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RUSSIAN APPROACHES TO INTERNATIONAL CRIMINAL LAW

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Introduction

The interpretation of international criminal justice holds significant importance in establishing the grounds for the rightfulness of the political stances States take. It can be contended that the comprehension of 'criminal justice' is primarily manifested in how States participate in or interpret the cases of the criminal courts/tribunals, whether at the international or domestic level. These international criminal tribunals and the International Criminal Court (ICC) are established and commissioned to bestow the justice to the people who have suffered along the way of States' political decisions and implementing them. In the case of international tribunals and the ICC, it becomes not only a matter of the affected people in a particular region(s) but also a concern for the international community as a whole that undertakes to establish it, aiming to deliver justice through this initiative.

Although the initial objective is to establish the facts and reach a conclusion to redress the parties by interpreting the rules based on these facts, the outcomes are not always welcomed by the concerned parties. This discontent is mainly due to the nature of the establishment of the international criminal tribunals often affected inherently by the political events, thus, becoming a matter of conflict of interest among the parties. Notwithstanding it is the personal responsibility in place where a State itself is not found culpable of its personnel's acts and cannot be a subject for a sentence as a consequence, the political outcomes – that significantly reflect in the reputability of the State in question in the aftermath of the judgments – are driving States to exert more efforts to preserve or establish its rightfulness to the international community.

This endeavour is naturally performed by the parties directly involved in the conflict at first hand. Outside this first cycle, there come the other States who perceive themselves affected by the conflict – either morally, politically, religiously, or simply for its own benefit deriving from the situation. Besides the political stance they take for the conflict, the legal perspective to the case comes into place when the actual judgments are rendered, and they observe how the facts are being interpreted through the legal lens and to what extent it is in line with their understanding of the criminal justice and relatedly, whether the outcome of them genuinely serve justice as intended.

This is what can be labelled as the '*second cycle*' of States observing the proceedings of the international criminal tribunals and the ICC. While their focus is centred mainly on how the court or tribunal resolves the issue, there can be other considerations that affect the outcome. For instance, even the legal grounds for establishing the tribunal itself or the jurisdiction of the court can be a matter of discussion. These discussions, therefore, can create disbelief for the prospective 'justice' served for the State in question from the very start. The states' consideration of the future possibilities for them facing similar problems further presents an issue for the international criminal tribunals and the ICC to function as they intend. Most of the *second cycle* States are geographically proximate to the conflict region(s) or share a similar view with one of the parties regarding how the issue at hand must be solved. When these States observe how it is being handled by the court following the event, to some extent, they also witness what might await them for their similar behaviour in the future.

There might be several States affected by the conflict or the ramifications of the rendered judgments; however, not all of them are adequately heard or taken into consideration duly in the realm of political decision-making. On the other hand, there are some States that significantly influence the political decision-making procedures owing to the permanent seats they hold at the United Nations Security Council (hereafter the UN Security Council): The United States of America, the United Kingdom, France, China, and the Russian Federation – or referred to as the Permanent Five (P5). To illustrate, the *ad hoc* international criminal tribunals could not be established without the unanimous consent of the P5[1].

Having in mind this authoritative power for the establishment of the tribunals in the first place, their approach to the adjudication of the tribunals and how they interpret the dispensed 'justice' at the end are considerable and influential upon the other States and subsequent related political decision-making processes. It is important to note that this consideration is for the period following the establishment of the United Nations (UN), whereas the previous tribunals were established by the victorious States[2] to address the war crimes that occurred during World War II: International Military Tribunals (IMT) at Nuremberg and Tokyo.

[1] Stahn, Carsten, A Critical Introduction to International Criminal Law, Cambridge University Press, 2019, pp. 191-192.
[2] Stahn describes the jurisdiction of the Nuremberg as 'multinational jurisdiction' in *supra* 1, p. 192.

These tribunals, especially the IMT at Nuremberg (hereafter the Nuremberg Tribunal), have influenced the establishment of the *ad hoc* tribunals and, arguably, constituted the first modern elements of the perception of international criminal justice. Thus, it is essential to have an understanding of how the P5 interpreted and engaged in the work of these military tribunals as well. One of the worthy linkages is between the Nuremberg trials and the International Criminal Tribunal for the former Yugoslavia (ICTY).

ICTY is the first international criminal tribunal established by the UN Security Council subsequent to the armed conflict in the former Yugoslavia with the Resolution 808[3] of 22 February 1993 and the Resolution 827[4] of 25 May 1993. Examining the grave violations of international humanitarian law (IHL) that led to perpetrating war crimes, crimes against humanity, and, genocide, it represented a great step forward to the improvement of the modern international criminal law practice. There was one State that could be considered as the *second cycle* that openly supported one of the conflicting parties, namely Serbia, and further had interests in the conflict region rooted in the history that was shared in common: namely the Russian Federation.

Understanding the Russian approach to international criminal law is significant considering the political influence upon the proximate regions and furthermore the use of force to the territories of other States based on the historical and political claims over other States. The latest example to this is the continuing armed conflict in the Ukrainian territory. Since the Nuremberg Trials, Russia (then the Soviet Union) has been involved in several international and non-international armed conflicts (such as Georgia, Chechnya, and Syria) that required legal justifications. Besides the justifications to the matters on the use of force and the conduct of hostilities, in the cases where international community has qualified the certain situations within the international criminal law frame, then it brought the interpretation of what Russia understands as a grave violation of IHL, concepts such as genocide, the stance on the international and national adjudication when a punishment of crimes is necessary.

[3] Resolution 808 (1993) / adopted by the Security Council at its 3175th meeting, on 22 Feb 1993. Last accessed on October 2023 here.

[4] Resolution 827 (1993) / adopted by the Security Council at its 3217th meeting, on 25 May 1993. Last accessed on October 2023 here.

The significance of being able to interpret how Russia uses these concepts comes with the practical reasons. As will be seen in the main text, Russia not only has its own understanding of certain international law concepts different from the general legal interpretation but also makes it as a tool to pave way for its military operations. Having a perception on the Russian approach to international criminal law today is necessary so that any following military conducts based on not being satisfied with the international criminal justice offered can be anticipated. For this purpose, a retrospective look into the international criminal law cases Russia was involved is essential so that what the international community hears from the Russian Government today can be understood better.

Nuremberg Tribunal and the ICTY are the starting points to connect the Russian understanding of the international criminal law today. In the context of the nexus between the Nuremberg trials and the ICTY cases, Russia holds a noteworthy involvement in rendering and interpreting these judgments. To begin with, Nuremberg was considered as a testament of the legitimacy of the Russia's political stance and its perspective to international criminal justice[5] that can be followed to current date. Having this practice, Russia had the perspective and belief for the trajectory of the international criminal proceedings at the ICTY for;

(1) Placing itself in a reputable position following the dissolvement of the Union of Soviet Socialist Republics (USSR, or shortly referred as Soviet Union) with taking sides with fellow P5 States,

(2) Engaging in this practice with other nations thereby ceasing its previous isolation from the 'West',

(3) Aiming that this would be a significant initiative for the criminal justice perception where this time there would be a tribunal consisted of the independent and impartial judges whereas the previous practice was rather victorious States were trying the vanquished ones.

By being the first example of its own following the establishment of the UN and the timely establishment of the tribunal with the newly formed 'Russian Federation' back in the 1990s following the dissolvement of the Soviet Union, ICTY cases and how they have been

[5] Francine Hirsch, 'The Soviets at Nuremberg: International Law, Propaganda, and the Making of the Postwar Order' (2008) 113 The American Historical Review 701 accessed October 2023, p. 703.

interpreted are essential to understand contemporary international criminal justice perspective of Russia.

Having observed how the cases have been handled by the ICTY and the political consequences it had on Russia, the approach and interpretation of the ICC cases is another aspect that is essential to understand Russian approach to international criminal justice. The impact of the ICC cases on Russia becomes a subject that needs to be examined further for the ones Russia is directly involved. Although Russia is not a party to the ICC Statute, the international community is having an opportunity to apprehend the Russian perspective although the arguments presented are mostly political, not based on interpretation of the law applicable.

This thesis centres its focus on the Russian approach, to the Nuremberg Trials, to the ICTY, and subsequently established United Nations International Residual Mechanism for Criminal Tribunal (hereafter the Residual Mechanism) cases from a *second cycle* State perspective, and *a first cycle* State for ICC cases, understanding its impact on the recent Russian practice regarding the international criminal justice. The main research question of the thesis is what was the Russian approach to the Nuremberg Trials, ICTY – from its establishment to the point where its mandate has ended – and Residual Mechanism and ICC case law practice and why it is still relevant to understand these practices to interpret the contemporary Russian approach to the international criminal justice. A short examination of the cases submitted to International Court of Justice (hereafter the ICJ) that were submitted against Russia will be presented in this thesis to understand the interpretation of Russian approach to the concepts of the international criminal law. The research methods that will be used throughout the thesis are historical, analytical, and comparative by the subject matter of the thesis. The historical method will be used to illuminate the Russian approaches in different periods of time. Comparative and analytical methods will be used to examine the historical inputs Russia has provided regarding their understanding of international criminal justice.

The first chapter of the thesis will briefly elucidate the reader on how the international criminal law cases that will be submitted in the thesis are relevant and important for understanding the Russian approach to international criminal law with laying a factual background information. The chapter will aim to correlate the Russian political stance and perceptive of the criminal justice bestowed since the Nuremberg practice and the factual

circumstances of the cases that had impact on Russia. This chapter aims to pave the way for the reader to have an understanding of why the cases that will be examined in the following chapters are relevant and significant on the Russian perspective.

Besides the judgements, the implementation of the international humanitarian and criminal law rules into the national law of Russia will be examined in the first chapter. The aim of the short review on the Russian implementation is essential to understand;

(1) where does the international criminal concepts stand in the Russian criminal law today and to what level it's in line with the modern international criminal law,

(2) in the case where a crime is committed within the Russian territory, what would be the expected outcome in terms of the punishment.

Following this explanatory background information and establishing the Russian correlation, the second chapter starts with briefly examining the Nuremberg practice and how it laid grounds on the Russian expectations from the Tribunal's work. This chapter will be beneficial to grasp the idealism Russia held in terms of what it means to establish a just order for the victims of a conflict and how Russia utilizes its political objectives through the work of the Tribunal. It will help reader to understand what Russia has expected by supporting the institution of the ICTY at the UN Security Council.

The second chapter will follow with delving into the Russian approach to the ICTY and the Residual Mechanism cases. This will be presented by;

(1) Why Russia supported the establishment of the ICTY and how it has been proclaimed politically at UN level,

(2) Examining how Russia has interpreted the ICTY and Residual Mechanism judgments based on their expectations.

The chapter will include political statements made by the Russian then politicians, legal scholars and academics, and judges who participated in international criminal tribunal judgments to have a broader perspective of the Russian approach. This part mainly aims to

demonstrate the consistency of the Russian stance in terms of political and legal expectations coming from an international criminal court Tribunal since the Nuremberg.

Third chapter will continue to the following Russian practice besides with the Residual Mechanism. The objective of this chapter is to understand the Russian approach since the establishment of the International Criminal Court (ICC). This objective will be established by, first, analysing the Russian approach to the ICC practice mainly. Secondly, even though there was no tribunal or ICC practice involved necessarily, the ensuing Russian practices where the war crimes, crimes against humanity, and genocide allegations against Russia were in place and how Russia has reacted to those claims will be examined to demonstrate the reflections of the Russian approach to international criminal justice. This will include the Russian practice before the ICJ. The author will correlate the past and consequential Russian practice through the lens of what has been established in the first and second chapter.

The ideas presented on the first three chapters will be summarized in the conclusion. The author will conclude with her understanding of the Russian practice covering the Nuremberg Trials, ICTY, Residual Mechanism case law, and ICC and ICJ case law with the nexus between these practices and the recent Russian practice regarding the interpretation of what does international criminal justice stand for Russia.

Keywords: *Russia, International Criminal Justice, International Criminal Tribunal for the former Yugoslavia, Russian Approach to the International Criminal Law*

CHAPTER – I: Russian approach: Timeline of the cases to follow and implementation of the international criminal law rules

a. Soviet contributions and a short introduction to the cases before the dissolution of the USSR

International criminal law is considerably a new field in the studies of public international law. Coming from the 'most serious crimes of concern to the international community'[6], understanding where this concern has emerged from and Russia's role and contribution for addressing these concerns can be a good start to provide a basis for why does the Russian approach to international criminal law is significant. For this, the timeline can be started from the 19th century.

Some of the crimes that were regulated by the Russian Empire in the 19th century already corresponded to what we can refer today as 'serious violations of international humanitarian law'[7]. This includes the prohibition of pillage, the improper use of the distinctive emblem such as Red Cross arm band, raising the Red Cross flag without authorization, ill treatment of the wounded enemy soldier.[8] Following this, the Russian participation during the Hague Conference (1899) has made its significance with Fyodor Martens giving his name to what we call today as 'Martens Clause'. It has been first put in the preamble of the Convention with Respect to the Laws and Customs of War on Land (1899)[9].

Martens Clause aims to emphasize the humanity during the armed conflicts whereby even in the cases that are not covered by the international humanitarian law treaties, the persons affected due to armed conflicts could not be completely deprived of protection. Being considered as a

[6] Article 5 of the Rome Statute describes the crimes within the jurisdiction of the Court (the ICC) as "The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole."

[7] Although not limited to humanitarian law, this is the term used to define war crimes committed during international armed conflict on the Rome Statute Article 8(2)(b): 'Other serious violations of the laws and customs applicable in international armed conflict…'

[8] Esakov, Gennady, International Criminal Law in Russia: Missed Crimes Waiting for a Revival, Journal of International Criminal Justice, vol. 15, 2017, p. 372, footnote 1.

[9] Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899, the full text of the preamble can be found here: https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-ii-1899.

customary international humanitarian law rule now, the Clause requires the belligerents to consider the laws of humanity and dictates of the public conscience.[10]

A consecutive step that led to a need for regulation of the grave breaches of the international humanitarian law and subsequently the international community's demand of punishing the perpetrators of war crimes is the Second World War. The trials in Nuremberg and Tokyo have seen the Union of Soviet Socialist Republics' (USSR) active participation. Nuremberg practice holds significant importance as this could be seen as a first step for the Russian approach to international criminal justice. This naturally comes from the fact that USSR was one of the States that its civil population had been a victim of the Nazi war crimes. As will be dealt in the next chapter, not only the participation into the Nuremberg Trial was observed but the contribution to the legal theory on the international criminal law by the Soviets was also recognized.

In the aftermath of the Nuremberg Trial, the academic contributions to the international criminal law field and the law-making within Russia on national criminal law that would coincide with the international criminal law rules and principles had declined.[11] Even the existence of such a field of international law has become a subject of discussion among the Russian scholars coming to the 21st century.[12] It could be commented that the experience the USSR had during the Nuremberg Trial had an effect on this. The Cold War in the following years is also a time period that the international community did not have a substantial legal theory contribution from Russia on the international criminal law perspective. This can be explained by the fact that there was not such a sporadic international armed conflict as much the States had during the World Wars. It can further be contended that the stagnation has ended with the Yugoslav armed conflict during the 1990s.

The armed conflict itself and how it had been handled by the ICTY had pressured Russia to interpret the situation from beginning to end considering the interest they had in the region. As indicated by the then Ministry of Foreign Affairs Andrei Kozyrev "(…) Russia could not and should not be excluded from the common efforts to regulate the conflict in the Balkans, a region

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[10] Martens Clause, ICRC Casebook, Glossary, can be visited here: https://casebook.icrc.org/a_to_z/glossary/martens-clause.
[11] *Supra* 8, p. 373.
[12] Bogush, Gleb, Russia and International Criminal Law, Baltic Yearbook of International Law, vol. 15, 2015, p. 174.

where Russia has long-time interests and influence"[13]. From the legal perspective, again, the efforts for the formulation of the international criminal law theory could not be observed whilst it was the political discussions coming from Russia that the international community had the information of what international criminal justice meant for Russia. The interest coming from Russia and how it evolved within that timeframe will be evaluated further in the next chapter.

b. The legal basis to understand the contemporary Russian approach: Implementation of the international criminal law into national law

One aspect during the 1990s on the national legislation from Russia that is related to Russian perspective on the international criminal law is their Criminal Code (1996) Chapter 34 that can be translated as 'Crimes against peace and security mankind'[14]. Although it includes some of the war crimes defined in the Rome Statute, the regulation of them was not as detailed as in the Rome Statute and the wording is quite abstract[15] that does not guide the reader enough to understand the elements of the crime.

