

Prospects for Punishing Citizens of the Russian Federation for War Crimes in Ukraine in 2014-2022

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Abstract

The authors of the article conducted a detailed analysis of the reasons for the aggression of the Russian Federation against Ukraine and determined the consequences of such behavior, considering historical examples of war crimes against other states. The main purpose of the article is to consider historical aspects and study official documents and options for prosecuting those guilty of war crimes by Russians. The article is based on functional, formally legal, dogmatic methodological approaches. As a result of the research, it should be noted that the prospects of punishing citizens of the Russian Federation for war crimes in Ukraine in 2014-2022 can be implemented through national courts in Ukraine with further formation of the relevant practice of the European Court of Human Rights; International Criminal Court; creation of an ad hoc international tribunal regarding Ukraine.

Keywords: War, International Tribunal, War in Ukraine, Rome Statute, Terrorist Country.

Introduction

International society recognized war as a “crime against peace” after the First World War. The United Nations (UN), created after World War II, expanded the concept of group security. The international community generally believed that the sanctions of the international community were necessary against military actions, gradually reducing the direct damage from the war on a global basis (Nagamatsu, 2019). After the Second World War, more than 250-armed conflicts were recorded in various regions of the globe, but they were mostly armed conflicts of an internal nature (Bazov, 2008). Instead, in 2014, as a result of the annexation of Crimea and the outbreak of war in the Ukrainian Donbas, the

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Russian Federation destroyed all existing international legal mechanisms for maintaining peace in the world, and in 2022 launched a bloody invasion of Ukraine on a scale unprecedented since the Second World War.

It should be noted that before the military aggression in Ukraine, the Russian military distinguished itself by committing war crimes in military campaigns in Chechnya, Georgia, and Syria. Thus, to a large extent, the consequence of the participation of the army of the Russian Federation in the civil war in Syria was that as of January 2017 there were about 5 million refugees from Syria, 6.3 million internally displaced persons, 13.5 million Syrians in need of humanitarian assistance, and according to estimates, the number of dead as a result of the war was 500 thousand (Steenkamp, 2017). That is, it can be argued that war crimes are already an integral part of the military culture of Russians. Just as organized by the British military, the trials in Singapore after World War II found that most of the defendants in these trials did not deny their involvement in the relevant war crimes; instead, these defendants argued that their conduct was in accordance with Japanese norms, beliefs, and customs (Cheah, 2018). Today, there is a significant amount of scientific research in the field of war crimes during military conflicts in the 20th century. Yes, researcher N.E. Tutorow has compiled a comprehensive annotated bibliography that indicates “where to find” sources of information on alleged war crimes and war crimes from ancient and medieval times to the conflict between Afghanistan and the Soviet Union (Edward, 1987).

War crimes of Japanese and German war criminals are analyzed in works, by M.M. Neto (2021), V. Polunina (2016), T. Hansen (2019), W.L. Cheah (2018). Among the works analyzing war crimes committed at the end of the 20th and the beginning of the 21st century, it is worth noting the study of responsibility for damages and compensation for war crimes by the Croatian scientist J. Jug (2018). In an article by Ch.W. Mullins (2020) examines differences among war crimes during the civil war in Sierra Leone (1991-2002). Researchers T. Hansen (2021) and S.R. Ghorishi et al. (2016) analyzed the specifics of the prosecution of war criminals in Bangladesh and Iraq.

In addition, there are publications by Ukrainian researchers devoted to a comprehensive understanding of international legal, procedural, and organizational problems of investigating war crimes committed during the military conflict in the south and east of Ukraine. According to I. Tataryn et al. (2021), there is a need to specify the components of war crimes in national Ukrainian legislation. Note that the term “war crime” appeared in 1945 in Article 6 Concepts and Signs of War Crimes, which stated that such violations should be considered to include murders, cruel treatment of prisoners of war, hostages, deportation of civilians in occupied territories, theft of state or private property, senseless

destruction of settlements, which is not caused by military necessity (Repetsky, 2009).

From 1945 to 1956, there were also trials of Japanese militarists. About 5700 people who worked for the Imperial Japanese Armed Forces were prosecuted. About 4500 people were found guilty and eventually, just over 900 were executed. The rest of the culprits were sentenced to imprisonment (Lingen & Cribb, 2016). Additional Protocol I of 1971, which codified international humanitarian law after the Second World War, contains a list of war crimes, which were understood as serious violations, taking into account the specifics of the relationship regulated by each of them. The founding documents of international criminal justice bodies should be highlighted separately, in particular the Statutes of international and mixed military and criminal tribunals (Rome Statute of the International Criminal Court, 2002).

