

**MISSION IMPOSSIBLE? - THE DILEMMAS OF
APPLYING INTERNATIONAL CRIMINAL LAW
REGARDING THE RUSSO-UKRAINIAN WAR**

Kézirat lezárásának a dátuma

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Abstract

This research paper tackles the many issues that come with holding those accountable that violated international law in the Russo-Ukrainian conflict. These problems can be summed up in mainly 2 big groups, these are theoretical and practical problems. Theoretical problems include things such as what charges can be used regarding crimes committed during the conflict, and what are those that has been actually used so far. Problems with the UN's structure, the International Criminal Court's jurisdiction, or conflicting articles in the Rome Statute. Looking at practical problems these include things such as avoiding the mistakes made in previous ad-hoc tribunals, issues of executing a fair and just trial in the accused personnel's cases, problematic judicial procedures on both sides of the conflict, factors holding back the ICC and possible sentence the current accused personnel can receive if found guilty. But it's important to mention that not all problems can be fit into these simple categories as some overlap multiple of them or do not fit into either of them.

1. Introduction

The Russo-Ukrainian war shook the entire world. The whole conflict began way back in 2014 when the Russian Federation occupied Crimea (and later annexed into the Russian Federation illegally¹), and Russian separatists started fights in the Donetsk and Luhansk region. This went on until 2022.02.24. when Russia launched a full-scale invasion into the territory of Ukraine.² The Invasion of Ukraine killed tons of people and caused tremendous suffering for those that has been affected by it,³ refugees alone are numbered to be around 4 million persons. This has caused multiple international law violations such as violating the charter of the United Nations.⁴ In my research paper, I will be trying to find answers regarding the conflict's connection with international law violations and how those responsible can be brought to justice. How and who shall be prosecuted? These are just some of the questions I'll be tackling in my research paper.

¹ Ruys, T. (2016). Aggression against Ukraine: territory, responsibility, and international law by Thomas d. Grant. *American Journal of International Law*, 110(3), 602-609.

² Ray, M. (2023, July 24). Russia-Ukraine War. *Encyclopedia Britannica*.
<https://www.britannica.com/event/2022-Russian-invasion-of-Ukraine>

³ Chachko, E., & Linos, K. (2022). International Law After Ukraine: Introduction to the Symposium. *AJIL Unbound*, 116, 124-129. doi:10.1017/aju.2022.18

⁴ Grossman, C. (2022). The invasion of Ukraine: gross violation of international law. *Human Rights Brief*, 25(2), 74-81.

2. Theoretical problems

2.1. Exactly what charges can be brought against the accused in the conflict

Taking a first look at our current research topic it would be very easy to say that from an outside view the Russian Federation has committed multiple violations of international treaties,⁵ however pinpointing the exact offenses will help the international community proceed more easily onto a phase where those who gave the orders, and executed these horrible acts of war, can be brought to justice. In this part of the paper, I'll be splitting it down into four categories, and seeing if they fit the description for the acts committed in the Russo-Ukrainian war. These four categories are aggression, genocide, crimes against humanity, and war crimes.⁶

2.1.1. Aggression

The crime of aggression is a really hard accusation to tackle, however it hides the most potential of all the previously mentioned crimes. On paper the conditions are simple and can be easily applied to the case at hand, in order for an act of aggression to happen, the use of armed force needs to happen by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.⁷⁸ While most of these seem fairly simple, the Security Council faces severe structural issues as of today(a topic that the paper will discuss in more detail later on).. Also, it is needs to be mentioned that the amendment that adds the crime of aggression to the ICC's Rome Statute has not been ratified by neither side of the conflict.⁹¹⁰ So these can be the hardest challenges to tackle when determining the crime of aggression in the case of the Russian Federation.

Philippe Sands a leading international lawyer summed up perfectly the reasons why the crime of aggression is a "slam dunk" in the case of the Russo-Ukrainian war, however he also

⁵ Bloed, A. (2014). Ukraine crisis: international law seriously undermined. Security and Human Rights, 25(1), 1-4.

⁶ Farkas, Á., Kis, L., & M Nyitrai, P. (2010). Nemzetközi büntetőjog és nemzetközi büntető igazságszolgáltatás= International criminal law and international criminal justice. OTKA Kutatási Jelentések| OTKA Research Reports.

⁷ Crime of Aggression - Amendments ratification | International Criminal Court. (n.d.). <https://asp.icc-cpi.int/crime-of-aggression>

⁸ The Practical Guide to Humanitarian Law. Doctors without borders | The Practical Guide to Humanitarian Law. (n.d.). <https://guide-humanitarian-law.org/content/article/3/aggression/>

⁹ Status of ratification and implementation | The Global Campaign for the Prevention of Aggression. (n.d.). <https://crimeofaggression.info/the-role-of-states/status-of-ratification-and-implementation/>

¹⁰ Sayapin, S. (2020). Aggression, international law and international institutions: lessons for Ukraine. Law of Ukraine: Legal Journal (Ukrainian), 2020(12), 86-99. Chachko, E., & Linos, K. (2022).

expressed concerns of why the international community would fear this type of accusation. First of all, the main thing to be looked at, if the ICC or any other international judicial body goes down another path of accusations, they have to prove a direct connection between the high command of Russian officials, and the troops who are on the ground doing the fighting. In this case it would be quite a hassle to tackle the case of every incident where for example civilians were slaughtered by Russian troops. In the case of aggression, you do not need to do that since the perpetrator is the official. However, this is why the international community is very cautious with this accusation, so far it has only been Gordon Brown, the UK's prime minister and Professor Sands who proposed to set up a special tribunal to investigate this accusation. The reason for approaching this sort of litigation very cautiously is that bigger powers like the United States of America fears that it could backfire on them, or you can take former colonial powers like Great Britain and France, who also can be prosecuted on similar charges if decided so. One other big problem with this accusation is that the ICC cannot exercise its jurisdiction if the country has not ratified the definition of the crime of aggression, in our case the Russian Federation and Ukraine belongs to this group. So prosecuting Russia on this crime would be tricky, but it would prove quite ingenious if the international community manages to somehow conquer these sorts of obstacles.¹¹ One suggestion would be to assure the community is that the retroactivity of this law will not take place under any circumstance, this could ease global powers from worrying about what this new sort of accusation can bring against them.

If the affected countries will decide not to ratify the Kampala amendments, then there are still several possible ways that the crime of aggression can be prosecuted. Firstly, Ukraine can ratify the Rome Statute and the Kampala Amendments which would give jurisdiction over this crime of the ICC. Secondly, the UN Security Council can also recommend the case for the ICC, that's assuming Russia will not veto these efforts. Thirdly as stated before a special tribunal can be set up just for the investigation and prosecution regarding the crime of aggression, this would be one of the most complicated ways to go about it, but at the same time it could be the most effective as well, as one independent organization could focus on these types of crimes with better effectiveness than the ICC which already has it's hand full with problems at the moment. However, this option also assumes that for some reason Russia is willing to sign an agreement to participate in this tribunal, which as of now is highly unlikely. The fourth and last option is

¹¹ Guardian News and Media. (2022, March 31). "it's a slam dunk": Philippe Sands on the case against Putin for the crime of aggression. The Guardian.
<https://www.theguardian.com/law/2022/mar/30/vladimir-putin-ukraine-crime-aggression-philippe-sands>

prosecution in national courts, this can be highly variable as it depends in which country the procedure would take place. Also, the nature of the crime suggests that it should be prosecuted by an International Court, not a national one.¹²

2.1.2. War crimes

The term of “war crimes” is a definition that has been mentioned a lot since the outbreak of the conflict, both in political and professional environments. But war crimes can be summed up as breaching the Geneva Conventions of 12 August 1949.¹³ This includes acts such as execution of prisoners of war, the attacking of medical crews, war correspondents, the targeting of civilians etc.

Sadly, it had already been said by the Independent International Commission of Inquiry on Ukraine that war crimes are actively being committed in the current conflict. These include illegal use of explosive weapons, violations of personal integrity (like executions), torture and sexual violence. On a visit in the 2022 of June the Commission witnessed firsthand how indiscriminately weapons were used targeting not just military but civilian infrastructure as well, such as schools and hospitals.¹⁴ The latest report released on the 20th of October 2023 by the Commission also confirms these tendencies which means that this type of attitude has not come to a halt, international law violations are still being committed in the fronts of Ukraine by both sides, with both side coming up with irrelevant reasons for which these crimes are being committed.¹⁵

2.1.3. Genocide

The definition of the crime of genocide is something that has been politically abused since the conflict broke out, for example with United States President Joe Biden saying that Vladimir

¹² Csapó, Zs. (2022). Alternatívákban gondolkodhatunk? A Nemzetközi Büntetőbíróság lehetséges kiegészítői/kihívói–az orosz agresszió relációjában. ÁLLAM-ÉS JOGTUDOMÁNY, 63(4), 25-46.

¹³ ICRC, The Geneva Conventions of 12 August 1949 Available at: <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0173.pdf>

¹⁴ Un commission concludes that war crimes have been committed in Ukraine, expresses concern about suffering of civilians. OHCHR. (2022, September 23). <https://www.ohchr.org/en/press-releases/2022/10/un-commission-concludes-war-crimes-have-been-committed-ukraine-expresses>

¹⁵ Report of the Independent International Commission of Inquiry on Ukraine to the UN General Assembly (A/HRC/52/62540) (2023). Independent International Commission of Inquiry on Ukraine. <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A-78-540-AEV.pdf>

Putin is “trying to wipe out the idea of even being Ukrainian”¹⁶, or Ukrainian President Volodymyr Zelensky claiming that „the elimination of the whole nation of people” are taking place.¹⁷ Russia has also been accusing Ukraine of committing the act of genocide, but international monitors found no evidence to back up these claims.¹⁸ So, as of now genocide by its definition of international law cannot be proven without a doubt on neither side.

