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SPECIAL TRIBUNAL FOR UKRAINE – A NEW CHALLENGE FOR INTERNATIONAL CRIMINAL JUSTICE

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SUMMARY

The outbreak of Russia's war of aggression in Ukraine made it necessary to hold the Russian aggressors accountable for the atrocities committed by the Russian army. A number of impediments have put the brakes on this. Initially, neither Russia nor Ukraine were signatories to the International Criminal Court Treaty.

Afterwards, Ukraine signed and ratified the treaty, but the Criminal Court could not refer the crime of aggression to the Court.

Talks have begun to find a solution to this problem as well, bypassing the UN Security Council where Russia is a veto-wielding member and can block any attempt to hold it accountable.

The solution has been found for the Council of Europe and other states to support the setting up of a special tribunal for Ukraine to try the crime of aggression. The treaty has been signed, but here too we have a problem. Those accused of this crime cannot be tried if they are in office (head of state, prime minister, ministers, generals, etc.) until they are out of immunity, i.e., they leave the positions they held when they started the conflict. Let's be optimistic that they will eventually end up in front of a judge.

It is this issue that we are discussing in this article.

Key-words: *war, aggression, crimes, international criminal justice, immunity.*

TRIBUNAL SPECIAL PENTRU UCRAINA – O NOUĂ PROVOCARE PENTRU JUSTIȚIA PENALĂ INTERNAȚIONALĂ

SUMAR

Izbucnirea războiului de agresiune al Rusiei în Ucraina a făcut necesară tragerea la răspundere a agresorilor ruși pentru atrocitățile comise de armata rusă.

O serie de impedimente au pus frână în această situaţie. La început, nici Rusia, nici Ucraina nu au fost semnatare ale Tratatului Curţii Penale Internaţionale. Ulterior, Ucraina a semnat și ratificat tratatul, dar Curtea Penală nu a putut examina crima de agresiune.

Au început discuţiile pentru a găsi o soluţie și la această problemă, ocolind Consiliul de Securitate al ONU, unde Rusia este membru cu drept de veto și poate bloca orice încercare de a o trage la răspundere.

S-a găsit soluţia ca Consiliul Europei și alte state să sprijine înființarea unui tribunal special pentru Ucraina, care să judece crima de agresiune. Tratatul a fost semnat, dar și aici avem o problemă: cei acuzați de această crimă nu pot fi judecați, dacă sunt în funcție (șef de stat, prim-ministru, miniștri, generali etc.), până când nu își pierd imunitatea, adică până nu-și părăsesc funcţiile pe care le deţineau la începutul conflictului. Dar, să fim optimiști că, în cele din urmă, vor ajunge în faţa unui judecător.

Anume această problemă o dezbatem în acest articol.

Cuvinte-cheie: *război, agresiune, crime, justiţie penală internaţională, imunitate.*

I. General aspects

International criminal justice has come a long and difficult way since the end of World War II.

The interests of the great powers did not allow for any barriers to their policies, finding in the argument of „sovereignty" a way to delay things, even though the great voices of lucid lawyers and politicians argued for the need for international agreements in this area.

The merciless axe of war had to pass over Europe and other continents, with unimaginable atrocities committed against peoples on ethnic, racial, and religious grounds.

The voices of millions of dead demanded justice and punishment for the guilty, regardless of their position in the state, and for a tribunal to judge them.

This is how the Special Tribunals for Nüremberg and Tokyo [3, p. 31-45, 85-90] came into being.

The principles established [11] by those tribunals were then confirmed by the UN General As-

sembly, but international law did not have the necessary leverage to act.

One of the most significant achievements was the 1948 drafting of the Convention on the Prevention and Punishment of the Crime of Genocide [9]. The debate over the statute of limitations for these crimes re-emerged in the 1960s, culminating in the UN adoption of the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity [8].

We should not overlook the UN resolution on the definition of acts of aggression, adopted in 1974 [10]. It should be remembered that this resolution, adopted during the March 11-April 12, 1974 session of the UN General Assembly, was preceded seven years earlier by the creation of the UN Special Committee on the Definition of Aggression, which proposed a draft definition of aggression [7]. During this session, Resolution 3314/1974 was adopted, which brought new elements to the previous regulations by detailing the content of the act. However, it should be noted that this resolution is not legally binding under the Charter, which contains the definition of aggression [12].