More importantly, the 1996 Criminal Code does not include the crimes against humanity as a separate crimes as regulated in the Rome Statute. This aspect becomes interesting considering that before the Criminal Code was enacted, in 1994, the then Ministry of Foreign Affairs of the Russian Federation, namely Andrei Kozyrev, himself has made a call for creating a system for international criminal justice with respect to crimes against peace and humanity[16]. The tendency in the Russian legal doctrine today is to use the crimes against humanity and the crimes against mankind interchangeably though there was an academic suggestion on implementing it clearly into the Criminal Code, these suggestions were overlooked.[17]

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[13] Kozyrev, Andrei, The Lagging Partnership, Foreign Affairs, Vol. 73, No. 3 (May-June 1994), p. 66.

[14] The Criminal Code of the Russian Federation NO. 63-FZ OF JUNE 13, 1996 (with Amendments and Addenda of May 27, June 25, 1998, February 9, 15, March 18, July 9, 1999, March 9, 20, June 19, August 7, November 17, December 29, 2001, March 4, 14, May 7, June 25, July 24, 25, October 31, 2002, March 11, April 8, July 4, 7, December 8, 2003, July 21, 26, December 28, 2004, July 21, December 19, 2005, January 5, July 27, December 4, 30, 2006, April 9, May 10, July 24, November 4, December 1, 6, 2007), can be found here: https://www.wto.org/english/thewto_e/acc_e/rus_e/wtaccrus58_leg_362.pdf

[15] *Supra* 8, p. 373.

[16] Letter dated 3 May 1994 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary General, UN Doc. A/49/151-S/1994/537, p.4., *Supra* 8, p. 374, footnote 6.

[17] Sayapin, Sergey, Russian Discourse on International Criminal Law, Journal of International Criminal Justice, Vol. 20, 19 December 2022, 819-828, pp. 821-822.

Up to the current date, it can be contended that the Russian national legislation regulating international crimes is not following the existent crime elements covered in the Rome Statute[18] to the fullest and the way of criminalisation of the grave breaches defined in the Geneva Conventions[19] which brings;

(1) an unclarity in terms of the punishment of those crimes when committed within the Russian territory,

(2) an indication of reluctance on the Russian end for engaging in the current international criminal law theory and practice[20].

This ambiguity can lead one to ask; if Russia does not implement the modern international criminal law into their national law at least to the level where the correspondents can understand clearly when a crime occurs, then where does the international criminal law itself stands for Russia? Could it be considered as a tool that works in a way of demonstrating that Russia has an agreed stance only on some aspects of the modern international criminal law and the rest is solely based on their interpretation of the elements of crimes and even what can be considered as a crime in the first place?

This question further concerns the national interests that is kept in mind when it comes to individuals being tried before an international court. By their individuals being tried before this court, it further brings the political decisions that was made by the State itself when the military operations were conducted. In a case where a State is not on the same page as others on what international criminal justice entitles to and the interpretation of what international criminal law is serving for, this brings the discrepancy both on the practice and theory. One example that can be mentioned here is the Olga Vedernikova's (a current judge of the Supreme Court of Russia) comments on where does the international criminal law stand and how it should be applied in practice:

[18] *Supra* 8, pp. 373-375.
[19] Riepl, Michael, Russian Contributions to International Humanitarian Law: A constructive analysis of Russia's historical role and its current practice, Nomos, 2022, p.186.
[20] *Supra* 12, p. 170.

"(…) an approach to international criminal law with due regard to national interests is connected with an idea of priority of state interests in international law which should be taken as the only possible approach in circumstances of conflict of national interests. (…) The views about priority of universal humanity values, existence of universal human rights standards are all idealistic pompous trivialities completely separated from reality."[21]

When mentioning national interests between States in the international criminal law, it is a fact that the nature of this field of international law does not particularly target the States themselves but rather the individuals perpetrating the crimes. The matter of the reputation of the State among others and more importantly the political indications coming from the judgments pointing to a fact that one individual's decision making and how it was conducted are a part of that State's political decision-making process as well. Therefore, the conflict of national interests could be understood in a way that when two states are in an armed conflict, the application of the international criminal law in the aftermath will pose a risk for them in the case the individuals are tried before the ICC or the State itself is brought before an international court like International Court of Justice (ICJ).

The risk here would be that a higher Court on an international level will render a judgment that makes it to the international community that one State's military and political decisions led to an international crime. Besides, the comment on universal humanity values not coinciding with reality for the international criminal law on this perspective can be explained this way. In other words, the humanity aspect can be;

(1) interpreted differently by States affirming the conducts were in line with this principle from their perspective or,

(2) can be overlooked because when the national interests come into place, the concept itself loses its true meaning and cannot be applied as it will be understood differently by the parties to the conflict.

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[21] Vedernikova, O.N., Russian Criminal Legislation in Domestic and International Legal Order System, B.V. Volzhenkin (ed.), Russian Yearbook of Criminal Law, University Press 2006, 39, at. 47-49. The quote and the translation are from *Supra* 8, p. 374.

For the purpose of this thesis, this cautiousness expressed by Russia when it comes to the international criminal adjudication carries a significant element to understand where this field of international law stands. Furthermore, the general approach to the international adjudication throughout the history that is displayed so far (especially the mistrust towards the international courts[22]) is essential to understand the Russian approach to international law in general.[23] In addition to this, it should be underlined that this cautious approach has not only displayed for the international criminal law adjudication in the 21st century prioritizing the national court adjudications but can be traced back to the Soviet period when the national courts take cases concerning international law issues.[24]

In addition to the conflict of national interests explanation above, there is another aspect that can be observed in Russian approach for the practice of international law, namely, prioritizing the sovereignty of the State. The emphasis on the sovereignty made by Russia will be examined in the next chapter further. However, for this chapter with regards to the implementation of international criminal law into national law, it should be underlined as a sign of significance of the State sovereignty for Russia that even the direct application of the international criminal law rules covered in relevant treaties is not possible unless the Criminal Code enforces its application[25] on the basis of the principle of legality[26]. In this aspect, the comment by Mälksoo "(…) international law does not need multiple speakers in the country, and if such speakers – such as highest courts – emerge, at least they should not contradict with each other."[27] on the Russian approach to international adjudication can found its reflection on the international criminal adjudication as well.

On the IHL part, the Geneva Conventions on the Protection of Victims of War of 12 August 1949 and the Additional Protocols have been implemented into the national law in 1990 by the USSR Ministry of Defence's Order No. 75.[28] This implementation of IHL instruments obliges States to 'enact any legislation necessary to provide effective penal sanctions for persons

[22] Mälksoo, Lauri, 'Case Law in Russian Approaches to International Law' in Anthea Roberts and others (eds), Comparative International Law, Oxford University Press, 2018, p. 350.
[23] *Supra* 22, p. 351.
[24] See on *Supra* 22, pp. 338-339 for examples of the Soviet scholars' comments on this including Tunkin.
[25] Mälksoo, Lauri, Russian Approaches to International Law, Oxford University Press, 2015, p. 136.
[26] *Supra* 8, p. 380.
[27] *Supra* 22, p. 350.
[28] *Supra* 19, p.184.

committing, or ordering to be committed, any of the grave breaches' listed in the Conventions and Additional Protocols.[29]

To give one example on the dichotomy between what Russia agreed on 1990 (accepting the obligation of enacting as described above) and what they have as a national law covering the international crimes today, the command responsibility did not find a place for itself in the corresponding Article 356: Use of Banned Means and Methods of Warfare.[30] Another example is, though, some of the crimes regulated in the Rome Statute Article 8 as a grave breach of the Geneva Conventions[31] are mentioned in Article 356, many of the war crimes defined as 'other serious violations of the laws and customs applicable in international armed conflict'[32] are not covered.[33] Lastly, the verbatim reading of the 'banned by an international treaty of the Russian Federation' on the Article 356 excludes the customary rules of IHL applicable in both international and non-international armed conflicts.

This brings the legal lacuna on the punishment when Russia is involved in a non-international armed conflict and there are perpetrators of war crimes[34] while conducting hostilities (applying the means and methods of the armed conflict).[35] In other words, the acts conducted on the Russian territory might qualify as a war crime but in the aftermath, it may never reach to a national court in Russia for a prosecution. Bogush takes this approach even further when evaluating the way the Criminal Code is regulated as 'completely inapplicable in practice'[36].

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[29] Articles 49-52 of the Geneva Convention (I), Articles 50-53 of the Geneva Convention (II), Articles 129-131 of the Geneva Convention (III), Articles 146-149 Geneva Convention (IV), see also Article 85 of the Additional Protocol (I) on the responsibility of States to repress the breaches of the Protocol.
[30] *Supra* 14.
[31] Article 8(2)(a) of the Rome Statute defines war crime as "Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention (…)".
[32] Article 8(2)(b) of the Rome Statute defines war crime as "Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts (…)".
[33] *Supra* 19, p.187.
[34] See Rule 156 of the ICRC's Customary IHL Study Rule 156: Definition of War Crimes for further explanation on war crimes can be committed both during international and non-international armed conflicts. The rule can be read here: https://ihl-databases.icrc.org/en/customary-ihl/v1/rule156.
[35] See an elaborated examination of the problematic aspects of disregarding the customary international law rules on Riepl, Michael, Russian Contributions to International Humanitarian Law: A constructive analysis of Russia's historical role and its current practice, Nomos, 2022, p.188.
[36] *Supra* 12, p. 171.

Chechnya: A case study before the European Court of Human Rights on the implementation of the existing rules and the reluctance on the punishment based on the international rules

This comment on the deficiency of the level of the implementation on the international criminal law into the national law leading to crimes ending unpunished has found its reality for the cases submitted against the Russian Federation to the European Court of Human Rights (ECtHR) concerning the events during the armed conflict in Chechnya. Having in mind that among all the international courts Russia has been a subject to, the ECtHR is practically the most relevant one for Russia[37] (where Russia has accepted the jurisdiction of the Court and the binding effect of the rendered judgments), the practice Russia followed for these cases are worthy of examination. There had been over 250 judgments[38] following the first case *Isayeva v. Russia*[39] examined by the Court in 2005 regarding the war crimes committed during the armed conflict. Throughout the judgments, it can be contended that there were two main issues detected concerning how Russia dealt with the situation:

(1) **The investigations of the crimes were not duly conducted.**

In the case that there is no sufficient investigation on what has happened during the conduct of hostilities, defining those acts as a crime would hardly be possible since there are certain criteria or elements of crime that need to be established. The perpetrators would be left without any sentence in practice. The Court has explained this aspect as "(…) there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory."[40]

(2) **No significant enhancement regarding the way the investigations were completed so that the violations would not occur in the future.**

[37] *Supra* 22, p. 345.
[38] Leach, Philip, 'The Continuing Utility of International Human Rights Mechanisms?', EJIL: Talk!, 1 November 2017, can be read here: https://www.ejiltalk.org/the-continuing-utility-of-international-human-rights-mechanisms/.
[39] ECtHR, Case of Isayeva v. Russia, Application No. 57950/00, Judgment, 24 February 2005.
[40] *Supra* 39, para. 214.

> This is a matter on executing the rendered judgments as regulated in the European Convention on Human Rights Article 46[41]. Although this part does not directly concern the application of the international criminal law rules, it points to the efforts on the Russian end for the identification of the war crimes committed within its territory and the judicial review on the ones that were detected.
>
> The root of the cases being ended before the Court has not varied substantially following each case submitted against Russia on this armed conflict in particular that led the Court to criticize Russia where; "(…) the inadequacy of the investigation into the deaths and injuries of dozens of civilians (…) was not the result of objective difficulties that can be attributed to the passage of time or the loss of evidence, but rather the result of the investigating authorities' sheer unwillingness to establish the truth and punish those responsible."[42]

This example on the Russian practice might suggest that although the requirement on the implementation of the IHL rules on criminalisation of the grave breaches into national law is met to a certain level, there are no significant efforts on the Russian end to expand it to meet the international standards covered in the international criminal law as regulated in the Rome Statute on the legal perspective. Furthermore, the procedural aspect when it comes to collecting evidence and conducting a duly investigation for the purpose of detecting the acts that qualify as war crimes is not met as required by international law standards. This, in turn, can make the acts that qualify as an 'international crime' to what can be called 'ordinary' crimes covered under the national criminal law provisions in the case the national Court in question disregards the international criminal law.

The reluctance on the Russian end to improve the situation in Chechnya ended in Parliamentary Assembly of the Council of Europe calling for an institution of an international criminal tribunal for Chechnya that had met a negative reaction from Russia emphasizing on its sovereignty.[43]

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[41] European Convention on Human Rights Article 46(1) reads as "The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties."
[42] ECtHR, Case of Abakarova v. Russia, Application No. 16664/07, Judgment, 15 October 2015, para. 98.
[43] *Supra* 12, p. 172.

Yevgeny Voronin, at that time the Deputy official spokesman of Russia's Ministry of Foreign Affairs, reinforced this stance when indicating "Russia has its own judicial system and no one can deprive of its sovereign right to administer justice in its own country."[44] This expression can be a great example for the statement by Mälksoo where he commented that the cases that are politically important to Russia do not end in a way that 'challenge' the decisions made by the execute, Kremlin for today.[45]

The national judgments within Russia rendered in the aftermath of the Chechnya armed conflicts would be a suitable illustration for qualifying the crimes as 'ordinary' instead of 'war crime' as understood under international criminal law as some of the perpetrators brought before the national Court, namely the Military Division of the Supreme Court of the Russian Federation, were found guilty of murder under the Russian Criminal Code, instead of conducting a judicial examination on the wilful killing that qualifies as a war crime.[46] This practice had been hold onto to the following years with different armed conflicts Russia was involved including Georgia, Syria, and Ukraine where there were no national Court judgements observed examining the alleged war crimes as understood within the terms of the international criminal law where Riepl labels this situation as the Article 356 of the Russian Criminal Code being a 'dead letter law' today.[47]

c. Twisting the terms – Genocide: A case study on Ukraine and a Russian retrospective approach to Nazi perpetrations

1. Russian understanding of genocide on the case of Ukraine: A distinctive interpretation on the protected groups as defined on the Article 6 of the Rome Statute and Article 2 of the Genocide Convention (1948)

Coming back to the question on applying the international criminal law to an extent where the rules can be implemented and applied in a way that would not contradict with the national interests of the State, the Russian approach defining genocide when the victims in question are

[44] Yevgeny Voronin, Deputy Official Spokesman of Russia's Ministry of Foreign Affairs, Answers a Russian Media Question About the Intention of the PACE Legal Committee to Create an International Tribunal for Chechnya, The Ministry of Foreign Affairs of the Russian Federation, 5 March 2003, can be visited here: https://mid.ru/en/press_service/spokesman/answers/1697396/

[45] *Supra* 22, p. 347.

[46] See the analysis of the case examples including *Budanov* and *Ulman* on *Supra* 8, pp. 383-384.

[47] *Supra* 19, p. 208.

'Russian speaking persons' is one example that can be given. Although there is no such linguistic group listed on the Genocide Convention Article 2 and the Rome Statute Article 6 that defines the genocide[48] and the targeted groups, Russia not only has accepted the Russian speaking persons as a group (a new linguistic group) that is being a subject of the genocide in the Donetsk and Luhansk Regions but also has instituted an Investigative Committee in Eastern Ukraine back in 2014 and prosecuted the alleged perpetrators.

Considering the fact that the 'linguistic' as a group has been offered to be included in the text of the Genocide Convention during its *travaux préparatoires* but has been later decided not to be included[49], it can be argued that the situation points to an intentional separation from the general understanding of the protected groups as understood by the international community.

