Gizo Kemertelidze*

INTERNATIONAL CRIMES

ABSTRACT:

The ongoing events in the world, especially the conflict situation between Ukraine and Russia raises the risks of occurring international crimes that result in the severe violations of basic human rights and freedoms. Nevertheless, the paper will not focus on the Russo-Ukrainian conflict as the process of inquiry based on clear evidence is still ongoing. Therefore, it is not appropriate to legally assess the situation in Ukraine. This paper will analyze the offenses criminalized by the Rome Statute of the International Criminal Court – the definitions on one hand and the case law of the International Criminal Court and the international tribunals on the other. Moreover, the paper will cover the military aggression undertaken during the August war of 2008 in Georgia through the international law prism and examine if Russia had a right to use military forces. Furthermore, the paper will inspect how the international crimes committed during the August war are similar to the ones that Russia is currently committing in Ukraine. The paper will also study a model case that clearly indicates that international criminal law is unable to face the global challenges today.

1. THE DEFINITION OF THE TERM 'GENOCIDE'

Raphael Lemkin is considered as a creator of the term 'genocide' who first used the term in 1955 in his book "Nazi crimes in occupied Europe" to describe the horrific crimes committed by the Nazis against the Jewish. According to Lemkin, genocide does not require the whole annihilation of the nation. It is only necessary for there to be a coordinated plan which aims to demolish the basic functions of its life, such as the destruction of political and social institutes, culture, language, national identity, religion, and economic groups; as well as the violation of personal security, liberty, health, dignity, and even the right of life of the persons belonging to these groups.[1] According to Lemkin, genocide has two phases: 1. The destruction of national structures of the oppressed groups, 2. The

* Student, law school, Ilia State University

1 Tsulaia, D. (2014). Genesis of genocide. *Journal of law*, 191-217.

forced implementation of oppressive national structures.[2] Oppression may occur on the people who were allowed to stay on the territory, or it may occur on the territory on which the oppressed people have been replaced by the population of the colonizer. Lemkin claims that genocide against a national or ethnic group is purposefully undertaken to annihilate these groups and reclaim these lands by the colonizer. Before the term 'genocide' Lemkin proposed the terms of 'barbarism' and 'vandalism'. Barbarism would mean the killing of persons due to their national, religious, or racial identity whereas vandalism would be used for the cases of such attacks on these persons' culture. However, these attempts were unsuccessful at the international conference 'for unification of criminal law'. Lemkin wanted to achieve barbarism and vandalism being adopted as international crimes but in vain. After these attempts he settled on the term used by Plato – Genos (depicting race, band, tribe, origin) to which he added the latin term 'cidium', which means 'to kill'. Genocide as a term was recognized by Resolution 96 (I) of the UN General Assembly in 1946.[3]

There have been particularly many instances of genocide in the XX century. The holocaust is the main example that took place against the Jewish and other ethnic groups since 1933 by the Nazis.[4] This event was jump started by the adoption of an anti-Semite law in Germany in 1935, which allowed the persecution of Jews. They were forbidden to ride public transport, they had to wear a David star on their clothes. They were placed in the prison known for its inhumane conditions – Auschwitz, to ensure their death. The qualification of these actions as a genocide was made easier by the remarks of the high public officials of Nazi Germany which clearly indicated that they aimed to annihilate the existence of Jews as an ethnic group. Joseph Goebels said 'there are Jews who are not easily recognizable from their appearances but they are the ones representing the most dangerous force'. Due to all this 6 million Jews died.[5]

1.1. The disposition of the crime of genocide

By Resolution 96 (I) of the UN General Assembly in 1946 genocide was first recognized as an international crime. Based on this resolution the Convention on the Prevention and Punishment of the Crime of Genocide was adopted which regulates the disposition of the crime of genocide. Namely, Article 2 of the convention states that '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;

2 Tsulaia, D. (2014). Genesis of genocide. *Journal of law*, 191-217.

3 Assembley, U. g. (1946). *The crime of genocide*. Retrieved from United nations digital library: https://digitallibrary.un.org/record/209873?ln=en

4 Faschism. (2014). In *History of XX century, TIME* (p. 50). Tbilisi, Palitra L.

5 Faschism. (2014). In *History of XX century, TIME* (p. 50). Tbilisi, Palitra L.

(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".[6]

Apart from this article, the convention forbids Direct and public incitement to commit genocide, attempt and complicity in genocide.

