INTERNATIONAL LEGAL ASPECTS OF THE RUSSIAN FEDERATION'S AGGRESSION AGAINST UKRAINE, JUSTICE AND MECHANISMS OF COUNTERACTION AND LEGAL LIABILITY FOR THE WAR CRIMES AND GENOCIDE

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Abstract: The article aims to show that after the collapse of the USSR, Russia has not been able to get rid of imperial complexes, revanchist thinking, and choose the path of further development as a modern, civilized state. This led to its further policy aimed at the past – the reintegration of post-Soviet states under Russian leadership, "restoration of greatness", primarily through aggressive actions against the former Soviet republics, especially Ukraine, as the most important of them. Therefore, the transformation of the nature of interstate relations during 1991-2022 concerned specific actions that the Russian Federation was ready to take to regain influence over our state. The deliberate rejection of the democratic principles of statehood with the coming to power of the KGB team led by Vladimir Putin at the turn of the 1990s and 2000s marked Russia's intensification in this direction and the transition to increasingly harsh means. On the one hand, a "strategic partnership" was proclaimed in relations with Ukraine; on the other, Russia became increasingly aggressive. Well-known examples are the active obstruction of European and Euro-Atlantic integration, attempts to destabilize the domestic political situation in our country, and the propaganda war against it, which was temporarily suspended or resumed, but conducted consistently for many years, demonstrated that to achieve its own political goals, Russia is absolutely ready for the war against the so-called "brotherly people".

Keywords: Aggression against Ukraine, Genocide of Ukrainian people, International Criminal Court, International law, Legal liability, Norms of international law, Russian aggression, Russia's full-scale invasion of Ukraine, Russia's war crimes.

1 Introduction

Russia's aggressive war against Ukraine, unleashed in Crimea in February 2014 and aimed at the occupation and annexation of the peninsula and continued in the east of our country, and from February 24, 2022 grew into a full-scale aggression throughout Ukraine, can be seen as, to some extent, the "culmination" of Russia's foreign policy. The actions of the Russian Federation against our state, of course, require proper international legal qualification, on the basis of which measures should be taken to stop the aggression and bring the violator to justice in all its aspects. However, such an analysis is impossible without a comprehensive, scientifically based study of the legal aspects of Ukraine-Russia relations on the "Crimean issue" in the post-Soviet period and now – during Russia's aggressive war against our state. Such research can, to some extent, help increase the effectiveness of public policy to respond to aggression, find new international remedies and improve the use of those currently in use.

1.1 Analysis of Recent Research and Publications, which Initiated the Solution of this Problem and on which the Author Relies

Among the domestic scientific studies devoted to the international legal analysis of Russian aggression, it is worth mentioning the thorough collective monograph "Ukrainian Revolution of Dignity, Russian aggression and international law" in 2014 and a number of articles in scientific journals 2014 - 2022. Special appreciation deserves the scientific heritage of the Ukrainian scientist Professor O. Zadorozhny. The works of Russian scholars (G. Velyaminov, O. Khlestov, V. Zorkin, V. Tomsinov, V. Tolstoy, K. Sazonova, etc.) contain arguments by which the authors try to justify the legitimacy of Russia's actions in Crimea. At the same time, it is worth noting Professor P. Kremnyov's article "The Concept of Crimean Law and the Doctrine of International Law on the Secession of Crimea from Ukraine" [33], in which the author criticizes a number of key theses of the Russian leadership and the Russian doctrine of compliance with international law.

Positions on violation of international law by the Russian Federation and preservation of the legal status of the Crimean Peninsula as part of the territory of Ukraine are held by almost all representatives of the world doctrine of international law who considered these issues (P. Ackerman, M. Barkovsky, A. Bebler, K. Borgen, M. Bote, M. Weller, J. Widmar, K. Walter, T. Grant, J. Green, R. Joritsma, J. Kranz, N. Krish, O. Luchterhandt, J.-B. Mayer, R. McCorkwooddale , L. Malxo, K. Marxen, E. Murray, M. Olson, A. Pelle, A. Peters, M. Sterio, G. Fox, H.-J. Heinze, O. Schaefer, etc.).

2 Materials and Methods

2.1 Highlighting Previously Unsolved Parts of the General Problem to which the Article is Devoted

In considering the many changes of various natures that have occurred during 2014-2022, the need for comprehensive, thorough, objective research, based on the analysis of the Russian aggression against Ukraine, remains extremely relevant, especially in the context of intensification and the need to increase the effectiveness of international legal activities to bring Russia to justice for systemic violations of international law, war crimes and acts of genocide.

Such a danger lies in the devaluation of international law, which is inevitable in conditions when its fundamental norms and principles are grossly violated, with numerous victims, and the aggressor does not bear due international legal responsibility.

Given these factors, the rude nature, systematicity, consistency, purposefulness of violations of international law in Russia's consistent strategy to transform modern international law – "international law of cooperation" to "the law of the strong", poses a direct threat to the modern world order – state cooperation as equal subjects.

The transition in international relations from the rule of law to the primacy of power based on the division of spheres of influence that the Russian Federation seeks to impose inevitably leads to the general lifting of restrictions imposed by international law to regulate the behavior of its subjects, with many negative consequences.