When we look at the term of genocide as defined by the 1948 Genocide Convention, genocide is „any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.”¹⁹ When we look at these definitions, right now it can be said that genocide in its current definition cannot be proven at the time. As of now, there is little evidence to suggest that an organized massacre of the Ukrainian population is taking place.

However, there is one possibility where the option of genocide could be considered an optional point of litigation in an international trial, which is entry (e) of the before mentioned definition, which means forcible transfer of children into another group. Recently in May of 2023, a Human Rights Watch report has found extensive evidence of Russian officials and their proxies, forcibly deporting Ukrainian civilians from Russian occupied Ukraine in which Maria Lvova-Belova Russia’s children rights commissioner allegedly played a major role. The report furthermore found that Ukrainian children were placed far away from regions of Ukrainian language, culture etc. and were put under military training and exposure to pro-Russian information. They were also swiftly given Russian citizenship to eligible for adoption into

¹⁶ Joe Biden accuses Vladimir Putin of committing genocide in Ukraine (2022) The Guardian. Available at: <https://www.theguardian.com/world/2022/apr/13/joe-biden-accuses-vladimir-putin-of-committing-genocide-in-ukraine> (Accessed: 29 August 2023).

¹⁷ Saul, D. (2022, April 3). Zelensky Accuses Russia Of Genocide As Allegations Of Civilian Killings Mount. Forbes. <https://www.forbes.com/sites/dereksaul/2022/04/03/zelensky-accuses-russia-of-genocide-as-allegations-of-civilian-killings-mount/>

¹⁸ Kramer, D., Petric, D., Kerr, V., Stolk, S., & Vos, R. (2022). War in Ukraine: politics, law, and identity. *Amsterdam Law Forum*, 14(1), 1-20.

¹⁹ Convention on the Prevention and Punishment of the Crime of Genocide. (1948). United Nations. https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

Russian families.²⁰ This systematic deportation of Ukrainian children can be considered as genocide when it will come to pursuing a trial against Russian official.

2.1.4. Crimes against humanity

When the accusation of “crimes against humanity” is mentioned it mostly refers to several acts that happens with a widespread/systematic attack directed at civilian population, these include the following, murder, rape, torture, sexual slavery, forced pregnancy, forced deportation.²¹ In this point of possible accusations, sadly multiple cases can be mentioned in the current conflict, when we look at the report that was inspected before in the mentioned point of litigation, then we can see that not only children, but regular Ukrainian citizens are also getting deported from Russian held regions of Ukraine which already checks out “deportation or forcible transfer of population” in the possible options of crimes against humanity. This is just a beginning of a long list of crimes against humanity that several organizations (like Human Rights Watch) already documented.

A Human Rights Watch report published in 2022 April, revealed a series of war crimes, numerous of which also can be as considered crimes against humanity. In one instance, on March 4th Russian forces rounded up 5 men in the town of Bucha pulled t-shirts over their heads, forced them to kneel on the side of the road, and proceeded to execute one of them by shooting him on the back of the head. In another case 6 men were rounded up in the village of Stayi Bykiv and allegedly executed them later on. These are just two examples of murder taking place in the systematic attack against the Ukrainian civilian population. But sadly, the list does not stop at forcible deportation and murder of the civilian populace. Amidst the horrors of war, sexual crimes are also happening in war torn parts of the Ukrainian federation. In another part of the same report, it details a case of a 31-year-old woman in the Kharkiv region, she reported that while she was sheltering in a basement of a local school, Russian troops forcibly entered and performed acts of sexual violence. The woman was ordered out of the basement and into a classroom where she was forced to perform oral sex while the soldier held a gun to her head. The soldier than ordered her to gather her things from the basement so she could stay in the classroom with the perpetrator, when she refused said order the troop pulled out a knife and

²⁰ Fresh details on Russia’s forcible transfer of Ukrainian children. Human Rights Watch. (2023, May 26). <https://www.hrw.org/news/2023/05/25/fresh-details-russias-forcible-transfer-ukrainian-children>

²¹ United Nations. (n.d.). United Nations Office on Genocide Prevention and the responsibility to protect. United Nations. <https://www.un.org/en/genocideprevention/crimes-against-humanity.shtml>

proceeded to cut her the skin on her neck, face, lips also he cut off some of her hair as well. This not only can count as rape, but also torture as well.²²

Looking at this report only it can be said that most probably crimes against humanity are taking place on a widespread scale in the regions of the conflict, seeing as this report is more than 1 years old now, it is grim to imagine how many more international law violations happened during the horrors of the conflict.

2.2. Reflection on the charges currently brought against public officials in the conflict

After looking at the possible charges that can show themselves regarding the Russo-Ukrainian conflict, it is practical to also look at the actual charges that are now in effect regarding the conflict and see if they match the possible options.

In March of 2023 the ICC issued 2 arrest warrants against Russian officials, these are Mr. Vladimir Vladimirovich Putin and Mrs. Maria Alekseyevna Lvova-Belova. Both warrants have been issued out for unlawful deportation of children and unlawful transfer of population from occupied areas. The ICC's Chief Prosecutor found reasonable ground to believe that each official is responsible for the crimes listed above.²³

However, this strikes up a few questions when dealing with the situation, sadly these problems are leaning in the same direction as we saw in the previous international trials. First of all, the ICC does not have its own police force to pursue and make those arrests. So, the ICC has to rely upon state police/armed forces or UN peacekeepers to make these arrests. Even if there was significant effort put into chasing down these officials, we still need to mention that in order for the hunt to begin effectively for these 2 people, Russia either has to lose the war and be invaded by foreign forces which would leave to devastating results for the whole world or they would have to overthrow the current regime, and as we look at it now both options are highly unlikely, the last time this was a logical option was back in World War 2 when the allies invaded the axis powers, which also lead to the capture of leading officials of the nazi regime. The last and most realistic option for the suspects to be apprehended is regime change in Russia,

²² Ukraine: Apparent war crimes in Russia-controlled areas. Human Rights Watch. (2022, October 11). <https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas>

²³ Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova. International Criminal Court. (n.d.). <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>

however this also assumes that the new regime will favor the west enough to hand over wanted suspects to them. The conflict between article 27 and 98 of the Rome Statute can also hold up the arrest of these individuals, however this will be looked at in a later part of the paper because of the depth of the problem itself.

The second problem is the charges themselves, as we looked at it before. War crimes, genocide, crimes against humanity are all charges that could be considered. Out of all this the ICC's Chief Prosecutor choose to issue warrants for only one of these. Of course, it has to be mentioned that the ICC has its hands tied as well. In order for the court to issue these warrants it has to be proven that the officials have a direct link between the ones who are committing the atrocities on the ground. These may only be proven when the conflict comes to an end and this end has to be favorable for authorities to be able to investigate orders given throughout the conflict. This again assumes that Russia in some way shape or form, loses the battle in Ukraine or a regime change happens in Russia. The only other charge that could be more easily prosecuted is the crime of aggression as described above. However, this is held back by the international community in fear that it could backfire on them as well.

Overall, the issued arrest warrant can be seen as the first step towards a trial for the officials responsible for the atrocities caused, however as of the current state of the conflict (in the fall of 2023) it is unlikely that the President of the Russian Federation will fall into the ICC's hands, either through western, Ukrainian or third-party hands.

2.3. Examining the International Criminal Court – pointing out a key problem

To have a complete theoretical image of the problems that the international community is facing an organizational body that we need to take a closer look at is the International Criminal Court. This organizational body exercises jurisdiction on possible crimes of genocide, crime against humanity and war crimes(the crime of aggression was also added to this on a later basis) that were committed after 2002 July 1st, also from 2018 the court exercises jurisdiction over the crime of aggression.²⁴²⁵ With this it could be more than likely that this organizational body will play a key role when the justice will need to be served in cases regarding the conflict. However,

²⁴ Lattman, T. (2009). A nemzetközi büntetőbírói fórumok működésének rendszere, különös tekintettel a Nemzetközi Büntetőbíróságra–politika, parancs vagy jog. Kirs Eszter szerk.: Egységesedés és széttagolódás a nemzetközi büntetőjogban. Miskolc, Bíbor.

²⁵ How the court works. International Criminal Court. (n.d.). <https://www.icc-cpi.int/about/how-the-court-works>

like everything in our world it's not perfect and in our current case, has a major flaw when it would come to exercise its duty in the post war years. As most international bodies the ICC too has a strong connection to the United Nations, more specifically it's Security Council. The Security Council is made up by permanent and temporary members. Where the flaw comes in is that the Russian Federation is a permanent member at the moment of writing this paper and holds the veto right to boycott every effort that the UN tries to put against it.

This old structure outright blocks one of the trigger mechanisms of the ICC, as the Security Council according to article 13 (II) of the Rome Statute has the right to start a case in a matter. This is huge issue, since it would allow the ICC to investigate crimes even if a perpetrator is not from an ICC member state. The Rome Statute allows for two more ways to start a case in a matter, which are cases getting started by the ICC member states, or cases getting started by the ICC's prosecutor.²⁶ In the current case the ICC's prosecutor was the one to start the case against the two accused personnel with ICC members states later stepping up to help²⁷ in the current case.²⁸ In an interesting move the Russian Federations one answer for this was to issue an arrest warrant for one of ICC's prosecutor, Karim Khan.²⁹ The validity of the basis of this arrest warrants legitimacy is questionable at best and outright refutable at best, as Russia is seen committing international law violations on a mass-level.