Despite all these important advances, we have only mentioned a few of the many documents that have been drafted. It was not until July 17, 1998, that the Statute of the International Criminal Court was signed in Rome. The treaty entered into force on July 1, 2002, and the Court was officially opened on March 11, 2003, in The Hague, establishing the first permanent criminal court.

The world's major powers – the US, Russia, China, and others such as Lebanon, Iran, Israel, Qatar, and Yemen – have not ratified the treaty.

The International Criminal Court is an independent judicial body, created on the initiative of the UN, and is not subordinated to any international institution (including the UN). However, it cooperates with the World Forum through the Security Council. It should be noted that the ICC was created by an international treaty and not by the UN Charter. In its cooperative relationship with the UN, the Court submits an annual report to the General Assembly. The Court is accountable only to the Assembly of States Parties, which currently has 125 members, with Armenia (February 1, 2024) and Ukraine (2024) having most recently joining.

The Court has jurisdiction over four major crimes: genocide, war crimes, crimes against humanity, and crimes of aggression.

Although aggression was listed as an international crime in Article 5(d) of the Statute, it could not be investigated because there was no definition of this act and no conditions for the exercise of the ICC's jurisdiction. These aspects are found in Articles 121 and 123 of the Statute.

At the Kampala Conference in Uganda on June 10, 2010, Article 8 bis was introduced into the Statute, providing a definition of the crime of aggression.

In this paper, we will clarify the situation regarding the jurisdiction to investigate this crime, with reference to Ukraine and Russia.

II. Ad hoc special tribunals, a way of resolving international crimes under the aegis of the un Security Council

Prior to the establishment of the ICC, the wars in the Balkans and Africa in the 1990s brought back into discussion the need for international criminal jurisdiction.

This led to the creation of ad hoc international criminal tribunals:

- in the former Yugoslavia – based on UN Security Council Resolutions No. 808/22.02.1993 and 827/25.05.1993, with the sole purpose of punishing persons guilty of serious violations of humanitarian law committed in the territory of the former Yugoslavia from 1January 1991 until a date to be determined by the Security Council upon the restoration of peace. The statute of this judicial structure was also adopted by the Security Council as an annex to the founding Resolution [3, p.158-175], and
- in Rwanda – on the basis of Security Council Resolution No. 935/01.07.1994, a commission of experts was set up to analyze the situation in that country, and as a result of the drawn up report, which stated that the acts could be classified as genocide, the Security Council adopted Resolution No. 955/08.11.1994 in accordance with Chapter VII of the UN Charter for the establishment of an international tribunal exclusively for the purpose of prosecuting persons responsible for genocide and other violations of international humanitarian law committed between 1 January and 31 December 1994 [3, p.176-196].

As a preliminary conclusion, these two tribunals:

- were created by resolutions of the UN Security Council;
- had jurisdiction to judge serious violations of international humanitarian law;
- were established as temporary courts;
- were composed of judges appointed for a limited term by the UN General Assembly;
- exercised jurisdiction only over natural persons, who were required to be physically present during trial (no trial *in absentia*);
- were founded from the UN budget, but also from optional donations in cash, equipment, etc.;
- did not have jurisdiction over the crime of aggression, as their statutes made no provision for it.

III. Mixed and Hybrid International Criminal Tribunals

The experience gained from organizing these tribunals formed the basis for the establishment of other courts, this time of a mixed or hybrid nature.

1. Their establishment was based on agreements with the UN and [3, p. 203-231, p. 233-257, p. 274-298]:
   - they are not included in the judicial system of the respective states;
   - they possess both international and domestic legal capacity;
   - their territorial jurisdiction is limited to the borders of the respective states;
   - their personal jurisdiction covers a limited number of persons.

   This category includes the tribunals in Cambodia, Sierra Leone, and Lebanon (the latter only for the crime of terrorism).
2. These tribunals were Established where the UN has exercised provisional administration and [3, p. 299-307, p. 308-315, p. 320-339]:
   - they are included in the domestic judicial system;
   - they have domestic legal capacity, with international legal capacity exercised by the UN mission administering the territory.

   This category includes the tribunals in East Timor, Bosnia, and Kosovo.
3. They were established in Africa to judge on behalf of Africa and with African judges, and were called Extraordinary African Chambers. They [3, p. 375-394, p. 397-417]:
   - are part of the internal judicial structure;
   - have jurisdiction over magistrates from Africa, but also from the country where they operate.

