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Justice for war crimes in Ukraine: In search of an optimal model

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Abstract

The article is devoted to the investigation of the problems of finding and applying the optimal mechanism for bringing to international criminal responsibility persons guilty of committing war crimes on the territory of Ukraine. During the research a set of methods of scientific knowledge was used. Among them: dialectical and formal logic, analysis, abstraction, historical, comparative, system-structural and modeling methods. The investigated problem is considered through Ukraine's obligation to ensure compliance with the right to a fair trial for persons accused of committing war crimes. The paper provides current statistics on the number of war crimes committed on the territory of Ukraine in 2022 and, furthermore, provides their classification in accordance with the provisions of the Statute of the International Criminal Court. The known historical models of international criminal justice are highlighted, their general features and differences are given. The shortcomings of the model of judicial procedure for war crimes chosen by the Government of Ukraine are highlighted. As a result, the author's model of international criminal justice is proposed in accordance with the specifics of the situation in Ukraine.

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Keywords: war crimes; international justice; hybrid courts; right to fair trial; police activity in Ukraine.

Justicia para los crímenes de guerra en Ucrania: En busca de un modelo óptimo

Resumen

El artículo está dedicado a la investigación de los problemas de encontrar y aplicar el mecanismo óptimo para llevar a la responsabilidad penal internacional a las personas culpables de cometer crímenes de guerra en el territorio de Ucrania. Durante la investigación se utilizó un conjunto de métodos de conocimiento científico. Entre ellos: lógica dialéctica y formal, análisis, abstracción, métodos históricos, comparativos, sistema-estructurales y modelización. El problema investigado se considera a través de la obligación de Ucrania de garantizar el cumplimiento del derecho a un juicio justo para las personas acusadas de cometer crímenes de guerra. El trabajo proporciona estadísticas actuales sobre el número de crímenes de guerra cometidos en el territorio de Ucrania en 2022 y, ademas, proporciona su clasificación de acuerdo con las disposiciones del Estatuto de la Corte Penal Internacional. Se destacan los modelos históricos conocidos de justicia penal internacional, se dan sus características generales y sus diferencias. Se destacan las deficiencias del modelo de procedimiento judicial por crímenes de guerra elegido por el Gobierno de Ucrania. Como resultado, se propone el modelo de justicia penal internacional del autor de acuerdo con las especificidades de la situación en Ucrania.

Palabras clave: crímenes de guerra; justicia internacional; tribunales híbridos; derecho a un juicio justo; actividad policial en Ucrania.

Introduction

The UN General Assembly, in its resolution of March 2, 2022, qualified the Russian attack on Ukraine as an act of aggression that violates Article 2(4) of the UN Charter (A/ES-11/L.1 resolution, 2022). In a resolution dated March 24, 2022, the General Assembly, meeting again in a special emergency session, demanded «the immediate cessation of military operations by the Russian Federation against Ukraine, including any attacks on the civilian population and civilian objects.» (A/ES-11/L.2 resolution, 2022).

In addition to the fact that the invasion of the troops of the Russian Federation into the territory of Ukraine in itself has the characteristics of a crime of aggression, a large number of international crimes of other types are committed during military operations on the territory of Ukraine - we are talking about war crimes.

The Geneva Conventions of 1949, which codified international humanitarian law after the Second World War, contained the first ever list of war crimes, which included the following actions: intentional killing; torture and inhumane treatment, including biological experiments; intentionally causing severe suffering or serious injury; causing damage to health; illegal destruction and appropriation of property, if it is not caused by military necessity; forcing a civilian or a prisoner of war to serve in the armed forces of an enemy state; deprivation of the right to an impartial trial; illegal deportation, transfer of civilians under protection; illegal arrest of civilians under protection; taking hostages.

This list was significantly supplemented by Additional Protocol I of 1977, including the following among serious violations: conducting certain medical experiments; turning the civilian population, individual civilians or demilitarized and safe zones into targets of attack; carrying out an indiscriminate attack affecting the civilian population or civilian objects, when it is known that such an attack will cause a large number of deaths and injuries among civilians; treacherous use of the emblem of the Red Cross, the Red Crescent and other protective and identifying signs; relocation by the occupying power of a part of its own civilian population to the occupied territory or deportation or relocation of all or part of the population of the occupied territory; unjustified delay in the repatriation of prisoners of war or civilians; apartheid; attack on historical monuments and a number of others *(Repetskyi, Lysyk, 2009)*.

