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To UN Office of the High Commissioner for Human Rights

**Russian Aggression Against Ukraine,
Casualties Recording and International Justice**

Our Association of Reintegration of Crimea (ARC)¹, is non-governmental expert and human rights organisation², with activities devoted to Crimea's issues. ARC's expert researches are related with human rights of Crimean residents and ethnic groups, including transitional justice issues and defending human rights in conflict and post-conflict conditions.

Since 2020 we sent more than 100 submissions and proposals to UN human rights' strictures, major part of them were published in the UN web-sources, including the issues of transitional justice^{3,4,5}. We informed UN structures that illegal occupation and attempted annexation of Crimea by Russia since 2014, as a part of Russian-Ukrainian interstate conflict, changed the situation in the region and worsened significantly the possibilities of human rights' realization and protection⁶, including issues of casualties recording.

The illegal occupation and attempted annexation of the Crimea by Russia since 2014 have been condemned in a series of international acts, including UN GA resolutions 2014 68/262, 2016 71/205, 2017 72/190, 2018 73/263 2019 74/168, 2020 75/192, 2018 73/194, 2019 74/17, 2020 75/29⁷, resolutions of the OSCE Parliamentary Assembly, of the Parliamentary Assembly of the Council of Europe 1988 (2014), 2028 (2015), 2067 (2015), 2112 (2016), 2132 (2016), 2145 (2017), 2198 (2018), 2231 (2018) etc., of the European Parliament's resolutions 2014/2841 (RSP), 2014/2965 (RSP), 2016/2556 (RSP), 2016/2692 (RSP), 2017/2596 (RSP), 2017/2869 (RSP), 2018/2754 (RSP), 2018/2870 (RSP), 2019/2734 (RSP), 2019/2202 (INI) etc. Those acts paid special attention to the brutal violation by Russia the fundamental human rights in the peninsula.

Ukraine fully realized the potential and necessity of transitional justice for the resolution of the conflict and post-conflict settlement and reconciliation. After a comprehensive discussion, which included consultations with the civil society organizations, scholars and international partners, the Ukrainian Ministry of Reintegration developed a draft law "On the Foundations of the State Policy of Transitional Period"⁸. The draft covers issues related to restoration of the justice system, prosecutions, and compensations to victims, memorialization, etc

¹ <https://arccrimea.org/>

² https://www.journal-officiel.gouv.fr/associations/detail-annonce/associations_b/20210005/1348

³ <https://www.ohchr.org/sites/default/files/documents/issues/truth/nsa/2022-09-14/submission-NSAs-hrc51-academia-Association-of-Reintegration-of-Crimea-ARC.pdf>

⁴ <https://www.ohchr.org/sites/default/files/2022-01/Association-of-Reintegratin-of-Crimea.pdf>

⁵ <https://www.ohchr.org/sites/default/files/documents/issues/truth/cfi-achieving-sdgs/2022-10-10/submission-NSAs-hrc51-academia-Association-of-Reintegration-of-Crimea-ARC.pdf>

⁶ https://www.ohchr.org/sites/default/files/Documents/HRBodies/CEDAW/DGD24June2021/Oral_statements/Part1/31.DOC

⁷ for example, <https://undocs.org/en/A/RES/73/263>

⁸ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72625

A whole branch of transitional law is needed, and this branch must be combined with the achievements of other sciences in the field of conflict resolution and overcoming. For such complex legal phenomena it is more expedient to create a whole set of legal acts. The Association's comments also provided a critical assessment of the terms and conditions proposed by the project, regarding a significant number of general declarative norms of the project, including absence of casualties recording issues. UN standards regarding casualties recording⁹ were not popularized in Ukraine and UN HRC resolution 50/11 "Importance of casualty recording for the promotion and protection of human rights"¹⁰ was not adopted

Ukraine's "Strategy of Deoccupation and Reintegration of the Temporarily Occupied Territory of the Autonomous Republic of Crimea and the City of Sevastopol" includes "measures in the sphere of transitional justice, including compensation of damages caused in connection with the armed aggression of the Russian Federation, armed conflict, temporal occupation of the territory of Ukraine, protection and restoration of the violated rights, bringing the perpetrators to justice",¹¹ but casualties recording issues also were not mentioned.