   These courts have been created in Senegal and the Central African Republic.
4. Another situation can be found in Iraq, where the tribunal was established by a coalition of states that occupied Iraq without a UN mandate [3, p. 344-375].
5. The fifth category can be found in Uganda as an integrated legal structure – the division against international crimes [3, p. 419-426].

It judges crimes mentioned here for which the ICC has not been notified.

The mixed tribunals have the following general features:

- These tribunals, through their founding documents, have provided for participation of both national and international judges in their structures.
- They have exclusive jurisdiction over cases falling within their competence and apply general principles of international criminal law, developed by previous international tribunals.

IV. The Special Criminal Court in Kosovo

This legal structure has a more distinctive history. As previously noted, it belongs to the category of hybrid international criminal courts, with the characteristics outlined above.

Attempts have been made to resolve the political problems in the independent state of Kosovo through the UN, but Russia exercised its veto in the Security Council to block any action.

Tensions between Kosovo and Serbia, both political and military, persisted. The Serbian state requested the approval of the UN General Assembly to refer the matter to the International Court of Justice in order to clarify the issue of its declaration of independence.

The response was limited, which, according to our Ministry of Foreign Affairs, did not resolve the issue, since the question, as formulated, did not resolve the underlying problem. Only the legality was analyzed, not the legal consequences.

This ongoing controversy has only delayed the resolution of serious crimes committed during the war. The conclusion was that a special criminal court should be created to investigate and refer these cases to a tribunal composed of international judges based outside Kosovo.

Discussions were held between representatives of Kosovo and the European Union [3, p. 326].

Once political agreement was reached, Kosovo's Constitution was amended to include Article 162, which provides: *„In order to comply with its international obligations in relation to the report of the Assembly (Doc. 12462 of January 7, 2011) of the Parliamentary Assembly of the Council of Europe, the Republic of Kosovo may establish Special Chambers and a Special Prosecutor's Office within the Kosovo court system. The organization, functioning, and jurisdiction of the Special Chambers and the Special Prosecutor shall be regulated by a special law"*.

Rather than examining this law in detail, it is important to note its novelty: the arrangement was concluded between the European Union and Kosovo, and it established new judicial structures (the Special Chambers and the Special Prosecutor's Office) within Kosovo's judicial system. Crucially, these bodies enjoy complete independence and are composed of European magistrates who do not serve permanently but participate in proceedings only when required [6].

Another novelty is that the special prosecutor is a full-time American citizen, as is the staff of the Prosecutor's Office.

The Chambers are not based in Kosovo, but in a European country. Under the agreement, it has been decided that The Hague will host the Chambers.

The budget for these structures is covered by the European Union and a number of contributors: Canada, Turkey, Norway, Switzerland, and the US.

V. The special tribunal for Ukraine – a new example of an International Criminal Court established at the regional level within the Council of Europe

The presentation of the above data was necessary for an understanding of the international context regarding the prosecution of particularly serious crimes committed in various parts of the world and the involvement of the international community in taking action in response to these situations. The experience gained by these criminal courts and the consolidated judicial practice have led to the continued organization of such judicial structures, which have earned their right to exist.

A final example is the creation of the Special Tribunal for Ukraine, which can be compared to the equally famous criminal tribunals in Nüremberg and Tokyo, established after the end of World War II.

The importance of this tribunal lies primarily in the fact that it has jurisdiction to investigate a war of aggression and punish a crime of aggression, and in terms of personal jurisdiction, it targets Russian leader Vladimir Putin and other high-ranking officials in the Russian Federation. This tribunal will have to be a continuation of the investigations initiated by the International Criminal Court. Thus, the ICC will continue to investigate crimes of genocide, war crimes, and crimes against humanity that are brought before it, while the special tribunal will deal with the crime of aggression.

It is good to know who first proposed the establishment of such a judicial structure. Just four days after Russia's aggression against Ukraine began (*i.e.* on 26 February 2022), Professor Philippe J. Sands [13], professor of law and director of the Centre for International Courts and Tribunals at University College London, wrote an editorial in the Financial Times, analysing the shortcomings of the International Criminal Court, which was unable to investigate the crime of aggression, and proposed the establishment of a special tribunal to investigate this crime.