Quite detailed statistics of war crimes committed on the territory of Ukraine are provided by the participants of the Global Initiative T4P (Tribunal for Putin) - Ukrainian human rights non-governmental organizations. To document the events, the organization's employees monitor open sources (social networks, news in the media, reports of the authorities), looking for information about a specific event that has signs of a war crime (shelling of a residential building, killing of civilians, torture and other crimes under the Rome Statute).

Data also comes directly from witnesses and victims. Where possible, employees of participating organizations record events in the field, take pictures of the destruction from drones, and personally communicate with witnesses of the events (T4P, 2022). According to their data, in accordance with the legal qualification of events under the Rome Statute of the International Criminal Court, they identified the following types of war crimes and their number:

1. «Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives» (article 8 (2) (b) (v)) – 198 cases;
2. «Intentionally directing attacks against civilian objects, that is, objects which are not military objectives» (article 8 (2) (b) (ii)) – 5283 cases;
3. «Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread» (article 8 (2) (b) (iv)) – 10441 cases;
4. «Murder (article 7 (1) (a) or Wilful killing» (article 8 (2) (a) (i)) – 268 cases;
5. «Wilfully causing great suffering, or serious injury to body or health» (article 8 (2) (a) (iii)) – 154 cases;
6. «Deportation or forcible transfer of population» (article 7 (1) (d)) – 21 cases;
7. «Enforced disappearance of persons» (article 7 (1) (i)) – 837 cases;
8. «Torture (article 7 (f) or Torture or inhuman treatment, including biological experiments» (article 8 (2) (a) (ii)) - 232 cases;
9. «Taking of hostages» (article 8 (2) (a) (viii)) – 10 cases;
10. «Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict» (article 8 (2) (b) (iii)) – 44 cases;
11. «Pillaging a town or place, even when taken by assault» (article 8 (2) (b) (xvi)) – 506 cases;
12. «Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law» (article 7 (1) (e)) – 389 cases;
13. «Committing outrages upon personal dignity, in particular humiliating and degrading treatment» (article 8 (2) (b) (xxi)) – 30 cases;
14. «Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power» (article 8 (2) (a) (v)) – 16 cases (T4P, 2022).

Consequently, the number and nature of crimes is staggering. However, the issue of verifying the discovered facts in court is no less important. Establishing guilty persons and proving their guilt based on the provisions of the right to a fair trial recognized in democratic countries. We remind that according to Art. 10 of the Universal Declaration of Human Rights of December 10, 1948 «Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the detennination of his rights and obligations and of any criminal charge against him» (United Nations, 1948).

Similarly, in Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950, it is said that «In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law» (COUNCIL OF EUROPE, 1950).

In this regard, the purpose of the research is to find a model of international criminal justice for war crimes committed on the territory of Ukraine, which could ensure the implementation of the principle of fair justice and, on the other hand, be able to solve a large number of cases.

1. Methodology

During the research, a complex of methods of scientific knowledge was applied at both general scientific and special scientific levels.

In particular, with the help of dialectical and historical methods, the development of the concept of international criminal justice was investigated, and the known historical models of international tribunals were highlighted.

With the help of methods of scientific analysis and abstraction, the characteristics of certain historical models of international criminal courts are given.

The systemic-structural method was used to identify and classify existing models of international criminal justice.

The comparative method was used to solve the task of conducting a comparative study of typical models of international criminal courts, as well as determining the most optimal model for use in Ukraine.

Logical and formal-legal methods were used when working with scientific and normative-legal sources, reference-statistical and empirical data.

The sociological method was used during the study of statistical data on the number and types of war crimes committed on the territory of Ukraine during the current military conflict.

The modeling method was used during the construction of the proposed hybrid model of the International Criminal Court on the territory of Ukraine.

2. Recent research and findings

The problem of finding and building an optimal model of international criminal justice for the commission of international (including war) crimes was the subject of research by many scientists. At the same time, these works have a general theoretical character, or are aimed at researching International Tribunals of certain varieties. The results of the research of these scientists formed the basis of this article.

For example, B.V.A. Röling explored the relationship between the law of war and the repression of war criminals during the post-war period (Röling, 1960.)

