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PERFIDIOUS ACTS DURING AN ARMED CONFLICT ON THE TERRITORY OF UKRAINE

The armed conflict started by Russian «detachments» in eastern Ukraine, which invaded the Ukrainian Donetsk and Luhansk regions in April 2014 after the capture of Crimea by the Russian Federation, a series of pro-Russian demonstrations in Ukraine and the proclamation of «state sovereignty» by the so-called Donetsk People's Republic and the Luhansk People's Republic. Thus, this conflict was a continuation of Russia's armed aggression against Ukraine.

The Prosecutor of the International Criminal Court's qualification of the conflict deserves considerable attention. The ICC Prosecutor's Office begins its analysis by confirming the fact that by April 30, 2014, the armed confrontation in Donetsk and Luhansk regions had reached at least the level of non-international armed conflict. This qualification alone is sufficient to consider allegations of war crimes committed by the parties to the conflict, but in order to properly apply Article 8 of the Rome Statute, which defines their composition, the Prosecutor also needs to determine whether the conflict was international.

Here is the first critical conclusion of the Report, which should be quoted in full: »point to the direct armed confrontation between the Russian armed forces and the governmental armed forces of Ukraine which indicates the existence of an international armed conflict in the context of hostilities in eastern Ukraine on July 14, 2014 at the latest, in parallel with the non-international armed conflict« [3].

Thus, in Donetsk and Luhansk districts the situation qualifies at least as an armed conflict of both non-international and international nature.

The treacherous actions of the Russian Federation were also observed in the city of Ilovaisk, where the treacherous murder of the Ukrainian military took place. The Russian military used the uniform of Ukrainian soldiers, which is expressly prohibited by Article 39 of Additional Protocol I to the Geneva Conventions of 12 August 1949, namely the use of flags, military emblems, military insignia or uniforms of opposing parties during attacks or to cover up hostilities. these actions, their protection or hindrance [2].

Another episode of treachery occurred in 2017, when militants, despite the declaration of a truce, fired 120-millimeter mortars at the ATO fortifications in the Pavlopol area.

The so-called «New Year's truce» was the result of agreements between representatives of Ukraine, Russia and the Organization for Security and Cooperation in Europe at the Tripartite Contact Group in Minsk, and officially began on the night of December 23. In the evening of December 25, the press center of the anti-terrorist operation headquarters reported on the social network Facebook that the occupiers had released five mines in the direction of Ukrainian positions from the temporarily occupied settlement of Sosnivske. The press center also added that such treacherous actions of Russian mercenaries indicate an interest in further escalation of the conflict and unwillingness to adhere to the ceasefire.

With regard to bringing to justice those guilty of war crimes, it should first be noted that this is a direct duty of Ukraine. The qualification of these crimes is contained in Art. 438 of the Criminal Code of Ukraine. Yes, this article is not perfect, outdated, it is a reflection of the Soviet approach to criminal liability for violating the laws and customs of war, but it is still valid and should be applied. The subject of a crime under this article is any person who has violated the laws and customs of war with certain consequences, i.e. committed a war crime. The peculiarity of the application of this article is the period of armed conflict, both international and non-international, as a matter of fact, regardless of martial law, declaration of war and more. There is an armed conflict – international humanitarian law automatically applies – and anyone must be prosecuted for violating it.

This duty of Ukraine, the duty to prosecute war criminals, is also connected with the jurisdiction of the International Criminal Court, in accordance with the principle of complementarity. That is, the jurisdiction of the Court extends to international crimes (and war crimes are international crimes) for which the state cannot or does not want to apply criminal liability.

Therefore, it is extremely important to improve the quality, efficiency, applicability, compliance with international law of the provisions of the Criminal Code of Ukraine relating to criminal liability for international crimes. This is important, among other things, for bringing to justice those guilty of war crimes near Ilovaik.

Also, it should be noted that Ukraine has agreed to the jurisdiction of the International Criminal Court in accordance with paragraph 3 of Art. 12 of the Rome Statute of the International Criminal Court, as a state that is

not a party to the Rome Statute. This jurisdiction is indefinite, extends to the entire territory of Ukraine within internationally recognized borders, including the temporarily occupied territories, and extends to all persons who have committed crimes against humanity and war crimes, in cases where Ukraine cannot or does not want to apply criminal liability to persons who committed these crimes. That is, the jurisdiction of the International Criminal Court over international crimes committed on the territory of Ukraine since November 21, 2013 is quite wide: «The court may exercise jurisdiction over crimes covered by the Rome Statute committed on the territory of Ukraine, starting from November 21, 2013» [1].

But Ukraine has not yet ratified the Rome Statute. That is, having the relevant obligations, as a state that has consented to the jurisdiction of the Court by application, Ukraine does not have the rights conferred by the status of a state party to the Statute. And this circumstance is very unfavorable for Ukraine [4]. Ratification of the Rome Statute, according to many scholars and practitioners, is an important step that will bring closer the responsibility of war criminals, including those guilty of committing war crimes against the Ukrainian military near Ilovaisk.

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