The response from many statesmen in support of this idea was astonishing, including from the Ukrainian Ministry of Foreign Affairs through Minister Dmytro Kuleba.

There were many difficult steps to be taken before the tribunal could be established.

The beginnings of this action were triggered by Ukraine immediately after the Russian Federation launched its invasion of the independent state of Ukraine in February 2022.

As with any beginning, a group of specialists from countries around the world had to be formed, specialists who accepted the idea of identifying the legal issues that needed to be addressed, mainly the lack of a mechanism to prosecute the leaders responsible for committing the crime of aggression. The legal framework for discussions was created by the adoption of a resolution by the Parliamentary Assembly of the Council of Europe and the European Parliament, which approved the establishment of a core group for the creation of a Special Tribunal for crimes of aggression against Ukraine, in cooperation with the Ukrainian authorities, the Council of Europe, and the legal services of the European Union.

At the meeting on March 18-21, 2025, in Strasbourg, the core group presented the final form of the three legal instruments that could be approved, as determined by the ministerial meeting. Thus, on May 9, 2025, in Lviv, the *„Lviv Declaration"* was adopted, announcing the completion of preparations for the establishment of the Special Tribunal.

The choice of Lviv as the place to sign the *„Declaration"* announcing the establishment of the Special Tribunal for Ukraine was not accidental. The Ivan Franko National University is located here, which includes, among other faculties, a law faculty.

Two great jurists who left their mark on what international crimes mean today studied at this faculty, namely:

- **Hersch Lauterpacht** (1897-1960), a lawyer who developed the legal concept of crimes against humanity during the Nüremberg trials, preparing the statements of British Chief Prosecutor H. Shawcross and writing several works on human rights, later becoming a judge at the International Court of Justice in The Hague.
- **Raphael Lemkin** (1900-1959), Polish lawyer, known as the inventor of the term *„genocide"*. He emigrated to the US and worked to investigate and punish those responsible for mass atrocities. He served as an expert witness for the US at the Nüremberg Tribunal. After the war, he drafted a convention against genocide.

At the meeting of the Council of Europe's Ministers of Foreign Affairs on May 14, 2025, in Luxembourg, the Secretary General of the Council of Europe received a formal mandate to establish the Special Tribunal from the Ukrainian Minister of Foreign Affairs, and on June 24, 2025, the Council of Ministers of the Council of Europe decided to authorize the Secretary General to sign the agreement containing the Statute of the Tribunal as an annex, to sign the Council's partially extended agreement for the management of the Special Tribunal, and to proceed with the establishment of the tribunal as soon as there are enough signatories to the agreement, with a sufficient budget.

The agreement was signed in Strasbourg on June 26, 2025, by the President of Ukraine and the Secretary General of the Council of Europe.

In his speech, the Secretary General of the Council of Europe summed up the moment, stating that *„for the first time, a dedicated international tribunal is being created to address the crime of aggression. Established within the Council of Europe, this tribu-*

nal will hold to account those who have used force in violation of the UN Charter, applying international law without double standards and reaffirming that Europe's security will not rest on silence or impunity – but on law, principle, and action" [5].

It should be noted that Russia is not part of the group of states that have ratified the Statute of the International Criminal Court, and that it withdrew from the Council of Europe in 2022 (a few hours before the exclusion vote was to take place).

The novelty that this tribunal brings to the table is that, to date, no international criminal judicial institution, regardless of its form of constitution, has investigated and proposed criminal sanctions for those who violate the UN Charter [4], a Charter whose purpose was to repress any act of aggression or violation of peace and to achieve, by peaceful means and in accordance with the principles of justice and international law, the settlement or resolution of international disputes or situations that could lead to a violation of peace – Article 1(1) of the UN Charter.

Criminal punishment involves identifying those responsible for violating the sovereignty, independence, and territorial integrity of any other member state, namely those who planned the occupation of another UN member state – heads of state, heads of government, military leaders, politicians.

The crime being investigated in this new international judicial structure is the crime of aggression – an act for which no one was held accountable.

Although it is a structure established under the Council of Europe – whose members are states in the region – its jurisdiction extends beyond European citizens. Any state that agrees to sign the agreement, is interested in seeing justice done in matters of aggression, and participates financially and by proposing candidates for prosecutors or judges can join as a founder or member.