A known work Antonio Cassese «International Criminal Law» that provides main aspects of international criminal law. The paper considers: the development of ideas about international criminal law; the concepts of international crimes are revealed and their main types are described (war crimes, crimes against humanity, genocide, aggression, torture and terrorism. The paper also defines the main forms of criminal responsibility for the commission of international crimes, as well as the main provisions related to punishment for international crimes at the national and international level.

The work of William A. Schabas «Is devoted to the law that applies in the three international criminal tribunals, for the former Yugoslavia, Rwanda and Sierra Leone, set up by the UN during the period 1993 to 2002 to deal with atrocities and human rights abuses committed during conflict in those countries» (Schabas, 2006; 3).

Oleksandra Chubinidze studies the problem of international criminal responsibility, which examines the nature of international judicial institutions that apply international criminal law, and analyzes their advantages over national courts. Three types of such organs are distinguished, and their features are outlined. (Chubinidze, 2018).

The bodies of international criminal justice also studied by Vadym Popko. His works are devoted to the study of the nature of the bodies of international criminal justice, the history of their formation and development, as well as the identification of the peculiarities of each of the many institutional models (Popko, 2021).

3. Results of the study

The practice of investigating war crimes and bringing guilty persons to justice is known to history. Various models have been applied in different countries, which differ not only in structure, but also in the effectiveness of their functioning. Let's consider the well-known international models of justice for war crimes.

3.1. International criminal courts and their historical models.

In this case, the term «international criminal court» means a competent, independent court or tribunal, created in accordance with the law, to the rights of the accused person to be accused by such a organization, which are recognized by International Covenant on Civil and Political Rights (Article 14). In addition, this term should be understood as a court established with the support of the international community. (Chubinidze, 2018). States can fulfill their obligation to investigate international crimes and prosecute suspects by using international or hybrid courts for this purpose, «which is reflected in military statutes and guidelines, domestic precedent law and official statements» (Henckaerts and Doswald-Beck, 2005).

This concept has received the name of international jurisdiction - the subjection of certain categories of cases to not national, but international judicial instances. This concept has received the name of international jurisdiction - the subjection of certain categories of cases to not national, but international judicial instances. To some extent, it is a limitation of the sovereign rights of each state. Its type is universal jurisdiction - the right (and in some cases, the obligation) of states to exercise criminal jurisdiction, which is based exclusively on the legal nature of the crime, regardless of the place of its commission, the nationality of the criminal or the victim, or any other connection with the state that carries out such a jurisdiction (Schabas, 2006).

Based on the method of creation, international courts can be divided into three types. The first type includes ad hoc international criminal tribunals. The first acts of the practical embodiment of international jurisdiction were the creation of the Nuremberg and Tokyo trials after World War II. Although they were ad hoc tribunals, they became a model for the creation of international judicial bodies by agreement.

In the recent period, another way of creating international tribunals was tried: the Security Council of the UN at its 3217th meeting, on May 25, 1993, voted to adopt Resolution No. 8271 on the creation of a special international tribunal - An international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed on the territory of the former Yugoslavia since 1991.

Similarly, the Security Council Resolution No. 955 of November 8, 1994 (S / RES / 955 (1994)) established the International Tribunal for Rwanda to prosecute those responsible for the genocide committed on the territory of Rwanda or crimes committed by citizens of Rwanda, but on the territory of neighboring countries in the period from January 1, 1994 to December 31, 1994.

Unlike the Nuremberg and Tokyo trials, the special international criminal trials for the former Yugoslavia and Rwanda were established not on the basis of an interstate treaty, but by a decision of the United Nations Security Council in accordance with Chapter VII of the UN Charter.

The second type of international criminal courts is the so-called hybrid and «internationalized» courts, which are created not by a decision of the Security Council, but by an agreement between the United Nations and the government of the country where the crimes took place and under which these courts are vested with jurisdiction. Or such courts are formed by the temporary administrations of the UN.

These agreements in their form are international treaties between a country and an international organization – «a type of public instrument of international law, provided for by the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations». The category of hybrid courts includes, for example, the Special Court for Sierra Leone or the Special Court for Lebanon (Schabas, 2006).

