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Russian war crimes in Ukraine – another version of the old tactics

The Russian army is committing numerous war crimes in Ukraine, attacking civilians and destroying the country's infrastructure. These actions are intended to suppress the will to resist of both the authorities and Ukrainian society, and at the same time they are probably also associated with the growing frustration caused by the prolonged stalemate and the lack of expected military successes. A humanitarian crisis is intentionally triggered to destabilize not only Ukraine but also neighbouring countries. However, it is possible that Russia may be held legally responsible for this.

Ius in bello and Russia's aggression against Ukraine. Russian actions in Ukraine violate international humanitarian law (the law of armed conflict) and constitute war crimes. Basic rules are being violated, such as the prohibition of attacking civilians and civilian facilities, including hospitals and medical personnel, and the prohibition of carrying out attacks that do not take into account the principle of distinction between military objectives and civilian objects. The ban on the use of methods and means that can cause serious damage to the natural environment has been violated (military operations in the vicinity of nuclear power plants). In addition, Russian forces have committed a number of other offenses, such as robbery, rape, murder, deportation and kidnapping, using civilians as "human shields", and destroying cultural property. Both political and military decision-makers and the direct perpetrators are legally responsible for these deeds. At the same time, Russia is constantly campaigning to hold the Ukrainian side responsible for its own criminal actions.

Crimes. In the chaos of war, it is impossible to accurately record and verify all war crimes committed by the Russians. However, a documentation process continues, mainly thanks to the efforts and activity of Ukrainian state institutions. Evidence is also collected by international organizations (including the United Nations, UNHCR, UNICEF, the Red Cross, and Amnesty International), as well as by numerous journalists reporting on the course of the aggression. The fact of violation of the law of armed conflict is also indirectly confirmed by the provisional order of the International Court of Justice of March 16, 2022, stating that Russian aggression is illegal.

Russian forces use all available weapons to shell and bomb cities and other civilian targets, which proves that they are deliberately trying to inflict as many losses and as many casualties as possible. The Russians allegedly used incendiary weapons (phosphorus munitions) and cluster and vacuum (thermobaric) weapons against civilians. It was confirmed they had used against civilians weapons like multiple rocket launchers. While the use of such weapons is not formally prohibited, as long as the principle of distinction is respected, attacking civilian targets is a war crime.

There are more and more reports of the deliberate murders of civilians. There have been reports of civilians (including children) being used as "human shields". Not only residential buildings have been massively destroyed, but also hospitals, churches (which is also a violation of the Russian Federation laws), schools, kindergartens, bus and railway stations, theatres, libraries, museums, shopping centres, and other public utility facilities. According to Mariupol's authorities, 80-90% of the city's buildings have been destroyed.

The Russians mine and shell humanitarian corridors and places where civilians hide, also destroying telecommunications, water, heating, gas, electricity, and even agricultural infrastructure. As the war goes on, the aggression of Russian forces against the population protesting against the occupiers has been increasing – cases of shooting at civilian protesters have been confirmed.

Arrests, repression, and pressure, as well as violence against representatives of local authorities, journalists, clergy, and social activists, are also increasing. According to information from Western intelligence services, there are lists of people to be executed or imprisoned in camps. Journalists are sometimes forced to work for pro-Russian propaganda, and there are kidnappings (especially representatives of local authorities). A lot of information about rapes, killings and mass robbery, as well as about deporting people to Russia have surfaced.

The exact number of deaths among the civilian population is still unknown, but according to the United Nations, it is around 1,000 people. These are most likely very understated figures, e.g. Mariupol's authorities estimate that at least 2,500 people have already died in the city itself. Over 110 children have already been killed during the war, and more than twice as many have been injured.

Humanitarian crisis. The hostilities have led to a deep crisis, with a looming risk of a humanitarian catastrophe. It should be assumed that the Russian army is consciously trying to provoke and deepen this crisis – in the besieged cities there is no electricity, food, water, medicine, and at the same time, all supplies are deliberately blocked. The aim is to break the Ukrainians' morale and will to resist and to persuade them to capitulate and cooperate with Russia, both directly in the areas under attack and indirectly in relation to the entire society. In turn, with regard to the Ukrainian authorities, this is an element of pressure to induce them to make concessions.

The aim of such activities is also to intimidate the civilian population, which is expected to increase the number of refugees, whose successive waves will destabilize both Ukraine and neighbouring countries. According to UNHCR estimates, as many as 10 million Ukrainians (including 1.5 million children) have left their homes, a third of which have ended up abroad.

Reactions. Since the beginning of the war, Ukrainian institutions (the Ministry of Foreign Affairs, the General Prosecutor's Office) have been carrying out extensive activities aimed at bringing Russia to justice for war crimes committed in the territory of Ukraine. A certain success of these actions is the decision of the ICJ, ordering Russia to immediately cease all hostilities and, *per facta concludentia*, recognizing Russia's actions as an illegal aggressive war that violates the basic principles of international law, included i.a. in the UN Charter. The proceedings are still pending and will most likely end with a judgment unfavourable to Russia. The activity of the International Criminal Court is a separate issue. Neither Russia nor Ukraine are parties to the Rome Statute, which is the legal basis for the Court, but Ukraine, under a 2015 declaration accepts the jurisdiction of the ICC with respect to war crimes, crimes against humanity, and genocide committed in its territory. This provides a legal basis for prosecution of Russian crimes, including in the case of the Russian decision-makers.

It was also possible thanks to the change of the political climate and the unprecedented support of many states for the activities of the ICC. At the same time, many countries (the United States, Estonia, Lithuania, Germany, Poland, Slovakia, Sweden) started their own proceedings in this case, as did international institutions, including the European Union and the International Civil Aviation Organization which are going, at the request of the Netherlands and Australia, to re-examine the case of the shooting down of a Malaysian airplane in 2014.

Conclusions. The lack of quick, expected military and political successes caused Russia to change tactics. In order to break the determination and resistance of the Ukrainians, Russia launched a brutal war of destruction, effectively enacting state terrorism – but this is not a new tactic. Such actions have previously taken place in Chechnya and Syria.

The reports that Russian rhetoric has also changed, more and more clearly emphasizing that “the awareness of the people of Ukraine will have to be changed”, sound disturbing. This may herald not only a further terror campaign and further destruction, but also growing brutality and repression in occupied areas. In this context, it is necessary to take into account the possibility of using the “Wagner Group” and Middle Eastern mercenaries brought to Ukraine not so much to fight the Ukrainian armed forces, but to a large extent for policing and pacification tasks. The consequence will be an escalation of violence against the Ukrainian population.

The reasons for Russian crimes committed on the territory of Ukraine are probably also the weak discipline of Russian troops and the growing frustration related to the unexpected resistance from the civilian population who were ostensibly “liberated from the Nazis”, as well as Russian supply and logistics problems and increasing losses.

It is possible, however, that for the first time Russia's war crimes will become the subject of extensive international debate and legal consequences will be drawn. Even if it is impossible to punish the highest representatives of the Russian Federation in real terms, the mere fact of bringing charges against them will have unprecedented political significance – the Russian elite is aware of this, as evidenced by the nervous and violent reactions to the legally

irrelevant words of Joe Biden, who publicly described the Russian president as a war criminal. In this context, important, but equally inconvenient from the Kremlin's point of view, is the consistent stance of the Ukrainian authorities, who have announced that they will seek war reparations from Russia.