For those unfamiliar with international legal mechanisms, we will explain below why the crime of aggression cannot be investigated by the International Criminal Court in The Hague, even though it is mentioned in Article 5 of the Rome Statute.

When the Rome Statute was adopted to include the crime of aggression in the category of core crimes, all states agreed that we are facing a „*supreme offense*" that threatens the existence of peace and the security of humanity as a whole.

While introducing the crime was easy, the difficulty arose when it came to establishing its constituent elements. The reason? Simple, yet complex: its pronounced political nature, with the active subject being restricted to a qualified one, namely the political and military leaders at the top of the state hierarchy, and the state itself being qualified as a „*criminal state*".

The definition of this crime was made after a long period of discussions, which began in the 1950s, resumed in 1967, and ended in 1974, when the UN Special Commission was able to present a negotiated text of the definition of aggression to the UN General Assembly [2, p.258-273].

Resolution No. 3314 (XXIX) of December 14, 1974, was adopted by the General Assembly, and Article 1 defined the concept of aggression. The adopted definition was formulated in general terms, which led to the need to analyze each situation individually, but also to investigate other aspects.

All these major shortcomings meant that the crime of aggression was only listed in theory in the Rome Statute, with practical application being postponed until the crime was defined (in accordance with the provisions of Articles 121 and 123 of the Statute).

It seemed that this issue of amending the Statute of the Court and defining aggression, as well as the conditions under which the ICC would exercise its jurisdiction, could not be harmonized anytime soon.

Several decades passed before, at the Kampala Meeting in 2010, after long and difficult discussions, a consensus was reached and the ICC Statute was revised, adopting Articles 15 bis and 15 ter, which define the conditions under which the ICC exercises jurisdiction over the crime of aggression [2, p.268].

This regulation opened the Court's jurisdiction for this crime only after July 17, 2018, according to a complicated mechanism found in Articles 15 bis and 15 ter.

It should also be noted that Russia and Ukraine were not signatories to the ICC Statute at the time of the revision.

Russia also participated in this meeting, at that time as an observer. It was led by President Dmitry Medvedev (May 7, 2008 – May 7, 2012), who is a lawyer and university professor, teaching civil law and Roman law at the Faculty of Law in St. Petersburg. At that time, a definition of aggression was adopted for the Statute of the International Criminal Court, a definition with which Russia agreed... Fifteen years later, this definition is being challenged!

Why is this regulation important in international criminal law?

The answer is that international humanitarian law does not classify all crimes committed during wartime as war crimes.

In the investigation of the crime of aggression, the criminal liability of state leaders may also be established. This crime is a crime of leadership, so they may be held accountable for the killing of soldiers and civilians resulting from an unprovoked attack, even if these deaths were the result of an action that would be acceptable under the rules of war.

This can resolve the false perception of legal and moral equivalence between the aggressor and the victim. Russia's crime of aggression against Ukraine could also implicate other heads of state – Belarus and North Korea – who have also become co-aggressors.

Ukraine signed the Rome Treaty on January 20, 2000, but officially ratified it on August 21, 2024, and the country's president signed the ratification law on August 24, 2024. The instruments of ratification were deposited with the UN on October 25, 2024.

In accordance with the provisions of Article 126 of the Statute, the treaty entered into force on January 1, 2025, at which point Ukraine became the 125th State Party, with the clarification made in the declaration invoking Article 124, which excludes the jurisdiction of the Court for its own citizens for war crimes for a period of seven years (Article 8).

However, on April 17, 2014, Ukraine submitted a declaration accepting the jurisdiction of the ICC for crimes committed on its territory between November 21, 2013, and February 22, 2014, in accordance with Article 12(3) of the Statute, and on 8 September 2015, it submitted a second declaration accepting the jurisdiction of the ICC for crimes committed since 20 February 2014 for an unlimited period.

The two declarations allowed for preliminary examinations covering the war in Donbas and the annexation of Crimea.

Temporary acceptance (Article 12(3)) allows a non-member state of the ICC to recognize the jurisdiction of the court for certain crimes, without other rights conferred by the Statute on states parties.

After January 1, 2026, Ukraine will have all the rights of states parties.