These courts are hybrid both in terms of their composition (their chambers are composed of both international and national judges) and in terms of the law they use (the norms used by these courts are derived from both international law and national law a certain state) (Popko, 2021).

The third type includes the International Criminal Court, created on the basis of multilateral agreement. Its main differences from the above-mentioned higher judicial bodies are that it is permanently active, its personal and territorial jurisdiction is not connected with a concrete conflict or event, and it is not retroactive, i.e. it has the right to consider only crimes committed after entry into force of it`s Statute (actually - starting from July 1, 2002). Like the Special International Tribunals of the UN, it has a two-stage structure and the Prosecutor as an independent body (Rome Statute of the International Criminal Court, 1998).

The International Criminal Court may exercise its jurisdiction if: 1) the case is referred to the Prosecutor by a participating state or the UN Security Council; 2) The prosecutor starts the investigation on his own initiative. Article 12 of the Criminal Code provides that the International Criminal Court may investigate and prosecute crimes which, among other things, were: «... (3) referred to the hearing of the court of the UN Security Council

in accordance with Article 13 ...». In this way, if the Security Council refers cases to the International Criminal Court, its jurisdiction covers the topic of any crime. Otherwise, the court will not be able to prosecute crimes committed by citizens of a country that has not ratified the Rome Statute, or on the territory of a country that has not ratified the Rome Statute. (Rome Statute of the International Criminal Court, 1998).

3.2. The Ukrainian model and its disadvantages

Despite the fact that war crimes committed on the territory of Ukraine are international in nature, the Government of Ukraine chose a national model of justice for their commission. This means that the qualification of criminal acts is carried out in accordance with national criminal legislation, the pre-trial investigation and trial of these crimes is carried out by national law enforcement and judicial bodies and, accordingly, according to the rules of national criminal justice.

The criminal classification of war crimes is carried out under Art. 438 (violation of laws and customs of war), art. 437 (planning, preparation or initiation and waging of an aggressive war, Article 436 (war propaganda) of the Criminal Code of Ukraine (Law of Ukraine, 2001). According to the official statistics of the Prosecutor General's Office for 2022, the largest number (50,625) of criminal proceedings were initiated under Art. 438 of the Criminal Code of Ukraine – «violation of the laws and customs of war».

However, the effectiveness of criminal proceedings on war crimes remains very low. Out of the total number of proceedings, during 2022, a notice of suspicion was served to only 85 persons, of which only 28 indictments were sent to court (General prosecutor's report on criminal offenses, 2022). As of February 2023, 25 Russian soldiers have been convicted of war crimes in Ukraine, and indictments against more than 90 people have been sent to court (BUG, 2023).

The problem of the investigation of war crimes is the impossibility of carrying out investigative actions in the territories that are not controlled by Ukraine, where active hostilities take place. There is a problem with the interrogation of persons who may be involved in the commission of a criminal offense, as well as the problem with the detention of potential criminals due to their stay in the occupied territories. Most of the persons involved in war crimes committed on the territory of Ukraine in one way or another have left for Russia and the temporarily occupied territories of Ukraine.

Along with the outlined problems of criminal justice for war crimes in Ukraine, there are questions about the model of justice chosen by the Government of Ukraine as a whole. Can the national model guarantee compliance with all internationally recognized principles of criminal justice

that must be followed in a constitutional and democratic country? Can the Ukrainian court be impartial in relation to the Russian military, who are accused of committing war crimes. Every Ukrainian judge, being a member of society, in one way or another suffered from military aggression on the part of the Russian Federation, at least moral, and sometimes - material damage. This also applies to other participants in criminal proceedings from the side of the prosecution: investigators and prosecutors. Moreover, there is no guarantee that the defender provided by the state to a person accused of a war crime will be able to fulfill his function fully for moral reasons.

In addition, the application of the national mechanism of justice for the commission of international crimes seems illogical. An international judicial procedure for criminal prosecution based on established international judicial and investigative institutions should be applied. This will also increase the legitimacy of court verdicts in such cases.

3.3. Finding the optimal model for Ukraine

The establishment of international criminal courts is the most adequate method of prosecution for international crimes. B.V.A. Röling stressed that «due to the fact that war crimes are a violation of the laws of war, that is, international law, cases of international crimes must be considered by an international judge.» He is best suited for this» (Röling, 1960).

