, stability in society in the information sphere the attempts to manipulate public consciousness, in particular by disseminating inaccurate, incomplete or biased information.

Legal evaluation of the UOC-MP and the imposition of appropriate sanctions are complicated by the non-transparent structure of this religious organization and the use of various legal manipulations in regulations governing its activities (starting with the official name of the church – Ukrainian Orthodox Church), as well as by large number of local religious organizations, which together constitute the UOC-MP.

The main internal normative documents regulating the activities of the UOC-MP (Statute on the Administration of the Ukrainian Orthodox Church and the Statute of the Russian Orthodox Church) testify to its full subordination to the ROC.

The issue of banning and terminating the activities of the UOC-MP can be resolved in several ways. *First*, it is the termination of a religious organization by applying a newly created mechanism for convicting its authorized persons for committing a criminal offense against the foundations of national security of Ukraine, provided for in Art. 111-1 of the Criminal Code (collaborationism), provided for in paragraph 5 of Part 4 of Art. 16 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations".

Secondly, the creation of a legislative mechanism to regulate the activities of destructive religious organizations ("sects"), the effect of which can be extended to the UOC (MP).

Third. The legislation using the small correction allow for termination of the UOC (MP) on the basis of its connection with the aggressor state. This is the Law of Ukraine from December 20, 2018 "On Amendments to the Law of Ukraine "On Freedom of Conscience and Religious Organizations"

regarding the name of religious organizations (associations) that are part of the structure (is part of) a religious organization (association), which management center is located outside Ukraine in a state that is recognized by law as having carried out military aggression against Ukraine and / or temporarily occupied part of the territory of Ukraine", which obliges to change the name of the UOC (MP). According to the results of the religious expertise approved by the Order of the Ministry of Culture № 37 of January 25, 2019, the UOC-MP should be called the UOC in unity with the ROC. However, on April 22, 2019, the Kyiv Region Administrative Court suspended the process of renaming the UOC (MP) as security measure for the lawsuit. The establishment of certain legislative prohibitions and restrictions due to the connection with the aggressor state is widely used in Ukrainian legislation. In accordance with Part 3 of Art. 8 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations" the state recognizes the right of a religious community to its subordination in canonical and organizational matters to any religious centers (administrations) operating in Ukraine and abroad and free change of this subordination by amending the statute of the religious community. It is clear that subordination to the religious centers of the aggressor state should be prohibited.

Fourth. As a precedent, the adoption of the Law of Ukraine "On Condemnation of Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of Propaganda of Their Symbols" can be used, which condemned these regimes, provided the legal bases for banning the propaganda of their symbols and established the procedure for eliminating the symbols of the communist totalitarian regime. The totalitarian fascist regime in Russia, which has set itself the goal of "the final solution of the Ukrainian question," deserves a political and legal assessment similar to that of the communist regime.

Fifth. In the context of the ban and termination of the UOC (MP), the issue of nationalization of property owned by religious organizations of the UOC (MP) needs to be regulated.

Chapter 10

STATUS AND PROSPECTS OF INTERNATIONAL PEACEKEEPING ACTIVITIES IN UKRAINE (*Iryna PROTSENKO, Kostiantyn SAVCHUK*)

The issue of deploying an international peacekeeping operation in Ukraine is not new, as it began to be discussed in late 2014 – early 2015. In February-March 2015, the President of Ukraine and the Verkhovna Rada of Ukraine asked the UN to begin appropriate procedures for deployment in Ukraine of international operation for maintenance of peace and security. However, despite the fact that the Ukrainian leadership has repeatedly raised this issue in talks with Western leaders and the UN Secretary General, Ukraine's proposals were not reflected in a specific draft UN Security Council resolution. In the second half of 2017, the issue of peacekeepers in Ukraine was again on the agenda, as on September 5, 2017 the Russian Federation submitted its draft resolution on the establishment of the UN Mission to promote the protection of the OSCE Special Monitoring Mission (SMM) in Southeast Ukraine. It provided for the deployment of the mission on the actual line of contact after full dilution of the parties' personnel and arms for a period of 6 months, and its mandate was to be limited to promoting the protection of the OSCE SMM in South-Eastern Ukraine. Ukraine and its allies did not submit their draft at the time, although the expert community discussed a UN peacekeeping project prepared by UN expert R. Gowan under the auspices of former NATO Secretary General A. Fogh Rasmussen and presented at the Munich Security Conference on February 17, 2018 which provided for the deployment of a peacekeeping mission of 20,000 military personnel and 4,000 police in Donbas, based on peacekeepers from non-NATO European countries, some post-Soviet countries, Asia and Latin America. However, this option was also not implemented in any specific draft UN Security Council resolution.