Therefore, looking at the chronology of Ukraine's relationship with the ICC and the provisions of the Statute, this new jurisdictional structure could have the general vocation to exercise its jurisdiction for acts committed after July 17, 2018, but another provision makes it impossible for the ICC to investigate from the perspective of the crime of aggression – Article 15 bis, paragraph 5, of the Statute — which provides that when the Court is referred to by states, as in the present case, the Court shall not exercise jurisdiction over the crime of aggression committed by citizens of a state that is not a party to the Statute.

What does this mean? Russia, as we have shown, is not a party to the ICC Statute, so the ICC cannot exercise jurisdiction over citizens of a state that is not a party to it, the case being blocked by this provision.

There could be a remedy to this blockade: the intervention of the UN Security Council, as there is no barrier to this alternative.

Following the logical thread of the hypothesis, in order for there to be a referral for the initiation of investigations, we encounter another, even greater impediment: the composition of the Council and the veto power of its permanent members. Russia is a permanent member with veto power and, without speculating, it is obvious that it will not vote in favor.

At this point of the discussion, it becomes clear how the situation could be resolved: by establishing a special international criminal tribunal with strict jurisdiction to investigate international crimes in Ukraine.

Despite the political will of states to sanction such abuses in international relations, there is and has been a fear that the establishment of a Special Criminal Court with full jurisdiction (all crimes without statute of limitations) in this situation against Russia – a permanent member of the Security Council with veto power – could set a dangerous precedent for other permanent members, and let's not forget Iraq!

A compromise was reached, with Ukraine, the Baltic states, and Poland agreeing to accept this tribunal for the crime of aggression.

One important thing must be emphasized. Any act brought before a judge must be proven. The crime of aggression has not been investigated to date, so in 2023, experts launched at Eurojust – the International Criminal Prosecution Center for the Crime of Aggression – which is a unique judicial coordination platform dedicated to supporting national investigations into the crime of aggression related to the war in Ukraine.

Through the ICPA, it has been ensured that the evidence necessary for the prosecution of those responsible for the crime of aggression in accordance with international standards will not be lost. The ICPA is made up of representatives from Ukraine, Estonia, Latvia, Lithuania, Poland, and Romania [2, p.72-73].

They were joined by a special prosecutor from the US, who's an expert in violent crime, and the ICC prosecutor's office sent people to be part of the ICPA.

The center is funded by the European Commission's Foreign Policy Instruments Service (FPI), contributions from some countries, and the US State Department.

Since we have shown that Romania is part of the ICPA, let us mention the statement by the Prosecutor General of Ukraine regarding our country's participation: *„I appreciate the effort and involvement of the Romanian prosecutors who took ex officio action on crimes against humanity in connection with the Russian Federation's attack on Ukraine. Romania is an important partner for us, as evidenced by the valuable contributions made through CICED – Core International Crimes Evidence Database, representing evidence administered in the investigation opened in that country*" [1].

The Military Prosecutor's Office played an important role in this area.

The discussions were successful, with agreement reached on the establishment of a special tribunal to investigate crimes of aggression against Ukraine.

It must be stated plainly that the decision to establish this tribunal was political in nature, with the active involvement of the Council of Europe. However, the establishment of this tribunal has been achieved, but we must also say here, having read and analyzed its statute, that it is not without procedural constraints.

We refer to the provisions of Article 23(5), which concern the active subject of the crime of aggression: a head of state, head of government, or minister cannot be brought to trial if they are in office or until the Special Tribunal receives a corresponding waiver; if they have immunity, the case will be suspended.

It can be said that this tribunal, through the agreed method of exercising its jurisdiction and through the provisions on the trial of subjects, combines two distinct but very sensitive issues of interpretation, namely trials *in absentia* and immunity, which either exist or do not exist.

The statute recognizes the immunity of the head of state, the prime minister, and the foreign minister (Art. 23, para. 5) before the International Tribunal – it would be natural that criminal proceedings against them could not be exercised either *in personam* or *in absentia*. From a legal point of view, in relation to the situation in international criminal law, this remains debatable. We will not expand on this topic here, as it requires a lot of space [2, p. 90-101].

The signal that certain dictators (V. Putin, Al. Lukashenko, Kim Jong-un) are granted immunity before an International Tribunal sends a dangerous message, because they are autocrats for life in their countries, providing a model for avoiding justice.