In addition, Russia's systematic use of the veto power during its aggression to block the work of the UN Security Council has led to a rapid reduction in the role of this crucial institution and a de facto impossibility for it to continue to perform key peacekeeping and security functions. At the same time, there is a loss of credibility of the EU, the United States, members of the UN Security Council, and other powerful countries of the world, which, because of this status, are responsible for international peace and security.

2.1 Formulation of the Goals of the Article (Task Statement)

Non-legal factors, despite the lack of potential to justify the state's actions in the international arena, are constantly used by the Russian leadership, diplomats, legal representatives to prove the legitimacy of events in Crimea in 2014, and from February 24, 2022 full-scale aggression on the whole territory of Ukraine. When it comes to legal arguments, the content of international law is deliberately distorted, misinterpreted, taken out of context. As for the factual circumstances, they are either distorted or simply fabricated.

This determines the author's attempt to conduct an objective international legal study and set a comprehensive analysis and scientific coverage of international legal aspects of Russia's full-scale military aggression against Ukraine, developing an effective mechanism for counteracting and legal responsibility for war crimes and genocide of the Ukrainian people.

3 Results and Discussion

3.1 Presentation of the Main Research Material with Full Justification of the Obtained Scientific Results

Aggression is the most serious international crime that violates the imperative norms of international law and threatens the international legal order, so Russia's international legal responsibility arises both before Ukraine as a affected state and before the international community as a whole. It is clear that since Russia's aggression is complex, international legal measures aimed at stopping the aggression, prosecuting Russia as a state and those guilty of crimes, restitution of violated rights, compensation for damage, ensuring non-repetition of these actions must be comprehensive and consistent, be systemic in nature.

These actions, as noted, are consistent with the basic international legal provisions on aggression, according to which the aggressor's responsibility includes the obligation to restore international legal order, compensate for the damage, the possibility of imposing sanctions and restrictions on the offending state, among which economic sanctions would be softer in comparison to the restriction of sovereignty, deprivation of part of the territory, the ban on certain types of armed forces.

Practical measures aimed at achieving these goals include solving the problem of the aggressor's participation in the work of the UN Security Council; recognition by Ukraine of the jurisdiction of the International Criminal Court, other international judicial bodies and bringing to justice those guilty of crimes accompanying the Russian aggression against Ukraine; initiating disputes in the UN International Court of Justice; appeal to the European Court of Human Rights; appeal of Ukrainian state and private legal entities to international arbitration mechanisms for compensation of material damages caused by the Russian Federation; application of sanctions to the Russian Federation as a mechanism of bringing responsibility for offenses recognized in international law. Each of these aspects should be carefully analyzed in view of the possibility of using appropriate mechanisms, their advantages and possible disadvantages and problems, practical prospects.

3.2 Ways to Solve the Problem of the Aggressor's Participation in the Work of the United Nations Security Council

The work of the UN Security Council has been blocked by the Russian Federation since the beginning of its aggression against Ukraine in February 2014; later on, the Russian Federation constantly and purposefully hinders the adoption of any constructive decisions. These circumstances, of course, raise the issue of Russia's participation in the work of the Security Council and the Organization as a whole.

The problems with the functioning of the UN Security Council, including in the context of the abuse of the veto right by permanent members, have been discussed for a long time [11, 18, 53]. Thus, S. Gassler notes in this regard that although the permanent members of the Security Council must use the veto in such a way as to comply with their obligations, defined in the UN Charter, this is not always the case [26]. According to Kehler, the presence of a veto in several states in the UN Security Council leads to "complete arbitrariness" in law enforcement in the field of international law, because the interests of permanent members become a criterion for applying or not applying (a) specific rules of international law and UN Charter, and (b) resolutions adopted by the Security Council in accordance with section VII of the Statute. Thus, the rule of law becomes the equivalent of the "right of the strong" [32].

Russian scientists have repeatedly pointed out the problems of the UN Security Council. Thus, T. Hoverdovska noted: “Self-removal of the UN Security Council in some cases from the resolution of international conflicts and cessation of acts of aggression, precedents of abstention or non-participation of permanent members of the UN Security Council in voting on major issues grossly violate UN Charter and contradict international law. This significantly reduces the authority of the Organization and the Security Council itself, has a negative impact on the collective security system. Due to its universality, the UN Security Council must respond more harshly, expeditiously and more clearly to obvious violations of the UN Charter and international law, regardless of which state or states are violators [25].

Back in 2004, Russians O. Zadokhin and O. Orlov claimed: “Nowadays, an extremely serious source of threat to the current world order and its “fundamental element” – the United Nations – is the “anti-systematic” actions of a number of states. That is, actions related to the violation of the adopted rules of conduct in the international arena, formed on the basis of the UN Charter, norms and principles of international law. It is obvious that the UN, for all the genius of its design, is completely helpless in cases where it is the large states that are part of the elite club of permanent members of the Security Council that tale the slippery slope of violations of international law. It is those states, creators and guarantors of the current world order, enshrined in the principle of their unanimity in the UN Security Council. However, these same states (let's say more – only they) can destroy it, because "there is no other real force capable of such an "achievement" [54]. As we can see, these words became prophetic, but the authors could not have predicted that the destroyer of the modern security system would not be the United States, usually demonized by many representatives of Russian science, including law, but the Russian Federation itself.