The main purpose of the article is to consider historical aspects and study official documents and options for prosecuting those guilty of war crimes by Russians.

Materials and Methods

Due to the involvement of a theoretical-methodological approach, an analysis of the concept of “demilitarization” as well as “war damage” was carried out through the plane of research of the scientific doctrine of criminal law. A functional methodological approach was used to analyze possible ways of punishing war criminals. At his expense, their features were determined, which are expressed during the selection of an approach to bring legal responsibility and establish the guilty for war crimes committed on the territory of Ukraine (Honcharenko & Shyhal, 2021). A formally legal methodological approach was also used, which made it possible to study the composition of war crimes, as well as the necessary elements for considering this type of criminal case, such as evidence (Vapniarchuk et al., 2021). A dogmatic methodological approach was the basis of a detailed analysis of norms that not only regulate responsibility for war crimes but also describe their nature and other features. In particular, the provisions of the Additional Protocol to the Geneva Conventions of August 12, 1949, relating to the Protection of Victims of International Armed Conflicts (Additional Protocol to the Geneva Conventions of August 12, 1949) were studied, with the aim of establishing the object of a war crime. In addition, on the basis of the above-mentioned method, the scope and algorithm of Ukraine's cooperation with the International Criminal Court were established, which are based on the provisions of the Criminal Procedure Code of Ukraine (Criminal

Procedure Code of Ukraine, 2012), as well as Rome Statute of the International Criminal Court (2002).

To determine the limits of the jurisdiction of the ad hoc International Criminal Court on the territory of Ukraine, the provisions of the Statement of the Verkhovna Rada of Ukraine to the International Criminal Court on Ukraine's recognition of the jurisdiction of the International Criminal Court regarding the commission of crimes against humanity by high-ranking state officials, which led to particularly grave consequences and the mass murder of Ukrainian citizens during peaceful protests in the period from November 21, 2013 to 22 of February 2014 (Statement of the Verkhovna Rada of Ukraine to the International ..., 2014), Resolution of the Verkhovna Rada of Ukraine No. 145-VIII "On the Statement of the Verkhovna Rada of Ukraine "On Ukraine's recognition of the jurisdiction of the International Criminal Court regarding the commission of crimes against humanity and war crimes by high-ranking officials of the Russian Federation and leaders of the terrorist organizations 'DPR' and 'LPR', which led to particularly serious consequences and mass murder of Ukrainian citizens"" (Resolution of the Verkhovna Rada of Ukraine No. 145-VIII "On the Statement of the ..., 2015). In addition, as part of the analysis of the components of war crimes provided for by the national criminal legislation and other regulatory documents, the Opinion of the Constitutional Court of Ukraine in the case on the constitutional submission of the President of Ukraine on the provision of an opinion on the conformity of the Constitution of Ukraine with the Rome Statute of the International Criminal Court (Rome Statute case) (Opinion of the Constitutional Court of Ukraine in the case on the ..., 2001), Law of Ukraine No. 1401-VIII "On Amendments to the Constitution of Ukraine (Regarding Justice)" (2022), Law of Ukraine No. 2236-IX "On Amendments to the Criminal Procedure Code of Ukraine and other legislative acts of Ukraine regarding cooperation with the International Criminal Court" (2022), Statement of the Ministry of Foreign Affairs of Ukraine regarding the opening of an investigation of the situation in Ukraine by the Prosecutor of the International Criminal Court (2022).

In addition, the method of legal hermeneutics was used to determine the main features of war crimes committed on the territory of Ukraine. In particular, on its basis, it was possible to investigate and establish that one of their main properties is cruelty, immorality, and chaos. The method of systematic analysis was the basis of the study of the components of the process of bringing the military of the Russian Federation to justice for war crimes committed during the war in Ukraine.

The research was carried out in three stages. The first of them, it was possible to qualitatively reveal the theoretical component of the object of this

scientific work, which consists of the concepts of “demilitarization”, and “denazification”. The second stage was built on the basis of a study of existing and effective international institutions designed to deal with war crimes, one of which is the International Criminal Court. The third stage made it possible to establish promising directions for a qualitative solution to the issue of bringing to justice the guilty military personnel of the Russian Federation, which are expressed in the combined positions of both national justice and international institutions.