Antonio Cassese reveals this opinion in more detail: «For the consideration of international crimes, international courts are the bodies most suitable for this, since they are in a better position from the point of view of knowledge and application of international law. International judges have more reason to be unbiased or more objective than national judges, which are related to the circumstances in which the crime was committed.

Antonio Cassese reveals this opinion in more detail: «For the consideration of international crimes, international courts are the bodies most suitable for this, since they are in a better position from the point of view of knowledge and application of international law . International judges have more reason to be unbiased or more objective than national judges, which are related to the circumstances in which the crime was committed. The prosecution of perpetrators of international crimes by international tribunals usually meets with less opposition than the prosecution of national ones, as it affects national pride much less.

International courts can more easily investigate crimes by conducting investigative actions in many countries than national courts. Often witnesses live in different countries, certain evidence can be obtained as a result of the cooperation of several states. Also, special expertise is often

necessary, which concerns complex legal problems that arise as a result of the interpretation of the laws of different countries. International courts can guarantee uniformity in the application of international law, while hearings conducted by national courts can lead to great differences in the application of this law and in punishment for convicts.

Finally, the creation of international courts indicates the desire of the international community to punish those who deviate from acceptable standards of human behavior. When determining the punishment, the goal of the international community is not only retribution, but also the stigmatization of criminal behavior - and the hope that it will continue to provide a deterrent effect on potential criminals».

At present, separate steps in this direction have been taken in Ukraine. In particular, amendments were made to the Criminal Procedure Code of Ukraine regarding the granting of powers to the prosecutors of the International Criminal Court to independently conduct investigative and other procedural actions on the territory of Ukraine after their agreement with the Prosecutor General of Ukraine.

In March 2022, the International Criminal Court, at the request of 42 countries, announced the start of an investigation into war crimes as a result of the Russian invasion of Ukraine. (Suspilne novyny, 2023). However, as stated in the message, the prosecutors of the International Criminal Court will collect evidence on the most serious international crimes committed in Ukraine. Therefore, only a certain part of the total number of crimes committed on the territory of Ukraine can potentially be considered by the International Criminal Court. In such a model, the problem of impartiality of the court does not arise, because the prosecutors of the International Criminal Court and the judges of this court are completely independent from the events taking place in Ukraine.

However, the prospect of the International Criminal Court's work on international crimes committed in Ukraine is doomed to failure. This is due to formal reasons. According to the Kampala Amendments to the Rome Statute, in order for the International Criminal Court to have jurisdiction over the crime of aggression, the aggressor state must ratify the Rome Statute.

Or this situation should be referred to the International Criminal Court by the UN Security Council (Rome Statute of the International Criminal Court, 1998). The Russian Federation has not ratified the Rome Statute and is unlikely to allow the adoption of a UN Security Council resolution regarding its own crimes, using the right of veto as a permanent member of the UN Security Council.

In this regard, it is currently necessary to talk about the creation of a special tribunal, either on the basis of an agreement between the Government

of Ukraine and the United Nations with the adoption of a corresponding resolution of the UN General Assembly, or on the basis of a multilateral open international agreement between the states of the civilized world. At the same time, the second model, in our opinion, is more optimal from the point of view of the international legitimacy of such an institution. The creation of a court based on the vote of the majority of member countries of the UN General Assembly will indicate the international recognition of such an institution. Otherwise, the creation of a special tribunal on the basis of an international treaty with individual states will require the involvement of the largest number of countries to increase the level of international legitimacy of the future judicial institution.

At the same time, the resource capacity of the special tribunal is limited. Considering the very large number of war crimes that have been committed and continue to be committed on the territory of Ukraine, consideration of these cases by one judicial institution may take years, or even tens of years. In this case, the implementation of the principle of inevitability of punishment for committed international crimes in practice will turn out to be ephemeral. In this regard, the following approach may be appropriate: for the crime of aggression, criminal proceedings should be carried out by a special tribunal, and for others - by hybrid judicial institutions.

The model of hybrid international justice provides for the creation of courts on the territory of Ukraine, which will consider those criminal cases that are currently being investigated by national law enforcement agencies. Under the conditions when the vast majority of crimes are already investigated according to Ukrainian criminal procedural legislation, during the consideration of these cases in court, the problem of checking the case for possible violations by investigators or prosecutors during the collection of evidence will arise. For this, it is necessary for the judge to have knowledge of national Ukrainian legislation and its peculiarities.