In the context of reforming the UN Security Council, various proposals are being made: to increase the number of permanent members (both with and without veto) [45], increase the number of non-permanent members, change the principle of forming the Security Council and impose restrictions on veto [7]. Mr. Kehler suggested a slightly different approach to membership in the UN Security Council: “Regional entities can form a new global system within the reformed Security Council. As permanent members of the old post-war system, they will represent the new UN Security Council on the basis of equitable geographical distribution and shared responsibility for global affairs. No state in any region, like any regional group, should enjoy privileges, because it can deeply destabilize the world order" [31].

Since 1994, there were 16 reports of the working group on equitable representation in the Security Council, expansion of its membership and other issues related to the UN Security Council. Unfortunately, they are all abstract, and the working group has only been able to identify ways to reform that have not been supported in the end [12].

However, the world community now needs to finally find answers to the challenges posed by the situation when *the aggressor state and at the same time a permanent member of the UN Security Council vetoes its work*, reducing the functioning of the main body of the world security system to peacekeeping. exchange of statements by representatives of the Member States.

The need to reform the UN Security Council (by increasing the number of permanent members, introducing a double veto, restricting the use of the veto, preventing the use of the veto by the aggressor state, etc.) is indeed long overdue. This is required not only by the recent events related to Russia's aggressive wars in Syria and Ukraine, but also by the radical change of circumstances, the shift of economic and political accents in the world since the adoption of the UN Charter.

In this context, the question arises as to the existence of international legal grounds for the membership of the Russian Federation in the United Nations itself. As you know, the issue of membership in the UN is regulated by Section II ("Members of the Organization") of its Charter. Based on the analysis of Articles 3 and 4 of the Charter, the following conclusions can be drawn: first, UN members are only those states that were members of this organization from the beginning (Article 3) or

later joined it on the basis of Art. 4; secondly, when it comes to admitting a state to the Organization, it must meet certain requirements (be a "peaceful state" and commit itself to the UN Charter); thirdly, the admission of a state to the membership of the Organization takes place by a resolution of the UN General Assembly on the recommendation of the Security Council (Article 4, paragraph 2). *However, Russia is not an original member of the UN (as, for example, Ukraine and Belarus), and was not accepted as a member of the Organization on the basis of a resolution of the UN General Assembly on the recommendation of the Security Council.*

The UN Charter *does not provide for the possibility of membership in this international organization on the basis of succession.* That is why all the former republics of the SFRY, together with Serbia (as part of the Federal Republic of Yugoslavia in 2000), were forced to join the UN separately after the collapse of the SFRY. This is exactly what Russia should have done after the collapse of the USSR, because only such accession to the UN complies with the Charter of this organization [38]. The decision of the CIS Council of Heads of State of December 21, 1991, in which they (except Georgia) agreed to continue Russia's membership in the UN, can not in any case be considered as compliant with the provisions of the UN Charter.

In his article on Russia's membership in the Organization, Blum said: "With the end of the Soviet Union itself, its membership in the UN should have automatically ceased, and Russia should have been admitted to membership in the same way as the newly independent republics (except Belarus and Ukraine)" [6].

The same author, analyzing the statement of the representative of Russia on Russia continuing the membership of the Soviet Union in the UN, points out: "This statement of the Russian Federation – made three days (and possibly sixteen days) after the collapse of the Soviet Union – that it "continues" its legal existence, as well as its membership in the UN, must be considered, regardless of the obvious political advantages, seriously erroneous in law" [6]. Indeed, since the collapse of the USSR (the preamble to the CIS Treaty of December 8, 1991, concluded by the founders of the Union, Russia, Ukraine and Belarus, states: "The USSR as a subject of international law and geopolitical reality ceases to exist"), [2] and the parties to the Agreement did not want to preserve it in any form, the Russian Federation could not become a successor state of the USSR, in particular, in terms of membership in the UN.

A successor state, according to international law, is possible if the previous state is preserved and a certain part (parts) [17] withdraw from its composition. As M. Buromensky rightly points out in this regard [8], in this case, the provisions of Part 1 of Art. 34 "Succession of States in the Case of Separation of Parts of the State" of the Vienna Convention on the Succession of States to Treaties of 1978: "When part or parts of the territory of a state are separated and form one or more states, regardless of whether: (a) any treaty in force at the time of the succession of States in respect of the entire territory of the predecessor State shall remain in force in respect of each successor State thus formed" [52]. However, with the Agreement on the Establishment of the CIS, the parties unequivocally stated that it was not the withdrawal of its parts from the state, but the cessation of the existence of the USSR. Thus, under international law, all former Soviet republics became equally successors to the Soviet Union, *and none of them, including Russia, could become the successor state of the USSR.*

The post-Soviet states were not only aware of this, but also clearly enshrined in key international legal acts, such as the Agreement on the Establishment of the Commonwealth of Independent States of December 8, 1991, [3] the Treaty on Succession on External Public Debt and USSR Assets of December 4, 1991 [21], Decisions of the Council of CIS Heads of State on Succession on Agreements of Mutual Interest, State Property, State Archives, Debts and Assets of the Former USSR of March 20, 1992 [19], Memorandum of Understanding on Succession on Treaties of the Former USSR, are of mutual interest from July 6, 1992 [37] and in other acts on succession. Ukraine clearly stated its position, among others, in the statement of the Ministry of Foreign Affairs of February 10, 1992, in which it pointed out the inadmissibility of unilateral decisions on the successor state of the USSR. It is clear that the Russian Federation could not simultaneously have (and could not be recognized by other CIS states) both the status of one of the successors of the Soviet Union, and the successor state of the Soviet Union.