As of now the ICC and the UN in its current state is in theory capable of putting efforts for the problem at hand. But due to practical limitations, as long as it's old structure stays, these problems will boycott its existence in certain cases.

2.4. UN response to the crisis – how the UN has failed to stop Russia for now

The United Nations is a key organizational body when dealing with the conflict in Ukraine on a global level, this chapter examines the UN response to the crisis and its flaws throughout its procedures and attempts to hinder then conflicts process.

When the war was about to begin in Ukraine, its government requested an emergency meeting of the UN Security Council to the worrisome presence of Russian troops concentrations near

²⁶ Béres, N. (2021). A Biztonsági Tanács által a Nemzetközi Büntetőbíróság elé utalt helyzetek legfontosabb jogi problémái (No. 5). Mádl Ferenc Összehasonlító Jogi Intézet.

²⁷ Ukraine. International Criminal Court. (n.d.). <https://www.icc-cpi.int/situations/ukraine>

²⁸ Béres, N. (2022). Ukrajna esete a Nemzetközi Büntetőbírósággal–Remények és realitások. ÁLLAM-ÉS JOGTUDOMÁNY, 63(4), 5-24.

²⁹ Roth, A. (2023, May 19). Russia issues arrest order for British ICC prosecutor after Putin warrant. The Guardian. <https://www.theguardian.com/law/2023/may/19/russia-arrest-order-international-criminal-court-prosecutor-karim-khan>

its borders saying that rumors and signs indicated a Russian invasion of Ukraine was imminent. The head of the Council urged Vladimir Putin to “give peace a chance”. However, these words were in vain because as it is publicly known, Russia began advancing into Ukrainian territory in the 24th of February. The response to this came on the 2nd of March, the UN General Assembly held an emergency session where it adopted a resolution which was demanding the Russian Federation to immediately withdraw all its forces from the territory of Ukraine. This measure was passed with 141 voters for it, 35 abstentions, and five voting against it (Russia, Belarus, North Korea, Syria, and Eritrea). The emergency session continued on 24th of March where a new resolution was adopted, which demanded that Russia stops hostilities in the territory of Ukraine and stops attacking civilian infrastructure. This was passed with 140 states in support, 5 voting against and 38 abstentions. However, as much of a political support this resolution had, it did not have any sort of power to bring the Russian advance to a halt.³⁰

The main problem is that the UN has a structural issue at the moment which is withholding it to react with proper measures. This mainly comes of the outdated structure of the Security Council. The Security Council consists of 5 permanent members and 10 temporary ones, the problem lays with the 5 permanent ones, which the Russian Federation is belonging to. The reason this is a problem is that in order for the Security Council to agree on something it requires the concurring votes of the five permanent members. As long as it remains like this, the UN will not be able to put a direct halt on to the advance of the Russian war machine.³¹

There is no direct way to work around this, the UN in its current state is incapable of handling to crisis on its own. There are three main ways as how the war can be stopped in the Ukraine. The first option is letting Ukraine fall, this would lead to the most disastrous consequences, and would give the Russian Federation the feeling that it can violate international law whenever it wants to, so it's clearly off the table for the international community. The second would be to encourage peace talks, this has been tried in the early parts of the war, however western powers advised Ukraine to be cautious when negotiating with Russia, the two sides could not reach the mutual point in these talks so this too has failed.³² The third road which the international

³⁰ United Nations. (n.d.). The UN and Ukraine: Year-long war spreads global fallout | UN news. United Nations. <https://news.un.org/en/story/2023/03/1134122>

³¹ United Nations. (n.d.-b). United Nations charter (full text). United Nations. <https://www.un.org/en/about-us/un-charter/full-text>

³² Zitser, J. (n.d.). Russia claims that it was ready to strike an early peace deal with Ukraine but the West ruined it. Business Insider. <https://www.businessinsider.com/russia-blames-us-allies-for-blocking-early-ukraine-peace-talks-2023-1?op=1>

community has decided to go down this far is condemnation, this has been to provide for some effect like shrinking the Russian Federation's Economy a bit. In 2023, Russian GDP is expected to drop by 2.5% according to the OECD and by 0.2% according to the World Bank. IMF forecasts growth by 0.7%³³. However, as we see, this alone has not been able to stop Russian troops fighting in Ukrainian territory as for now.

It remains to see that international condemnation and sanctions will be able to stop the Russian Federation's advance, the international community opted to take a slower approach this way which means more people dying in the horrors of war. It would have been wiser of the international community to hold out the idea of peace talks until a favorable compromise could be reached for the two countries, however this was abandoned early on.

2.5. The dilemma between article 27 and 98 of the Rome Statute

When it comes to arresting high-positioned state officials there's two articles which contradict the ICC's attitude towards this behavior. The first of this is article 27 which states that official status (Head of state, Member of government or parliament, elected representative, or government official) does not make the said person exempt from abiding to international law and will not bar the court from having jurisdiction over the suspected individual. This in theory contradicts article 98 of the Rome Statute, which aims to outline that the court may not proceed with a request for surrender or assistance if it implies for the acting state to act inconsistently with its obligations regarding diplomatic immunity in international law. This in theory if interpreted directly, makes it impossible for an acting state to act according to the ICC arrest warrants like the ones issued against Russian officials.³⁴

This problem caused issues in practice as well when in 2015 on the Johannesburg congress Omar al-Bashir (the then Sudanian president) made an appearance who is wanted by the ICC on war crimes and crimes against humanity, South Africa refused to arrest al-Bashir on grounds of article 98 of the statute, which has caused a scandal around South Africa's handling of the situation. Furthermore, Jordan also failed to arrest the former Sudanese head of state, which has resulted on a non-compliance decision by the ICC.

³³ Impact of sanctions on the Russian economy - consilium. (n.d.).

<https://www.consilium.europa.eu/en/infographics/impact-sanctions-russian-economy/>

³⁴ ³⁴ UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6, available at: <https://www.refworld.org/docid/3ae6b3a84.html> [accessed 4 September 2023]

This situation proves to be a good example for the situation the ICC finds itself today, Russia like Sudan has not ratified the Rome Statute, and with that they did not agree to surrender the right for state officials to waive diplomatic immunity when faced with orders to surrender or to assist. So, when we look at the problem from this perspective any state that is part of the ICC or is willing to cooperate despite not being a member is not obliged to make an arrest on the ground of article 98 of the statute. If Russia or Sudan would have ratified the Statute then acting states would have a much easier time deciding on the right course of action, since then the country would have decided to waive their rights of diplomatic immunity which is based on international customary law, and while in Russia's case the ICC has not started any procedures to tell if the wanted suspects diplomatic immunity will be considered, it is still debatable that the 2 suspects can be arrested by ICC member states on the basis of the Rome Statute³⁵

While theory these arguments can seem valid, in 2019 the ICC overruled these opinions in its 2019 ruling it has stated Jordan's non-cooperation regarding the obligation to arrest Mr. Omar Al-Bashir. The ICC concluded that there is no Head of State Immunity under international customary law.³⁶ This ruling has sparked controversy since, this ruling can very likely stiffen non-party states' opinions on the court itself³⁷ and stretches its jurisdiction beyond its legal limits.³⁸

In conclusion, in the ICC's opinion, an arrest would be possible in an ICC member state in their interpretation of the Rome Statute, however this is highly unlikely to happen as the currently wanted individuals are not likely going to step into an ICC member state's territory, which would mean that while in theory, an arrest on wanted suspects can happen, but the odds of this actually happening is slim to none.

³⁵ Csapó, Zs. (2019). Az állam- és kormányfői immunitás versus a hivatali minőség irrelevanciájának elve a felelősségre vonáskor. Az Afrikai Unió kezdeményezése tanácsadó vélemény kérésére a Nemzetközi Bíróságtól. Állam És Jogtudomány, 19–35. <http://real-j.mtak.hu/15025/1/2019-01-AJT.pdf>

³⁶ Al-Bashir Case: ICC Appeals Chamber confirms Jordan's non-cooperation but reverses the decision referring it to the ASP and UNSC. (n.d.). International Criminal Court. <https://www.icc-cpi.int/news/al-bashir-case-icc-appeals-chamber-confirms-jordans-non-cooperation-reverses-decision>

³⁷ ICC Appeals Chamber Holds that Heads of State Have No Immunity Under Customary International Law Before International Tribunals. (2019, May 6). EJIL: Talk! <https://www.ejiltalk.org/icc-appeals-chamber-holds-that-heads-of-state-have-no-immunity-under-customary-international-law-before-international-tribunals/>

³⁸ A hidden reading of the ICC Appeals Chamber's judgment in the Jordan referral re Al-Bashir. (2019, June 6). EJIL: Talk! <https://www.ejiltalk.org/a-hidden-reading-of-the-icc-appeals-chambers-judgment-in-the-jordan-referral-re-al-bashir/>

2.6. The question of the ICC having jurisdiction over involved parties

So far, the paper has examined what options does the ICC have if it wants to prosecute wanted officials, however one key problem has been not yet examined thoroughly. In theory for the ICC to have jurisdiction over a person, his/her home country would need to ratify the Rome Statute, or the person has to commit those atrocities in an ICC member state.³⁹⁴⁰ The Russian Federation decided to withdraw its signature from the Rome Statute after a court published a report, classifying the annexation of Crimea as an occupation.⁴¹ The Ukrainian government did not yet ratify the Rome Statute, but they accepted the court's jurisdiction over alleged crimes that were committed in Ukrainian territory, firstly from 2013 November 21st to 2014 February 22nd., and later on in a second declaration from 2014 February 20th onwards.⁴² This may hold as one of the key reasons that the ICC can prosecute Russian officials, if it can be proven without a doubt that certain crimes mentioned in article 5 of the Rome Statute were committed. Then the question of jurisdiction can be argued to be effective over state officials not belonging to an ICC member state after they committed crimes mentioned in article 5 in the territory of an ICC member state.