The Rome Statute of the International Criminal Court adopted in 1998 established the International Criminal Court and simultaneously provided the definitions of the crimes on which the Court has jurisdiction. It also provides the objective and subjective elements of the crimes. Article 6 of the Rome Statute provides the definition of the crime of genocide. It partially reiterates the clause given in the Convention on the Prevention and Punishment of the Crime of Genocide. According to the Rome 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.[7]

To charge one with this crime there must be sufficient evidence proving that the intent of committing the aforementioned acts is to bring about the physical destruction of a group in whole or in part. This is a strict request that must be met in order to find a crime of genocide. This was explained by the International Criminal Tribunal for the former Yugoslavia in the case *Prosecutor v. Radislav Krstic*: "37. The gravity of genocide is reflected in the stringent requirements which must be satisfied before this conviction is imposed. These requirements – the demanding proof of specific intent and the showing that the group was targeted for destruction in its entirety or in substantial part – guard against a danger that convictions for this crime will be imposed lightly. Where these requirements are satisfied, however, the law must not shy away from referring to the crime committed by its proper name. By seeking to eliminate a part of the Bosnian Muslims, the Bosnian Serb forces committed genocide".[8]

6 Assembley, U. g. (1946). *The crime of genocide*. Retrieved from United nations digital library: https://digitallibrary.un.org/record/209873?ln=en

7 The Rome Statute of International Criminal Court, 1998

8 Prosecutor V. Rdislav Kristic, IT-98-33-A (International criminal tribunal Yugoslavia April 19, 2004).

As mentioned earlier, Lemkin defines genocide as not only a direct annihilation of certain groups but also the destruction of their political and social institutes, language, national identity, that is crucial for their life. Nevertheless, this position is not agreed upon in contemporary international law. The Convention on genocide and customary international law forbid just the physical or biological destruction of the groups of people. In the case of *Krstic* the International Criminal Tribunal for the former Yugoslavia directly reiterated this limitation. The chamber noted: "25. The Genocide Convention, and customary international law in general, prohibit only the physical or biological destruction of a human group. The Trial Chamber expressly acknowledged this limitation, and eschewed any broader definition. The Chamber stated: "customary international law limits the definition of genocide to those acts seeking the physical or biological destruction of all or part of the group. [A] n enterprise attacking only the cultural or sociological characteristics of a human group in order to annihilate these elements which give to that group its own identity distinct from the rest of the community would not fall under the definition of genocide".[9]

Meanwhile, in the process of assessing whether an act constitutes genocide it might be essential to figure out if the victimized group represents a national, ethnic, racial, or religious group. During April-June period of 1994 a genocide took place in Rwanda which claimed the lives of 800 000 Tutsi people. This process was initiated by the massive hate speech campaign through the mass media in the 1990ies which prompted the Hutu tribe to fight against the Tutsi tribe.[10] The International Criminal Tribunal for Rwanda analyzed whether the Tutsi tribe constituted a group named in the Rome Statute. The chamber of the Tribunal noted that every witness answered instantly and without a doubt the questions asked by the prosecutor regarding their ethnic identity. Therefore, the chamber concluded that during the events of the genocide Tutsi was a stable and set group. "702. In the light of the facts brought its attention during the trial, the Chamber is of the opinion that, in Rwanda in 1994, the Tutsi constituted a group referred to as "ethnic" in official classification". [11]

To sum up, the crime of genocide requires there to be an intent to bring about the physical destruction in whole or in part of the groups noted in the Article 6 of the Rome Statute – national, ethnic, racial or religious groups. The victimized group must also belong to one of the stated groups because the clause is not defined extensively. Moreover, the Convention on the Prevention and Punishment of the Crime of Genocide and customary international law forbids only physical or biological killing of persons. If there is an attack on the values that give the certain groups their identity, it will not be classified as genocide.