Lack of grounds, from the international legal point of view, of the concept of "Russia – the successor state of the USSR" was well understood by legal scholars. For example, I. Lukashuk noted in this regard: "The Alma-Ata Declaration of the CIS countries in 1991 stated that "with the formation of the Commonwealth of Independent States, the Union of Soviet Socialist Republics ceases to exist." The Declaration itself had a clear answer to the question of succession to treaties: the CIS members guarantee "the fulfillment of international obligations arising from the treaties and agreements of the former USSR." This shows that all members of the Commonwealth were equally considered successors to the USSR. However, the implementation of this decision was virtually impossible. The Soviet Union was one of the pillars of the current international political and legal system. Its role was especially great in the military-political structure, as well as in the UN system. The liquidation of the USSR threatened all this. None of the successors could apply for UN membership by succession, let alone a permanent member of the Security Council. Russia faced serious difficulties in securing its rights. The way out of this situation was artificially found in the concept of "Russia – a successor state of the USSR." It means that USSR's place in world politics is occupied by Russia. It is the Union's principal successor and has the primary responsibility for fulfilling its obligations" [35]. So, as we can see, it is not just the political reasons for Russia's membership in the United Nations that are being emphasized, but the illegal nature of the relevant decisions.

Not surprisingly, very little is known about the process of legalizing Russia's membership in the UN as an event of global importance: in particular, on December 21, 1991, the CIS Heads of State Of the Union to the UN, including permanent membership in the Security Council and other international organizations") [20], December 24, 1991, Russian President Boris Yeltsin sent a message to the UN Secretary General, in which he simply announced the continuation of Soviet membership in the UN by the Russian Federation and maintaining its responsibility for all rights and obligations of the USSR in accordance with the UN Charter [30]. Later, according to the Russian Foreign Ministry, "the Secretary General sent this letter (message from the President of the Russian Federation) to all members of the Organization. Based on the opinion of the Legal Department of the UN Secretariat, he believed that this appeal was in the nature of a message, states the reality and does not require formal approval by the UN. All permanent members of the Security Council and other leading countries have agreed to this approach, and since December 24, 1991, the Russian Federation has extended its membership in the United Nations [22], including membership in the Security Council. In the note of the Ministry of Foreign Affairs of January 13, 1992 on "the continuation of the exercise of rights and obligations arising from international treaties concluded by the USSR."

However, Russia's interpretation of the legal basis for its membership in the Security Council as the successor to the USSR in the international arena after allegedly "passing the necessary procedures established by the UN Charter" [27] is grossly contrary to both facts and norms of international law. This is explained by the fact that the *"procedure" applied to Russia does not coincide with the one provided for in the UN Charter for the acquisition of membership by new states,* namely specified in Art. 3: "The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San

Francisco, or having previously signed the Declaration by United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110" (these include the USSR, Ukraine and Belarus, but not Russia) and Art. 4 "Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council" [10].

This is exactly the procedure followed by the Federal Republic of Yugoslavia (FRY), which both the UN General Assembly and the UN Security Council in their 1992 resolutions [49, 50], in strict accordance with the Charter, refused to automatically renew the membership of the Federal Republic of Yugoslavia. At the same time, it was clearly stated that the FRY must apply for membership in the UN, and cannot take part in the work of the General Assembly until a decision is made [49].

On the other hand, as we can see, in the case of Russia, no approval procedure was carried out, there was no decision of the UN General Assembly, the Security Council, which was only informed about this transformation, or even any official statements. Therefore, there is no doubt that the admission of the Russian Federation's membership in the United Nations is a gross violation of the norms of the UN Charter. It is important to add that the Decision of the CIS Heads of State of 21.12.1991 was not registered with the UN Secretariat in accordance with Art. 102 of the Statute, therefore, in accordance with Part 2 of Art. 102 it cannot be referred to in any UN body [9].

All this is confirmed even in the analysis of the works of those scientists who claimed the legitimacy of Russia's membership in the Organization. Thus, R. Muellerson did not refer to legal arguments: "First, after the collapse of the Soviet Union, Russia remains one of the largest states in the world geographically and demographically. Second, Soviet Russia after 1917, and especially the Soviet Union after 1922, was seen as a continuation of the same state that existed during the Russian Empire. These are objective factors that demonstrate that Russia is a continuation of the Soviet Union. The third reason (subjective factor) is the behavior of the state and the recognition of continuity by third states" [39]. Note that the researcher does not refer to any norm of international law, according to which Russia could be considered a successor state of the Soviet Union.

It is noteworthy that according to the UN Charter, *Russia is still not a member of the Security Council.* According to Art. 23 of the Charter, one of the permanent members of the UN Security Council is the Union of Soviet Socialist Republics, not Russia [9]. This situation has not changed so far, which in itself makes Russia's stay in the Security Council illegal and, we add, does not seem accidental: UN member states, having all the opportunities to do so, have not yet changed the Charter, have not made a decision that could still legally secure Russia's acquisition of membership and thus failed to demonstrate a corresponding position.

As already mentioned, the Russian Federation could "take the place" of the USSR in the UN Security Council only if all the republics left the Soviet Union, except Russia itself – then it could be considered as Russia's "continuity" in relation to the USSR. But this did not happen, the USSR ceased to exist as a state and a subject of international law.