The turn of the Russian Federation to full-scale open armed aggression throughout Ukraine forces the latter to resort to any possible diplomatic and international legal measures to counter Russian aggression. It is expedient to raise the issue of the peacekeeping operation at the 11th special session of the UN General Assembly on Ukraine. It is known that its

work was temporarily suspended, but the UN General Assembly Resolution "Aggression against Ukraine" of March 2, 2022 authorized the Chairman of this body to resume meetings at the request of member states. The legal basis for raising this issue within the UN General Assembly, and not the UN Security Council, is UN General Assembly Resolution 377 (V) "Uniting for Peace" of November 3, 1950, which provides that in the event that the UN Security Council due to differences between its members (and this is the case now, as the Russian Federation vetoes the decision on the Ukrainian issue, which was clearly shown during the vote on February 25, 2022 on the draft Resolution of the UN Security Council, initiated by the US and Albania) is unable to fulfill its main obligation on the maintaining the international peace and security in all cases where there is reason to suppose a threat to peace, a breach of the peace or an act of aggression, the General Assembly shall immediately consider the matter in order to provide UN members states with appropriate recommendations on collective measures including – in the case f breach of peace or act of aggression – the use of armed forces to maintain or restore international peace and security. The format of the peacekeeping operation will depend on the ever-changing military-political situation in Ukraine. However, given the huge civilian casualties, Ukrainian diplomacy urgently has to raise the issue of deploying peacekeepers at least to protect humanitarian corridors to be provided for the safe exit of civilians from the hostilities zone, and the current regrouping of Russian troops and their strengthening in eastern Ukraine only exacerbate the need to address this issue. It would also be appropriate to raise the issue of launching a peacekeeping operation under the auspices of the United Nations in talks with the Russian delegation in the event of an agreement on a ceasefire. This will at least allow us to act ahead, as Russian and Belarusian experts are "throwing in" information about the possibility of involving the Collective Security Treaty Organization in a peacekeeping operation in Ukraine, which is categorically unacceptable for the Ukrainian side. Appeal to the UN with the idea of organizing and conducting a peacekeeping operation in Ukraine is due to pragmatic considerations, as this organization has a well-established mechanism and rich practice of peacekeeping. If we take the OSCE for comparison, its documents also provide for the possibility of peacekeeping operations, but the Organization

has never resorted to its implementation. In the field of security, the OSCE mainly resorts to crisis management measures through field missions involving civilians rather than the military. The OSCE SMM, which operated in Ukraine from 2014 to 2022, came very close to the signs of a peacekeeping operation (its mandate included a ceasefire monitoring, it included ex-military personnel wearing bulletproof vests and moving in armored vehicles, and the Mission used unmanned aerial vehicles to perform its functions), but never crossed this line. The OSCE will be able to join in supporting the UN Blue Helmet operation, if organized.

It should be added that NATO documents recognize three types of military operations, namely: collective defense operations under Art. 5 of the North Atlantic Treaty; NATO deterrence and defense operations in the NATO area; missions outside NATO, so-called crisis management operations. Peacekeeping operations (NATO distinguishes several types: from armed conflict prevention to peace enforcement) are included in the third type. However, after the Organization has conducted operations in the Balkans without a relevant UN Resolution, it adheres to the rule that peacekeeping operations must be conducted either on the basis of a UN Resolution, or at the invitation of the state, or both; the invitation of the state is not required only for a peace enforcement operation, but such an operation presupposes full-fledged military action. This is difficult to expect at the moment, given the statements of NATO's top political and military leaders about the impossibility of involving NATO in the war against Russia. As the Extraordinary Summit of NATO Heads of State and Government of 24 March 2022 showed, this organization is also not ready to launch a peacekeeping operation in Ukraine in the format proposed by Poland, namely: to organize a mission to be stationed in areas currently controlled by the Government of Ukraine to ensure security of numerous internally displaced persons who have moved from eastern to western Ukraine and also to send a clear signal to Russia that NATO member states do not agree with war crimes. It should be added that in Ukraine, too, the plan proposed by Poland was perceived as unpromising, one that would only contribute to the "freezing" of the conflict. Indeed, the practice of peacekeeping operations shows that the deployment of peacekeepers to ensure a ceasefire can lead to such an effect, and, moreover, to the establishment of a

new de facto border of the state. The state power of Ukraine is focused on victory over the enemy, and therefore, while active hostilities are underway, the format of a possible peacekeeping operation should be rather limited to protection of civilians in the war zone and, in particular, protection of humanitarian corridors to withdraw civilians from these zones to prevent the commission of war crimes and crimes against humanity.