9 Prosecutor V. Radislav Krstic, IT-98-33-A (International criminal tribunal Yugoslavia April 19, 2004).

10 The case of Rwanda Genocide. Media Development Foundation: http://millab.ge/ka/case-study/magaliti-1-ruandas-genocidis-saqme/2

11 Prosecutor V. Jean-Paul Akayesu, ICTR-96-4-T (International criminal tribunal Rwanda, September 2, 1998).

2. CRIME AGAINST HUMANITY

Article 7 of the Rome Statute defines what criteria must be met to consider an act a crime against humanity.[12] The following acts may be considered as a crime against humanity: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; enforced disappearance of persons; apartheid; or other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. To classify these acts as a crime against humanity they must be committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. The main victim of this crime is the civil population against which these acts are committed. Meanwhile, Article 7 of the Rome Statute is not cumulative. It is not necessary for the acts to be both 'widespread' and 'systematic'. These clauses are alternative. Therefore, there must be a widespread OR a systemic attack against civilian population. Article 7 of the Rome Statute defines the "attack directed against any civilian population" as a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.[13] Two subjects are given in this definition that may perpetrate this act: a state, the prerequisites of which are clear in international law and an organization which is not every entity of persons. This is explained by the International Criminal Court. By the Court, to classify an entity/a network as an organization under this clause, this network must be capable of undertaking a widespread or a systemic attack against civilian population. For example, if the network has a solid capital, arms, and soldiers it may provide a reasonable suspicion that this network has planned criminal activities against civilian population as its general aim and that it clearly demonstrated its intent to attack civilian population.[14] Therefore, if there are sufficient circumstances that demonstrate the existence of a network capable of harming humanity and whose intent is clear, it allows for classification of such a network as 'an organization'.

Civilian population of Georgia became a victim of a crime against humanity during the Russo-Georgian armed conflict of 2008. Namely, in September and October of 2008, the armed forces of South Ossetia along with paramilitary groups perpetrated attacks on civilian populations in the villages controlled by Georgia. Their main target were ethnic Georgians. Killing, beating, threatening,

12 The Rome Statute of International Criminal Court, 1998

13 The Rome Statute of International Criminal Court, 1998

14 Prosecutor V. William Samoei Ruto, Henry Kiprono kosegy and Joshua Arap Sang, Decision on the prosecutor's application for summons (International criminal court March 8, 2011)

detaining persons, and looting and burning of their houses took place systemically.[15] The attacks were organized and the destruction of the houses belonging to ethnic Georgians used to ensue. The looters used trucks to transport the stolen property. Before setting fire they took out the valuables from the houses and farms.

The result of attacks on peaceful civilians was the murder of 51 to 113 ethnic Georgians and forcible displacement of 13400 to 18500 Georgians from their villages and cities. To compel the Georgian civilian population to leave their houses the South Ossetian armed forces employed the tactics of fear and terror such as: deprivation of life, severe beating, verbal insults, threats, detentions, looting/robberies and destruction of property.[16]

Given these facts the International Criminal Court decided to satisfy the motion of the prosecutor to launch an investigation in 2015. The Chamber noted that "the campaign of aforementioned violence perpetrated by South Ossetian forces falls under the 'attack on civilian population' according to the Article 7(2)(a) of the Statute".[17] Meanwhile, the Chamber ruled that there had been cases of killing, forcible deportation of persons, and persecution which fall under the Article 7 of the Rome Statute.