Nevertheless, the 'linguistic' group separation is not without any legal base. The jurisprudence on genocide has changed over time and new interpretations has been established by different courts. For instance, the International Criminal Tribunal for Rwanda (ICTR) in the case *Kayishema* has introduced subjective elements[50] into the ethnic groups protected. It defined the ethnic group as "(…) one whose members share a common language and culture, or a group which distinguishes itself, as such (self identification) (…)"[51] leaving room for subjective perception of the situation by the victims and recognizing the linguistic element. In any case, it can be contended that the linguistic element could only be a component to qualify as an ethnic group, therefore, the arguments on genocide should have been based on the qualification of an ethnic group rather than a mere separation of the linguistic group.

Another emphasis by Russia that leads to the 'genocide' by Ukraine is made on the term 'Russophobia' by which Putin today claims that some European countries use as a state

[48] Article 6 of the Rome Statute is a short article with few elements listed:
"*For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:*
(a) Killing members of the group;
(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group."
[49] Fortuin, Egbert, "Ukraine commits genocide on Russians": the term "genocide" in Russian propaganda, Russian Linguistics, Springer, Vol. 46, 7 September 2022, p. 317.
[50] *Supra* 1, p. 36.
[51] Prosecutor v. Kayishema and Ruzindana, ICTR-95-1-T, 21 May 1999, para. 98.

policy.[52] The arguments on the hate propaganda leading to genocide can be traced back to the Nuremberg practice where it has been observed that an editor of an anti-Semitic magazine has been convicted for conducting a hate propaganda against the Jewish people.[53]

When the Genocide Convention was being drafted, the Soviet delegate Morozov has made an emphasis on the criminalization of the public incitement to genocide stating that it is '(…) impossible that hundreds of thousands of people should commit so many crimes unless they had been incited to do so (…)'[54]. In his opinion, the inciters were the ones who are responsible for the perpetration of genocide along with the organizers.[55] It can be commented that there is a vivid interest on genocide claims by Russia asking for a redress today as in its political agenda rather than on a substantial legal basis when bringing out the Russophobia that can incite to genocide.

To inquire into the question on whether the incitement to genocide by the Russophobia through the lens of international criminal law, an example on the ICTR's judgment covering the incitement to genocide through hate propaganda can be given. The Court's own wording for this is to 'disseminate hate and violence'[56] targeting the Tutsi population in Rwanda. To demonstrate the level on what is understood as a hate propaganda leading to genocide, a brief look into the persons the Court sentenced to life imprisonment, namely Nahimana, Barayagwiza, and Ngeze, can be useful.

All of these persons were holding a significant influential power (either academically, politically, or through mass media) over the public actively calling for the genocide of Tutsis. The Court has described the gravity of the dissemination of hatred as causing thousands of innocent civilian deaths without using any physical weapons betraying the trust the public had on them.[57] Depicting the Tutsi population as a cockroach describing them as a biologically different and wicked[58] from Hutus and portraying the Tutsi women as a danger to the Hutu

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[52] Unveiling a memorial to USSR civilians who fell victim of Nazi genocide during Great Patriotic War, 27 January 2024, Putin's speech can be found here: http://en.kremlin.ru/events/president/news/73334.
[53] *Supra* 1, p. 47.
[54] Official records of the third session of the General Assembly, Part I Legal Questions, Sixth Committee, Summary Records of Meetings 21 September – 10 December 1948, p. 219.
[55] *Supra* 54, p. 219.
[56] The Prosecutor v. Nahimana et al, ICTR-99-52-T, Trial Chamber I, Judgment and Sentence, 3 December 2003, para. 1099.
[57] *Supra* 56, para. 1099.
[58] *Supra* 56, para. 180.

population paving a way for sexual attacks on them[59] are two instances Court included as an example on the hate propagandas.

Comparing the example on Tutsis where there is an indictment on the public incitement to commit genocide and conspiracy to commit genocide[60], the same level that is being directed to Russian-speaking people through Russophobia can be hardly established[61] for the same purposes on an international criminal law basis. Therefore, it can be concluded that the genocide claims by Russia based on Russophobia is not supported through legal argumentation enough today for the purposes of evidencing the alleged genocide Ukraine has committed against the Russian-speaking people.

The Russian practice on alleging genocide has been criticized as the principle of legality (*nullum crimen sine lege*) in international criminal law requires States not to make analogies whereas the Russian practice in Ukraine had two main problems concerning this analogy approach:

(1) Forming a new group of 'Russian speaking' persons whilst the only listed and accepted groups are national, ethnical, racial, and religious groups,

(2) Applying an extraterritorial jurisdiction to protect the 'compatriots' in Ukraine while the jurisdiction would be on the territorial state (Ukraine) and the ICC.[62]

This issue has been brought before the ICJ in 2022 after the "special military operation" – a term pointing to their classification of the conflict[63] in the first place – initiated by Russia. Ukraine, once more, had denied that the genocide occurred as alleged by Russia and repeated

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[59] *Supra* 56, paras. 187-188.
[60] *Supra* 56, para 1096.
[61] See the comment on the protection of the nationals doctrine for the situation of Ukraine by Ralph Janik, EJIL: Talk!, Putin's War Against Ukraine: Mocking International Law, 28 February 2022, can be accessed at https://www.ejiltalk.org/putins-war-against-ukraine-mocking-international-law/.
[62] Sayapin, Sergey, An Alleged "Genocide of the Russian-Speaking Persons" in Eastern Ukraine: Some Observations on the "Hybrid" Application on International Criminal Law by the Investigative Committee of the Russian Federation in S. Sayapin and E. Tsybulenko (eds), The Use of Force Against Ukraine and International Law: Jus Ad Bellum, Jus In Bello, Jus Post Bellum, T.M.C. Asser Press/Springer, 2018, p.324.
[63] Gorobets, Kostia, Russian "Special Military Operation" and the Language of Empire, Opinio Juris, 24 May 2022, can be found here: http://opiniojuris.org/2022/05/24/russian-special-military-operation-and-the-language-of-empire/ . Gorobets explains the usage of this term specifically as Russia seeing Ukraine as its colony and there could not be a war between the colony and the imperial.

that “(…) Russia has no lawful basis to take action in and against Ukraine for the purpose of preventing and punishing any purported genocide.”[64]

The making use of the genocide argument becoming a practice can be traced back to the annexation of the Crimea back in 2014. This has not been conducted with academic works but rather with the media that has disseminated the concept that genocide against the Russian speaking people was happening. As Sayapin argues, it has served for Russian politicians to use it as a *casus belli*[65] for the illegal use of force that had its reflections on the situation in Ukraine since 2022.

The Ukraine example on the Russian approach to genocide once more strengthens the stance Russia takes when the politically important case at hand might end contrary to the political agenda of the State. The practice can be summarized as turning the situation at hand by;

(1) making a leeway of the international concepts into a national matter to be dealt by Russia instead of a higher court where the international standards and rules would apply, therefore the punishment of either their nationals or the enemy soldiers due to their perpetrations of crimes would be dealt how it’s regulated within their own criminal law adjudication,

(2) forming the international criminal law rules using analogy to base their arguments as in the example of linguistic groups.

2. Russian arguments on genocide recently: Understanding genocide as part of observing international criminal justice with a retrospect look into the Nazi perpetrations

For the purpose of understanding the Russian argumentation on the term genocide, the recent recognition of genocide request by Russia from Germany on the siege of Leningrad will be briefly analysed. The elaborated analysis on the Nuremberg Trials and the Russian contribution to international criminal law thereby will be examined further in the next chapter.

[64] Ukraine institutes proceedings against the Russian Federation and requests the Court to indicate provisional measures, International Court of Justice Press Release, No. 2022/4, 27 February 2022, p.1, can be accessed here: https://www.icj-cij.org/sites/default/files/case-related/182/182-20220227-PRE-01-00-EN.pdf.
[65] *Supra* 17, p. 820.

Besides this Ukraine practice on interpreting the term 'genocide' differently, it is still being observed that Russia has its own arguments on genocide today even coming from the World War II on the Nazi perpetrations. Recently, Russia has officially requested from Germany to recognize the siege of Leningrad as genocide[66] where the German perspective on it is considered as a war crime.

On the historical aspect, it is known that the term genocide as we understand in international criminal law today is first recognized[67] as a crime in 1946 with a resolution by the United Nations General Assembly[68], which is the following year after the Nuremberg judgments. The Convention on the Prevention and Punishment of the Crime of Genocide (1948) has followed with recognizing the genocide as a separate crime that has become a part of customary international law[69] and a *jus cogens*[70] norm today.

Although by that time the term genocide has been a subject for discussion for its development, such as Raphäel Lemkin's book Axis Rule in Occupied Europe creating the term genocide himself with his advocacy back in 1944[71], the Nuremberg Charter and the Tribunal itself did not make an explicit reference to the term 'genocide'[72]. Still, Lemkin made the genocide to be included in the Nuremberg indictment possible under the title of war crimes.[73] On the other hand, for Holocaust, the crimes that were prosecuted during the Nuremberg Trial could be considered under the title of crimes against humanity[74] whereas today it is clearly labelled as genocide.

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[66] Russia demands Germany officially recognize siege of Leningrad as act of genocide, TASS, 18 March 2024, can be accessed at https://tass.com/politics/1761509.

[67] United Nations Office on Genocide Prevention and the Responsibility to Protect, Genocide, can be accessed here: https://www.un.org/en/genocideprevention/genocide.shtml.

[68] United Nations General Assembly, A/RES/96-I, 11 December 1946, can be accessed here: https://documents.un.org/doc/resolution/gen/nr0/033/47/pdf/nr003347.pdf?token=v30lWgpl8QAqkzONi4&fe=true.

[69] ICJ has described the customary nature of the Convention as "(…) the principles underlying the Convention are principles which are recognized by civilized nations as binding on States, even without conventional obligation." on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, 28 May 1951, 15 at p. 23.

[70] Prosecutor v. Goran Jelisic, Case No. IT-95-10, ICTY, Trial Chamber I, 14 December 1999, para. 60.

[71] *Supra* 67.

[72] Kittichaisaree, Kriangsak, 'International Criminal Law' (2009), Oxford University Press, p. 67.

[73] *Supra* 1, p. 33.

[74] *Supra* 72, p. 67.

It can be argued that on the judicial perspective, trying the Nazis based on the law applicable at that time is not an issue in and off itself for Russia but rather the political repercussions demonstrating the international criminal justice served. The reparation payments made by Germany has been found 'unacceptable and unconvincing'[75] by Russia. On its official note to Berlin, Russia has made the statement that "There can be basically no legal connection between the post-war reparations and the restoration of human justice for all Leningrad siege survivors."[76]

This statement is indeed an approach to international criminal justice from Russia today by way of political assurance on acknowledging the crime committed as recognized by the victims as a way of restoration. Related to this, the emphasis was made on the fact that Germany has followed a path that discriminates the USSR (on the siege of Leningrad case in particular) where they have recognized their crimes in the colonial era as genocide but did not do the same for Leningrad siege.[77]

Besides the sensitivity of the situation for the public, the significant matter concerning these statements today can be explained with the approach to the punishment of the genocide. In his article 'Russian Approach' in 1999, Sergey Lavrov describes the core issue of fighting against genocide as assuring the inevitable punishment when the crime is committed.[78] In conjunction with this, he explained the Russian approach towards the punishment of the genocide is that the statute of limitations cannot be applied and a prosecution for this should be imperative.[79] Although he was not specifically writing his article based on the Nazi crimes committed in the USSR, the idea he presented finds its reflections today when Russia asks Germany to acknowledge the genocide committed and finding the redress implemented by Germany unacceptable.

The same wording has been used by Putin in 2024 when he made his speech during the 80th anniversary of breaking the siege of Leningrad mentioning that just like the Hitler's genocide

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[75] *Supra* 66.
[76] *Supra* 66.
[77] Russia demands Germany recognise WWII Siege of Leningrad as 'genocide', Novaya Gazeta Europe, 19 March 2024, can be accessed at https://novayagazeta.eu/articles/2024/03/19/russia-demands-germany-recognise-wwii-siege-of-leningrad-as-genocide-en-news.
[78] Lavrov, Sergey, The Russian Approach: The Fight Against Genocide, War Crimes, and Crimes Against Humanity, Fordham International Law Journal, Vol. 23, Issue 2, 1999, p. 422.
[79] *Supra* 78, p. 423.

towards the Soviet people, Russia's compassion to uncover the crimes committed towards Soviets has no statute of limitations.[80] Mentioning the death over a million civilians, he underlined that the entire city was exterminated identifying the situation as genocide. The legal identification of the situation at hand is open to interpretation.

While the official note Russia sent to Germany disregards the ethnic background of the victims[81], or in other words do not specify a one ethnic group that was the victim, it is still necessary to establish the intent to destroy the protected group as regulated in the Genocide Convention and the Rome Statute under the killing the members of the group category.

On the German end, the situation could be qualified as a grave breach of the Geneva Conventions (1949) that is a part of a plan or policy or as part of a large-scale commission of wilful killing[82] of civilian Soviets, rather than objectively manifesting a pattern of a similar conduct[83] to destroy the Soviets in Leningrad. Further mentioned by Putin in the same speech, besides the killings, the goal of the Nazis was to seize Russia's natural resources[84] which again could be considered under war crimes.

Bringing the Nazi genocide claims back to discussion might be considered as a political agenda of Russia rather than an intent to establish the elements of crime of genocide through academic works as the argument of fighting the 'neo-Nazis', especially the Ukraine as Russia claims it to be, is in a way of justification for Russia to conduct military operations to eradicate Nazism. As it is being emphasised by several political actors throughout the years since Nuremberg, for Russia, it has no statute of limitation meaning whenever needed for an argumentation to base a military conduct, it is a tool that can be utilized for intervening into other territories where Russian-speaking protected groups require to be protected by Russia.

d. Summary of the timeline to follow on understanding the Russian perspective on the international criminal law and jurisprudence

[80] *Supra* 52.
[81] *Supra* 66.
[82] International Criminal Court, Rome Statute, 2011, Article 8 (1) and Article 8(2)(a)(i), p. 4.
[83] International Criminal Court, Elements of Crimes, 2013, Article 6 (a): Genocide by killing, p. 2.
[84] *Supra* 52.

Reviewing the period starting from the Soviet period on the Russian contributions to international criminal law, even pioneering in the legal theory during the Nuremberg Trials, to how it evolved during the Cold War period to the current date, the conclusions on the Russian practice can be made:

(1) An enthusiasm on the theory and practice during the Nuremberg period that ended unexpectedly unfavourable on the Russian end was observed that resulted in decline for further efforts on this.

(2) Coming into the 1990s, the implementation of the IHL instruments covering some crimes covered on the Rome Statute into the national law in 1990 and the regulation of the Criminal Code of 1996 that is still applicable today for the Section 34 have demonstrated that although there is an effort on being compliant with the international treaty law applicable, the practice did not support as much as the opportunities offer coming from the Article 15(4) of the Russian Constitution[85].

(3) Two armed conflicts occurred during the 1990s, namely the Chechnya and the Yugoslavia, where the national interests of Russia were at stake, there were two different aspects where the Russian approach could be examined:

    a. In Chechnya, the separation of national and international jurisdiction has been sharply made. Considering the armed conflict occurred on the Russian territory, it can be contended that the international standards (as pointed out by the ECtHR mentioned on the cases in this chapter) for duly investigation to establish the elements of the crimes has not been found. The crimes were considered within the sphere of national criminal law instead of examination on the war crimes.

    b. Although Russia was not a party to the conflict in Yugoslavia, the national interests were at consideration that led to a close interest on how the cases were handled by the ICTY. This practice holds significance on what has changed on the Russian

[85] Article 15(4) of the Constitution of the Russian Federation reads "*Universally recognized principles and norms of international law as well as international agreements of the Russian Federation should be an integral part of its legal system. If an international agreement of the Russian Federation establishes rules, which differ from those stipulated by law, then the rules of the international agreement shall be applied.*". English translation cited can be found here: http://archive.government.ru/eng/gov/base/54.html.

approach since Nuremberg on what is the expectation on the international criminal justice for Russia. The next chapter will delve into the Russian approach to the ICTY practice in detail.