This task can be solved only with the introduction of a hybrid model of judicial proceedings, because only it involves the formation of mixed court chambers (from both international and national judges). Thus, the presence of international judges will guarantee the impartiality of the court during the consideration of criminal cases, and the presence of national judges will become a guarantor of awareness of national criminal procedures. In order for such courts to function effectively, there should be several - according to the number of administrative regions of Ukraine, on the territory of which the largest number of war crimes were committed - Donetsk, Luhansk, Kharkiv, Sumy, Chernihiv, Kyiv, Zaporizhzhya, Dnipropetrovsk, Kherson and Mykolaiv.

Each of the courts, respectively, is created at the level of the region and its jurisdiction includes the consideration of those crimes that were committed on the territory of the relevant territorial unit. It is also necessary to create

an appellate instance for the exercise of the right of participants in criminal proceedings to appeal the decisions of the court of first instance and to control their legality.

The possibility of creating hybrid courts on the territory of Ukraine should also be considered for compliance with its Constitution. In accordance with Part 6 of Art. 125 of the Constitution of Ukraine, the creation of extraordinary and special courts is not allowed in Ukraine (Constitution of Ukraine, 1996), and the same prohibition is mentioned in Part 2 of Art. 3 of the Law of Ukraine «On the Judicial System and the Status of Judges» (Law of Ukraine, 2016). At the same time, neither the Constitution nor the aforementioned law discloses the meaning of the concepts «emergency and special courts».

Therefore, if we consider the creation of international hybrid courts on the territory of Ukraine as extraordinary or special, then such a model contradicts the Constitution of Ukraine. However, the Constitutional Court of Ukraine in its conclusion in the case based on the constitutional submission of the President of Ukraine on providing an opinion on the conformity of the Constitution of Ukraine with the Rome Statute of the International Criminal Court (Rome Statute case) dated July 11, 2001 No. 3-v/2001 noted that «The International Criminal Court did not can be referred to extraordinary and special courts, the creation of which is not allowed in accordance with the fifth part of Article 125 of the Constitution of Ukraine. Extraordinary and special courts within the meaning of this article are, firstly, not international, but national courts, and secondly, courts created to replace ordinary courts that do not properly follow the procedures established by law» (Constitutional Court of Ukraine, 2001).

Therefore, in Ukraine it is forbidden to create national courts that do not follow the procedures established by law. Hybrid courts are, first of all, international judicial institutions, not national ones. And, secondly, during their work, it is possible to apply both international and national court procedures, which can be properly balanced during their creation.

Conclusions

Summarizing what has been said, the following conclusions should be emphasized. Historically, several typical models of trial for war crimes have been formed in international practice: 1) ad hoc international criminal trials, which can be established on the basis of an interstate treaty or a document of the United Nations Security Council; 2) hybrid organizations, which are created on the basis of an agreement between the United Nations and the country, on the scene of which a crime was committed, for which these organizations have jurisdiction; 3) a permanent tribunal - the International Criminal Court.

The national judicial model chosen by the government of Ukraine cannot guarantee compliance with the requirement of an impartial judiciary as a component of the right to a fair trial in relation to the Russian military accused of war crimes. In addition, the international criminal prosecution procedure should be applied for the commission of international crimes, and not the national mechanism. Otherwise, the legality and legitimacy of court judgments issued by national courts becomes questionable.

The most optimal approach may be that the crime of aggression will be prosecuted by a special tribunal, and for other war crimes - by hybrid judicial institutions that will operate on the territory of Ukraine and that will consider those criminal cases that are currently being investigated by national law enforcement agencies. The presence of international judges in the composition of hybrid tribunals will guarantee the impartiality of the court during the consideration of criminal cases, and the presence of national judges will become a guarantor of awareness of national criminal rules and procedures.

Taking into account the very large number of war crimes that have been committed and continue to be committed on the territory of Ukraine, there should be several such courts - according to the number of administrative regions of Ukraine, on the territory of which the largest number of war crimes were committed. It is also necessary to create an appellate authority for the exercise of the right of participants in criminal proceedings to appeal the decisions of the court of first instance and to control their legality.

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