3. WAR CRIMES

When discussing war crimes, *jus ad bellum* and *jus ad bello* regulations must be distinguished from each other.[18] *Jus ad bellum* regards the right to start a war – if a state has a right under international law to use force against another state. *Jus ad bellum* is regulated by the UN Charter. According to the Article 2(4) of this document, every member state of the UN refrains from using force or threat of using force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.[19] This clause forbids the members of the UN to use force or threat of using force. However, there are exceptions when a state can legally use military force. According to the Article 51 of the UN Charter this does not impair the inherent right of individual or collective self-defense if an armed attack occurs against a member state.[20] To employ the right of self-defense there must be certain prerequisites: 1. The situ-

15 Council, E. (2009). *Independent International Fact-Finding Mission on the Conflict in Georgia*.

16 Council, E. (2009). *Independent International Fact-Finding Mission on the Conflict in Georgia*.

17 The decision of the International Criminal Court to satisfy the motion of the prosecutor to launch an investigation, ICC--1/15 (International criminal court January 27, 2015).

18 Kant, I. (1887). *The Philosophy of Law. An Exposition on the Fundamental Principles of Jurisprudence as the Science of Right.*

19 Charter of the United Nations- Article 2, 1945.

20 Charter of the United Nations- Article 51, 1945.

ation must require an immediate and unavoidable situation that does not leave room for choices or time to consider other options 2. The force used during the self-defense must be proportionate to the force used against this state 3. The state may not initiate military measures for punishment purposes 4. There must be an armed attack.[21] Meanwhile, the case law of the International Criminal Court indicates that a state may gain a right of preemptive self-defense. This may occur when there is sufficient evidence that there is not just a potential risk of attack but the attack has already been launched and it is already taking place, however it has not crossed the border yet.[22] This basis was used by the United States and United Kingdom to enter Iraq in 2003. They claimed to have possession of the evidence proving that the president of Iraq, Saddam Hussein had the weapons of mass destruction. This is why they had decided to use force preemptively as they would not be able to stop the attack had Hussein decided to use such arms against them.[23]

As noted above, there must be an armed attack occurring in order for a state to gain a right of self-defense. A question may arise regarding who may be perpetrating such an attack. The United States responded to this question in 2001 when they used force against Afghanistan. They claimed that terror groups Al Qaeda and Taliban had undertaken an attack on September 11, 2001 on the soil of United States.[24] The government of Afghanistan was not trying to stop them so the US launched the operation 'enduring freedom' and attacked the whole group that had struck against the US. Therefore, the attacking party may be a state or a terror/armed group.

The UN Charter sets out another exception other than the inalienable right of self-defense that allows the use of force by a state. According to the UN Charter, when the UN Security Council allows a state to use force it may use such force. According to Article 41 of the UN Charter the Security Council may decide what kind of measures may be taken for self-defense.[25] It may also request the Member States to undertake these measures. The measures may consist of cutting the economic, railroad, air, post, telegraphic, radio, or other means of diplomatic communications. However, if such measures are not sufficient the Security Council may undertake such measures by air, land, or sea, that are necessary to restore international peace and security. Such measures may consist of demonstrations, blockade, or other operations of the land, air, and sea forces of the Member State forces.[26]

21 Council, E. (2009). *Independent International Fact-Finding Mission on the Conflict in Georgia*.

22 Nutsubidze Mariam, (2018). Hybrid Tribunal: a mechanism for legal and political actions? (in the case of Saddam Hussein).

23 Information Center on NATO and EU, retrieved at: https://old.infocenter.gov.ge/peacekeeping-missions/#1

24 Editors, H. (2010, February 10). *History.com*. Retrieved from HISTORY: https://www.history.com/topics/21st-century/9-11-attacks

25 Charter of The United Nations- Article 41, 1945.

26 Charter of The United Nations- Article 42, 1945.

3.1. Legality of the use of force by Russia against Georgia in 2008

The Russian Federation tried to justify its military intervention in 2008 by several arguments. Namely, 1. To protect the Russian citizens living in South Ossetia, 2. To protect the Russian peacekeepers based in South Ossetia, 3. Humanitarian intervention, 4. Obligation to protect citizens.[27]

We have already set the criteria above that must be met for a state to legitimately use force – in the cases of inalienable self-defense or in the cases approved by the UN Security Council. It is undisputed that Russia had not been granted a permit to use force in Georgia by the UN Security Council.[28] Therefore, the legality of its intervention fully depends on whether Russian acts fall under the regulations set out in the Article 51 of the UN Charter.