Chapter 11

JUDICIAL FRONT OF THE CONFRONTATION BETWEEN UKRAINE AND THE RUSSIAN FEDERATION AND THE RESPONSIBILITY OF THE LATTER FOR THE COMMISSION OF AGGRESSIVE WAR AND OF WAR CRIMES

(*Iryna PROTSENKO, Kostiantyn SAVCHUK*)

Since the beginning of the ongoing aggression by the Russian Federation, which began in February 2014 with the occupation and illegal annexation of the Autonomous Republic of Crimea and the city of Sevastopol, continued with armed intervention in Donetsk and Luhansk regions, and on February 24, 2022 entered a phase of full-scale hostilities practically throughout Ukraine, Ukraine tried to use the full range of judicial means of counteraction. Thus, Ukraine has applied such international legal mechanisms as recourse to: the International Court of Justice (in 2017, on charges of Russia violating international legal obligations under the 1999 International Convention for the Suppression of the Financing of Terrorism and the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, for which the Court recognized its jurisdiction in 2019 and is currently pending), the European Court of Human Rights (a series of cases ranging from Ukraine v. Russia (concerning Crimea)), which comprise two complaints № 20958/14 and 38334/18, on which the court ruled on the admissibility, the joined case "Ukraine and the Netherlands v. the Russian Federation", which combines complaints № 8019/16, 43800/14 and 28525/20 etc.), the International Tribunal for the Law of the Sea (in 2019 on the illegal detention of three Ukrainian warships in the Kerch strait, for which the Tribunal issued an order imposing interim measures on May 25, 2019), the International Criminal Court, etc.

Following the full-scale invasion, Ukraine filed on February 26, 2022 a new case against Russia in the ICJ over a dispute concerning the interpretation, application and implementation of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. In its application Ukraine stated that Russia falsely claiming the cases of genocide in Donetsk and Luhansk regions of Ukraine, and on this basis recognized the so-called

"DPR" and "LPR", and later launched a "special military operation" against Ukraine. Ukraine categorically denies that such genocide took place and demands a decision and a declaration that Russia cannot legally take any action under the 1948 Genocide Convention against Ukraine aimed at preventing or punishing alleged genocide on the basis of false allegations. Ukraine accuses Russia of "planning acts of genocide in Ukraine" and claims that Russia intentionally kills and inflicts grievous bodily harm on members of the Ukrainian nationality, which is the composition of crime under Art. 2 of the Genocide Convention. In order to prevent irreparable damage to the rights of Ukraine and its people, it asked the Court to order interim measures, the most important of which was to demand an immediate cessation of hostilities in Ukraine.

On March 16, 2022, the ICJ adopted the Order on Provisional Measures in the case "Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)", according to which:

1) the Russian Federation had to immediately cease hostilities (military operations) initiated on the territory of Ukraine on February 24, 2022 (adopted by 13 votes to 2);

2) Russia must ensure that military or irregular armed groups, organizations or persons subordinate / controlled / supported by it (military supported so-called "DPR" and "LPR"), do not take any steps to promote hostilities (adopted 13 votes to 2);

3) The parties must refrain from any action that may aggravate or prolong the duration of the proceedings before the Court or complicate its resolution (adopted unanimously).

A spokesman for the President of the Russian Federation D. Peskov said that the Russian Federation will not take into account this decision of the ICJ, although the text of the Order states that on the basis of Art. 41 of the ICJ Statute and the ICJ Judgment in LaGrand (Germany v. USA) of 2001, it is binding and creates international legal obligations for both parties. D. Peskov explained the non-fulfillment of the ICJ Order by a vague reference to the consent of the parties, which is important for the Court, which, according to him, cannot be in this issue. Although the ICJ has recognized its jurisdiction in this case, and Ukraine and Russia are states parties to the

1948 Convention on the Prevention and Punishment of the Crime of Genocide. Thus, the Russian Federation has once again demonstrated its contempt for the principles and norms of international law.