2.7. How can unbiased judgement be achieved?

Before assessing the international community's reactions further, it is important to speak about how fair justice can be upheld when dealing with a major crisis like this. When it comes to the ICC it is expectable from the judges to be free of bias, however it is important to note that war criminals do not only face justice by international tribunal, but of national tribunals too, the paper will elaborate on these more deeply, but all in all the current procedures going down on Russia's and Ukraine's side can be considered biased, so it's highly important that these courts take the proper measure to assure that every receives fair and just sentences.

First of all, there are two categories of bias that needs to be addressed, hindsight bias and outcome bias, but what separates the two? Well hindsight bias is best explained in a practical manner. Take a case where someone has suffered their goods being stolen and take 5 different

³⁹ UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6, available at: <https://www.refworld.org/docid/3ae6b3a84.html> [accessed 4 September 2023]

⁴⁰ Ádány, T. V. (2014). A Nemzetközi Büntetőbíróság joghatósága (No. 8). Pázmány Press.

⁴¹ Walker, S., & Bowcott, O. (2018, April 20). Russia withdraws signature from international criminal court statute. The Guardian. <https://www.theguardian.com/world/2016/nov/16/russia-withdraws-signature-from-international-criminal-court-statute>

⁴² Ukraine. International Criminal Court. (n.d.). <https://www.icc-cpi.int/situations/ukraine>

suspects to the crime. After this has happened, take a person who builds up a carefully constructed narrative against one suspect, and presents that to a wide audience before the suspect has even been tried before a proper court. This well-built narrative against one suspect can make those people who even read into these narratives, liable to hindsight bias. We can see this in the case of the Russo-Ukrainian conflict as well, due to constant misinformation, hindsight bias is almost unavoidable. The best advice to counter this would be to filter every bit of information a person intakes, but it is hardly expectable for modern day citizens and small town judges to always double check the news source that they are receiving information from. This sadly led to online disinformation being a huge part of hybrid warfare, which later on will make it hard to come to a verdict that is not plagued by bias.⁴³

The other kind of bias is called outcome bias, this kind of bias is basically the outlook of a good decision that has sadly ended up in tragedy. To understand this better I will illustrate it again in a practical example. Imagine that a Russian field artillery officer receives information of a Ukrainian weapons depo in range of their armament. The intelligence report states that there are only military personnel in the area, no civilians inhabit the location. Of course, the Russian officer decides that an artillery barrage of the area would help infantry forces before the advance. However, when ground troops enter the area of operation after the barrage, it is found that the area was flooded with civilians who are now almost totally deceased, with only a few survivors remaining. This leads the men on the ground to believe that the artillery unit has just committed serious crimes. However, it seemed like a wise decision to make when it was first planned out. To come to these sorts of decisions which achieve outcome bias, many paths can be taken. First of all, this can happen purely out of mistake on one side. However, we have to consider also that it could be the army's foes who led them to this sort of decision and therefore, took part in creating this sort of atrocity.⁴⁴

But how can all of these errors be avoided in judicial conditions. Well, there some methods that have proven to work quite well, and others not so much. Firstly, one method which has not proven to be very effective is to warn the proceeding body about the existence of bias, these only showed varying results of success. Another technique which has been found to be way more effective than the one stated in the previous sentence can be summed up in one sentence,

⁴³ Arkes, H. R. (1989). Principles in judgment/decision making research pertinent to legal proceedings. *Behavioral Sciences & the Law*, 7(4), 429–456. doi:10.1002/bsl.2370070403

⁴⁴ Arkes, H. R. (1989). Principles in judgment/decision making research pertinent to legal proceedings. *Behavioral Sciences & the Law*, 7(4), 429–456. doi:10.1002/bsl.2370070403

„Please consider the possibility of the opposite version of events”. This briefly means that if one person takes the time to consider all possible narratives of an event, then they are way less likely to be blinded by one well-constructed narrative, and they will be better at making unbiased decisions. This can be crucial when sentencing violators of international law, as the international community must show that they are willing to give out fair sentences, made in fair trials to people who has not provided the same attitude towards the people he/she violated. This also can be used to reduce overconfident decision making, if we don not even let a judge know that his/her decision might be incorrect, then they are definitely bound to make some wrong decisions down the line, so this too will also play a key role when sentencing individuals after the conflict. Another great way to reduce overconfident decision making is what can be learned as the „warmup technique” it basically means that before getting on to the real questions, make the person in question take 5-10 practice questions, this has also showed to reduced overconfident decision making. The way this can be imagined in the case of the Russo-Ukrainian war is that the national courts should start working on the smaller, simpler cases first, as to warm them up to the more difficult cases later down the line. The last technique I want to mention is the reduction on the reliance on evidence. Too much focus on certain evidence can lead to biased decision making, therefore illustrating multiple pieces of evidence in one figure can help these errors reduce their chance of manifesting.⁴⁵

For these types of biases to not happen it’s important to be aware of their presence however, it is hardly expectable that in a volatile environment, such war-torn parts of Ukraine for everyone to follow the rules. It is for this reason that the higher Ukrainian national courts (or the later suggested joint courts) receive monitoring by the UN, with this it could be ensured that most people will receive adequate sentencing when tried before a court of law for their actions.

3. Practical problems

After exploring the theoretical problems of the current conflict, it is also important that practical problems will be looked at as well, these include topics such as Ukrainian, and Russian judicial procedures, the errors of the ICC, avoiding mistakes in previous trials and many more.

⁴⁵ Arkes, H. R. (1989). Principles in judgment/decision making research pertinent to legal proceedings. *Behavioral Sciences & the Law*, 7(4), 429–456. doi:10.1002/bsl.2370070403

3.1. Avoiding the mistakes made in previous trials

When it comes to international trials it is key that we learn from the mistakes made in previous trials, since there has been limited precedents to cases like this, we only have a few to go off of, but these still give us some really intriguing thoughts to go on about.

3.1.1. *Problems of Nuremberg*

The first time a real international tribunal sat together was at Nuremberg so it is obvious that it will be the first that I will be discussing. The key error that the trial has committed is not being fair while making judgement on nazi perpetrators, while they were sentenced for what they did during the invasion of Poland, the USSR had received no such treatment and were not prosecuted for its wrongdoings during the invasion.⁴⁶ This sort of double standard can be seen nowadays as well, while Russia has been criticized for using at least of 10 types of cluster munitions in the conflict which the 2008 Convention on Cluster Munitions comprehensively prohibits.⁴⁷⁴⁸ However it has been found that the United States also provided Ukraine with these types of armaments to be used in the conflict.⁴⁹ It is important to mention that neither the USA, Ukraine or Russia ratified the 2008 Convention, however they still have to abide by international customary law, firstly the use of cluster munitions is forbidden due to their indiscriminate nature as it cannot distinguish between military and civilian targets, also when using these armaments militaries have to consider the military and civilian casualties when striking a target if the civilian casualties would mount compared to military ones it should not be given the order to proceed. With cluster munitions this ability is lost, as in a densely populated area it is impossible for cluster bombs to only strike military targets. Fighting nations are also forbidden from using armaments that leave behind an number of unexploded ordinances that will later on cause civilian casualties, a criteria which cluster bombs also meet, this is not just backed up by just customary law but also by a record as well which 97 states (including Russia and Ukraine) agreed to which orders the removal of these leftover munitions. So, while it cannot be directly said that the use of cluster munitions is in violation of

⁴⁶ The Nuremberg Trial and its legacy: The National WWII Museum: New Orleans. The National WWII Museum | New Orleans. (n.d.).

<https://www.nationalww2museum.org/war/articles/the-nuremberg-trial-and-its-legacy>

⁴⁷ Cluster munition use in Russia-ukraine war. Human Rights Watch. (2023, June 13).

<https://www.hrw.org/news/2023/05/29/cluster-munition-use-russia-ukraine-war>

⁴⁸ The Convention on Cluster Munitions. (n.d.). Convention text.

<https://www.clusterconvention.org/convention-text/>

⁴⁹ CBC/Radio Canada. (2023, August 19). U.S. provided Ukraine with cluster bombs to fight Russia. survivors say they should never be used | CBC news. CBCnews.

<https://www.cbc.ca/news/world/ukraine-war-us-cluster-bombs-1.6940961>

international law, it still can be considered a violation which makes Ukraine and Russia liable for using these armaments, and also the USA too for providing Ukraine with these sorts of armaments.⁵⁰

If the international community strives to hold a fair trial, those who are using these munitions against Russian positions should be prosecuted as well, also it should also be considered that shipping these sorts of armaments to Ukraine, should be considered as a violation of international law. As long as these double standards continue to live on, international trials will be plagued by unfair decision making. If we look at the ICC today, it is highly unlikely that this level of biased judgement would take place, but with the political pressure on the court, it is interesting to see what cases they will prosecute in the future regarding the Russo-Ukrainian war.