Significantly, the authors of the United Nations Charter acknowledged that five countries – China, France, the Union of Soviet Socialist Republics, the United Kingdom and the United States – because of their key role in the creation of the UN, will continue to play an important part in maintaining international peace and security. They were given the special status of permanent members of the Security Council, as well as a special voting right known as the "right of veto". It is obvious that the Russian Federation (which in fact occupies the Soviet Union in this body) not only does not continue to play an important role in maintaining international peace and security, but is an aggressor state, a threat to peace and stability.

Moreover, Russia is trying to use the UN Security Council as a tool to disseminate false information and distorted facts, questioning existing international law, thus undermining the very essence of the UN Security Council. Such actions by the Russian Federation are blurring the foundations of a world order based on the UN Charter and the special responsibility of the Security Council and its permanent members to maintain international peace and security. Russia is deliberately abusing its status as a permanent member of the UN Security Council and does not justify the trust that the international community expresses to the permanent members of the UN Security Council. It is difficult to find a state in the modern world whose actions would contradict the requirements for membership in the Security Council more than the actions of the Russian Federation. Not to mention countries such as Germany, Japan, India, i.e. large countries with much greater political and economic potential than Russia, which really meet these criteria and can contribute to maintaining international peace and security.

It should be emphasized that the repeated reference by Russian officials to Russia's veto of "the blood of the Russian people shed during World War II" neglects the enormous contribution of the Ukrainian and other peoples of the USSR to the victory over fascism and is offensive and unacceptable for Ukraine [55]. The legal basis for the Russian Federation's membership in the UN Security Council is usually said to be the Decision of the CIS Council of Heads of State adopted on November 21, 1991, which states that "the Commonwealth supports Russia's continued membership in the UN, including permanent membership in the Security Council, and other international organizations". The decisions were signed by 11 CIS states, except Georgia. At the same time, the possibility of ignoring the opinion of even one state that was a member of the USSR is doubtful.

The intentions of the parties are clearly traced on the example of the provisions of the preamble and Art. 5 of the Agreement on the Establishment of the CIS [4], the Alma-Ata Declaration [5], adopted, as well as the Decision of the CIS Heads of State, December 21, 1991. The Decision itself states (preamble) that in adopting it, the parties proceed from the intention of each state to fulfill its obligations under the UN Charter [21].

It is obvious that since the decision of 21.12.1991 there has been a radical change of circumstances, and Ukraine's consent to membership in the Security Council of a state that is continuing aggression against it, violating, of course, the fundamental provisions of the UN Charter, the Declaration of Principles of International Law 1970, The Helsinki Final Act of 1975, the Agreement on the Establishment of the CIS and many other international treaties (and at the same time in some incomprehensible way should contribute to the maintenance of international peace and security), today is completely unfounded.

However, there are also purely procedural factors: the decision of the CIS heads of state of 21.12.1991 adopted at a time when only 4 of the 11 signatories ratified the CIS Agreement and thus became its members, is not an international treaty because it does not comply with the criteria set by the Vienna Convention on the Law of Treaties of 1969, not registered with the UN Secretariat in accordance with Art. 102 of the Charter of the Organization, which, as noted, excludes the legitimacy of the reference to it in the UN bodies. It is not a notification of the succession of the Russian Federation to membership in the UN Security Council or the refusal of other CIS states to succeed, because in Art. 12 of the CIS Agreement the opposite is stipulated.

Given all the available legal preconditions, systematic violations of Russia's principles and norms of international law, Russia's aggressive full-scale war against Ukraine, accompanied by mass

war crimes against civilians and genocide of the Ukrainian people, it becomes clear that Russia's membership in the UN has no international legal basis.

The international community is faced with the urgent question of immediately amending the UN Charter and removing the Russian Federation from the Security Council or the United Nations or terminating its membership in the United Nations by making an appropriate decision within the Organization. After all, according to Art. 6 of the current UN Charter, a member of the Organization who systematically violates the principles contained in this Charter may be removed from the Organization by the General Assembly (under Article 18 – by the two-thirds vote) on the recommendation of the Security Council [9]. As noted, the Russian Federation, since 2014, has systematically violated all the principles enshrined in the Charter. Based on this, it is safe to say that there are legal grounds for removing Russia from the UN, however, again, the aggressor has the right to veto the decision of the Security Council, including recommendations, and during 2014-2022 other members of the UN Security Council did not raise the question of the impossibility of voting by the state whose actions it directly affects.

3.3 Recognition of the Jurisdiction of the International Criminal Court and Other International Judicial Bodies to Bring to Justice Those Guilty of Crimes Accompanying the Russian Aggression against Ukraine

In international law, the crime of aggression is defined, on the one hand, as an act for which the state is responsible, on the other – as a crime of individuals, which provides for individual responsibility under international criminal law.

It is obvious that in the conditions of Russian aggression, Ukrainian national legal mechanisms, for objective reasons, in most cases *are unable to prevent these crimes, ensure adequate protection of the civilian population, or detain criminals and bring them to justice.* Therefore, it seems quite natural to ensure the possibility of using procedures and mechanisms established at the regional and universal levels.