(4) Following armed conflicts Russia was involved such as the ones in Georgia, Syria, and Ukraine, the similar approach was followed where the denial on the alleged war crimes that did not even found a prosecution in the Russian national courts. Especially on the genocide part, breaking away from the Rome Statute standards was observed to define the genocide. This, again, can be considered within the arguments submitted on this chapter concerning the Russian approach to national interest when an international criminal law rules contradicts with it.

In the next chapter, the three main periods will be evaluated in detail with the basis provided on this chapter: the Nuremberg Trials, the approach on the rendered ICTY and Residual Mechanism judgments, and the cases submitted to the ICJ concerning claims of genocide coming from Ukraine.

CHAPTER – II: The Russian Approach – Soviet Practice during the Nuremberg Trials and the ICTY cases

a. Nuremberg Practice

Nuremberg Tribunal has been formed initially by the States who have defeated the Nazi Germany at the end of the WWII – Great Britain, France, the United States, and the USSR. The judges and the prosecutors of the Tribunal were appointed by these four States[86]. The Charter of the Nuremberg Trial (hereafter the Charter) was considered as the sovereign legislative power of the drafter States[87], including the Soviet Union at that time. The crimes that were under investigation were regulated by Article 6 of the Charter[88], which were namely, crimes against peace, war crimes, and, crimes against humanity.

In this respect, the Soviet contribution has been put in place both practically with the work of the prosecutors but also with using the legislative power when drafting the relevant documents for the Tribunal to function as aimed. On the other hand for the Soviet Union, this Tribunal was a great opportunity to impose their narrative of the war, supported by the Soviet archives, envisaging it as a "show trial"[89].

As the war was concluded, Nuremberg was seen by the Soviets as a great platform to establish themselves as the main actor for the post-war order. Likewise, other States who had participated during the Trials had the aim in a similar vein that caused a conflict of interest between them. This, in turn, had rendered for Soviets to perform in a way that would establish what Russians understand as criminal justice.

Leaving the 'isolation from the West' practice, this was the first step from the Russians explaining their approach of the criminal law to the international community that the effects of it have been observed with the next practice (after the Tokyo Tribunal) international community

[86] *Supra* 72, p. 18.
[87] *Supra* 72, p. 18.
[88] Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis, 8 Aug 1945, last accessed in October 2023 here.
[89] *Supra 5*, p. 703.

have worked on to serve for the international criminal justice: the establishment and the functioning of the ICTY.

To have a broader understanding of the Russian approach to the ICTY cases, one has to look at the Soviet practice at the Nuremberg trials. Russia – then the USSR – has participated in and influenced the Nuremberg Trials. The moral aspect of fighting against Nazis had been a component for this purpose in the first place.

The emphasis on the fact that USSR had insisted upon trying the Nazi war criminals where the 'Western Allies' had been unwilling to do so in the beginning has found its reflection in the Russian society by literature[90] to make an emphasis on the Russian morality at that time. This participation has been important as it was the time where the Russian influence on the international criminal law-making procedure was visible and involved alongside other States. Following this practice, the Russian law-making influence on the modern international criminal law has not been observed to this scale[91].

Thereafter, the impact Russia has on the global community in regards to the matters of international criminal law has shifted from the legal perspective to the political perspective in the following years. This has been due to the failure encountered during the trials where it has been observed by the Soviet Union that the use of institutions like the Nuremberg Tribunal has its own challenges when cooperating with the 'Western' countries when each one of them has their own interests to meet. It also brings the question of whether the victorious ones themselves, who are in the seat of trying the vanquished, comply with the rules of international humanitarian and criminal, refraining from the possibility of finding itself in a situation where there will be also allegations of the crimes against themselves.

The conflict of interest with the other States and the question on the credibility of the Soviets at the trials have been specifically observed when the Molotov-Ribbentrop Pact (known as Soviet-German Non-Aggression Pact) of 23 August 1939 establishing the alliance between Nazis and Soviets and the Katyn massacre of Polish military officers where it was demonstrated by the Germans that it was in fact committed by the Soviets have been brought before the

[90] *Supra* 25, p. 139.
[91] Esakov (n 8).

Tribunal where the other States' prosecutors have allowed them to make these claims and submit evidence against Soviets.[92]

The need of using other means – e.g. political influence – has emerged for the efforts of post-war order[93] when they have had the experience of their criminal doctrine contribution efforts have lost its value in the case they cannot present themselves as they have wished for. Thus, on the international criminal law aspect, the doctrinal contribution seen at the beginning of the Trials has turned into a condemnation and questioning of the justice put in place by the work of the Trial[94].

1. Aron Trainin as an example on contributing to the international criminal law concepts and theory

One of the persons who has actively participated in drafting the Nuremberg Charter and supported the appointed Soviet prosecution team was a known Soviet scholar Aron Trainin where the Russian approach to the international criminal law can be traced. His work can be divided into two parts:

(1) Before the Tribunal started its work,

(2) After the judgments have been rendered.

While his pre-Tribunal undertakings focused on the legal aspects of the criminal law – such as his books 'The Defence of Peace and Criminal Law' published in 1937 and 'The Criminal Responsibility of the Hitlerites' published in 1944 –, the post-Tribunal works focused more on the political aspects by claiming the decisions of the acquittals as biased[95].

It can be argued that the most influential aspect of the work of the Trainin is the concept of crime against peace. According to Trainin, not only the perpetrations conducted during war

[92] *Supra* 5, p. 725.
[93] *Supra* 5, p. 726.
[94] Gennady, Esakov, 'International Criminal Law and Russia: From "Nuremberg" Passion to "The Hague" Prejudice' (2017) 69 Europe-Asia Studies 1184, p. 1188.
[95] Supra 94, p. 1188.

could constitute a crime but also launching a war itself should be a punished as a criminal act.[96] He further asserted that launching a war of aggression as a crime against peace is the 'gravest international offence' that this concept he brought has been used as a legal basis for the Nuremberg Charter.[97] Modern international criminal law has classified the 'use of armed force by a State against the sovereignty, territorial integrity or political independence of another State'[98] as a crime of aggression only in 2010.[99]

Trainin further published an academic work on the classification of genocide. On the same year the Genocide Convention was adopted, Trainin has published an article 'The Fight Against Genocide as an International Crime' formulating three type of genocides:

(1) **Physical genocide**: Describes the physical extermination of the protected group.

(2) **Biological genocide**: Includes 'childbirth, sterilization, prohibition of marriage with the complete separation of sexes, forced abortions' within the definition of genocide.

(3) **National and cultural genocide**: Considers destroying the natural culture and the heritage of the protected group as a genocide.[100]

The concepts he introduced in 1948 can be followed to the Rome Statute today not only under crime of genocide but also war crimes and crimes against humanity.

As demonstrated, the academic works Trainin has published have found their reflections even on the modern international criminal law rules today. The shift from influencing the work of the tribunals to distancing from the counterpart states with a focus on the political agenda of the State was then observed. This situation is inherently related to the experience with what the

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[96] *Supra* 5, p. 707.
[97] Trainin, Aron, Criminal Responsibility of the Hitlerites, 1944, p. 47-48, (Trans.) Francine Hirsch, 'The Soviets at Nuremberg: International Law, Propaganda, and the Making of the Postwar Order' (2008) 113 The American Historical Review 701, p. 707.
[98] Article 8(2) *bis* of the Rome Statute defines the act of aggression as "*the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.*".
[99] Resolution RC/Res.6, 11 June 2010, can be accessed here: https://treaties.un.org/doc/source/docs/RC-Res.6-ENG.pdf.
[100] Porter, Thomas Earl, In Defence of Peace: Aron Trainin's Contributions to International Jurisprudence, Genocide Studies and Prevention: An International Journal, Vol. 13, Issue 1, 2019, p. 110.
Also see Polunina, Valentina, The Human Face of Soviet Justice? Aron Trainin and the Origins of the Soviet Doctrine of International Criminal Law in Stalin's Soviet Justice – 'Show' Trials, War Crimes Trials, and Nuremberg (ed. David M. Crowe), Bloomsbury Academic, 2019, p. 139

Soviets could see as a betrayal by their Western allies in during the proceedings. To defend the position Soviets hold during the trials, he indicated that;

> *"in Nuremberg the world was again convinced that when it is necessary to hear the clear and strong voice in defence of democracy and peace then the Soviet representative is speaking."*[101]

2. Criticism directed towards the establishment of the Tribunal and the Soviet interpretation

Besides these political encounters during the judgments, there had been criticism towards the practice of the Tribunal in two main aspects that Russia had an interpretation with the establishment of the ICTY in a similar way in the following years as well:

(1) The Tribunal was set up by the victorious States which displays their perspective of what is just for the individuals who have been brought before the Tribunal,

(2) The principle *nullum crimen sine lege* has not been respected as the Charter of the Tribunal has established the basis of the definition of the crimes without a preceding written international law source, like a treaty. Thus, the functioning of the Tribunal has been criticised as an *ex post facto* punishment[102].

To address the first criticism – that the Tribunal did not represent the international community as a whole – in the aftermath of the Nuremberg Trials, the International Law Commission of the UN has brought up with a proposal to establish a permanent international criminal court to the UN General Assembly[103]. This proposal had the dissent from the representative of the Soviet Union by contending that the question of establishing an international court was beyond the terms of the reference of the Sixth Committee[104]. It has been underlined that the Nuremberg

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[101] Trainin, A.N. (2004), Izbrannye Trudy, St Petersburg, Yuridicheskii tsentr Press (G. Esakov, Trans.). In 'International Criminal Law and Russia: From "Nuremberg" Passion to "The Hague" Prejudice' (2017), p. 1188.
[102] 'Judgment' (1947) 41 American Journal of International Law 172 <https://www.cambridge.org/core/product/identifier/S0002930000085961/type/journal_article> accessed in October 2023.
[103] UN Secretary-General, 'Historical Survey of the Question of International Criminal Jurisdiction' (United Nations, 1949), pp. 25-30, accessed in October 2023 here.
[104] *Supra* 103, p. 28.

Charter was clear that judging the war criminals is bestowed to the national jurisdictions and the Nuremberg Trials only tried the criminals which the geographical location of their perpetration could not be designated[105].

In relation to this clarification, the approach of the Soviet Union to this matter focused on the fact that the national sovereignty of the States would be violated[106] in the case their right to try the perpetrators when the crime is committed in their territory. This approach is consonant with what has been discussed in the first chapter when one looks into the application of the rules of criminal law regarding the punishment. The emphasis on the national sovereignty found its application especially during the Chechnya Wars when the national criminal law rules were applied instead of the international criminal law for the punishment of the perpetrators.

On the political aspect affecting the Soviet approach towards the Tribunal, in his last book that was published in 1956, Aron Trainin has objected to the idea of an international criminal tribunal by labelling it as 'false and anti-communist'[107], again, putting the emphasis on the national jurisdiction rather than following the international standards applicable to international criminal law. Nevertheless, the Nuremberg practice USSR put in place has been considered as a positive one[108] with their legal and political contributions, even some consider this practice as their greatest achievement for their international criminal law theory[109].

On a doctrinal basis for the international criminal law, the academic discussions in Russia still focus mainly on the Soviet contributions to the Nuremberg Trial today.[110] The importance of the Nuremberg Trials in terms of contributing to the international criminal law theory and, therefore, the value Soviets brought cannot be denied. However, the fact that the academic discourse carried out in Russia for the international criminal law today is circling around the same subjects is pointing to the Russian academia being silenced for the sake of a one united voice that would be compatible with the interpretation provided by the government. This has been especially observed since the annexation of the Crimea in 2014 that will be examined on the following chapter.

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[105] *Supra* 103, p. 28.
[106] *Supra* 72, p. 22.
[107] *Supra* 94, p. 1188.
[108] *Supra* 25, p. 138.
[109] *Supra* 94, p. 1185.
[110] *Supra* 17, p. 819.

If one were to summarize the Soviet approach to the Nuremberg practice, these points can be underlined:

1. The enthusiasm phase

Punishing the Nazi war criminals was seen as a great political tool for the Soviets in the beginning. Aside from the moral aspect, Soviets wished to participate in shaping the post WWII order with taking a risk cooperating with the Western States. It can be interpreted that the main drive was rooted in the political aims.

2. Facing the reality during the practice

Having the necessary doctrinal research base at hand – especially with the international criminal law concepts, such as complicity and crimes against peace, brought by the Trainin before the Tribunal's active work –, Soviets contributed to the legal side of the functioning of the Tribunal. However, they were not able to be persistent with this when the effort they have put in has been overlooked coming from the conflict of interest with the Western allies at that time.

Related to this aspect, Soviets realized that the political agenda they have prepared for themselves might (and in fact, did not) work against for themselves when they perpetrate similar acts. It brings the consciousness for Soviets that what they would describe as bestowing justice might be a case against them when contested by another State. This awareness with the experience at Nuremberg had made the efforts of legal contribution being abandoned whereas the importance of political influence has prevailed.

3. Change in the approach by analysing the expectations and the outcome

The Russian attitude has changed towards claiming the Tribunal being politically biased, changing from having the comprehension that it was impartial and challenged the subsequent attempts establishing an international criminal tribunal prioritizing the national jurisdiction. As in the beginning, the Soviet approach at the end of the Nuremberg Trials had its roots in the political sphere.

These hints of these three steps Soviets performed during the Nuremberg Trials can be observed in the subsequent Russian practice as well. Though these steps are logical in a way that can be applied to other States, Russia's initiatives to participate in a way to present themselves as what can be regarded as 'guardians' of the criminal justice that is promised and the following change of attitude having the experience of situations not coming up as they have contemplated in the beginning can be traced back to the Nuremberg Trials.

As will be seen in the next chapter, Russia's ICTY practice has a similar path where it starts with an enthusiasm for a promising justice and ends with stepping back with the reality not meeting the expectations.

b. ICTY Practice

Russian approach to the work of the ICTY (hereafter will be referred as 'the International Tribunal') starts with how the International Tribunal is established. The initial approach for establishing the International Tribunal was positive that reflects itself with the votes in favour of the establishment of it with the UN Security Council Resolutions 808 and 827, acting under Chapter VII of the UN Charter, from Russia as a permanent member of the Security Council. The Tribunal has been established "(…) for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991"[111] and as a subsidiary organ of the UN Security Council pursuant to Articles 7(2) and 29 of the UN Charter.

The violations mentioned have included mass killings and "ethnic cleansing" practice[112] which leads to the allegation of perpetration of war crimes, crimes against humanity, and genocide when committed during both international and non-international armed conflicts that received Russia's support to be addressed at the ICTY so the threat to peace and security would be ceased.

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[111] *Supra* 3, p.2.

[112] These violations of international humanitarian law have been cited in *Supra 4*. Last accessed on October 2023 here.

Although the political support was vocal, Russia had not made monetary contribution or provided personnel for the work of the International Tribunal at that time[113]. This, in and of itself, does not necessarily mean that the attitude Russia displayed was biased as the economic situation due to the impact of the dissolvement of the USSR in 1991 played a significant role.

On the other hand, it has been observed that other States proximate to Russia had made, albeit was in an amount that could be considered symbolic, economic contributions.[114] Thus, it can be interpreted that though the monetary expectations from Russia at that time might not be as highly as the economically stable States, it was Russia's preference not to monetarily contribute even in a symbolic amount.

Albeit the international community being supportive for its establishment, there has been criticism on the legal aspect that needed to be covered by the International Tribunal and in the political sphere so that the International Tribunal could function as intended. Due to the novelty the International Tribunal brought by being established by the UN Security Council for the first time in history, there was similar critique towards the International Tribunal compared to the Nuremberg Trials.

1. Russian approach to the critique of the legality of the Tribunal

Up front, it was the legality of the way of it has been established that was open to discussion. This has been nicely addressed in an annual report submitted by the ICTY to the UN Security Council and General Assembly in 1994. Accepting the novelty the International Tribunal brings, it has referred to the "laws of humanity" firstly professed by Fyodor Martens – influential Russian delegate with Estonian origin at the Hague Peace Conferences in 1899 – to explain why it was necessary to establish this tribunal in an experimental way. The emphasis was made on the international public conscience that demanded the laws of humanity to transform into a reality[115].