According to the Russian position, the attacks perpetrated against the citizens and peacekeepers based in South Ossetia amounted to attacking Russia itself. Therefore, they had a full right to use military force based on the inalienable right of self-defense. To thoroughly assess whether Russia acted within self-defense we must consider every justification offered by the Russian Federation.

3.1.1. Protecting citizens of Russia living in South Ossetia

The Russian Federation launched a policy of 'passportization' before starting a military intervention. It involved systemically granting the citizenship of Russia and giving out passports to the persons living in South Ossetia and Abkhazia.[29] Before 2003, individual assessment was needed for granting Russian citizenship, but in 2003 the law on citizenship of Russia was amended. It allowed for the persons living in Abkhazia and South Ossetia to apply for the citizenship of Russia and included a simplified procedure to be granted one. The main demand was there to be an adequate factual link between the applicant and Russian Federation. However, the states are not permitted to use this opportunity unilaterally and there must be a permit from the originating state for the citizenship granting procedure. Therefore, the practice of systemic give out of Russian citizenship and passports on the territory of Georgia, without a permit of such conduct from the government of Georgia, goes against the principles of good neighborhood, undermines the sovereignty of Georgia, and amounts to interference in the internal politics of Georgia.

Taking all above into consideration, the justification of using force to protect the Russian citizens living in South Ossetia is unfounded and does not fall under the regulations of Article 51 of the UN Charter.

27 Dzamashvili, B. (2013). Legality of Russian intervention in Georgia in 2008 in light of the law on prohibition of use of force. *Contemporary law review*, 117-136.

28 Dzamashvili, B. (2013). Legality of Russian intervention in Georgia in 2008 in light of the law on prohibition of use of force. *Contemporary law review*, 117-136.

29 Council, E. (2009). *Independent International Fact-Finding Mission on the Conflict in Georgia*.

3.1.2. Protecting Russian peacekeepers based in South Ossetia

The Sochi treaty of 1992 allowed Russian peacekeepers to be based on the territory of South Ossetia.[30] Therefore, the legality of the Russian peacekeepers being located in South Ossetia in itself does not constitute a legal question.

The situation in Tskhinvali region escalated since August 1, 2008 when the representatives of so-called South Ossetia separatist regime launched attacks on Georgian villages – Upper and Lower Nikozi, Avnevi, Ergneti, and Eredvi, using bombs and BB guns.[31] At this time, the subdivisions of Special Task Forces of Georgia were stationed in Tskhinvali region, which were under fire. There was no attack from Georgian forces against Russian peacekeepers. But even if they did, the Russian response, the scope of which went deep into the territory of Georgia, would have failed to satisfy the requirement of proportionality of self-defense. Russia undertook a series of widespread and massive military actions that included bombing the upper part of Kodori valley, stationing Russian military troops to cover a substantive part of Georgia, strengthening military positions in order to control Georgian cities and key highways, stationing troops in Black sea.

Given all above, had Georgia even undertaken an attack against Russian peacekeepers, Russia would still not be allowed to use disproportionate military force against Georgia, according to the Article 51 of the UN Charter. Therefore, the justification of protecting Russian peacekeepers for the use of force by Russia is also illegitimate and against international law.

3.1.3. Humanitarian intervention

Humanitarian intervention with the use of force is permitted only in exceptional cases. It is under discussion among lawyers if the use of force is even permitted for humanitarian intervention.

There was no vast violation of human rights on the territory of South Ossetia that would bring into effect the new concept of 'responsibility to protect'. This doctrine aims to ensure effective action by the international community in cases of severe human rights violations and when the UN Security Council is unable or unwilling to take action.[32] Moreover, the Russian Federation went against the use of this doctrine in Kosovo by NATO with a special persistence and will. Therefore, Russia cannot use the doctrine that it itself does not formally recognize to justify its intervention on the territory of Georgia.[33]\

Therefore, the justification of humanitarian intervention claimed by Russia is ill-founded to justify the use of force.