3.1.2. Problems of the ICTY

Looking on the Yugoslavian trials and one of its key mistakes which has happened while prosecuting Slobodan Milosevic. The key error here that in his instance the need to bring someone to account has been unfortunately mixed with the need to present a clear narrative for his judgement, which has been argued by observing personnel to be a huge mistake. As reimagining history to play into the accused's hands could lead to incorrect judgement later down the line.⁵¹ Another big problem of the ICTY is the problem of witness intimidation, that the ICC has a witness protection program, but that too has its faults as well, if the international community wants to have witnesses testifying without any fear, the ICCs witness protections should be also taken into consideration of reforming itself(which the paper later will bring suggestions for), otherwise this man made error is bound to happen again in this possible trials as well.⁵²

⁵⁰ Zsuzsanna Cs. (2023). Háborús bűncselekménynek minősül a kazettás bombák bevetése? Ludovika.hu. <https://www.ludovika.hu/blogok/kormblog/2023/07/27/haborus-buncselekmenynek-minosul-a-kazettas-bombak-bevetese/>

⁵¹ Wilson, R. A. (2011). Writing history in international criminal trials. Cambridge University Press.

⁵² Yugoslavia's War Crimes Tribunal showed the promise – and limits – of international justice. Human Rights Watch. (2020, October 28). <https://www.hrw.org/news/2018/01/09/yugoslavia-war-crimes-tribunal-showed-promise-and-limits-international-justice>

3.1.3. *Problems of the ICTR*

Coming to the last example will be the tribunal set up in response to the Rwandan genocide. This system was the most complex out of all three that we are looking at, however it still had its shortcomings to be learned from. First problem is the improper treatment of rape victims in the conflict, the ICTR only had two cases which ended up in rape convictions, these are Jean Peal Akayesu who received a 15-year sentence and Laurent Semanza who only received 7 years for rape. This can be considered very lenient in a conflict where a system of mass rape happened. The second error is a common one that we witnessed in the Yugoslavian trials and in the procedure of the ICC as well, which is the incorrect handling of witnesses. In the case of Rwanda this was both true during the trial and after it happened. Regarding the handling of witnesses during trial, it has been stated by critics that the court failed to establish an atmosphere where witnesses felt that they could speak out loud regarding the atrocities they face throughout the horrors of the genocide. In one example, judges even bursted out laughing while a rape victim was getting flooded with questions. This shows how the ICTR failed to treat its victims with the responsibility and dignity they would have deserved.⁵³⁵⁴ When it comes to handling witnesses after the trial, there was little effort to ensure the witnesses stay protected after the trial has been conducted. In this manner it is obvious that witnesses (especially those of sexual violence) are afraid to testify against those who should held responsible for these wrongdoings. The last error which also can be seen in the case of Yugoslavia, is the length of the procedure. In many cases it had been argued that victims will pass away before justice has been served. A rape victim of the conflict summed this up perfectly in an interview held with her:

“For those of us on the road to death, this justice will be too slow. We will be dead and no one will know our story. Our families have been killed and our remaining children are too young to know. What happened to us will be buried with us. The people for whom this tribunal was set up are facing extinction – we are dying. We will be dead before we see any justice.”⁵⁵

⁵³ Juma, Peter M., *An Assessment of the ICTR’ s Failures and Successes*. (December 31, 2022). Available at

SSRN: <https://ssrn.com/abstract=4315844> or <http://dx.doi.org/10.2139/ssrn.4315844>

⁵⁴ Koomen, J. (2013). “Without These Women, the Tribunal Cannot Do Anything”: The Politics of Witness Testimony on Sexual Violence at the International Criminal Tribunal for Rwanda. *Signs*, 38(2), 253–277. <https://doi.org/10.1086/667200>

⁵⁵ Juma, Peter M., *An Assessment of the ICTR’ s Failures and Successes*. (December 31, 2022). Available at

SSRN: <https://ssrn.com/abstract=4315844> or <http://dx.doi.org/10.2139/ssrn.4315844>

3.1.4. Summary of still present past-problems

In conclusion, it can be said that there are three main problems that plague international tribunals today, one is the case of having double standards. Fair judgement cannot be made when those on the prosecuting side have committed the same or worse crimes in the duration of the conflict. The second main error is the handling of witnesses. When it will come to prosecuting those responsible for violations of international law both on the Russian and Ukrainian side, that victim protection has to be one of the most focused on aspects. These people have to be protected on the maximum level, so they can tell testify without fear of any repercussions in their future. The third and final problem plaguing the concept of international trials is the length of these procedures. This is one problem that will likely never be solved to its fullest since these trials require a complex and thorough approach. However, the usage of AI as the paper looked at it before, will be sure to help speed up this process so that most affected generations can see justice in their lifetime.

3.2. Issues that can come with trying to conduct a fair trial about international law violations regarding the Russo-Ukrainian conflict

Like every turmoil that the International Community has faced so far, this also will be quite a hassle to solve. I've put these problems in to three groups which I'll be exploring in my research, these are the issue of credible evidence, the issue of witness protection and the issue of catching the war criminals themselves, these are three categories that we need to find definite answers for, if the international community is looking to uphold international law.

3.2.1. Tackling the issue of credible evidence

However we make it, whatever way the international community decides to go down it will all be in vain, if we do not have any evidence to show for the accusations that certain personnel put forward. The digital age has surely been a great help in this case, as of now. This would be the first time in our history where online media plays a major role in tying off loose ends, after the disaster.

The problem with these materials of evidence will not be getting it but vetting it. There are several projects under way that seek to gather evidence committed in modern day Ukraine. The most easy and simple way to go about this as a victim of the situation is to report it on the Ukrainian Attorney Generals website. This shows how easy this part has become.⁵⁶ To illustrate how big of a problem handling evidence can be, let's look at a conflict before Ukraine,

⁵⁶ Warcrimes. warcrimes.(n.d.). <https://warcrimes.gov.ua/en>

throughout the 11 years of active conflict in Syria, an NGO named Mnemonic managed to collect around 5 million total records, in Ukraine's case they have already collected around 3 million records. To sort this and be as thorough with it as possible will be a massive undertaking, if only one organization manages to collect this amount of evidence, then the result can be well over a 100 million digital files which all need to be looked at in order to make fair judgement. Fortunately, not all this needs to be done by human effort, the before mentioned NGO is already looking into training artificial intelligence to do this job for them. They are making a so called "data set" which would teach the machine to look for specific content, making its way through much bigger workload than what an average human would be able to do.⁵⁷

This kind of help will be revolutionary when handling international law violations all over the world not just in the case of Ukraine. According to the Ukrainian Prosecutor General over 65,000 war crimes have been committed in the war so far since it began more than a year ago. These include numerous accounts of rape, torture and executions and targeting civilian infrastructure by Russian forces.⁵⁸

Nations are also stepping up in help to investigate the crimes being committed in Ukraine. 45 nations like the United States, Canada, Australia, Germany, Poland etc. have pledged to coordinate evidence for war crimes committed in Ukraine, they also pledged 20 million euros to assist the ICC and its prosecutor general's office in Ukraine and UN to support the efforts being made in Ukraine.⁵⁹ But in sheer contrast to this the Pentagon has decided to block evidence regarding Russian war crimes in fear of setting precedent against US servicemen. This problem still remains unsolved.⁶⁰

⁵⁷ YORK, J. (2023, February 28). "accountability and Justice": Gathering digital evidence of war crimes in Ukraine. France 24. <https://www.france24.com/en/europe/20230228-accountability-and-justice-gathering-digital-evidence-of-war-crimes-in-ukraine>

⁵⁸ Amanda, M, Macias. (2023, February 2). Russia has committed more than 65,000 war crimes in Ukraine, prosecutor general says. CNBC. <https://www.cnn.com/2023/02/01/ukraine-russia-war-65000-war-crimes-committed-prosecutor-general-says.html>

⁵⁹ Deutsch, A., & Emmott, R. (2022, July 14). Forty-five nations pledge to coordinate evidence of war crimes in Ukraine. Reuters. <https://www.reuters.com/world/europe/45-nations-pledge-to-coordinate-evidence-war-crimes-ukraine-2022-07-14/>

⁶⁰ Borger, J. (2023, March 8). Pentagon accused of blocking effort to hand Russia war crimes evidence to ICC. The Guardian. <https://www.theguardian.com/world/2023/mar/08/pentagon-international-criminal-court-russia-war-crimes>

The International Criminal Court has also been doing their fair share of work in the manner, the court organized a never seen before allocation of resources into collaboration with the Court and domestic jurisdictions, as of May 2022 the ICC prosecutor organized a team of 42 investigators which include seconded national experts.⁶¹ This is unprecedented in the ICC's lifetime so far but this investigation team's effort it clearly sends a message to war criminals that no stone will be left unturned and justice will be served in the crimes that have been committed in Ukraine.

3.2.2. Issue of witness protection

When it comes to prosecuting people who committed some of the most evil acts against mankind, witness testimony is of key importance to back up evidence. But to have a witness, who is willing to provide everything he/she got, is not so easy. The sense of the fear of persecution has to be zero percent, if we want them to testify on trial against potential war criminals.