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[113] Bílková, Veronika, Divided We Stand? The Ad Hoc Tribunals and the CEE Region, Symposium on the International Criminal Tribunals for the Former Yugoslavia and Rwanda: Broadening the Debate, AJIL Unbound, Vol. 110, p. 241.
[114] *Supra* 113, p. 241.
[115] Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, A/49/342,

The report also made reference to the Nuremberg Tribunals[116] that the laws of humanity were applied primarily after it had found its place in the preamble of the 1907 Hague Convention on the Laws and Customs of the War on Land[117]. This can be understood as a path towards to reaching to a certain level of international criminal justice to be delivered through a way of making 'abstract tenets into inescapable commands'[118] as tried first with Nuremberg and Tokyo Tribunals and now with the work of the ICTY. The wording in the report regarding this aspect reflects the hopes existed at that time;

> "*If the Tribunal proves that it can work in an effective and dispassionate way and the necessary cooperation of all States and United Nations bodies is forthcoming, it may open a new path towards the realization of true international justice, and hence of peace, in the world community.*"[119]

Considering that the International Tribunal had a prevailing jurisdiction over the national courts, the Tribunal needed to clarify this matter when brought by the appellant that this is a breach of the national sovereignty of States directly affected in Prosecutor v. Tadic Appeals Chamber decision[120]. The International Tribunal has made it clear that Art. 2(7) of the UN Charter allows to intervene in situations where the enforcement measures under Chapter VII of the UN Charter is applicable. As this was the case for the International Tribunal by being established under the power of the Chapter VII of the UN Charter, the plea of the appellant has been dismissed[121].

On Russia's end, this criticism has been found right in the following years where the Ministry of Foreign Affairs has identified the establishment of the international tribunals by the UN

S/1994/1007, Submitted to the UN General Assembly and Security Council, 29 August 1994, paras. 195-196, accessed in October 2023 here.

[116] *Supra* 115, para. 195.

[117] Today, it is known as 'the Martens Clause' which founds its place in the preamble of the 1907 Hague Convention on the Laws and Customs of the War on Land: '*Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.*'

[118] *Supra* 115, para. 196.

[119] *Supra* 115, para. 197.

[120] Prosecutor v. Dusko Tadic, Case No. IT-94-1-AR72, ICTY App. Ch., 2 October 1995, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, para. 50.

[121] *Supra* 120, paras. 56-60.

Security Council as 'being based on a questionable principle'[122] whereby it is not an ideal situation to be set up for other matters that has been brought before the international community. This retrospective statement is in line with the practice Russia has put through the armed conflicts within its own territory. As elaborated on the first chapter regarding the Chechen armed conflicts and other following conflicts Russia was involved to, there is a stance on two aspects:

(1) The national courts should take over the cases first rather than establishing new courts or carrying the situation to the international/regional courts for judgment.

(2) Even in the case the matter is brought before a Russian national court, there is a practice of abstaining of applying the international criminal law applicable due to the implementation to the national criminal law and further, an intentional overlook offered by the Russian Constitution.

Having the information of how the judgments have turned out for Russia, these statements are understandable and compliant with their practice. On the other hand, the initial phase approving the establishment of the Tribunal with the identification of the legal rules applicable and an interest on the new institutions having an opportunity on declaring what is expected so that the international criminal justice can be served based on the previous practices.

To expand on this, Russia submitted a letter to the UN Security Council for their version of a draft ICTY Statute back in 1993 and made their legal arguments on the establishment of this International Tribunal. In the explanatory notes in its annex, Russia has officially stated that the draft they have submitted was:

> "*(…) based on the possibility that a Tribunal might be established and its Statute adopted by a decision of the Security Council of the United Nations taken in accordance with Articles 24, 29, 39, and 41 of the Charter.*"[123]

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[122] Comment by the Foreign Ministry on the proposed establishment of an international tribunal to prosecute those suspected of downing Malaysia Airlines flight MH17 over Ukraine, The Ministry of Foreign Affairs of the Russian Federation, 14 July 2015, accessed in October 2023 here.

[123] Letter dated 5 April 1993 From the Permanent Representative of the Russian Federation to the United Nations Addressed to the Secretary-General, UNSC, S/25537, Annex-II, Explanatory notes on the draft Statute of the International Tribunal to hear cases relating to crimes committed in the territory of the former Yugoslavia, p. 14.

A further clear statement – acclaiming the legal grounds for the ICTY – could be seen from the then Russian representative Yuri Vorontsov at the UN Security Council in 1993.

Before going into the details of the legality, he started with the moral aspect of why Russia approved the establishment of the International Tribunal. With a comparison to the International Military Tribunal practices before;

> "*We favour the establishment of the International Tribunal because we see in it not a place for summary justice, nor a place for settling scores or for seeking vengeance, but an instrument of justice which is called upon to restore international legality and the faith of the world community in the triumph of justice and reason.*"[124]

Following this statement, he accepts the ICTY's work as implementing an appropriate measure as regulated under Chapter VII of the UN Charter and Russia's supportive stance by stating they approve the establishment in the same way they approve its Statute;

> "(…) *the Security Council, as the principal organ of the United Nations responsible for the maintenance of international peace and security, assumed, in accordance with the Charter of the United Nations, the responsibility for implementing the appropriate specific measures, which include the establishment of the International Tribunal. In taking this decision to establish the International Tribunal, we are simultaneously approving its Statute* (…)"[125]

In the following years, looking back to what were their expectations in 1993 when Russian representative made this speech at the UN Security Council, in 2016, Russian Foreign Ministry reminded that the International Tribunal was not ought to perform as 'a place for settling scores or an instrument of revenge' but this expectation of Russia has not become true[126]. This was due to the factual circumstances that Russia was not satisfied with.

[124] Provisional Verbatim Record of the Three Thousand Two Hundred and Seventeenth Meeting, UN Doc S/PV.3217, 25 May 1993, p. 44.
[125] *Supra* 124, p. 44.
[126] Moscow says Karadzic verdict continues myth of Serbs' sole responsibility for Yugoslav war, TASS, 25 March 2016, available here.

2. The dissatisfaction with the work of the Tribunal: Political Impacts on the Russian Approach

It must be underlined that Russia's approach to the ICTY cases have not been consistent and depended on the factual circumstances that had a political impact on their foreign relations. In line with this, Sergei Egorov, a former judge who has worked in the ICTR representing Russia, has indicated in the following years regarding the criticism towards the work of the ICTY that they were 'mainly of a political nature'[127].

It can be classified that there had been three major events that had an impact on Russia's change of attitude[128] towards the work of the International Tribunal:

(1) On the political aspect, the ally of the Russia, namely Serbia (formerly: Yugoslavia), did not meet its objectives participating in the conflict during the work of the Tribunal,

(2) Relatedly, as a major event, the bombing of Serbia by NATO in 1999,

(3) Outcomes of certain judgments rendered by the International Tribunal in the 2010s that Russia was not satisfied with, e.g. acquittal of the Croatian general Ante Gotovina in 2012 and the observation that it was mostly the Serbians who had been found guilty and had the prison sentence.

As none of the outcomes in the aftermath of the Yugoslavian armed conflict was in favour of Russia, the International Tribunal had been labelled and remembered as a biased institution where a 'selective justice' was applied.

In addition, the way Russia dealt with the Chechen Wars (between 1994-2009 in total) internally during the active work of the International Tribunal might be added as an additional element to these events. This is particularly significant as Russia at that time was dealing with

[127] Egorov, S.A., 'Mezhdunarodnyi ugolovnyi tribunal po byvshei Yugoslavii', Mezdhdunarodnoe pravo i mezhdunarodnye organizatsii, 4, p. 596, (G. Esakov, Trans.). In 'International Criminal Law and Russia: From "Nuremberg" Passion to "The Hague" Prejudice' (2017), p. 1191.
[128] *Supra* 94, p. 1190.

same claims against itself, e.g. perpetrating crimes against humanity, where they have been vocal that this was what they were fighting against.

The speeches of the public officials of Russia in the following years have been proving this stance and it is observed that the criticism towards the International Tribunal is quite open and clear on the Russian end. Especially, the consistent declarations of the support to cease the International Tribunal's activity by its deadline set by the UN Security Council in the 2010s is worth mentioning to detect that Russia had no interest of the continuity of the system that the ICTY put in place.

As an example, the Ministry of Foreign Affairs of the Russian Federation has published a statement regarding the acquittal by the ICTY in the case of Haradinai;

> "*The verdict together with the recent justification of Croatian generals A. Gotovina and M. Markach is the further evidence of selective justice, when the person accused of committing crimes against humanity and war crimes remain unpunished.*
>
> *We think that the state of affairs in the ICTY is unsatisfactory. The term allotted to this body expires, and Russia intends to pursue the completion of the Tribunal activities in the terms established by the UN Security Council Resolution of 1966 (2010).*"[129]

Another example is pointing to the fact that the functioning of the International Tribunal was taking unnecessarily a long time that is not in line with what a fair trial would be regarding temporary release of Vojislav Šešelj due to his medical conditions;

> "*At this time, Vojislav Šešelj has already spent almost 12 years in detention without a verdict. The Russian Ministry of Foreign Affairs has brought to the attention of the international community many times that it is intolerable for judicial proceedings to be protracted and drawn-out.*

[129] Comment of the Information and Press Department of the Ministry of Foreign Affairs of Russia in connection with passing of the acquittal by the ICTY in the case of R. Haradinai, The Ministry of Foreign Affairs of the Russian Federation, 30 November 2012, accessed in October 2023 here.

Unfortunately, the case of Vojislav Šešelj is a good example of the existing negative trend to draw out judicial proceedings by the Tribunal. The duration of judicial proceedings by the ICTY, as in the case of Vojislav Šešelj, is evidence of many systemic gaps in Tribunal's activities, which, among other things, lead to gross violations of rights of the convicted to fair judicial proceedings and standards of proper legal procedure.

Russia believes that the ICTY must complete its actions within the deadlines set by the UN Security Council."[130]

The dissatisfaction with the time taking for the International Tribunal to render judgments was one of the most common expressions, even to the extent that the institution itself was a 'heavy burden on the world community's shoulders'[131] .

A more generalised critique of the International Tribunal has been published by the Ministry of Foreign Affairs back in 2015 on the question of possibility of establishing an *ad hoc* tribunal to prosecute the suspected persons downing the Malaysia Airlines flight MH17. This is a great example of looking back at the International Tribunal practices and how Russia has perceived the situation on their end in the aftermath. It has been stated that the International Tribunal's:

"(...) activity has been ineffective, expensive, is taking too long and is extremely politicised. These judicial bodies have been in existence for over 20 years, but they have not yet provided any acceptable results of their activity."[132]

Furthermore, Sergey Lavrov has commented that the foundation of the ICC was based on the failure *ad hoc* international criminal tribunals, highlighting it was especially the case for the ICTY, performed. It was the interpretation of Lavrov that the establishment of the ICC was an attempt to function in a more efficient way unlike the *ad hoc* tribunals.[133]

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[130] Comment by the Information and Press Department of the Russian Ministry of Foreign Affairs regarding the decision by the ICTY to temporarily free Vojislav Šešelj, The Ministry of Foreign Affairs of the Russian Federation, 14 November 2014, accessed in October 2023 here.

[131] *Supra* 126.

[132] *Supra* 122.

[133] 'Po kakomu pravu. Sergei Lavrov: Ugrozy primenit' silu protiv Sirii ostro stavyat vopros o normakh mezhdunarodnogo prava', 10 October 2013, accessed in October 2023 here, (G. Esakov, Trans.). In 'International Criminal Law and Russia: From "Nuremberg" Passion to "The Hague" Prejudice' (2017), p. 1193.

The criticism was not only on Russian end. The International Tribunal had a critique about the lack of cooperation coming from Russia on the arrest warrants[134] when it has been detected that they've been in the Russian territory.

Lastly, on the genocide committed in Srebrenica during the armed conflict, Russia has made a statement that is worth mentioning. In 2015, Russia vetoed the condemnation of the denial of 1995 massacre in Srebrenica as genocide in the UN Security Council. Vitaly Churkin, the UN Ambassador of Russia at the time, has acknowledged the sufferings of the victims in Srebrenica, however, found the condemnation as politically motivated and not constructive.[135]

What is more interesting in terms of understanding the meaning of genocide for Russia, the proposal from Russia was that instead of condemning the genocide, the condemnation should be towards 'the most serious crimes of concern to the international community'[136]. Considering that genocide as an international crime is described as the 'crime of the crimes'[137], what would be the difference between these two descriptions in the legal sense is arguably none. In any case, even submitting as a political claim, this indicates that the conceptualization of the international crimes could be problematic in sensitive topics such as genocide.

To summarize, it can be contended that the change in the Russian attitude towards the work of the ICTY is similar to that of Nuremberg:

(1) The initial phase of the institution of the Tribunal was supported showing an interest that the new initiative will 'restore' what had missing in the Nuremberg trials. The efforts made mostly stayed in the political discourse unlike the Nuremberg where there was a contribution to the theory of international criminal law.

(2) The work of the Tribunal was observed closely as a *second cycle* State that had a political interest with its ally being tried before the Court. The rendered judgment

[134] *Supra* 113, p. 243.
[135] Russia blocks U.N. condemnation of Srebrenica as genocide, Michelle Nichols, Reuters, 8 July 2015, available at https://www.reuters.com/article/us-bosnia-srebrenica-un-idUSKCN0PI1W620150708/.
[136] *Supra* 135.
[137] Evans, Malcolm D., International Law, Fifth Edition, Oxford University Press, 2018, p. 745.

outcomes and how much time it takes for the Tribunal to issue their final decision has caused Russia to take a step back from its initial support.

(3) Related to the second point, Russia has interpreted the situation at hand as a selective justice pointing to cases Serbs have been sentenced and the gravity of the conditions for the ones that were sentenced with prison. To give an example, Russia has made an official request for the temporary release of Ratko Mladic from the ICTY[138] to be transferred to Russia for medical treatment.

(4) As a result, Russia has found the work of the Tribunal as unsatisfactory taking too much time and resources compared to the work the Tribunal produced. The wording Kuzmin used during a UN Security Council meeting was 'biased and cost-intensive Hague machinery of justice'[139] highlighting that the Mechanism was 'deaf and blind' for the crimes committed against Kosovar Albanians[140]. Even further, he made a sharp comment on the work of the ICTY as "The ICTY went down in history as a tool of revenge rather than a body of justice"[141] and that the Residual Mechanism is not making any significant difference.

This has showed its reflections to the extent that when the extension of the mandate of the Residual Mechanism was being discussed at the Security Council, Russia has 'threaten to block the text'[142] that was necessary for the extension.

The main points Russia had comments on were the failure of the Mechanism to comply with the timeframes for the completion of the cases at hand, medical conditions of detainees, and being critical towards the prosecutor Brammertz re-appointed.[143]

(5) The dissatisfaction of Russia has been declared once more when the institution of the International Criminal Court was being discussed using it as a way that they hope the

[138] Press release on transfer of Ratko Mladic to Russia for medical treatment, The Ministry of Foreign Affairs of the Russian Federation, 22 March 2017, available at https://www.mid.ru/en/foreign_policy/news/1544179/.
[139] Statement by Deputy Permanent Representative Gennady Kuzmin at UNSC briefing regarding the report of the International Residual Mechanism for Criminal Tribunals, Permanent Mission of the Russian Federation to the United Nations, 8 June 2021, available at https://russiaun.ru/en/news/yugoslavia08062021.
[140] *Supra* 139.
[141] *Supra* 139.
[142] Council to Vote on the International Residual Mechanism for Criminal Tribunals, Security Council Report, 25 June 2020, available at https://www.securitycouncilreport.org/whatsinblue/2020/06/council-to-vote-on-the-international-residual-mechanism-for-criminal-tribunals.php.
[143] *Supra* 142.

new institution will ‘recover’ the issues the Court has displayed: just like the enthusiasm on the ICTY coming from the shortcomings of the Nuremberg. This will be evaluated further in the next chapter.