30 Sochi Agreement of June 14, 1992 on Principles of Settlement of the Georgian – Ossetian Conflict.

31 Abramishvili, N. The Russo-Georgian armed conflict and prohibition of use of force under international law.

32 https://www.un.org/en/genocideprevention/about-responsibility-to-protect.html

33 Council, E. (2009). *Independent International Fact-Finding Mission on the Conflict in Georgia*.

3.1.4. Obligation to protect citizens

According to the article 61(2) of the constitution of Russia, "Russian Federation guarantees the protection and security of its citizens abroad".[34] There is no piece of customary international law which would legitimize such an action. If such justification was permitted, it would certainly be a subject of restrictions and limited scope, time frame and purpose of rescuing and evacuating citizens.[35] The actions undertaken by Russia do not fall into these standards and breaches international law.

In conclusion, the military intervention undertaken by Russia in South Ossetia violates international law.

3.2. War crimes jus in bello

Article 8 of the Rome Statute of the International Criminal Court defines war crimes.[36] Before analyzing the crime itself it is necessary to discuss the very meaning of *jus in bello* which correlates to *jus ad bello*. *Jus in bello* regulates the actions of armed forces and what kind of military action is permitted during war.[37] This is fully regulated by international humanitarian law, in particular the Geneva Conventions of August 12, 1949, guaranteeing protection for civilians from the consequences of armed conflicts.[38] The Geneva Conventions regulate: 1. Improving the conditions of the wounded on the battlefield, 2. Improving the conditions of the wounded, sick, and shipwrecked members of armed forces, 3. Improving the conditions of and protecting the prisoners of war and civilians, 4. Protecting the civilians who are under control of a different state than they were before the armed conflict and occupation. The second article of Geneva Conventions is identical, mandating the scope of the conventions. The identical clause states that the "Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them".[39]

War crimes occur when the Geneva Conventions of August 12, 1949 are severely violated, e.g. when such events take place as: willful killing; torture or inhuman treatment, including biological experiments; willfully causing great suffering, or serious injury to body or health; extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; compelling a prisoner of war or other protected person to serve in the forces of a

34 Constitution of Russia, 1993.

35 Dzamashvili, B. (2013). Legality of Russian intervention in Georgia in 2008 in light of the law on prohibition of use of force. *Contemporary law review*, 117-136.

36 The Rome Statute of International Criminal Court, 1998

37 Kant, I. (1887). *The Philosophy of Law. An Exposition on the Fundamental Principles of Jurisprudence as the Science of Right.*

38 Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949.

39 Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949, article 2.

hostile power; willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial; unlawful deportation or transfer or unlawful confinement; taking of hostages.[40] Such actions undertaken against the persons or properties protected by the Geneva Conventions constitutes a war crime. For example, Article 4 of the third Geneva Convention covers the members of the armed forces, volunteers, and other groups including guerilla fighters, which: 1. Are under command of a superior officer, 2. Have a distinctive sign, 3. Openly carry arms, 4. Conduct operations in lieu of the rules and traditions of war.[41] If there is sufficient evidence that these regulations are violated, it will constitute a war crime.

War crimes, apart from crimes against humanity, can be committed by individual soldiers. However, the jurisdiction of the Court covers the crimes that are committed as a part of a plan or a policy to conduct such actions on a massive scale.

As already mentioned, war crimes can be committed by individual soldiers. Therefore, in reality a question might appear regarding when the state's responsibility for war crimes begin. This question was answered in 1999[42] by the International Criminal Tribunal for the former Yugoslavia in the case *Prosecutor v. Dusko Tadic*: "To find that the military or paramilitary groups' actions are directed from the state we must find that the state exerts general control over the group, by not only providing ammunition and financing, but also coordinating or assisting in military planning. Only after this is established may the state be found liable for the acts of this group under international law. Moreover, it is not necessary that the directives given to the leaders or the members of this group be illegal under international law".