Based on the fully predicted refusal of the Russian Federation to comply with the ICJ Order, the Ukrainian side should immediately initiate the application of paragraph 2 of Art. 94 of the UN Charter, which gives it the right to appeal to the UN Security Council if the other party fails to fulfill its obligations under the Court. Article 94, paragraph 2, gives the UN Security Council the opportunity to decide on measures to implement the decision.

In the case of the again projected veto of the Russian Federation on any attempt by the UN Security Council to take a constructive decision on this issue should be used the tools provided by UN General Assembly Resolution 377 (V) "Uniting for Peace" of November 3, 1950, and argued that the failure of the Russian Federation to comply with the ICJ Order poses a threat to international peace and security, so that the 11th Special Session of the UN General Assembly will make appropriate recommendations for collective action. This is quite real, given the results of the vote on the Resolution "Aggression against Ukraine" of March 2, 2022. In any case, Russia's failure to comply with the Order increases Ukraine's chances of winning the case on the merits, which will be an important mechanism for bringing the aggressor state to justice.

The mechanisms of the European Court of Human Rights were also used by Ukraine on February 28, 2022, when it asked the Court to determine urgent interim measures in connection with mass human rights violations committed by Russian troops during the armed aggression against Ukraine's sovereign territory. On March 1, 2022, the ECtHR ordered the Russian government to refrain from military attacks on civilians and civilian objects, including housing, ambulances, schools and hospitals and etc. being under special protection, and immediately ensure the safety of medical facilities, their personnel and ambulances on the territory under attack or siege by Russian troops. Demonstrative disregard for the Court's Order can only contribute to the further international isolation of the aggressor state, and the exclusion of the Russian Federation from the

Council of Europe will not affect the proceedings already brought against Russia in the ECtHR.

The importance of using the tools of the International Criminal Court should be emphasized. The Rome Statute of the ICC must be ratified as a matter of urgency. Now is not the time for theoretical discussions, especially since Part 6 of Article 124 of the Constitution of Ukraine enshrines the provision that Ukraine may recognize the jurisdiction of the ICC under the conditions set out in the Rome Statute. The delay in ratifying the Rome Statute is meaningless, as already on April 17, 2014 the Government of Ukraine submitted an application in accordance with Art. 12 (3) of the Rome Statute recognizing the jurisdiction of the ICC in respect of alleged crimes committed in its territory from 21.11.2013 to 22.02.2014, and on 8.09.2015 – in respect of alleged crimes committed in its territory from 20.02.2014 without completion date. On March 2, 2022, the Prosecutor of the International Criminal Court announced that he had launched an investigation into alleged war crimes and crimes against humanity in Ukraine. Thus, the ICC can currently exercise its jurisdiction over crimes under the Rome Statute committed on the territory of Ukraine, but Ukraine cannot enjoy the organizational and procedural rights granted to the member states of the Statute. By ratifying the Rome Statute, Ukraine will become a full member of the Assembly of ICC States Parties and will be able to have a full voice in this body, to participate in the election of judges and prosecutors of the Court. It is also urgent to ensure the proper implementation of the provisions of the Rome Statute into the national legislation of Ukraine. In this regard, it is necessary to resolve the issue with the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Implementation of Norms of International Criminal and Humanitarian Law" adopted 20.05.2020, which has not yet been signed by the President of Ukraine.

However, it should be borne in mind that the ICC cannot initiate prosecution of Russian citizens for the crime of aggression, as paragraph 5 of Article 15 bis of the Rome Statute explicitly states that "In respect of a State that is not a party to this Statute, the Court shall not exercise its jurisdiction over the crime of aggression when committed by that State's nationals or on its territory", and Russia is not participate in the Rome

Statute. The way out of this situation may be the creation of a Special Tribunal to punish the crime of aggression against Ukraine, the draft declaration of which was proposed by a group of reputable international lawyers from different countries who worked with the Ukrainian Ministry of Foreign Affairs and with the support of former British Prime Minister Gordon Brown. It is clear that the work of this tribunal can in no way replace the investigation of war crimes and crimes against humanity carried out within the framework of the ICC. This all the same will not be hindered by the consideration of the case initiated by Ukraine against Russia in the ICJ, according to which the Court on March 16, 2022 issued an Order imposing interim measures.