CHAPTER – III: Current Russian Approach to the Cases Handled by the International Criminal Court and International Court of Justice

a. International Criminal Court: A review on the cases on Georgia and Ukraine

One of the legacies ICTY has left for the future attempts for establishing an international criminal justice was that, now with the practice at hand, the vocal positive attitude has shifted towards a more suspicious and cautious manner.[144] This was not particularly the case with the International Criminal Tribunal for Rwanda practice that can be interpreted that the conflict of interest of the States, including Russia, was not as harsh as for the ICTY. As the next substantial step towards having a system for the international criminal responsibility, International Criminal Court (ICC) is a great practice of examination for Russian approach since there had been cases concerning Russia for their acts in Georgia (2008) and Ukraine (2014).

Firstly, it can be commented that a similar approach was shown towards to the ICC when Russia has signed the Rome Statute and was supportive in the beginning but it has changed its position when the factual circumstances was not in favour of the Russia. The support towards the establishment of the ICC and initially signing the Rome Statute was a way of expression that Russia was willing to fight against international crimes as they've done via the performance during the Nuremberg Trials[145].

1. Georgia – An Indication for 'Selective Justice' for Russia

When the Russia-Georgia armed conflict has been examined by the ICC in 2016 in terms of the Court's complementarity, Russia had the hope that the attacks against the Russian peacekeepers by the Georgian armed forces would be investigated as well. The investigation request has been found inadmissible by the Pre-Trial Chamber referring to Article 17(1)(b) of the Rome Statute[146] with a reasoning that the national proceedings carried out by Russia by that

[144] *Supra* 113, p. 244.
[145] Statement by the Russian Foreign Ministry, The Ministry of Foreign Affairs of the Russian Federation, 16 November 2016, accessed in October 2023 here.
[146] Rome Statute of the International Criminal Court, United Nations, Treaty Series, vol. 2187, No. 38544, Depositary: Secretary-General of the United Nations, http://treaties.un.org. Article 17(1)(b) regulates the

time has been showing that Russia was not unwilling or unable to prosecute those who might have committed a war crime, thus the issue was not going to be considered by the Court[147].

This has been understood by Russia that the killing of the Russians were to be left for the Georgian justice and this makes unreliable the ICC as an institution.[148] Two days after this decision, Foreign Ministry Spokesperson at the time, has expressed their disappointment Court agreeing on the Prosecutor's stance on the admissibility of the case and how their view of the ICC's work has changed;

"*Russia stood at the origins of the ICC's founding, voted for its establishment and has always cooperated with the agency. Russia hoped that the ICC will become an important factor in consolidating the rule of law and stability in international relations. Unfortunately, to our mind, this did not happen. In this regard and in the light of the latest decision, the Russian Federation will be forced to fundamentally review its attitude towards the ICC."*[149]

Likewise the attitude towards the ICTY cases, the way ICC handled cases concerning Russia has been considered as a reflection of 'selective justice'. It has been stated that the ICC was not an independent and authoritative as it was promised to be when establishing and the work performed so far have been observed as 'one-sided', thus they have decided not to ratify the Rome Statute and withdraw their signature.[150]

2. Ukraine – Current Russian Practice on Understanding the Russian Approach to International Criminal Law

The practice Russia has applied in the case of Ukraine, especially since the annexation of Crimea in 2014, is significant in terms of understanding Russia's current approach to

inadmissibility of the cases: *Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where: (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute.*

[147] Decision on the Prosecutor's request for authorization of an investigation, ICC-01/15-12, Pre-Trial Chamber I, Decision, 27 January 2016, para. 50.

[148] *Supra* 145.

[149] Briefing by Foreign Ministry Spokesperson Maria Zakharova Moscow, January 29, 2016, The Ministry of Foreign Affairs of the Russian Federation, 29 January 2016, accessed in October 2023 here.

[150] *Supra* 145.

international criminal law. Firstly, on the doctrinal basis, the suppression against the academia has increased[151] in Russia since the annexation that has resulted in hearing more about the political arguments and less about the legal argumentation. Therefore, the arguments presented by Russia under this title and the interpretation of them into the international criminal law are mostly, if not all, based on the historical or political claims. Nevertheless, this works out for Russia in the sense that Ukraine today does not only have to submit its legal arguments to the international community but also has to correct the 'distorted legal arguments'[152] submitted by Russia.

The disappointment regarding how the Georgia case had been concluded by the ICC is not the sole reason of the withdrawal from the Rome Statute. There was a more concrete and practical reason on the Russian end that could result in its nationals brought before the Court. As the situation in Crimea and the Eastern Ukraine has included claims of international crimes committed, Ukraine has accepted the jurisdiction of the Court under the Rome Statute Article 12(3)[153] with a declaration submitted by the Government of the Ukraine on 17 April 2014[154] and 8 September 2015[155] for the crimes committed within the territory of Ukraine starting from 21 November 2013 and onwards.[156] Office of the Prosecutor (hereafter the OTP or the Office) classified the situation in Crimea and Sevastopol as an international armed conflict between Ukraine and the Russia[157] finding it as a reasonable basis to open an investigation[158]. OTP further announced that the Office will continue to record the crime allegations committed in the territory of Ukraine to assess whether the situation falls under the subject matter of the jurisdiction of the Court.[159]

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[151] *Supra* 17, p. 819.
[152] Wyrozumska, Anna, The Russian "Special Military Operation" in Ukraine Before International Courts, Polish Yearbook of International Law, Vol. 42, 2022, p. 31.
[153] Ukraine is not a State party to the Rome Statute. Therefore, to establish the conditions for the jurisdiction of the Court, Ukraine lodged the declaration accepting the jurisdiction of the Court as regulated with the Article 12(3) of the Rome Statute.
Article 12(3) reads "*If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question*."
[154] Declaration submitted by the Embassy of the Ukraine dated 9 April 2014 can be accessed here: https://www.icc-cpi.int/sites/default/files/itemsDocuments/997/declarationRecognitionJuristiction09-04-2014.pdf.
[155] Declaration submitted by the Minister for Foreign Affairs of Ukraine dated 8 September 2015 can be accessed here: https://www.icc-cpi.int/sites/default/files/iccdocs/other/Ukraine_Art_12-3_declaration_08092015.pdf#search=ukraine.
[156] International Criminal Court, The Office of the Prosecutor, Report on Preliminary Examination Activities (2016), 14 November 2016, para. 150, can be accessed at https://www.icc-cpi.int/sites/default/files/iccdocs/otp/161114-otp-rep-PE_ENG.pdf.
[157] *Supra* 156, para. 158.
[158] *Supra* 156, para. 154.
[159] *Supra* 156, para. 191.

According to Sayapin, the withdrawal therefore was for the purpose of protecting its nationals from the jurisdiction of the Court for their alleged crimes committed in Ukraine and also for any potential prosecutions by the ICC in the future.[160] It can be contended that rather than the functioning of the Court in the legal sense, the political outcomes it brings when it comes to the alleged crimes committed by the nationals of the Russia in other States' territories is the reason to cut the ties with the ICC. Starting from the classification of the conflict to the crimes committed, the labelling Russia puts is parting ways from the interpretation of the international community in general. Since 2014, the annexation of Crimea has been a warning for Russia regarding what might be expected in the case the matter reaches to an international court. The classification of the conflict in Eastern Ukraine has been made as an international armed conflict whereas today the claim of Russia is that this is a 'special military operation' as declared by Putin in the Security Council meeting[161] in the beginning of the conflict.

Setting aside the political argument on the attacking on the Russian-speaking people in the Donbass region of Ukraine thereby violating the Minsk Agreement between Ukraine and Russia for eight years and therefore declaring the 'special military operation' as a way of stopping the so-called war Ukraine started[162], the legal argumentation on what this concept means cannot be found in the Russian doctrine as of today in detail. This is a matter of *jus ad bellum* specifically, however, it points to a trend Russia follows with introducing concepts deriving from the political discourse and implementing them to legally base to justify their actions.

The author agrees on the comment of Hilpold interpreting this trend as "(…) an array of justifications somewhat alluding to legal exceptions but without providing real substantiation, leaving it to the listener or reader to choose among them, individually or combination, and to

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[160] Sayapin, Sergey, Russia's Withdrawal of Signature from the Rome Statute Would not Shield its Nationals from Potential Prosecution at the ICC, EJIL: Talk! Blog of the European Journal of International Law, 21 November 2016, can be accessed here: https://www.ejiltalk.org/russias-withdrawal-of-signature-from-the-rome-statute-would-not-shield-its-nationals-from-potential-prosecution-at-the-icc/#more-14774.
[161] UN Security Council, SC/14803 8974th Meeting, Russian Federation Announces 'Special Military Operation' in Ukraine as Security Council Meets in Eleventh-Hour Effort to Avoid Full-Scale Conflict, 23 February 2022, can be accessed at https://press.un.org/en/2022/sc14803.doc.htm.
[162] Elena Teslova, Putin Says he regrets not starting 'special military operation' against Ukraine earlier, Anadolu Ajansı, 15 February 2024, can be accessed here: https://www.aa.com.tr/en/europe/putin-says-he-regrets-not-starting-special-military-operation-against-ukraine-earlier/3137917.

connect the dots randomly placed to somewhat resemble a legal figure."[163] He further argues that this tradition by Russia cannot succeed in the international legal doctrine as "rarely before there has been such a broad consensus among international lawyers in not providing such arguments any basis in international law."[164]

As mentioned earlier, the practice Russia has followed since the 1990s is firstly dealing the matter within its own jurisdiction using its own Criminal Code overlooking the rules applicable in the international criminal law to the extent Constitution allows. In times where the international community requests for a basis for its actions, there comes to interpretation or twisting of the concepts available in international law. Since the Russian academia itself on the international criminal law do not produce academic work to a level that could be constructive for understanding the Russian interpretation, political discourse the Russian Government brings on the matters concerning the international criminal law hardly can succeed in terms of the legal argumentation.

The 'special military operation' concept also can find its reflections on the crime of aggression as regulated under the Rome Statute Article 8*bis*. The jurisdiction of the Court is technically pursuant to Article 15*ter* of the Rome Statute[165] in conjunction with the Article 13(b)[166]. Article 13(b) regulates that in the case there is a Security Council referral of the situation acting under Chapter VII of the Charter of the United Nations, the Court may exercise its jurisdiction over the matter referred. The veto power Russia holds at the UNSC makes this option practically impossible, at least interpreting from what has been displayed by Russia so far.

Despite the fact that it is not binding upon any member States, a UN General Assembly Resolution named 'Furtherance of remedy and reparation for aggression against Ukraine'[167] has passed almost like a way of the States which voted for the favour of the Resolution as a

[163] Hilpold, Peter, Justifying an Unjustifiable: Russia's Aggression against Ukraine, International Law, and Carl Schmitt's "Theory of the Greater Space" ("*Großraumtheorie"*), Chinese Journal of International Law, Vol. 22, Issue 3, 28 September 2023, p. 410.

[164] *Supra* 163, p. 410.

[165] Article 15*res* (1) of the Rome Statute reads as "*The Court may exercise jurisdiction over the crime of aggression in accordance with article 13, paragraph (b), subject to the provisions of this article.*"

[166] Article 13(b) of the Rome Statute states that the Court can exercise its jurisdiction in "*A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations*".

[167] UN General Assembly, Furtherance of remedy and reparation for aggression against Ukraine, A/RES/ES-11/5, 14 November 2022, can be accessed here: https://digitallibrary.un.org/record/3994481?v=pdf.

moral response of the Russian veto disabling the UN Security Council. There are two aspects that needs to be underlined that demonstrates the majority of the international community interprets the situation in Ukraine:

(1) Whichever concept Russia introduces to base arguments for the sake of military conducts, it does not quite find an acceptance from the majority of States.

Firstly, it is recognized with this Resolution that Russia should be held accountable for any violations of international law underlining the crime of aggression, violations of IHL and international human rights law specifically.[168] On the international criminal justice perspective, the legal consequences required by the violations should be met including any reparations that can be offered to Ukraine.[169] Once more, this is a legal interpretation statement as well as a political stance on the support to Ukraine demonstrating that any grave violations of IHL that results in war crimes and on the crime of aggression should be dealt in a way that Russia could bear the legal consequences of its acts.

(2) According to the States that voted in favour, there is a need for an international mechanism, that could be in form of a tribunal or a court, that will surmount the veto power Russia holds for the purposes of reparations to Ukraine

The need for establishing an institution for prosecuting the alleged crimes committed by Russia has been a subject matter for academic discussions since the start of the war where the scenario today is that there is no international court available that can prosecute nationals of Russia considering the veto power. A step further to establish a tribunal can be possible based on the 'Uniting for Peace' resolution creating an obligation upon all the member States of the UN to cooperate with the tribunal.[170] This, in turn, brings the problem on Russia's voluntariness of cooperating with the work of the tribunal where even concerning the practice with the ECtHR accepting the jurisdiction resulted in not executing the judgments.

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[168] *Supra* 167, p. 2.
[169] *Supra* 167, p. 2.
[170] European Parliament, Tribunal for the crime of aggression against Ukraine – a legal assessment, December 2022, pp. 31-32, can be accessed here: https://www.europarl.europa.eu/RegData/etudes/IDAN/2022/702574/EXPO_IDA(2022)702574_EN.pdf.

b. Requesting for Provisional Measures from International Court of Justice on the Genocide Case Submitted by Ukraine

Another important topic concerning the Russian invasion into Ukraine is the matter brought before the ICJ. The Court has decided that 'Russian Federation must suspend its military operations that it commenced on 24 February 2024 in the territory of Ukraine'[171]. The Court at this stage did not ascertain whether there was a genocide committed either by Russia or Ukraine[172] as the case was concerning the provisional measures. This case is differentiating from the other cases covering genocide claims in the sense that both the applicant and the respondent is accusing each other for committing genocide whereas the other cases before the ICJ was on the claim that the responded has committed the genocide.[173] Meaning not only evidencing the alleged genocide committed by Russia, Ukraine also has to evidence that there is no genocide committed against the Russian-speaking people in the Eastern Ukraine as used for a legal justification for the invasion to Ukraine from Russia.

Although the Court has found Ukraine's provisional measure request plausible initially, there was a procedural aspect of the case where the Court has accepted the Russian submission[174] later on the preliminary objections that the Genocide Convention does not cover the basing use of force on the genocide allegations (including the false allegations of genocide itself), this, in turn, will result for the merits of the case Ukraine will be subject to the examination whether they've committed genocide[175]. The Court decided that it has no jurisdiction over the Ukrainian submissions[176] on the 'Russian Federation's use of force in and against Ukraine beginning on 24 February 2024 violates Articles I and IV of the Genocide Convention' and 'the Russian Federation's recognition of independence of the so-called "Donetsk People's Republic" and "Luhansk People's Republic" on 20 February 2022 violates Articles I and IV of the Genocide Convention'.[177] This means that there won't be a judgment rendered by the ICJ to punish the

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[171] ICJ, Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide, Request for the Indication of Provisional Measures, Order of 16 March 2022, para. 81.
[172] *Supra* 171, para. 43.
[173] Milanovic, Marko, ICJ Delivers Preliminary Objections Judgment in the Ukraine v. Russia Genocide Case, Ukraine Loses on the Most Important Aspects, EJIL: Talk! Blog of the European Journal of International Law, 2 February 2024, can be accessed at https://www.ejiltalk.org/icj-delivers-preliminary-objections-judgment-in-the-ukraine-v-russia-genocide-case-ukraine-loses-on-the-most-important-aspects/.
[174] ICJ, Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections, 2 February 2024, para. 151.
[175] *Supra* 173.
[176] *Supra* 174, para. 149.
[177] ICJ, Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide, Memorial Submitted by Ukraine, 1 July 2022, para. 178 (c) and (d).

alleged genocide for the reasons submitted by Ukraine. Nevertheless, the Court has emphasised that even in the case there is no jurisdiction of the Court, States have to comply with the rules of international law including the Charter of the United Nations.[178] The Court further decided that States are responsible 'for acts attributable to them that are contrary to international law'.[179]

In the case that there won't be a Court to decide on the attribution and the subject matter of the case, this makes the situation as Russia should abide by the rules of international law without any binding decision. The voluntariness of Russia for this purpose according to the practice displayed so far can be interpreted as this will be hardly happen, if not impossible.

[178] *Supra* 174, para. 150.
[179] *Supra* 174, para. 150.