Results

International criminal tribunals: historical aspects and examples

Today, in addition to the International Special Criminal Tribunals for the former Yugoslavia and Rwanda, which are generally quite similar to the Nuremberg Tribunal, a number of other judicial bodies have been established, which can be classified into two new groups. The first includes the International Criminal Court, which became the first permanent body of international criminal justice, and the second includes mixed and internationalized courts and tribunals that combine elements inherent in both international and national judicial bodies (Kubarieva & Pertsev, 2022). However, it remains an open question whether the International Criminal Court or other international courts deter crimes. Thus, the post-World War II tribunals and the previous special tribunals, the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, clearly had little influence on how the various warring parties operated in Sierra Leone (2020). The prosecution and prosecution of individuals and organizations accused of committing war crimes continue to be a matter of deep controversy not only among states but also among the world's best lawyers. Currently, five such signs can be distinguished:

- actions constituting the objective side of war crimes committed during an armed conflict and related to it;
- acts are committed, which are considered serious violations of the norms of international humanitarian law;
- such actions are usually committed by combatants or persons who can give them orders;
- the object of the encroachment is persons under the protection of international humanitarian law (or their rights);
- these crimes are always committed intentionally or out of gross negligence (Tataryn et al., 2021).

The list of crimes listed in Rome Statute of the International Criminal Court (2016), which collected most of the current violations of international

humanitarian law, established by a number of international conventions and international customary law, determines the understanding of the subject of research. The court's jurisdiction is limited to the following crimes: the crime of genocide; crimes against humanity; war crimes; crimes of aggression. It is worth noting that in scientific opinion there are also concepts that speak unequivocally about war criminals and claim that trials of war crimes create a dangerous precedent for which the victors will feel justified in persecuting, judging, and punishing the vanquished (Edwart, 1987). However, scientists state that command and control at the organizational level are decisive factors in deterring war crimes by active forces (Mullins, 2020).

In turn, researcher M.M. Neto concludes that narratives about the atomic bombs dropped on Japan are used both as a way to legitimize the idea of Japanese victimization and to reinforce the engaged historiography of the Japanese state's amnesty, even though Japan is both victim and executioner, depending on the context and actors/institutions. The study focuses on understanding the dynamics of the nuances of Japanese historiography, which necessarily require exposure to the role of the Japanese country as an executioner, especially regarding the regime of sexual slavery and the Nanjing Massacre. Such discussion allows us to understand the nuances between memory, denial, and the mobilization of historians in organizing a critical and engaging narrative that reveals the complexity of Japan's past. Already at the beginning of the process of documenting war crimes, the large amount of work created a challenge for the state structures of Ukraine (Dukhnevych, 2021). On May 23, 2022, the Solomyansky District Court of the city of Kyiv issued the first verdict for a war crime (The case concerns V.E. Shishymarin, 2022). Russian military officer Vadym Shishymarin, accused of murdering a civilian resident of the Sumy region, was sentenced to life imprisonment (A captured Russian received a life sentence for killing a civilian, 2022).

It is obvious that the criminal-procedural perspectives of this and other similar cases may have a continuation in the European Court of Human Rights, which creates the prerequisites for the formation of a separate segment in the judicial practice of this institution, which, in turn, will influence the criminal-procedural policy of the European Union. In particular, such a possible development of events is provided for by the Criminal Procedure Code of Ukraine (Additional Protocol to the Geneva Conventions of ..., 1977) and is evidenced by the position of the defense in the above case (Life imprisonment: the court sentenced Russian soldier Vadim Shishymarin, 2022). Observers point out that at the first stage of documentation, weak coordination of actions of investigative bodies, lack of knowledge about the qualification of actions, and imperfection of

domestic legislation were noticeable (Lukashova, 2022). Ukraine is a member of almost all international rules (Bazov, 2008). In addition, it should be noted that, as noted by T. Hansen (2019), the ability of transitional justice to help end the war is questionable. At the same time, the prosecution of political and military leaders who continue to hold power has proven problematic. Trials of war criminals in Ukraine should not raise any doubts about compliance with generally accepted legal norms. Thus, the International Criminal Tribunal in Bangladesh, which was recognized by the Bangladesh government as a court for war crimes committed during the 1971 war, according to a number of researchers, violated the right to a fair trial guaranteed by the Constitution, the International Covenant on Civil and Political Rights, international humanitarian law and standards established by the International Criminal Tribunal for Rwanda and the International Criminal Court (Ghorishi, Niavarani & Zamani, 2016).