Chapter 12

RESPONSIBILITY FOR COLLABORATIONISM ON THE TERRITORIES ANNEXED AND ILLEGALLY CONTROLLED BY THE RUSSIAN FEDERATION (*Mykola RUBASHCHENKO*)

Establishing the separate (regardless of liability for treason) criminal liability for collaborative activities has come a long way in Ukraine. The first attempts at criminalization date back to 2014. However, hopes for an evolutionary gradual and peaceful return of the temporarily occupied territories of Ukraine and work on the concept and other acts on state politics of transitional justice have formed an unspoken cautious consensus on the inappropriateness of considering the liability for collaborationism.

A new treacherous unprovoked turn of aggression of the Russian Federation against Ukraine, which began on February 24, 2022, forced the legislator to react. As a result, on March 3, 2022, the Verkhovna Rada of Ukraine adopted related laws "On Amendments to Certain Legislative Acts of Ukraine Concerning the Establishment of Criminal Liability for Collaborative Activities" № 2108-IX, "On Amendments to Certain Legislative Acts of Ukraine Concerning Ensuring the Responsibility of Persons Who Carried Out Collaborative Activities" № 2107-IX and “On Amendments to the Criminal Code of Ukraine on Strengthening Liability for Crimes against the Fundamentals of National Security of Ukraine in the Conditions of Martial Law” № 2113-IX.

According to their content, the adopted laws provide for mixed – criminal and non-criminal – negative legal consequences of committing forms of collaboration activities specified in Art. 111-1 of Criminal Code of Ukraine. The public demand for these legislative novelties is unquestionable. It is hoped that in this difficult period for Ukraine, the establishment of special criminal liability for collaboration activities will contribute to more effective counteraction to the phenomenon of collaborationism, will have some preventive potential.

Suggestions and recommendations:

1. For the subjects of the legislative initiative:

– in order to overcome the internal terminological contradiction within the framework of Section I of the Special Part of the Criminal Code,

replace the word "crimes" in the title of Section I with the words "criminal offenses". Among other things, this will make it impossible to apply the limitation period for criminal liability for collaboration under Part 1 and 2 of Article 111-1 of the Criminal Code, as well as make it possible to use confiscation of property as an additional punishment under Part 2 of Article 111-1 of the Criminal Code;

– in order to cover by Part 8 of Article 111-1 of the Criminal Code of a wider range of grave consequences, paragraph 4 of the note to Article 111-1 of the Criminal Code should be worded as follows: "Grave consequences in the Part 8 of this article if they provide for material damage which is one thousand and more times higher than the non-taxable minimum income of citizens";

– to reflect collaborationism as a threat to the national security of Ukraine in the relevant provisions of the National Security Strategy of Ukraine, the Law of Ukraine "On National Security of Ukraine" and other regulations;

– consider the possibility of adopting a separate law on combating collaborationism or of implementing certain basic provisions on combating collaborationism within the existing law (for example, "On the Legal Regime of Martial Law", "On the Principles of Domestic and Foreign Policy").

2. For the entities of law enforcement:

– keep in mind that certain acts committed by a citizen of Ukraine may simultaneously fall under the signs of treason and collaborative activities, i.e. there may be competition of norms. In view of this, in the qualification should be used the clarifications contained in the Resolution of the Plenum of the Supreme Court of Ukraine "On the Practice of Application by Courts of Criminal Legislation on the Recurrence, Aggregation and Recidivism of Crimes and Their Legal Consequences" from 4.06.2010 № 7;

– in the situation of competition of criminal offenses under Articles 111-1 and 436-2 of the Criminal Code, it should be assumed that the subject of the offense under Art. 436-2 of the Criminal Code is a general subject (regardless of citizenship), and the subject of public objection as an act of collaborative activity is a citizen of Ukraine;

– in the case of the perpetration of certain types of collaboration criminal offenses in the period up to March 16, 2022 (the date of entry into

force of the law № 2108-IX) these actions should be qualified taking into account the provisions of Art. 5 of the Criminal Code of Ukraine on the retroactive effect of criminal law in time. Initially, on March 7, 2022, Law № 2113-IX increased the liability for treason committed under martial law by imposing the punishment of a sentence of fifteen years' imprisonment or lifelong imprisonment with confiscation of property, but on March 16, Law № 2108- IX mitigated the criminal liability of collaborators who are citizens of Ukraine, except in cases where collaboration activities have resulted in the death of people or the occurrence of other serious consequences.

Наукове електронне видання

DE-OCCUPATION OF UKRAINE

Legal expertise

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