However, the ICC has a major error when it comes to Article 68 of the Rome Statute, it states that a person will only be protected while testifying in the Hague, however when it comes to them returning to their origin countries the witness protection does not apply to them anymore. This could be a major problem factor when it comes to witnesses standing trial against suspected war criminals. One small workaround to this is that witnesses can apply for asylum in the Netherlands instead of returning home. However, not everyone has the knowledge to make this possible themselves, which could potentially scare away crowds of witnesses, letting the war criminals go unpunished.⁶²

Detained witnesses (those who are held on some reason by their origin countries) and non-detained witnesses face similar problems when it comes to witness protection, which is the violation of article 33 of the Geneva Convention of July 1951 in that the 1951 Refugee Convention, which is the rule of non-refoulment. However, on the other hand the ICC is not a state, rather a legal body established by international will to prosecute war crimes.⁶³ The best

⁶¹ Marchuk, I., & Wanigasuriya, A. (2022, July). The ICC and the Russia–Ukraine War. In American Society of International Law (Vol. 5).

⁶² Lungu, Dr. S. (2020). ICC witnesses and the review of the rome statute: The missing link. <https://www.southernafrialitigationcentre.org/wp-content/uploads/2020/12/Policy-Brief-ICC-WITNESS-PROTECTION-PROGRAMME.pdf>

⁶³ Lungu, Dr. S. (2020). ICC witnesses and the review of the rome statute: The missing link. <https://www.southernafrialitigationcentre.org/wp-content/uploads/2020/12/Policy-Brief-ICC-WITNESS-PROTECTION-PROGRAMME.pdf>

solution in this case would be to invest more heavily in its legal assistance aspect. The ICC needs to have the ability to safeguard its witnesses if they are afraid that they will be met with hostility in their origin countries. A suggestion would be that with proper legal support the ICC could distribute their witnesses in ICC member states this way they would not be afraid of backlash after their testimony before the tribunal.

3.2.3. Issue of arresting war criminals

As one of the most itching questions is, how can we bring the supposed criminals to the Hague? This has been a major problem with both the Yugoslavian and the Rwandan trials as well. As the UN or the ICC does not possess its own police/military. It must rely heavily on cooperation by member states to provide security forces for these tasks. In which case a lot of conditions must be met (but not all of them have to be in effect at the same time), in order for the ICC to capture the wanted suspects in the matter. First and foremost, Ukraine should win the conflict, without it there is little chance that the UN and the ICC will get the chance to capture Russian state officials. Secondly, the collapse of the Russian state regime would aid these efforts since they would be more likely to cooperate with the international community and abide by international law. The third is the establishment of a reliable force that's able to track and capture the wanted suspects. According to Transparency International, Ukraine has a corruption score of 33/100⁶⁴ which is not the worst however it would not be the best idea to just rely onto local police and military units. The most comfortable solution would be to appoint international commanders to lead these units, chosen by the United Nations. The most resource intensive but probably most successful solution would be the application of UN peacekeeping forces in the area. Due to this problem, we can expect the trial to last well more than the actual war, since tracking down high-profile individuals will not be an easy task to complete. As stated before a similar case that has been prosecuted that by the international community is the Yugoslavian war trials that lasted from 1993 to 2017, one of its main reasons of this length was the problem of catching the perpetrators of the conflict, the same issue could very much surface here.⁶⁵ International sanctions against Russian officials also hinder the hunt for the accused persons, due to the travel bans that apply to them, this way they are way less likely to travel, which severely limits their chances of getting arrested.⁶⁶

⁶⁴ Ukraine. Transparency.org. (2022). <https://www.transparency.org/en/countries/ukraine>

⁶⁵ International Criminal Tribunal for the former Yugoslavia | United Nations International Criminal Tribunal for the former Yugoslavia. (n.d.). <https://www.icty.org/>

⁶⁶ Marchuk, I., & Wanigasuriya, A. (2022, July). The ICC and the Russia–Ukraine War. In American Society of International Law (Vol. 5).

3.3. International police organizations aiding the efforts

These problems listed above also can be aided with the assist of international police organizations. Fortunately, there are agreements in place between the ICC and several of these organizations, the examples that the paper will look at are EUROPOL and INTERPOL.

EUROPOL and the ICC signed an agreement on the 25th of April 2023 for the reason of preventing and combating serious crimes affecting two or more member states. EUROPOL and the ICC will cooperate in the following area according to the agreement: exchange of information, in accordance with the tasks of EUROPOL and the mandates of the ICC. The two sides also agreed to help each other with evidence gathering, making general situation reports, sharing information on crime prevention methods, participating in training activities, and providing aid in ongoing criminal investigations.⁶⁷ This alone can be a huge help for the ICC to track down and arrest suspected war criminals.

It's not just EUROPOL that is aiding the ICC's pursuit of international law violators. INTERPOL and the ICC signed not one but two agreements, the first one for the purpose of exchanging information, publication and circulation of INTERPOL notices, searching for fugitives on the run, and the assist of national teams including national disaster victim identification teams and war crime units. The second agreement was made for one sole purpose, which is to allow the ICC for the use of INTERPOL's telecommunications system. The usage of the data and the deployment of these specialist teams by INTERPOL can be a massive assistance seeing as they are the global police organization on the world and have plenty of data to go off of.⁶⁸

These two agreements serve as an example of international cooperation in order to chase down perpetrators wherever they might be around the globe, however so far there has not been any widely known benefits of this cooperation, so it remains to be seen that this will serve as an answer to the problems mentioned before.

3.4. Letting Ukraine off the hook

To be fair and just in an international trial, it is not only one side that should be looked at thoroughly. One clear tendency that is showing on the reports of international law violations

⁶⁷ International Criminal Court | Europol. (n.d.). Europol.

<https://www.europol.europa.eu/partners-collaboration/agreements/international-criminal-court>

⁶⁸ Co-operation agreement between the Office of The Prosecutor of the International Criminal Court and the International Criminal Police Organization-Interpol. (n.d.). Interpol.

<https://www.interpol.int/content/download/11060/file/4-%20ICC.pdf>

throughout the conflict, that the investigations that Ukrainian forces are behaving to the regulations of international law are few and far between. To see this one only needs to pull up google and search for Ukrainian war crimes in Ukraine, and Russian war crimes in Ukraine. Unsurprisingly there are way more investigations into the behavior of Russian forces than the Ukrainian armed forces.

One investigation revealed that Ukraine does not seem to fight fair either. Amnesty International found that several actions of Ukrainian armed forces are putting civilians in immediate danger. These tactics include setting up military bases in residential areas like schools or hospitals, launching attacks from areas that are populated heavily by civilians.⁶⁹ The international community so far is also silent on this matter. As of now it is only Russian officials who are stressing these matters for obvious reasons. The Biden administration for example has not commented these reports and is only stressing the prosecution of Russian caused atrocities.

A UN Human Rights Monitoring Mission in Ukraine also revealed disturbing details about Ukraine's fighting style amidst the conflict, concerning multiple categories of international law violations. The report states that there has been 91 cases of enforced disappearances and arbitrary detention that were committed by Ukrainian security forces, 53% of the 73 victims that they interviewed spoke about being tortured or ill-treated by members of Ukrainian armed forces and law enforcement agencies. Also, between 2022.02.24.-2023.01.31. 24 cases of conflict related sexual violence were attributable of Ukrainian Security Service (SBU), civilians and members of territorial defence forces. Regarding the prisoners of war (POWs), the report discussed the summary execution of up to 25 Russian POWs and people hors de combat by the hands of Ukrainian armed forces. Supposedly an investigation was started by Ukrainian authorities, but no prosecution was made of the perpetrators. Almost half of the Russian POWs (totaling in 229 persons) spoke about being tortured or ill-treated by members of Ukrainian armed forces or the SBU. POWs been reportedly beaten, shot in the leg, stabbed in their limbs, electrocuted, subjected to mock executions, threatened with sexual violence or death. These sorts of treatment were much more common on initial capture, ill treatment like this was less likely to happen in POW camps.⁷⁰

⁶⁹ Ukraine: Ukrainian fighting tactics endanger civilians. Amnesty International. (2023, May 31). <https://www.amnesty.org/en/latest/news/2022/08/ukraine-ukrainian-fighting-tactics-endanger-civilians/>

⁷⁰ UN Human Rights Ukraine released reports on treatment of prisoners of war and overall human rights situation in Ukraine. (n.d.). Ukraine. <https://ukraine.un.org/en/224744-un-human-rights-ukraine-released-reports-treatment-prisoners-war-and-overall-human-rights>

Ukraine is on the defense in this conflict, as it has been for a long time, but this still does not put their forces above international law. Of course, Ukrainian international law violations dwarf compared to ones committed on the Russian side, but this still does not justify it. These actions in no shape or form justify Russian war crimes but to conduct a trial in a professional manner, these actions too will need to be looked at in order to bring justice.

3.5. How Russia and Ukraine prosecutes alleged perpetrators?

While the ICC's gears are grinding slowly to bring alleged perpetrators to trial, the two states in conflict have resulted to taking matters into their own hands, with suspects getting tried based on state law. If done right, this could help ease the workload on International Judicial bodies, however in its current execution it is debatable that fair judgement is being made. It has been shown already that both Russia and Ukraine are committing international law violations in the conflict, but how were some of these cases prosecuted?

3.5.1. *Trial conducted by the Russian Federation*

In one interesting case a Ukrainian soldier was put on trial on April 4th 2023 in the city of Rostov-on-Don, Russia. This is the state's first trial for war crimes in connection with its campaign in Ukraine. Anton Cheredenik, a Ukrainian senior sergeant in the naval infantry was accused of using prohibited methods of warfare and of murdering a civilian in Mariupol, in 2022 March, the sergeant pleaded "partly guilty" and requested to meet the judge in person to explain his position.⁷¹ More details about the case are not known yet but as it seems, Russia is not likely to encourage the prosecution of Ukrainian "war criminals" before an international tribunal, they rather use their own system of laws to sentence alleged perpetrators. So far it has been only this Ukrainian sergeant that has been tried before a court in Russia. Russia is not likely to prosecute their own war criminals at the moment, which can make their judgement seem one sided, but with the war likely to continue for a time, this could change at any moment.