Furthermore, a question might arise as to when does the armed conflict start. This question was also answered in the *Tadic* case by the Tribunal: "armed conflict starts when armed forces are used by the state or a continuous violence is taking place between the government bodies and organized military groups".[43]

Taking this analysis into consideration, the state will be found liable if it is assisting or coordinating military action, or finances and provides ammunition. Armed conflict starts when armed forces are used by the states.

3.2.1. International and non-international armed conflicts, concept of 4 generation war

There is a distinction between international and non-international armed conflicts which must be explained.

40 The Rome Statute of International Criminal Court, 1998

41 Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949, article 4.

42 Prosecutor V. Dusko tadic, the appeal chamber (International criminal tribunal Yugoslavia July 15, 1999).

43 Prosecutor V. Dusko Tdic, Decision on the defense motion for interlocutory appeal on jurisdiction (International criminal tribunal Yugoslavia 1999).

International armed conflicts occur when two or more states are going against each other. Non-international conflict involves clashes between the government and non-governmental armed forces.[44] Such groups may involve separatists, members of criminal cartels, pirates, terror groups, or rebels. Although these groups are considered non-state actors who frequently are involved in armed conflicts against the state.[45] Such examples include the Abkhazian conflict in Georgia in 1992-93 where the Georgian military was challenged by the Abkhaz separatists, as well as the events that took place in South Ossetia in 2008.[46] Moreover, the terror groups Al Qaeda (radical organization of Sunite muslims which has conducted a number of terror acts in various regions of the world, including the terror act of 9/11 in 2001) and Taliban (extremely conservative radical islamic organization which actively supported islamic-fundamentalist terrorism).[47]

As noted above, Article 8 of the Rome Statute of the International Criminal Court punishes war crimes. Despite this, the clause does not regulate the acts committed in modern war. Nowadays the fourth generation war is taking place which has concrete elements. The fourth generation war is not fought using only military means but also by using high tech measures, including cyber attacks resulting in destruction of strategic infrastructure; also, terrorism that aims to plant fear in people or governments and make them to do as they wish, destabilize or destruct fundamental political, constitutional, economic, or social structures of a state.[48] Meanwhile, the fourth generation war involves a direct attack on the culture and ideology of the enemy, psychological warfare conducted by media outlets, and conducting small-scale high-intensity attacks against the enemy to make them feel vulnerable, weak, and attrited.[49]

Article 8 of the Rome Statute of the International Criminal Court criminalizes the violation of the Geneva Conventions rules in armed conflicts. Namely, using forbidden arms, bombing civil infrastructure and so on. However, the Rome Statute does not criminalize cyber attacks using certain technologies that might harm the subjects protected under the Geneva Conventions. Therefore, the International Criminal Court does not have jurisdiction and can not rule over a case that concerns cyber attacks.

44 Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949.

45 Maisaia V. Guchua A. (2020). NATO and non-state aggressive religious actors. Tbilisi: Caucasus International University

46 Gvianidze, M. (2020). Conflicts in Georgia, problems of genocide and ethnic cleansing. Tbilisi: Guram Tavartkiladze University.

47 Maisaia V. Guchua A. (2020). NATO and non-state aggressive religious actors. Tbilisi: Caucasus International University

48 Criminal Code of Georgia, remark of Article 323, 09.09.2022

49 Maisaia V. Guchua A. (2020). NATO and non-state aggressive religious actors. Tbilisi: Caucasus International University

4. CRIME OF AGGRESSION

Article 5(2) of the Rome Statute of International Criminal Court states that "The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations".[50] Therefore, there is no concrete act described that would enable criminalization and there is no explanation as to what constitutes a crime of aggression.

A crime of aggression is planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.[51]

Therefore, crime of aggression sets responsibility for starting an armed conflict that serves as a deterring measure. The crime of aggression may fall under the jurisdiction of the court if after January 1, 2017 at least two thirds of the member states decide on the amendment and at least 30 member states ratify the amendment.[52]

Even though the crime of aggression is immensely important for protecting certain states and persons, the states are reluctant to ratify the crime of aggression which may lead us to believe that certain states may become the perpetrators of this crime.

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