Conclusion

Russian Federation indeed has impacts, be it for political or historical reasons, over other territories that needs a justification from Russia in the case there is a conflict of interest. When the confrontations are in the form of military interventions, there come the rules firstly applicable in the international humanitarian law field that Russia is a party to. In the case there is an allegation that the rules are violated by Russia, then the justifications on the international criminal law field makes it necessary to understand the Russian approach to the concepts of international criminal law. That is the reason why the thesis has covered different timelines and cases with diverging international and national courts and tribunals to have a better grasp of the Russian approach. The thesis covered the Russian discourse mostly on the political arguments trying to implement it into the legal concepts and argumentations.

The author argues that there is a similar path in terms of the Russian attitude towards the Nuremberg Tribunal and the cases of the ICTY. The practice starts with an interest and acclaiming of the institution of the Tribunal by way of expressing the eagerness on the participation of the criminal justice that will be bestowed to the victims in question.

What differentiates the Nuremberg trials from the ICTY for the Russian approach would be that the level of the legal contributions as an added value by the Soviet Union has not been seen in the any of the following international criminal adjudication where Russia was involved. The following step is the observation (in Nuremberg participation as well) on the work of the Tribunal which in both cases ended in a disappointment in terms of the political outcomes. Especially after the ICTY and Residual Mechanism practice, the suspicions toward the international criminal adjudication has been observed more.

The 1990s is also an important time frame in terms of understanding the Russian approach to international criminal law in terms of implementing the international criminal law into the national law. The author agrees with the argument that the Criminal Code of Russia does not meet the international criminal law standards to the fullest as regulated with the Rome Statute and the additional Elements of Crimes document.

Especially, there is a lack of clarity in terms of the elements of the crimes that results in punishing the international crimes committed within the territory of Russia without a sufficient

basis. As a further step, when it comes to the punishment of its nationals for the perpetration of international crimes, the practice is that Russia is not willing to apply the international criminal law rules but rather applying the rules as regulated under the national laws applicable.

In addition, the terms used in the national law does not coincide fully with what is understood in the international criminal law instruments, such as using the crimes against humanity and crimes against mankind interchangeably in the Russian criminal law doctrine. Not only the national criminal law regulation itself is problematic in this sense but also a practice of emptying the international criminal law concepts by way of either politics or mass media and using them as a pretext of military conduct, especially since the annexation of Crimea is another issue that needs further academic work from the Russian scholars to understand the approach better.

It can be contended that the use of the international criminal law concepts since 2014 is mostly based on the political agenda rather than a legal substantiation to understand whether Russia offers a contribution to the international criminal law theory as a different interpretation of the rules applicable. As examined in the main text, most of them do not find an acceptance from the international community for a legal basis. However, this does not restrain Russia continuing on this practice as it is not an easy task to make sure that the modern international criminal law rules are respected by Russia. The nature of the field of international criminal law is based on the definition of crimes and relatedly the punishment of them and in a case where Russia is not a party to the Rome Statute and finds the applicable rules mostly deriving from its own national criminal law rules on the interpretation and adjudication, meeting the international standards applicable to criminal law is quite challenging.

On a further note, the veto power Russia holds at the UN Security Council results in issuing a binding decision that can cease any violations of international rules. There are couple of aspects into this. First, ceasing any military conducts that Russia carries is a challenge from the beginning. When this cannot be stopped and is left to the voluntariness of Russia, this naturally will result in shifting the focus on the punishment and reparations.

On that matter, Ukraine as a case practice is a good example on the difficulty on the punishment of the alleged international crimes committed by Russia. The jurisdiction of the international courts requires a State consent which in the case of Russia, a venue for this purpose

is not easy because the acceptance on the jurisdiction is required that practically is not viable. Even in the attempts of creating alternative venues, such as *ad hoc* tribunals, the binding effect and more importantly the willingness of Russia respecting the judgments is once more creating a challenge for the prosecution of the nationals of Russia.

In terms of the power Russia holds at the UN Security Council, it is also observed that Russia uses this power even in the cases that does not directly concern themselves. The main text has the example of threatening the other UN Security Council member States with not making certain texts pass from the Council in the case that what they offer is not accepted. Considering all these elements, it is practically difficult to make use of the international criminal law rules applicable for the punishment whenever there is an allegation of international crimes committed by the nationals of Russia.

To make sure that there are no other threats to international criminal adjudication towards its nationals, cutting the ties fully with the ICC is another example. Although the political statements emphasised on the 'selective justice' or the institution itself acting biased, it can be argued that when the ICC has initiated investigations and applied the relevant international humanitarian and criminal law rules applicable to conflict Russia was involved, and made the statement that the evidence gathering will be continued, this has resulted in withdrawing its signature from the Rome Statute fully. Since 2016, the alleged crimes committed by Russia including genocide, war crimes, and crimes against humanity await for another venue to be examined and a judgment based on this could be rendered.

The latest attempt was for the violation of the Genocide Convention submitted by Ukraine against Russia to the ICJ. The jurisdiction of the Court became an issue again where some of the claims submitted by Russia has been upheld by the Court that there is no jurisdiction found to continue with the subject matter of the case. The emphasis on even in the case where a jurisdiction is preventing the State to be tried, the responsibility of the State remains in the case it is found that the acts are attributable to the State.

Again, in the case the institution that will decide on the attribution and State responsibility is missing, the practical outcome for Russia is a request from the Court that Russia won't find itself in a situation where the individuals will be tried before a court or tribunal but the State

itself will be responsible for the conduct of hostilities. Since 2 February 2024, the practical outcome of the examination of the preliminary objections is not efficient.

It can be concluded that there are two main issues with the interpretation of the Russian approach to international criminal law:

(1) The shortage of academic work from the Russian scholars on international criminal law. This is significant in the sense that Russia has an approach to international criminal concepts by way of declaring with a political argumentation whereas for the legal aspect, basing the arguments on the rules applicable is a necessity that is lacking with the current academic work produced that is available in languages other than Russian.

(2) Russia is not (and most probably won't be) willing to participate in the international or regional criminal courts or tribunals. The preference seems on resolving cases with its own national criminal adjudication where a crime is committed by its national that can be qualified as an international crime. The participation from Russia is important as when there is a Court, the justifications need to be based on legal arguments rather than political ones. According to the author, this is the most important aspect to understand the Russian approach to international criminal law so that the Russian legal argumentations could be used for interpretations rather than twisting the international criminal concepts with political discourse.

Kokkuvõte

Venemaa Föderatsioonil on tõepoolest mõju, olgu see siis poliitilistel või ajaloolistel põhjustel, teistele territooriumidele, mis vajab huvide konflikti korral Venemaa poolt põhjendust. Kui vastasseisud toimuvad sõjalise sekkumise vormis, siis kehtivad kõigepealt rahvusvahelise humanitaarõiguse eeskirjad, mille osaline on Venemaa. Juhul, kui on etteheide, et Venemaa rikub neid reegleid, siis õigustused rahvusvahelise kriminaalõiguse valdkonnas muudavad vajalikuks mõista Venemaa lähenemist rahvusvahelise kriminaalõiguse mõistetele. Seetõttu on lõputöös käsitletud erinevaid ajaskaalasid ja juhtumeid, mille puhul on erinevad rahvusvahelised ja riiklikud kohtud ja tribunalid, et paremini mõista Venemaa lähenemisviisi. Töös käsitleti Venemaa diskursust peamiselt poliitiliste argumentide kohta, püüdes seda rakendada õiguskontseptsioonides ja argumentatsioonides.

Autor väidab, et Venemaa suhtumine Nürnbergi tribunali ja EJRK kohtuasjadesse on sarnane. Praktika algab huvi ja kiitusega tribunali institutsiooni vastu, väljendades innukust kriminaalõiguses osalemise suhtes, mida antakse kõnealustele ohvritele.

Mis eristab Nürnbergi kohtuprotsessi ja EJRK-d Venemaa lähenemisviisi poolest, on see, et Nõukogude Liidu õigusliku panuse kui lisandväärtuse tase ei ole ilmnenud üheski järgmises rahvusvahelises kriminaalmenetluses, kus Venemaa osales. Järgmine samm on tähelepanek (ka Nürnbergi osaluse puhul) tribunali töö kohta, mis mõlemal juhul lõppes poliitiliste tulemuste osas pettumusega. Eriti pärast EJRK ja jääkmehhanismi praktikat on täheldatud rohkem kahtlusi rahvusvahelise kriminaalkohtumõistmise suhtes.

1990. aastad on samuti oluline ajavahemik, et mõista Venemaa lähenemisviisi rahvusvahelisele kriminaalõigusele seoses rahvusvahelise kriminaalõiguse rakendamisega siseriiklikus õiguses. Autor nõustub väitega, et Venemaa kriminaalkoodeks ei vasta täiel määral rahvusvahelise kriminaalõiguse normidele, nagu need on reguleeritud Rooma statuudiga ja kuriteoelementide lisadokumendiga.

Eelkõige puudub selgus kuriteokoosseisude osas, mille tulemusel karistatakse Venemaa territooriumil toime pandud rahvusvahelisi kuritegusid ilma piisava aluseta. Veelgi enam, kui tegemist on oma kodanike karistamisega rahvusvaheliste kuritegude toimepanemise eest, siis

Venemaa ei soovi kohaldada rahvusvahelise kriminaalõiguse eeskirju, vaid kohaldab pigem eeskirju, mis on reguleeritud kohaldatavate siseriiklike õigusaktidega.

Lisaks sellele ei lange siseriiklikus õiguses kasutatavad mõisted täielikult kokku rahvusvahelistes kriminaalõiguslikes dokumentides kasutatava mõistega, näiteks kasutatakse Venemaa kriminaalõiguse doktriinis inimsusevastaseid kuritegusid ja inimkonna vastu suunatud kuritegusid vaheldumisi. Selles mõttes ei ole problemaatiline mitte ainult siseriiklik kriminaalõiguse regulatsioon ise, vaid ka praktika, mille kohaselt tühjendatakse rahvusvahelise kriminaalõiguse mõisteid kas poliitika või massimeedia kaudu ja kasutatakse neid sõjalise käitumise ettekäändena, eriti pärast Krimmi annekteerimist, on teine teema, mis vajab Venemaa teadlastelt edasist akadeemilist tööd, et paremini mõista seda lähenemisviisi.

Võib väita, et rahvusvahelise kriminaalõiguse mõistete kasutamine alates 2014. aastast põhineb peamiselt poliitilisel tegevuskaval, mitte õiguslikul põhjendusel, et mõista, kas Venemaa pakub rahvusvahelise kriminaalõiguse teooriasse panust kui kohaldatavate eeskirjade teistsugust tõlgendust. Nagu põhitekstis uuritud, ei leia enamik neist rahvusvahelise üldsuse poolt õigusliku aluse tunnustamist. See ei takista Venemaad siiski selle praktika jätkamist, sest ei ole lihtne ülesanne tagada, et Venemaa järgiks kaasaegseid rahvusvahelise kriminaalõiguse norme. Rahvusvahelise kriminaalõiguse valdkonna olemus põhineb kuritegude määratlemisel ja nendega seotud karistamisel ning juhul, kui Venemaa ei ole Rooma statuudi osaline ja leiab, et kohaldatavad eeskirjad tulenevad enamasti tema enda siseriiklikest kriminaalõiguse tõlgendamise ja kohtumõistmise eeskirjadest, on kriminaalõiguse suhtes kohaldatavate rahvusvaheliste standardite täitmine üsna keeruline.

Lisaks sellele on Venemaa vetoõigus ÜRO Julgeolekunõukogus siduv otsus, mis võib lõpetada rahvusvaheliste reeglite rikkumise. Selles on paar aspekti. Esiteks on Venemaa sõjalise tegevuse lõpetamine algusest peale väljakutse. Kui seda ei saa lõpetada ja see jääb Venemaa vabatahtlikkuse hooleks, siis loomulikult toob see kaasa keskendumise karistamisele ja heastamisele.

Selles küsimuses on Ukraina kui praktiline juhtum hea näide Venemaa poolt väidetavalt toime pandud rahvusvaheliste kuritegude karistamise raskustest. Rahvusvaheliste kohtute jurisdiktsioon nõuab riigi nõusolekut, mis Venemaa puhul ei ole selleks lihtne, sest nõutakse kohtualluvuse aktsepteerimist, mis praktiliselt ei ole võimalik. Isegi katsetes luua alternatiivseid

kohtuid, nagu näiteks ajutised kohtud, tekitab Venemaa kodanike vastutusele võtmisel taas kord väljakutse siduvus ja mis veelgi olulisem, Venemaa valmisolek kohtuotsuseid järgida.

Mis puudutab Venemaa võimu ÜRO Julgeolekunõukogus, siis on täheldatud, et Venemaa kasutab seda võimu isegi juhtudel, mis ei puuduta otseselt teda ennast. Põhitekstis on näiteks teiste ÜRO Julgeolekunõukogu liikmesriikide ähvardamine sellega, et teatud tekstid ei lähe nõukogust läbi juhul, kui nende poolt pakutut ei võeta vastu. Kõiki neid elemente arvesse võttes on praktiliselt raske kasutada karistuse määramiseks kohaldatavaid rahvusvahelise kriminaalõiguse norme, kui Venemaa kodanike poolt toime pandud rahvusvahelistes kuritegudes süüdistatakse.

Selleks, et tagada, et tema kodanike suhtes ei tekiks teisi ohte rahvusvahelisele kriminaalasjades kohtumõistmisele, on veel üks näide, et ta katkestab täielikult sidemed Rahvusvahelise Kriminaalkohtuga. Kuigi poliitilistes avaldustes rõhutati "valikulise õigusemõistmise" või institutsiooni enda erapoolikust, võib väita, et kui Rahvusvaheline Kriminaalkohus on algatanud uurimise ja kohaldanud asjakohaseid rahvusvahelise humanitaar- ja kriminaalõiguse norme, mida kohaldatakse konflikti suhtes, millesse Venemaa oli kaasatud, ning teinud avalduse, et tõendite kogumist jätkatakse, on see viinud tema allkirja täieliku tagasivõtmiseni Rooma statuudist. Alates 2016. aastast ootavad Venemaa poolt väidetavalt toime pandud kuriteod, sealhulgas genotsiid, sõjakuriteod ja inimsusevastased kuriteod, et neid saaks uurida teises kohtuastmes ja selle põhjal saaks teha kohtuotsuse.

Viimane katse oli Ukraina poolt Venemaa vastu esitatud genotsiidi konventsiooni rikkumine Rahvusvahelisele Kohtule. Kohtu pädevus sai taas teemaks, kus mõned Venemaa esitatud väited kinnitati kohtu poolt, et puudub pädevus jätkata asja menetlemist. Rõhuasetus isegi juhul, kui jurisdiktsioon takistab riigi kohtu alla andmist, jääb riigi vastutus juhul, kui leitakse, et teod on riigile omistatavad.

Jällegi, juhul kui institutsioon, mis otsustab süüstamise ja riigi vastutuse üle, puudub, on Venemaa jaoks praktiline tulemus, et Venemaa ei leia end olukorras, kus üksikisikute üle mõistetakse kohut kohtu ees, kuid riik ise vastutab sõjategevuse läbiviimise eest. Alates 2. veebruarist 2024 ei ole esialgsete vastuväidete läbivaatamise praktiline tulemus tõhus.

Võib järeldada, et Venemaa lähenemisviisi tõlgendamisel rahvusvahelisele kriminaalõigusele on kaks põhiprobleemi:

(1) Venemaa teadlaste akadeemiliste tööde vähesus rahvusvahelise kriminaalõiguse valdkonnas. See on märkimisväärne selles mõttes, et Venemaal lähenetakse rahvusvahelistele kriminaalkontseptsioonidele poliitilise argumentatsiooniga deklareerimise teel, samas kui õigusliku aspekti puhul on kohaldatavatele normidele tuginev argumentatsioon vajalik, mis puudub praeguste akadeemiliste tööde puhul, mis on kättesaadavad muudes keeltes kui vene keeles.