In this context, we consider it appropriate to support Ukraine's accession to the Rome Statute of the International Criminal Court (ICC) as soon as possible, as well as to intensify the work of the competent bodies of our state to investigate all events of 2014-2022 and bring to justice all perpetrators of war crimes and crimes against humanity committed on the territory of Ukraine. Such actions, carried out in full compliance with the doctrine of "positive complementarity", will ensure the implementation of Ukraine's international obligations aimed at combating the most serious crimes against international law. At the same time, in cases where Ukraine for objective reasons will not be able to prosecute perpetrators of international crimes on its territory (for example, because of their hiding in other countries), our state will be able to count on the assistance of the International Criminal Court that will have jurisdiction over all events in Ukraine [24].

The International Criminal Court is currently the only permanent body of international criminal justice. In 1998, 120 UN member states adopted the Rome Statute, which became the basis for the ICC [41]. The Charter entered into force on July 1, 2002, when it was ratified by 60 states. Among more than 120 states that have now ratified the Statute are all members of the European Union. The court became the first permanent criminal court. It is not a member of the United Nations, but may initiate proceedings at the request of the UN Security Council [48].

By becoming a party to the ICC Statute, Ukraine would extend the Court's jurisdiction to its entire territory, including the Crimean Peninsula and other territories currently occupied by Russian invaders. This would allow us to prosecute for crimes that fall under the jurisdiction of the ICC and committed in our country *by citizens of foreign countries, including the Russian Federation, despite the fact that Russia itself has not acceded to the Rome Statute of the ICC.* The fact is that in accordance with paragraph 2 of Art. 12 of the Statute, the Court may exercise its jurisdiction if a State is a party to the Statute or recognizes the jurisdiction of the International Criminal Court and has committed offenses within its jurisdiction.

The crimes covered by the ICC jurisdiction are defined in Art. 5 of the 1998 Statute. It deals with limitation to the most serious crimes of concern to the entire international community: a) the crime of genocide; b) crimes against humanity; c) war crimes; d) the crime of aggression. With regard to the latter, the ICC is determined to have jurisdiction over it, in accordance with Articles 121 and 123, as soon as the provision defining the crime of aggression and determining the conditions under which the Court has jurisdiction over that crime is adopted. This provision is consistent with the relevant provisions of the UN Charter.

In this aspect it is essential to note the importance of the decisions taken in 2010 at the Kampala Conference: the ICC Statute has been amended to contain provisions on the characteristics of *the crime of aggression*. According to the approved at that time Article 8-bis of the Statute, "crime of aggression" means the planning, preparation, initiation or commission by a person capable of effectively directing or controlling political or military action of a State, an act of aggression which by its nature, seriousness and scale is a gross violation of the UN Charter. It is defined that an act of aggression is the use of force by a state against the sovereignty, territorial integrity or political independence of another state or in any other way incompatible with the UN Charter. Specific actions that constitute an act of aggression are determined by the provisions of Art. 3 of the UN General Assembly Resolution on Aggression in 1974 [46]. However, according to Art. 15-bis of the ICC Statute, it exercises jurisdiction over this crime in accordance with a decision taken after 1 January 2017 by the same majority of States Parties required to adopt amendments to the Statute, i.e. by thirty States.

As for the ICC's jurisdiction over individuals, it applies to individuals who have been charged with international crimes and who are subject to individual criminal prosecution [43]. Fundamentally important was the enshrinement in the Rome Statute that the I*nternational Criminal Court does not recognize the immunities of heads of state and senior officials.* Article 27 provides for the inadmissibility of references to official position, stipulating that the Statute applies to all persons equally without any discrimination on the basis of official position. In particular, the position of head of state or government, member of government or parliament, elected representative or government official does not in any way absolve a person from criminal liability and is not in itself a ground for mitigating a sentence. Article 28 of the Statute deals with the responsibility of the commander [43].

Extremely important in the context of war crimes and crimes against humanity committed during the Russian aggression against Ukraine in 2014-2022, are the rules of Part 3 of Art. 25, according to which a person is subject to criminal liability and punishment for a crime falling within the jurisdiction of the Court, among other grounds, if that person:

a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either: (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the

commission of a crime within the jurisdiction of the Court; or (ii) Be made in the knowledge of the intention of the group to commit the crime;

Therefore, the leadership of the Russian Federation may well be held accountable for crimes committed in Ukraine. In the case of war crimes and crimes against humanity, the leaders of the Russian Federation will be responsible, in particular, for inciting or facilitating the commission of these crimes by personnel of the armed forces subordinate to them, so a wide range of factual grounds is in place. The circumstances of the aggression mentioned in this study leave little doubt as to the existence of relevant factual grounds.

Therefore, "guided by the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide, customary international law and the provisions of the Rome Statute of the International Criminal Court, emphasizing the international legal obligation of all states to cooperate in which prohibits genocide, as well as crimes against humanity and war crimes", the Verkhovna Rada of Ukraine on April 14, 2022 adopted a decision, that "actions committed by the Armed Forces of the Russian Federation and its political and military leadership during the last phase of the armed aggression of the Russian Federation against Ukraine, which began on February 24, 2022, constitute a genocide of the Ukrainian people" [40].

On April 27, 2022, the Canadian Parliament unanimously passed a resolution recognizing Russia's actions in Ukraine as genocide. Canadian lawmakers stressed that there is sufficient evidence of systemic and massive war crimes and crimes against humanity committed against Ukrainians by the Russian military on the instructions of dictator Vladimir Putin and members of the Russian parliament. According to the petition of the House of Commons of Canada, Russia's war crimes include: mass atrocities, systematic cases of deliberate killings of Ukrainian civilians, desecration of corpses, forcible transfer of Ukrainian children, torture, physical harm, mental harm, rape [23]. Earlier, Canadian Prime Minister Justin Trudeau described the actions of Russia during the invasion of Ukraine and its methods of warfare as "genocide". Estonia was the first EU country to declare Russia's war against Ukraine a genocide of the Ukrainian people.