The Statute provides that a case may be tried in the absence of the accused (Article 28), but for persons who do not enjoy immunity, other than the head of state, prime minister, and foreign minister, and such a trial would diminish the power of example and the value and legitimacy of the process. We have such a precedent *in absentia* at the Special Tribunal for Lebanon [2, p. 207-280].

It is worth mentioning another aspect that was regulated outside the treaty on the special tribunal, namely that an official register of damage caused by the war in Ukraine has been launched. It is established under the auspices of the Council of Europe and aims to collect claims for compensation, which as of June 26, 2025, amounted to 34,000 such claims.

Russia is not part of this initiative, and its reaction to the announcement made by the signatory countries was furious: *„For us, the activities and decisions of this body will be null and void, and we will also consider any country's accession to this tribunal as a hostile move, reflecting a desire to aggravate the current crisis surrounding Ukraine rather than to resolve it."*

We will not analyze the statutory provisions in detail, but will limit ourselves here to drawing a few conclusions:

- Once again, it has been proven that when there is political will, a consensus can be reached emphasizing that the path to international criminal justice is open.
- Even if the outcome of such an endeavor is quite distant, and holding the guilty parties accountable will be difficult to achieve, it shows us and the leaders of states that they must refrain from pushing the limits of international regulations that have guaranteed and maintained peace for several decades;
- Last but not least, the victims can hope that they will not be forgotten and that there is international solidarity in achieving justice.

Bibliographical references

1. Centrul Internațional pentru Urmărirea Penală a Crimei de Agresiune împotriva Ucrainei (ICPA). https://www.mpublic.ro/ro/content/un-de-la-lansarea-centrului-interna%C8%9Bional-pentru-urm%C4%83rirea-penal%C4%83-crimei-de-agresiune (visited 19.09.2025).
2. Cosneanu Gh. *Drept internațional penal. Crima și infracțiunea internațională.* Vol. I: Partea generală. Timişoara: Editura Universității de Vest, 2022. 400 p.
3. Cosneanu Gh. *Drept internațional penal. Jurisdicția penală internațională*. Vol. II: Partea specială. Timişoara: Editura Universității de Vest, 2023. 532 p.
4. Charter of the United Nations of 26 June 1945 – Official Gazette of Romania of 26 June 1945. https://legislatie.just.ro/Public/DetaliiDocument/19362 (visited 19.09.2025).
5. Council of Europe. Key Events and Meetings. https://www.coe.int/en/web/portal/-/president-zelenskyy-and-council-of-europe-secretary-general-berset-to-sign-agreement-on-special-tribunal-for-aggression-against-ukraine#:~:text=President%20Volodymyr%20Zelenskyy%20and%20Secretary,for%20the%20Crime%20of%20Aggression (visited 19.09.2025).
6. Law 05/L – 053/2015 on Special Chambers and the Special Prosecutor's Office. https://www.scp-ks.org/sites/default/files/public/05-l-053_a.pdf (visited 19.09.2025).
7. Resolution 2330(XXII) of 18.12.1967 of the UN General Assembly. https://unispal.un.org/pdfs/7B5760D830995C2F8525732C004C4751.pdf (visited 17.09.2025).
8. Resolution 2391(XXII) of 26.11.1968 on the non-applicability of statutory limitations to war crimes and crimes against humanity. https://treaties.un.org/doc/source/docs/A_RES_23_91-Eng.pdf (visited 17.09.2025).
9. Resolution 260(III)/December 9, 1948 – Convention on Genocide. https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf (visited 17.09.2025).
10. Resolution 3314(XXIX) of 14.02.1974 on the definition of aggression. https://legal.un.org/avl/pdf/ha/da/da_ph_e.pdf (visited 17.09.2025).
11. Resolution No. 958/December 1, 1946 of the UN General Assembly and the Universal Declaration of Human Rights of December 10, 1948. https://www.un.org/en/about-us/universal-declaration-of-human-rights (visited 17.09.2025).
12. Rotariu I. Crime of aggression in the view of the United Nations, in the statute of the International Military Tribunal at Nuremberg and in the statute of the International Criminal Court. Theoretical and practical issues. In: *Revista Pro Lege*, 2023, nr.2, p.171-192.
13. Sands P. Every person is capable of terrible things. https://www.veridica.ro/ interviews/philippe-sands-every-person-is-capable-of-terrible-things (visited 18.09.2025).