(2) Venemaa ei ole (ja tõenäoliselt ei ole ka edaspidi) valmis osalema rahvusvahelistes või piirkondlikes kriminaalkohtutes või -kohtutes. Tundub, et eelistatakse lahendada juhtumeid oma siseriikliku kriminaalkohtu kaudu, kui tema kodanik on toime pannud kuriteo, mida saab kvalifitseerida rahvusvaheliseks kuriteoks. Venemaa osalemine on oluline, sest kui on olemas kohus, peavad põhjendused põhinema pigem õiguslikel kui poliitilistel argumentidel. Autori arvates on see kõige olulisem aspekt, et mõista Venemaa lähenemist rahvusvahelisele kriminaalõigusele, nii et Venemaa õiguslikke argumente saaks kasutada tõlgendustes, mitte väänata rahvusvahelisi kriminaalkontseptsioone poliitilise diskursusega.

REFERENCE LIST

Books

1. Evans, Malcolm D., International Law, Fifth Edition, Oxford University Press, 2018, p. 745.

2. Kittichaisaree, Kriangsak, ‘International Criminal Law’ (2009), Oxford University Press, p. 67.

3. Mälksoo, Lauri, 'Russian Approaches to International Law' (2015), Oxford University Press, pp. 136, 138, 139.

4. Riepl, Michael, Russian Contributions to International Humanitarian Law: A constructive analysis of Russia’s historical role and its current practice, Nomos, 2022, pp. 184, 186, 187, 188, 208.

5. Stahn, Carsten, A Critical Introduction to International Criminal Law, Cambridge University Press, 2019, pp. 33, 191-192.

Blog Posts

1. Gorobets, Kostia, Russian “Special Military Operation” and the Language of Empire, Opinio Juris, 24 May 2022, can be found here: http://opiniojuris.org/2022/05/24/russian-special-military-operation-and-the-language-of-empire/

2. Leach, Philip, ‘The Continuing Utility of International Human Rights Mechanisms?’, EJIL: Talk!, 1 November 2017, can be read here: https://www.ejiltalk.org/the-continuing-utility-of-international-human-rights-mechanisms/.

3. Milanovic, Marko, ICJ Delivers Preliminary Objections Judgment in the Ukraine v. Russia Genocide Case, Ukraine Loses on the Most Important Aspects, EJIL: Talk! Blog of the European Journal of International Law, 2 February 2024, can be accessed at https://www.ejiltalk.org/icj-delivers-preliminary-objections-judgment-in-the-ukraine-v-russia-genocide-case-ukraine-loses-on-the-most-important-aspects/.

4. Ralph Janik, EJIL: Talk!, Putin's War Against Ukraine: Mocking International Law, 28 February 2022, can be accessed at https://www.ejiltalk.org/putins-war-against-ukraine-mocking-international-law/.

5. Sayapin, Sergey, Russia's Withdrawal of Signature from the Rome Statute Would not Shield its Nationals from Potential Prosecution at the ICC, EJIL: Talk! Blog of the European Journal of International Law, 21 November 2016, can be accessed here: https://www.ejiltalk.org/russias-withdrawal-of-signature-from-the-rome-statute-would-not-shield-its-nationals-from-potential-prosecution-at-the-icc/#more-14774.

Cases (on the chronological order)

European Court of Human Rights

1. ECtHR, Case of Isayeva v. Russia, Application No. 57950/00, Judgment, 24 February 2005.

2. ECtHR, Case of Abakarova v. Russia, Application No. 16664/07, Judgment, 15 October 2015.

International Court of Justice

1. ICJ, Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, 28 May 1951, p. 23.

2. ICJ, Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide, Request for the Indication of Provisional Measures, Order of 16 March 2022, paras. 43, 81.

3. ICJ, Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide, Memorial Submitted by Ukraine, 1 July 2022, para. 178.

4. ICJ, Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections, 2 February 2024, paras. 149 - 151.

International Criminal Court

1. Prosecutor v. Dusko Tadic, Case No. IT-94-1-AR72, ICTY App. Ch., 2 October 1995, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction.

2. Resolution RC/Res.6, 11 June 2010, can be accessed here: https://treaties.un.org/doc/source/docs/RC-Res.6-ENG.pdf.

3. Decision on the Prosecutor's request for authorization of an investigation, ICC-01/15-12, Pre-Trial Chamber I, Decision, 27 January 2016, para. 50.

4. International Criminal Court, The Office of the Prosecutor, Report on Preliminary Examination Activities (2016), 14 November 2016, paras. 150, 154, 158, 191.

International Criminal Tribunal for the Former Yugoslavia (ICTY)

1. Prosecutor v. Goran Jelisic, Case No. IT-95-10, ICTY, Trial Chamber I, 14 December 1999, para. 60.

International Criminal Tribunal for Rwanda (ICTR)

1. Prosecutor v. Kayishema and Ruzindana, ICTR-95-1-T, 21 May 1999, para. 98.

2. The Prosecutor v. Nahimana et al, ICTR-99-52-T, Trial Chamber I, Judgment and Sentence, 3 December 2003, paras. 180, 187-188, 1096, 1099.

Journal Articles

1. Bílková, Veronika, Divided We Stand? The Ad Hoc Tribunals and the CEE Region, Symposium on the International Criminal Tribunals for the Former Yugoslavia and Rwanda: Broadening the Debate, AJIL Unbound, Vol. 110, pp. 241, 243, 244.

2. Bogush, Gleb, Russia and International Criminal Law, Baltic Yearbook of International Law, vol. 15, 2015, pp. 170-172, 174.

3. Esakov, Gennady, 'International Criminal Law and Russia: From "Nuremberg" Passion to "The Hague" Prejudice' (2017), pp. 1185, 1188, 1190, 1191, 1193.

4. Fortuin, Egbert, "Ukraine commits genocide on Russians": the term "genocide" in Russian propaganda, Russian Linguistics, Springer, Vol. 46, 7 September 2022, p. 317.

5. Francine Hirsch, 'The Soviets at Nuremberg: International Law, Propaganda, and the Making of the Postwar Order' (2008) 113 The American Historical Review 701, pp. 703, 707, 725, 726.

6. Hilpold, Peter, Justifying an Unjustifiable: Russia's Aggression against Ukraine, International Law, and Carl Schmitt's "Theory of the Greater Space" ("*Großraumtheorie"*), Chinese Journal of International Law, Vol. 22, Issue 3, 28 September 2023, p. 410.

7. 'Judgment' (1947) 41 American Journal of International Law 172 <https://www.cambridge.org/core/product/identifier/S0002930000085961/type/journal_article> accessed 23 October 2023.

8. Kozyrev, Andrei, The Lagging Partnership, Foreign Affairs, Vol. 73, No. 3 (May-June 1994), p. 66.

9. Lavrov, Sergey, The Russian Approach: The Fight Against Genocide, War Crimes, and Crimes Against Humanity, Fordham International Law Journal, Vol. 23, Issue 2, 1999, pp. 422-423.

10. Mälksoo, Lauri, 'Case Law in Russian Approaches to International Law' in Anthea Roberts and others (eds), Comparative International Law, Oxford University Press, 2018, pp. 345, 347, 350-351, 388-389.

11. Polunina, Valentina, The Human Face of Soviet Justice? Aron Trainin and the Origins of the Soviet Doctrine of International Criminal Law in Stalin's Soviet Justice – 'Show' Trials, War Crimes Trials, and Nuremberg (ed. David M. Crowe), Bloomsbury Academic, 2019, p. 139.

12. Porter, Thomas Earl, In Defence of Peace: Aron Trainin's Contributions to International Jurisprudence, Genocide Studies and Prevention: An International Journal, Vol. 13, Issue 1, 2019, p. 110.

13. Sayapin, Sergey, An Alleged "Genocide of the Russian-Speaking Persons" in Eastern Ukraine: Some Observations on the "Hybrid" Application on International Criminal Law by the Investigative Committee of the Russian Federation in S. Sayapin and E. Tsybulenko (eds), The Use of Force Against Ukraine and International Law: Jus Ad Bellum, Jus In Bello, Jus Post Bellum, T.M.C. Asser Press/Springer, 2018, p. 324.

14. Sayapin, Sergey, Russian Discourse on International Criminal Law, Journal of International Criminal Justice, Vol. 20, 19 December 2022, pp. 819-828.

15. Wyrozumska, Anna, The Russian "Special Military Operation" in Ukraine Before International Courts, Polish Yearbook of International Law, Vol. 42, 2022, p. 31.

UN Documents

1. Letter dated 5 April 1993 From the Permanent Representative of the Russian Federation to the United Nations Addressed to the Secretary-General, UNSC, S/25537, Annex-II, Explanatory notes on the draft Statute of the International Tribunal to hear cases relating to crimes committed in the territory of the former Yugoslavia, p. 14.

2. Letter dated 3 May 1994 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary General, UN Doc. A/49/151-S/1994/537, p. 4.

3. Official records of the third session of the General Assembly, Part I Legal Questions, Sixth Committee, Summary Records of Meetings 21 September – 10 December 1948, p. 219.

4. Provisional Verbatim Record of the Three Thousand Two Hundred and Seventeenth Meeting, UN Doc S/PV.3217, 25 May 1993, p. 44.

5. Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, A/49/342, S/1994/1007, Submitted to the UN General Assembly and Security Council, 29 August 1994, accessed in October 2023 here, paras. 195-196

6. Resolution 808 (1993) / adopted by the Security Council at its 3175th meeting, on 22 Feb 1993, p. 2. Last accessed on October 2023 here.

7. Resolution 827 (1993) / adopted by the Security Council at its 3217th meeting, on 25 May 1993. Last accessed on October 2023 here.

8. United Nations General Assembly, A/RES/96-I, 11 December 1946, can be accessed here: https://documents.un.org/doc/resolution/gen/nr0/033/47/pdf/nr003347.pdf?token=v30lWgpl8QAqkzONi4&fe=true.

9. United Nations Office on Genocide Prevention and the Responsibility to Protect, Genocide, can be accessed here: https://www.un.org/en/genocideprevention/genocide.shtml.

10. UN General Assembly, Furtherance of remedy and reparation for aggression against Ukraine, A/RES/ES-11/5, 14 November 2022, can be accessed here: https://digitallibrary.un.org/record/3994481?v=pdf, p. 2.

11. UN Secretary-General, 'Historical Survey of the Question of International Criminal Jurisdiction' (United Nations, 1949), pp. 25-30.

Other Documents

1. Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis, 8 Aug 1945, last accessed in October 2023 here.

2. Briefing by Foreign Ministry Spokesperson Maria Zakharova Moscow, January 29, 2016, The Ministry of Foreign Affairs of the Russian Federation, 29 January 2016, accessed in October 2023 here.

3. Comment by the Foreign Ministry on the proposed establishment of an international tribunal to prosecute those suspected of downing Malaysia Airlines flight MH17 over Ukraine, The Ministry of Foreign Affairs of the Russian Federation, 14 July 2015, accessed in October 2023 here.

4. Comment by the Information and Press Department of the Russian Ministry of Foreign Affairs regarding the decision by the ICTY to temporarily free Vojislav Šešelj, The Ministry of Foreign Affairs of the Russian Federation, 14 November 2014, accessed in October 2023 here.

5. Comment of the Information and Press Department of the Ministry of Foreign Affairs of Russia in connection with passing of the acquittal by the ICTY in the case of R. Haradinai, The Ministry of Foreign Affairs of the Russian Federation, 30 November 2012, accessed in October 2023 here.

6. Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899, the full text of the preamble can be found here: https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-ii-1899.

7. Council to Vote on the International Residual Mechanism for Criminal Tribunals, Security Council Report, 25 June 2020, available at https://www.securitycouncilreport.org/whatsinblue/2020/06/council-to-vote-on-the-international-residual-mechanism-for-criminal-tribunals.php.

8. Declaration submitted by the Embassy of the Ukraine dated 9 April 2014 can be accessed here: https://www.icc-cpi.int/sites/default/files/itemsDocuments/997/declarationRecognitionJuristiction09-04-2014.pdf.

9. Declaration submitted by the Minister for Foreign Affairs of Ukraine dated 8 September 2015 can be accessed here: https://www.icc-cpi.int/sites/default/files/iccdocs/other/Ukraine_Art_12-3_declaration_08092015.pdf#search=ukraine

10. Elena Teslova, Putin Says he regrets not starting 'special military operation' against Ukraine earlier, Anadolu Ajansı, 15 February 2024, can be accessed here: https://www.aa.com.tr/en/europe/putin-says-he-regrets-not-starting-special-military-operation-against-ukraine-earlier/3137917.

11. European Parliament, Tribunal for the crime of aggression against Ukraine – a legal assessment, December 2022, pp. 31-32, can be accessed here: https://www.europarl.europa.eu/RegData/etudes/IDAN/2022/702574/EXPO_IDA(2022)702574_EN.pdf.

12. International Criminal Court, Elements of Crimes, 2013, p. 2.

13. Martens Clause, ICRC Casebook, Glossary, can be visited here: https://casebook.icrc.org/a_to_z/glossary/martens-clause.

14. Moscow says Karadzic verdict continues myth of Serbs' sole responsibility for Yugoslav war, TASS, 25 March 2016, available here.

15. Press release on transfer of Ratko Mladic to Russia for medical treatment, The Ministry of Foreign Affairs of the Russian Federation, 22 March 2017, available at https://www.mid.ru/en/foreign_policy/news/1544179/.

16. Rome Statute of the International Criminal Court, United Nations, Treaty Series, vol. 2187, No. 38544, Depositary: Secretary-General of the United Nations, http://treaties.un.org.

17. Rule 156 of the ICRC's Customary IHL Study Rule 156: Definition of War Crimes. The rule can be read here: https://ihl-databases.icrc.org/en/customary-ihl/v1/rule156

18. Russia blocks U.N. condemnation of Srebrenica as genocide, Michelle Nichols, Reuters, 8 July 2015, available at https://www.reuters.com/article/us-bosnia-srebrenica-un-idUSKCN0PI1W620150708/.

19. Russia demands Germany officially recognize siege of Leningrad as act of genocide, TASS, 18 March 2024, can be accessed at https://tass.com/politics/1761509.

20. Statement by Deputy Permanent Representative Gennady Kuzmin at UNSC briefing regarding the report of the International Residual Mechanism for Criminal Tribunals, Permanent Mission of the Russian Federation to the United Nations, 8 June 2021, available at https://russiaun.ru/en/news/yugoslavia08062021.

21. Statement by the Russian Foreign Ministry, The Ministry of Foreign Affairs of the Russian Federation, 16 November 2016, accessed in October 2023 here.

22. The Criminal Code of the Russian Federation NO. 63-FZ OF JUNE 13, 1996 (with Amendments and Addenda of May 27, June 25, 1998, February 9, 15, March 18, July 9, 1999, March 9, 20, June 19, August 7, November 17, December 29, 2001, March 4, 14, May 7, June 25, July 24, 25, October 31, 2002, March 11, April 8, July 4, 7, December 8, 2003, July 21, 26, December 28, 2004, July 21, December 19, 2005, January 5, July 27, December 4, 30, 2006, April 9, May 10, July 24, November 4, December 1, 6, 2007), can be found here: https://www.wto.org/english/thewto_e/acc_e/rus_e/wtaccrus58_leg_362.pdf.

23. Ukraine institutes proceedings against the Russian Federation and requests the Court to indicate provisional measures, International Court of Justice Press Release, No. 2022/4, 27 February 2022, p. 1, can be accessed here: https://www.icj-cij.org/sites/default/files/case-related/182/182-20220227-PRE-01-00-EN.pdf.

24. UN Security Council, SC/14803 8974th Meeting, Russian Federation Announces 'Special Military Operation' in Ukraine as Security Council Meets in Eleventh-Hour Effort to Avoid Full-Scale Conflict, 23 February 2022, can be accessed at https://press.un.org/en/2022/sc14803.doc.htm

25. Unveiling a memorial to USSR civilians who fell victim of Nazi genocide during Great Patriotic War, 27 January 2024, Putin's speech can be found here: http://en.kremlin.ru/events/president/news/73334.

26. Yevgeny Voronin, Deputy Official Spokesman of Russia's Ministry of Foreign Affairs, Answers a Russian Media Question About the Intention of the PACE Legal Committee to Create an International Tribunal for Chechnya, The Ministry of Foreign Affairs of the Russian Federation, 5 March 2003, can be visited here: https://mid.ru/en/press_service/spokesman/answers/1697396/.