However, the possibility of prosecution will depend primarily on whether our country becomes a member of the ICC. Ukraine took an active part in the preparation of the Rome Statute, signed it and acceded to the Agreement on the Privileges and Immunities of the International Criminal Court [34]. However, the Statute has not yet been ratified by the Verkhovna Rada. On July 11, 2001, the Constitutional Court of Ukraine issued a conclusion according to which the Statute does not comply with the Constitution of Ukraine "in the part relating to the provisions of para. 10 preambles and Art. 1 of the Statute, according to which "The International Criminal Court ...complements the national bodies of criminal justice" [16]. The court found that the provisions of the Rome Statute did not comply with the provisions of Part 1, Part 3 of Art. 124, part 5 of Art. 125 of the Constitution of Ukraine, according to which the delegation of functions of courts of Ukraine to other bodies and creation of courts not provided by the Fundamental Law is not allowed [15].

The content of the relevant provisions (preamble and Article 1 of the Rome Statute) is fully disclosed in Article 17, which provides that the International Criminal Court shall act only when the State itself is unable or unwilling to prosecute the perpetrators [28]. "Reluctance" occurs in three cases:

a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;
b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice [42].

Thus, the Charter enshrined the well-known principle of complementarity. Its aim is to address the relationship between international and national criminal jurisdiction over the most serious crimes against international law: crimes of genocide, crimes against humanity, war crimes and crimes of aggression. The nature of these crimes, which encroach on the most important values of the international community as a whole, presupposes the obligation of all states to ensure their prosecution at the national level, to cooperate with each other and with specialized international judicial institutions.

These obligations are also provided by international law of treaties, in particular the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, the four Geneva Conventions on the Protection of Victims of War of 1949 and their Additional Protocols of 1977, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, etc., and general customary international law, which applies to all countries of the world without exception, regardless of their participation in a particular international treaty. The relevant rules belong to the *jus cogens* (mandatory rules of general international law), and the obligations arising from them are *erga omnes*, ie not to certain states, but to the international community as a whole.

M. Hnatovsky quite correctly, in our opinion, notes the conclusion in the case of the Rome Statute provided by the Constitutional Court of Ukraine at a time when there was no practice of applying the principle of complementarity of the ICC (which began operating in 2003) and its interpretation by the Assembly of States-participants. The latter must be taken into account when interpreting the provisions of the Rome Statute (in particular on the principle of complementarity) in accordance with paragraph 2 and paragraph 3 of Art. 31 of the Vienna Convention on the Law of Treaties of 1969 (which is part of the national legislation of Ukraine) as a subsequent practice of application of the treaty and the agreement reached on the treaty by the participating states.

According to the Rome Statute and the subsequent practice of its interpretation and application, *the principle of complementarity is not a problem but a guarantee of preventing unlawful interference of the International Criminal Court in the jurisdiction of national courts, and is designed not to limit the scope of state sovereignty, but, conversely, to protect it.* The cases in which the International Criminal Court may declare a case admissible contrary to the position of a State having jurisdiction over the offenses concerned shall be limited to situations of non-compliance by that State (for objective or subjective reasons) with its international obligations under imperative norms of international law and international treaties concluded by it.

The prospects of appealing to the Constitutional Court of Ukraine in connection with the changes that have taken place since the adoption of the decision in 2001 and may provide for a different interpretation of the content of the ICC Statute are currently unclear. One way that could be considered is to amend the Constitution of Ukraine, which would provide that *Ukraine may recognize the jurisdiction of the International Criminal Court under the terms of the Rome Statute of the ICC.*

Similar norms have been included in the Fundamental Laws of a number of states. Thus, Article 53-2 is added to the Constitution of France, according to which the Republic may recognize the jurisdiction of the International Criminal Court, as provided by the treaty signed on July 18, 1998 [13]. The Luxembourg Constitution was supplemented by the following provision (Article 118): approval of the Rome Statute of the International Criminal Court, adopted in Rome on July 17, 1998, and fulfillment of the obligations arising from the Statute, in accordance with the conditions specified therein" [36].

Article 7 of the Portuguese Constitution states that, in order to achieve international justice that promotes the rights of individuals and peoples and in accordance with the Complementarity and Other Conditions set out in the Rome Statute, Portugal may accept the jurisdiction of the International Criminal Court [14].

It is also possible to consider proposals for a broader approach, according to which the Constitution of Ukraine may include a provision *recognizing the jurisdiction of international courts on the basis of existing international treaties approved by the Verkhovna Rada of Ukraine* [44] or, taking into account the activities of ad hoc international tribunals which are created for the administration of justice to individuals on charges of international crimes, – *on the recognition and jurisdiction of international courts acting on the basis of statutes adopted by the UN Security Council* [56].

The inclusion of relevant provisions in the Constitution of Ukraine will result in the extension of the jurisdiction of the International Criminal Court to the entire territory of Ukraine, ie to the Autonomous Republic of Crimea and parts of Donetsk and Luhansk regions – in areas where Ukraine, for objective reasons, is unable to prosecute those guilty of crimes against humanity or war crimes, in particular, senior officials of the Russian Federation as organizers of these crimes.