War crimes: a two-sided view

The issue of war crimes went even further in the matter of political use in the USSR. Thus, the trials of Japanese war crimes in this country “were a projection of Soviet influence in the Pacific region, despite the relatively late entry of the Red Army into the war against Japan” (Polunina, 2016). The time factor is also important. T. Hansen (2021), who examines responsibility for United Kingdom war crimes in Iraq, points out that while a certain amount of time in the context of war crimes is usually a prerequisite for any kind of justice, the passage of time can easily end up complicating and obscuring prospects of justice through “cycles” of ineffective and repeated investigations, which can become politically engaged and increasingly unpopular. But it must be remembered that these crimes are not subject to the statute of limitations, and as the experience of prosecuting the leaders of the Iraqi regime for war crimes during the Iran-Iraq war has shown, international criminals will be punished despite the statute of limitations (Hansen, 2021). The jurisdiction of the ad hoc International Criminal Court extends to the territory of Ukraine, taking into account:

1. Statement of the Verkhovna Rada of Ukraine to the International Criminal Court on Ukraine's recognition of the jurisdiction of the International Criminal Court regarding the commission of crimes against humanity by high-ranking state officials, which led to particularly grave consequences and the mass murder of Ukrainian citizens during peaceful protests in the period from November 21, 2013 to 22 of February 2014 (Criminal Procedure Code of Ukraine, 2012).

2. Resolution of the Verkhovna Rada of Ukraine No. 145-VIII “On the Statement of the Verkhovna Rada of Ukraine "On Ukraine's recognition of the

jurisdiction of the International Criminal Court regarding the commission of crimes against humanity and war crimes by high-ranking officials of the Russian Federation and leaders of the terrorist organizations ‘DPR’ and ‘LPR’, which led to particularly serious consequences and mass murder of Ukrainian citizens” (Statement of the Verkhovna Rada of Ukraine to the International ..., 2014).

J. Jug (2018) notes that wars and armed conflicts took place on the territory of the Republic of Croatia and neighbouring Bosnia and Herzegovina in recent history, war crimes were committed, but criminal proceedings and compensation of the guilty and responsible persons are still ongoing.

It seems difficult to prove that the actions of the Russian state leadership against Ukraine have signs of genocide against the Ukrainian nation. As noted by the famous researcher T. Snyder (2022) “Vladimir Putin has been conducting a case of genocide against Ukrainians for many years”. In July 2021, the Russian president actually denied the existence of the Ukrainian nation: “When I was asked about Russian-Ukrainian relations, I said that Russians and Ukrainians are one people – a single entity. These words were not driven by any short-term considerations or prompted by the current political context. This is what I have repeatedly said and what I firmly believe”. On the eve of a large-scale military invasion, V. Putin denied the existence of Ukraine as a state: “...modern Ukraine was created entirely by Russia, or rather by Bolshevik, communist Russia. This process began almost immediately after the revolution of 1917, and Lenin and his like-minded people did it extremely harshly in relation to Russia – separated, separated historically Russian land” (Putin wrote an article about the "historical unity of Russians and Ukrainians, 2022).

To claim that there is no nation and no state is to claim the right to destroy it. Both goals of the war that Putin announced on February 24 – “denazification” and “demilitarization” meant the destruction of the Ukrainian nation and state. As T. Snyder³¹ aptly noted: “Since the term "Nazi" does not refer to anyone in particular, it is a justification for endless war and purges. As long as Ukrainians resist, there will be "Nazis" to punish. "Demilitarization" means the destruction of a sovereign state by force, which would include the elimination of anyone capable of preserving elementary forms of sovereignty”. In fact, as in the case of Japanese war criminals during the Second World War, who “dehumanized their victims in order to avoid any personal affection and guilt”, so Russian propaganda unimpededly allowed the Russian military to destroy the mythical “Ukrainian Nazis” (Fisher, 2022). On February 26, 2022, the Russian state press service “RIA Novosti” repeated Putin's genocidal themes for propaganda purposes: “but Ukraine will no longer be anti-Russia. Russia is restoring its historical completeness, gathering the Russian world and the Russian people together – in

all its totality of Great Russians, Belarusians, and Little Russians. Now this problem does not exist – Ukraine has returned to Russia. This does not mean that its statehood will be eliminated, but it will be rearranged, re-founded, and returned to its natural state as a part of the Russian world” (Akopov, 2022).