3.5.2. *Trials conducted by Ukraine*

On the other hand, Ukraine has also started to prosecute captured suspects who were fighting on the side of Russia. Ukraine was responsible for the first war crime trial regarding the invasion. This trial was conducted in the case of Sergeant Vadim Shyshmarin, a 21-year-old

⁷¹ Reuters. (2023, April 4). Ukrainian soldier pleads "partly guilty" at Russia's first war crime trial. Reuters. <https://www.reuters.com/world/europe/ukrainian-soldier-pleads-partly-guilty-russias-first-war-crime-trial-2023-04-04/>

soldier who admitted to shooting a 62-year-old man in the back of the head in northeastern Ukraine for which he received a life sentence.⁷²

The second war crime trial of Ukraine was of two Russian soldiers who were accused of shelling civilian targets in the eastern Kharkiv region, which destroyed an educational facility but fortunately did not result in any casualties. The prosecution asked for 11.5 years in prison for the charge of violating the customs of war, which they were sentenced for in the trial.

What's also interesting that Iryna Venediktova Ukraine's prosecutor general announced on 2022 May 24th that a Russian service member Mikhail Romanov will be charged with rape and tried in absentia in Ukraine.⁷³ This is problematic for the reasons that it goes against norms of international judicial practice. While Ukraine is not bound by the Rome Statute to not try someone in absentia, it is clearly making a condescending look on war crime trials. It was only at Nuremberg and the Special Tribunal for Lebanon⁷⁴ where this was allowed in history, article 63 (1) of the Rome Statute clearly states that the accused needs to be present at the trial. So, to allow a trial in absentia by Ukraine can be considered to go against the standards of prosecuting someone before an international court.⁷⁵

3.5.3. A resolution for fair trials in the future regarding nation level procedures

The people that were tried in these processes are low level perpetrators but not one side so far has tried to prosecute their own citizens as well. These come from many reasons, such as political backlash or a possible uproar by the states armed forces. What I see reasonable in this case is, when a peace treaty will be established between the two nations, a Russo-Ukrainian Joint court system should be established. This would allow the accused to stand at a more even trial and not get biased sentences from the opposing nations judicial system. These courts would also be able to help with the ICC's investigations with higher level individuals getting

⁷² Russian soldier sentenced to life in first war crimes trial since Ukrainian invasion. (2022, May 23). [Video]. NBC News. <https://www.nbcnews.com/news/world/russian-soldier-sentenced-life-prison-ukraine-first-war-crimes-trial-rcna29628>

⁷³ Parker, C., Francis, E., & Chapman, A. (2022, May 31). Russian soldiers get prison terms in second Ukraine war crimes trial. Washington Post. <https://www.washingtonpost.com/world/2022/05/31/ukraine-russian-war-crimes-second-trial-sentencing/>

⁷⁴ Gardner, M. (n.d.). Reconsidering trials in absentia at the Special Tribunal for Lebanon: an application of the tribunal's early jurisprudence. Scholarship@Cornell Law: A Digital Repository. <https://scholarship.law.cornell.edu/facpub/1530/>

⁷⁵ UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6, available at: <https://www.refworld.org/docid/3ae6b3a84.html> [accessed 4 September 2023]

transferred from the joint court to the ICC. In this case some supervision by international monitors would be crucial as corruption in Ukraine⁷⁶ and Russia⁷⁷ which certainly affects public officials as well. If the international community would let corruption run rampant in these procedures, then the whole process would be in vain.

3.6. Factors holding back the ICC from proper working

3.6.6. *Financial Issues*

One thing to talk about when handling an organization is the financial support it's going to have, that decides how much one organization can really produce regardless of its duty. In 2015 the Office of The Prosecutor (OTP) released its basic size report which described the organizations bare minimum that were necessary to pursue its investigative duties. However still to 2022 the ICC is only receiving around 155 million euros, from which the OTP received 49.5 million euros. This is still way smaller than what the OTP outlined in its report (60.6 million euros). While all of the inefficiencies cannot be blamed on financial limitations, massive undertakings like investigating the Russo-Ukraine war should be done with properly allocated funding. So, it is no surprise, when a group of independent experts found that the OTP's staff was „stretched over multiple situations” and was working on a „shoestring budget”. International criminal law expert Professor Megan Farlie has also pointed out that the ICC has been faced demands to increase their already heavy workload "despite an already crowded docket and a history of inadequate support from the United Nations Security Council."⁷⁸

An independent expert report in 2020 also pointed out the understaffed position of the OTP with 30 additional professionals for the organization function properly. Increased funding from members states would definitely help not just the investigations in the territory in Ukraine but also the investigations that the ICC is conducting elsewhere. With the Ukrainian crisis going on, funding has increased significantly but it has been argued that countries should not only start supporting the ICC more when it's politically beneficial for themselves but also on a general basis, so that justice can always be served.

⁷⁶ Ukraine. Transparency.org. (2022). <https://www.transparency.org/en/countries/ukraine>

⁷⁷ Transparency International. (2020, August 3). Russia. Transparency.org. <https://www.transparency.org/en/countries/russia>

⁷⁸ Megan A. Fairlie, The Hidden Costs of Strategic Communications for the International Criminal Court, 51 TEx. INT'L L.J. 281, 290 (2016).

3.6.7. *Cooperation issues*

The second thing that can be mentioned is international cooperation through action, the ICC is basically is of no use without member state cooperation, because it's lack of a police force to apprehend wanted suspects across the globe, cases like the one we saw with Omar al-Bashir are sending a message that international warrants for arrests are not being taken seriously, so member states should consider actually acting by their legal obligations. With this and financial support the ICC could pose as a global deterrent for possible war crimes in the future, seeing as in theory with proper funding and cooperation, the ICC could bring justice to significantly more places than it ever has. With these kind of successes the ICC would only get more funding, which lead to more cooperation which lead to more action, and the cycle would go on and on.

In one instance the United States had signed a law which shows a major problem with support for the ICC. On the 5th of January 2023 President Joe Biden signed into law the Justice for Victims of War Crimes Act, which enabled the US Department of Justice to prosecute war criminals who are located in the US regardless of location of crime, nationality of the accused or victim. The previous war crimes act, which was signed into law by Bill Clinton on August 21, 1996, only allowed prosecution if the person was a US national or service member.⁷⁹ This bill that has been signed into law in January can serve to take power away from the ICC as if the United States somehow manages to capture wanted officials, then they will not likely extradite the accused person to the Hague, rather they will try him/her. It has to be said that according to *delicta iuris gentium* the USA would be allowed to prosecute individuals who committed violations of international law, however if for some reason the 2 suspects that are currently wanted by the ICC would be managed to be captured by the USA and not prosecuted before the ICC but before a US tribunal, it would still send a contradictory message.⁸⁰

3.6.8. *Summary of problematic factors*

Overall, the Ukrainian crisis served as a wakeup call, but it is up to the international community will keep up this level of support that it now started to garner with the beginning of the conflict in 2022. Although continuous funding will probably be determined on how effectively can the ICC serve justice in charges that originate from the Ukraine, political pressure should be kept

⁷⁹ Ochab, E. U. (2023, January 14). Putin's War Crimes Could Be Prosecuted In The United States. Forbes. <https://www.forbes.com/sites/ewelinaochab/2023/01/14/putins-war-crimes-could-be-prosecuted-in-the-united-states/?sh=28c62bf26594>

⁸⁰ Csapó Zsuzsanna: *Delicta iuris gentium*, a természetes személyek nemzetközi jogon alapuló büntetőjogi felelőssége és a felelősségre vonás folyamata (JURA, 2002/1., 136-143. o.) | Szakcikk Adatbázis. (n.d.). <https://szakcikkadatbazis.hu/doc/4863462>

to a minimum, because if states fall back to only funding the court when it's politically beneficial for them, then the ICC will not succeed in its own goals of upholding international law, which could lead to devastating consequences.⁸¹

3.7. Possible violation of article 66 of the Rome Statute by the international community

When any case that goes before a court of law is examined, „innocent until proven guilty” is one of the key principles to be upheld, however some states (both members of ICC and those outside the ICC) have decided to violate this principle, which was codified in article 66 of the Rome Statute.⁸² It has been already discussed in the paper that both Joe Biden the President of the United States⁸³ and the Ukrainian President Volodimir Zelenskiy⁸⁴ claimed that Vladimir Putin is a war criminal without any sentence actually carried out against him at the moment. But as this is not listed in the “violations” of the Statute it cannot be stood up to. This makes the term “war criminal” a word that can be used very loosely in politics. This makes a clear way of hindsight bias in a potential trial against the suspect that will be tried in lower-level national courts. It could be said that the before mentioned people are politicians and therefore be given some slack for their loose terminology, but it's still important to stress that these terms should be only used when it's without confirmed that a person is guilty of certain crimes.

This hindsight bias could make the public perception of the trial questionable to the global community, it could also play in hand to the accused persons defense attorneys seeing as how western nations already decided to use these definitions in a political manner without any concern of its actual meaning. Both the UN and the ICC should remind its members that these definitions are not to be taken lightly and should be used cautiously as to adhere to Article 66.

3.8. Possible sentences

It is important to point out that as mentioned before, currently only two highly positioned personnel were given charges by the ICC these are Mr. Vladimir Vladimirovich Putin and Mrs.