It is important to note that according to Art. 11 of the Rome Statute, the ICC's jurisdiction extends only to crimes committed after its entry into force. Thus, if a State accedes to the Statute, the Court extends its jurisdiction to the offenses committed after accession. However, there is an exception from these provisions provided by paragraph 3 of Art. 12 of the ICC Statute: The Court may investigate certain crimes transferred to it by a State that is not a party to the Statute. To this end, the State concerned must decide to recognize the jurisdiction of the International Criminal Court in respect of specific crimes by submitting an application to the ICC Registrar.

Ukraine is known to have already used this mechanism in relation to the crimes of the previous government against Euromaidan. The relevant decision was adopted by the Verkhovna Rada of Ukraine on February 25, 2014. This is the Statement of the Verkhovna Rada to the International Criminal Court on recognizing Ukraine's jurisdiction over crimes against humanity by senior government officials, which led to particularly severe consequences and mass murder of Ukrainian citizens during peaceful protests in the period from 21.11.2013 to 22.02.2014 [51]. The statement was made by the Verkhovna Rada "as the only body of legislative power of Ukraine, on behalf of the Ukrainian people." The ICC Secretary received it on April 17, 2014 [29].

Thus, to ensure the extension of the ICC's jurisdiction to crimes committed in the Crimea, parts of Donetsk and Luhansk regions, and since the beginning of Russia's full-scale war against Ukraine – throughout Ukraine, during the aggression of 2014-2022 by Russian officials, military, intelligence officials, when Ukraine ratifies the Rome Statute, it is necessary to turn again to the mechanism of paragraph 3 of Art. 12 of the Statute, and t*o declare the recognition of the jurisdiction of the ICC for crimes under the Rome Statute, committed on the territory of Ukraine from 22.02.2014.*

It is important to realize that this is not about our state transferring the investigation and responsibility for its course to the ICC.

In general, it is obvious that the rationality of ratification of the Statute of the International Criminal Court and its compliance with the provisions of the Constitution of Ukraine, with proper legal analysis, do not and cannot raise any doubts.

However, in parallel with the ICC investigation, a process was launched to establish a Special Ad-hoc Tribunal to investigate the crime of aggression (as this crime cannot be investigated under the ICC due to existing restrictions). On March 5, 2022, experts in the field of international law proclaimed the Declaration on the Establishment of such a Tribunal on the Principles of the Nuremberg Tribunal after the Second World War. The establishment of such a Tribunal has received many different positions (both positive and those with some reservations) from the international scientific community.

Shortly afterwards, the Parliamentary Assembly of the Council of Europe adopted a resolution on 28 April proposing the urgent establishment of a special international tribunal to investigate war crimes during Russia's aggression against Ukraine. The PACE resolution emphasizes that both the Russian military and political leadership and those who committed the crimes must appear before the tribunal.

According to the resolution, the proposed tribunal should be mandated to investigate and prosecute the crime of aggression committed by the political and military leadership of the Russian Federation. The tribunal should also have the right to issue international arrest warrants not being limited by the immunity of the state or heads of state, government and other public officials. The tribunal should be set up by a group of like-minded states in the form of a multilateral treaty approved by the UN General Assembly, with the support of the Council of Europe, the EU and other international organizations [47].

4 Conclusion

The defining feature of Russia's aggressive war against Ukraine is the severe negative consequences for international law, the system of international relations and the modern world order in general. This is primarily about the danger of establishing the "law of the strong" as the basis of international relations instead of "international law of cooperation"; obvious threats to the nuclear disarmament process; the potential of Russian aggression against neighbors and other states, as well as the corresponding actions of other authoritarian regimes; the loss of both the authority and the practical capacity of the UN Security Council to carry out its functions, key to peace and security in the world at large; possible centrifugal tendencies in the Russian Federation itself and the associated negative consequences for the entire world community, etc.

These circumstances require a proper response, decisive action by Ukraine and the world community, aimed primarily at stopping criminal behavior. In general, it is necessary to develop and implement a comprehensive, consistent, systematic strategy of international legal measures aimed at stopping aggression, prosecuting Russia as a state and persons guilty of crimes, restitution of violated rights, compensation for damage, ensuring non-repetition.

Efforts are currently being made to address the aggressor's involvement in the work of the UN Security Council; recognition by Ukraine of the jurisdiction of the International Criminal Court, other international judicial bodies and bringing to justice those guilty of crimes accompanying the Russian aggression against our state; steps to initiate consideration of Ukrainian-Russian interstate disputes in the UN International Court of Justice; appeal to the European Court of Human Rights; appeal of Ukrainian state and private legal entities to international arbitration mechanisms for compensation of material damages caused by Russia; application of sanctions to the Russian Federation as a mechanism recognized in international law to bring the violator to justice.

In addition to the use of international institutions to prosecute international crimes, the national justice system and foreign systems based on the principles of universal jurisdiction must also be involved. Thus, Ukraine and the entire international community now face the important and complex task of developing and engaging international judicial mechanisms, investigative bodies, international experts and experts to punish all perpetrators of serious crimes against the Ukrainian people in order to achieve justice, compensation for victims and avoiding

atrocities in our history. International crimes have no statute of limitations for prosecution. History has shown that sooner or later, even high-ranking officials face justice and are held accountable for their actions.

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