The testimonies of more than two hundred and seventy injured internally displaced persons about war crimes committed by the Russian military in the territories of Kyiv, Donetsk, Luhansk, Kherson, Sumy, Kharkiv, and Chernihiv regions, were collected by volunteers of Vasyl Stefanyk Precarpathian National University from March to June 2022, testified that the Russian military is carrying out the ideas of the top state leadership regarding the destruction of Ukrainians (Archive of the Educational and Scientific ..., 2022). It should be noted that the actions of Russia in Ukraine have already been called an act of genocide by the parliaments of Poland (March 23), Ukraine (April 14), Estonia and Latvia (April 21), Canada (April 28), Lithuania (May 10), the Czech Republic (May 10), Ireland (June 2). However, the legal process of proving genocide according to the definition of the Rome Statute is likely to take a long time, and even more so the procedure of bringing those responsible for this crime to justice.

The problem of the aggression of the Russian Federation

The unprovoked and brutal military aggression of the Russian Federation against the independent state of Ukraine is unique for the 21st century. The Russian military invasion of Ukraine is an absolutely archaic colonial imperial war. The brutality of the war on the part of the Russians is due to the fact that the defeat of the Russian Federation in this war will be the existential defeat of the last Eurasian empire and its subsequent disintegration into separate national states.

On January 20, 2000, Ukraine signed but did not ratify, the Rome Statute, taking into account the decision of the Constitutional Court of Ukraine dated July 11, 2001, which concluded that all provisions of the Rome Statute correspond to the Constitution of Ukraine, with the exception of Clause 10 of the Preamble and Article 1, according to which the jurisdiction of the International Criminal Court “supplements national bodies of criminal justice” (Resolution of the Verkhovna Rada of Ukraine No. 145-VIII ..., 2015). Subsequently, on June 2, 2016, Article 124 of the Constitution of Ukraine was revised, which provided that Ukraine could recognize the jurisdiction of the International Criminal Court under the conditions defined by the Rome Statute of the International Criminal Court. The scope and procedure of Ukraine's cooperation with the International Criminal Court is detailed in Section IX-2 “Peculiarities of cooperation with the International Criminal Court” (Opinion of the Constitutional Court of ..., 2001), which was supplemented by the Criminal Procedure Code of Ukraine (Law of

Ukraine No. 2236-IX..., 2022) (Law of Ukraine No. 1401-VIII "On Amendments to the ..., 2022) but at the same time, it seems, erroneously limiting the effect separate provisions (part of Article 617, Part 3-5 of Article 636 of the Criminal Code of Ukraine (Criminal Code of Ukraine, 2001), which takes effect from the date of entry into force of the Rome Statute for Ukraine). In fact, such restrictions are worthless, an attempt at one-sided interaction, and should be removed immediately, as they are not the best manifestation of Ukrainian criminal procedural policy, considering the fact that Ukraine has already recognized the jurisdiction of the International Criminal Court.

Although the Russian Federation is not a party to the Rome Statute, as it withdrew its signature in 2016 when the International Criminal Court ruled that Russia's activities in Crimea constitute a "long-term occupation" (Russia withdraws from International Criminal Court treaty, 2016). However, the International Criminal Court has subject and territorial jurisdiction, that is, it extends its action to: crimes committed on the territory or by citizens of the participating state; crimes committed on the territory or by citizens of the state that submitted an ad hoc declaration of recognition of the jurisdiction of the International Criminal Court, which corresponds to the situation in Ukraine. That is, despite the attempt to avoid the mechanism of prosecution of the Russian Federation, the actions of its citizens still fall under the jurisdiction of the International Criminal Court. Thus, the Prosecutor of the International Criminal Court made a decision to open an official investigation of the situation in Ukraine on the basis of the appeal of forty-three countries.²⁶ The investigation of the International Criminal Court was launched on March 2, 2022, and covers crimes committed in the context of the situation in Ukraine since November 21, 2013. Moreover, the relevant mechanisms in this direction already have a real procedural implementation. In particular, on May 17, 2022, the Prosecutor of the International Criminal Court, Karim A.A. Khan, announced the dispatch of a group of 40 investigators, forensic experts, and support staff to Ukraine to promote investigations of crimes under the jurisdiction of the International Criminal Court (ICC Prosecutor Karim A.A. Khan QC announces, 2022).