⁸¹ Dutton, Y., & Sterio, M. (2023). The war in ukraine and the legitimacy of the international criminal court. *American University Law Review*, 72(3), 779-828.

⁸² UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6, available at: <https://www.refworld.org/docid/3ae6b3a84.html> [accessed 4 September 2023]

⁸³ Joe Biden accuses Vladimir Putin of committing genocide in Ukraine (2022) The Guardian. Available at: <https://www.theguardian.com/world/2022/apr/13/joe-biden-accuses-vladimir-putin-of-committing-genocide-in-ukraine> (Accessed: 29 August 2023).

⁸⁴ Saul, D. (2022, April 3). Zelensky Accuses Russia Of Genocide As Allegations Of Civilian Killings Mount. *Forbes*. <https://www.forbes.com/sites/dereksaul/2022/04/03/zelensky-accuses-russia-of-genocide-as-allegations-of-civilian-killings-mount/>

Maria Alekseyevna Lvova-Belova, both warrants have been issued for out for unlawful deportation of children and unlawful transfer of population from occupied areas.⁸⁵ However, it is likely if wanted persons are arrested, then more charges are likely to pop up as the investigation continues.

3.8.1. 30 years or less, life?

It is important to mention that after Nuremberg, no international trial had applied the death penalty, this will likely not change in the foreseeable future. The heaviest sentence the ICC can give is a life sentence, otherwise the ICC can sentence someone up to 30 years.⁸⁶ The only option when the death sentence can be thought of is if the US manages to capture wanted and prosecute officials in their own national system, then the death sentence could also be given out to sentenced individuals, if found guilty. One case that is similar to the current suspects and can serve as an example is the case of Zdravko Tolimir. Mr. Tolimir was tried for crimes committed in Srebrenica and Zepa enclaves, in Eastern Bosnia, at the time. He was charged with crime against humanity, genocide, and forcible transfer. For this crime he was given a life sentence by the ICTY. Another case which can be compared in the ICTY is the case of Ratko Mladic. Mr. Mladic was the Commander of the Main Staff of the Army of the Bosnian-Serb republic. He stood trial for 11 counts of crimes these broke down into 2 counts of genocide, 5 counts of crimes against humanity and four counts of violations of the laws or customs of war for which he was given a life sentence.⁸⁷ Going off these verdicts, people who are at the top of these organizations and are orchestrating the happenings of these international law violations are not likely to get away without a life sentence, this could be true in the future for the top war criminals in the Russo-Ukrainian conflict.

3.8.2. The possibility of claiming mental incapability

When dealing with criminals it is generally assumed that they should be responsible for their crimes, however there is one major exception stated in Article 31 (a), which states that a “person suffers from a mental disease or defect that destroys that person's capacity to appreciate the

⁸⁵ Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova. International Criminal Court. (n.d.). <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>

⁸⁶ UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6, available at: <https://www.refworld.org/docid/3ae6b3a84.html> [accessed 4 September 2023]

⁸⁷ Judgement List | International Criminal Tribunal for the former Yugoslavia. (n.d.). <https://www.icty.org/en/cases/judgement-list>

unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law”; if these terms are met then a person will be declared mentally unfit for trial and be ordered to undergo medical treatment instead of prison⁸⁸

The case of psychiatric defense is a very broad topic to talk about, in this paper only cases before international tribunals will be examined. One case that is a particular example is the Celebici case, in the ICTY, which has this rule in its rules of procedure and evidence (RPE), according to which „The International Tribunal itself will have to decide on various personal defences which may relieve a person of individual criminal responsibility, such as age or mental incapacity, drawing upon general principles of law recognised by all nations”. This gave way for claiming partial irresponsibility for their actions, such was in the case of Esad Landzo of the Celebici case, where 4 out of 5 psychiatrists found that the defendant was suffering from the traits of mental illness. This did not lead to complete dismissal of his actions, he was sentenced to 15 years, however it did lighten his sentence.

In the case of the So far there has not been a trial in the ICC that has been a case where the defense of mental illness was used, this is because of the ICCs rather harsh treatment of the option of defense for the mentally ill. This comes from many reasons like the reaction people would have when a severe war criminal gets away with no jail time, making it seem like he/she just tricked the court into giving him/her no punishment. The option of partial mitigation of a sentence is practically impossible because of the definition the Rome Statute uses in Article 31 (A) that a person has to suffer from a condition that destroys their capacity to appreciate unlawfulness or nature of his/her conduct. The word of destruction leaves no room for partial disabilities, leaving the usage of this defense method highly situational, so it is unlikely to see this defense method in action.⁸⁹

3.9. Suggestion for the upcoming trial’s structure

After looking at all the errors the current problems that hold back judgement from being handed out the last part of the paper aims to set a theoretical example on what structure these judicial procedures can be executed in. This structure aims to relieve pressure on higher courts so they

⁸⁸ UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6, available at:

<https://www.refworld.org/docid/3ae6b3a84.html> [accessed 4 September 2023]

⁸⁹ TOBIN, J. (2007). The psychiatric defence and international criminal law. *Medicine, Conflict and Survival*, 23(2), 111–124. <https://www.jstor.org/stable/27017352>

can focus on higher level cases, so the principle of complementarity⁹⁰ is heavily in effect in this structure. This court system took the most inspiration from ad hoc tribunals explored before and the current issues at hand which the paper already talked about in more detail.

3.9.1. Handling lower-level cases

When talking about lower-level cases this paper especially means those individuals who are on the ground committing these sorts of acts, for example soldiers executing civilians, these cases should be handled by local courts with international supervision. The reason for this is the number of suspects on this level, higher level courts cannot be allowed to be flooded with low-level personnel, justice for them could be easily handed out in local joint Russian-Ukrainian courts. If a person is found out to be part of a bigger scheme or he/she was responsible for organizing a series of international law violations, he/she can be recommended to face trial in a higher-level national court.

3.9.2. Handling mid-level cases

Mid-level cases would come from recommendations made by district courts, according to the severity of the accusations found out, the accused personnel here would be comprised mostly by mid-level leaders executing orders from higher officials. These courts handling mid-level cases should be located in the district courts^{91,92} currently working in Ukraine as it would be the most convenient as it would be easy to distribute suspects waiting for trial between them. If a mid-level suspect is found to be on the top of planning these actions, then he/she could be ordered to face trial before the International Criminal Court among higher-level suspects.

3.9.3. Handling high-level cases

Coming to higher cases the only organization that should be working on these cases is the International Criminal Court. For a suspect to be prosecuted here, he/she either has to be ordered by a district court as stated before or be directly wanted by the ICC such as the persons already stated in this paper. The people prosecuted here should be on the top of the chain of command, making high-level decisions that was the cause for most international law violations throughout the conflicts. It is important that these cases receive all the attention they can get from the ICC

⁹⁰ What is Complementarity? - National courts, the ICC and the Struggle Against Impunity. (n.d.). <https://www.ictj.org/sites/default/files/subsites/complementarity-icc/>

⁹¹ Attorneys ask Poroshenko not to destroy the district courts of Kyiv". Ukrayinska Pravda (in Ukrainian). 26 December 2017

⁹² "Poroshenko replaced local district courts". Ukrayinska Pravda (in Ukrainian). 29 December 2017.

as these trials will be the ones that will take up the most resources and time to look through all the evidence thoroughly and deliver justice for those who will stand trial before the tribunal.

4. Conclusion

Overall, this paper has concluded that the international community still faces a lot of challenges before being able to adequately hand down judgement to those who undermined international law at every level. To solve these challenges international cooperation is required not just from a couple of states but from the global community as a whole, without global cooperation all these efforts sadly could be in vain, as the base of international law is what states are willing to accept to regulate themselves in the long run.

Without this will, theoretical problems such as the problems with the use of the crime of aggression, ineffective reaction by the United Nations, “unbiasing” lower-level courts, the ICC’s structural errors, the dilemma between article 27 and 98 of the Rome Statute or the question of the ICC having jurisdiction over Russian perpetrators will remain unsolved. These problems can only be solved if UN member states agree that these problems exist and then agree on a solution on this problem without backing off from it later as we already seen before.

After the theoretical problems have been taken care of the international community can begin to focus on the practical problems, this will no doubt be a challenge for everyone participating in the execution of these procedures. The reason for this comes from several factors, first the international community needs to avoid the mistakes it has made before in previous trials, it needs to find ways to solve handling evidence, assuring witnesses be protected, and suspected criminals get captured. Furthermore, judicial processes on the national level should be overlooked thoroughly and be given a structural overhaul for these cases with joint Russo-Ukrainian tribunals. The international community can also look to solve problems holding back the ICC from proper working with giving it more funding, and cooperating which will require the setting aside of national interests. Finally, the international community can think about in what structure does it want the accused people to be prosecuted and what sentences should they deserve.

This process of problem solving will no doubt take many-many years to complete. It will require sheer dedication from the global community to meet these demands to solve the problems it has found itself in. But it needs to happen, as the ICC has an overwhelming role in the investigation

and prosecution in these crimes⁹³. So, it is only a matter of time before the world will see the international community's reaction to the horrors of 21st century warfare.

⁹³ Hoffmann, T. (2022). Túl a szélmalomharcon? A Nemzetközi Büntetőbíróság és az orosz–ukrán konfliktus–Előszó a „A Nemzetközi Büntetőbíróság 20 éve” című tematikus számhoz. ÁLLAM-ÉS JOGTUDOMÁNY, 63(4), 3-4.

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