Discussion

Both theoreticians and practitioners are engaged in the study of approaches to bringing the military of the Russian Federation to justice for war crimes committed on the territory of Ukraine, which indicates the special need to solve this issue. In particular, O. Lytvynova & T. Kortukova (2022) believe that one of the main elements during the investigation of a criminal offense is the availability of a wide evidence base. Of course, during military operations, it is extremely

difficult to record all the information that could be useful for the investigation of the case. The author agrees with this position since the presence of witnesses or other materials could speed up the process of considering the case and identifying the culprits.

A similar opinion is held by C. Martz (2022), who in his work classifies military actions into two phases, according to which the distribution of the necessary elements for the formation of the evidence base is determined. In particular, in his work, war is divided into combat and occupation phases. Their main difference lies in the military participation of both sides in a specific territory. Thus, he classified the military actions taking place in the east of Ukraine, in particular in Kharkiv, Donetsk, Luhansk, and Mariupol, into the combat phase. This is explained by the fact that both Ukrainian and Russian military forces clashed around these cities. In this case, the basis of the evidence base will be the weapon, in particular its structural elements, which can characterize the peculiarities of its structure and purpose. In turn, it is somewhat easier to collect evidence to bring individuals to legal responsibility during the occupation phase. This is explained by the fact that the basis of such criminal acts are not military actions, but direct actions of specific military personnel of the Russian Federation against the civilian population during the occupation of a certain area. The author also drew attention to the occupation phase, because in addition to the evidence described above, the time of the civilian's death, the presence of direct orders regarding such actions from the commanders of the military units that occupied the territory, can be determined from the materials obtained by the Ukrainian military during the search, must be taken into account equipment, captured and dead occupiers.

I. Garner (2022) managed to investigate the possibility of bringing the military of the Russian Federation to justice for encroachment on objects that pose a significant threat to the environment. Special attention was paid to the analysis of actions that took place around and directly within the Chernobyl nuclear power plant. As a result, he managed to establish that such actions are dangerous not only for the territory and citizens of Ukraine but also for the entire planet. In this context, the author adds that, in fact, the military leadership of the Russian Federation is resorting to nuclear terrorism around the world. This position is confirmed by the fact that, in addition to the Chernobyl nuclear power plant, the Zaporizhzhia nuclear power plant, which was occupied by the Russian military, became a zone of active hostilities, as a result of which control over its activities was lost. Such actions violate not only the norms of Ukrainian criminal legislation but also international provisions, in particular Article 56 of the Additional Protocol to the Geneva Conventions of August 12, 1949, relating to the Protection

of Victims of International Armed Conflicts (Rome Statute of the International Criminal Court, 2002).

Conclusions

As a result of the conducted research, it was possible to determine qualitative approaches, due to which it is possible to punish all Russian military personnel who committed war crimes on the territory of Ukraine, the period 2014-2022. Thus, in the work, it was possible to establish the following methods for solving criminal offenses committed by the Russian occupiers during military operations, in particular, due to consideration of cases by national courts in Ukraine; appeal to the International Criminal Court; formation of a special international tribunal. At the same time, the experience of various international institutions, one of which is the International Criminal Court, was compared with mixed and internationalized courts and tribunals. This approach made it possible to determine that it is worthwhile for Ukraine to consider the case not only at the International Criminal Court but also to form a national tribunal, similar to hybrid courts. This opinion was confirmed in the work by the fact that such organizations are developed by national justice bodies, but they are based on UN agreements.

In addition, the researcher paid attention to the concept of war damage, namely its absence in the norms of international law. The study of this category is due to the fact that the presence of damage, both property, and material, is a characteristic consequence of military operations, including on the territory of Ukraine. Since war damage is not fixed in any of the normative legal acts, it makes it impossible to compensate it. The author believes that the establishment of such a legal category requires the qualitative development of an algorithm for the formation of the evidential base, as well as the determination of probable approaches for going to court. A special place in the work was given to the analysis of the nature of the conduct of the war by the Russian Federation on the territory of Ukraine, which is aggressive and extremely harsh, which is expressed not only in arbitrary actions against the Ukrainian military but also against the civilian population. All this indicates the need for timely documentation and transfer of evidence to relevant authorities, in particular to the Prosecutor General's Office, for the purpose of further investigation of such war crimes. It is because of this that in the following studies it is necessary to clearly define the grounds on the basis of which the international community can recognize Russia as a terrorist, and the actions of its military on the territory of Ukraine as terrorist acts.

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