The main obstacle to realization of Ukraine's transitional justice strategy, including for the purposes of achieving the 2030 development goals, is the occupation of parts of the territory of Ukraine by Russian Federation. The fact of the occupation of Crimea was on many occasions recognized on the international legal level, including by the Prosecutor of the International Criminal Court (§ 158)¹² and the European Court of Human Rights (§ 315 and onwards)¹³¹⁴¹⁵.

As we pointed already to some UN bodies, since 24th of February 2022 Russia committed broad and open military aggression to Ukraine's territory. Due last eleven months of fights Russia occupied some territories of Donetsk, Kherson, Luhansk, Zaporizhzhya regions and strong fights are going near cities with total population of millions persons near the frontline¹⁶¹⁷¹⁸¹⁹²⁰. Thousands of casualties happened as between combatants so with civil population. More than 400 children have been killed and hundreds more injured, UNICEF points²¹

Ukraine immediately filed an Application with the International Court of Justice (ICJ) on 25 February 2022, instituting proceedings against Russian in a dispute concerning the interpretation, application or fulfillment of the UN Convention on the Prevention and Punishment of the Crime of Genocide. Russia refused to execute the ICJ order in this case to stop the aggression²²²³.

Those issues now are the subject of the investigation the International Criminal Court²⁴ Due to gross violation the human rights Ukraine filed an application to the European Court of Human Rights also²⁵. Russian government refused to execute the demand of the ECtHR and

⁹ https://www.ohchr.org/sites/default/files/Documents/Publications/Guidance_on_Casualty_Recording.pdf

¹⁰ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/407/83/PDF/G2240783.pdf?OpenElement>

¹¹ <https://www.president.gov.ua/documents/1172021-37533>

¹² https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf

¹³ <http://hudoc.echr.coe.int/eng?i=001-207622>

¹⁴ <https://arc.construction/5594>

¹⁵ <https://arc.construction/5582>

¹⁶ <https://www.ohchr.org/sites/default/files/2022-04/association-reintegration-crimea-ukraine-minnesota-protocol.pdf>

¹⁷ <https://www.ohchr.org/sites/default/files/2022-04/AssociationReintegrationCrimeaSubmission.pdf>

¹⁸ <https://www.ohchr.org/sites/default/files/2022-04/association-reintegration-crimea.pdf>

¹⁹ <https://www.ohchr.org/sites/default/files/2022-04/association-reintegration-crimea.pdf>

²⁰ https://www.ohchr.org/sites/default/files/2022-05/arc_replies-dp.pdf

²¹ <https://www.unicef.org/emergencies/war-ukraine-pose-immediate-threat-children#impact-children>

²² <https://www.ohchr.org/sites/default/files/documents/issues/children/cfi/vulnerabilities-children/csos/2022-07-26/submission-sdgs-cso-ARC-second-submission.pdf>

²³ <https://www.icj-cij.org/en/case/182>

²⁴ <https://www.icc-cpi.int/ukraine>

²⁵ <https://hudoc.echr.coe.int/eng-press?i=003-7282553-9922068>

the order of ICJ to immediately suspend the military operations that it commenced on 24 February 2022,²⁶ also as previous order of ICJ to ensure the availability of education in the Ukrainian language in the Russia-occupied Crimea, given in April, 2017 in case No. 166²⁷. Anyway the casualties recording and other similar activities, including forensic actions, are important for relevant proceedings in ECHR, ICJ an ICC.

On March 16 2022, Russia was excluded from the Council of Europe and refused officially to execute the demands of European Convention on Human Rights²⁸ that guarantees rights to life, and not to be tortured or degrading treated, often violated by casualties. UN Human Rights Council (HRC) adopted its resolution 49/1 on 4 March 2022 where it expressed grave concern at the documented harm to the enjoyment of many human rights, resulting from the aggression against Ukraine by Russia²⁹.

On 8 March 2022 UN human rights experts called on Russia to immediately end its invasion of Ukraine to avoid further bloodshed; experts recalled that intentional attacks against civilian objects amount to war crimes³⁰, which are terroristic by their nature. In other UN experts' statements the negative impact of Russia's aggression on children was condemned³¹, and relevant risks for children's right were pointed³²³³.

UN General Assembly in its resolution ES-11/1 on 2 March 2022 recognized that the military operations of Russia inside the sovereign territory of Ukraine are on a scale that the international community has not seen in decades and that urgent action is needed to save this generation from the scourge of war. In article 9 of this resolution UN General Assembly demanded to protect civilians, including persons in vulnerable situations³⁴.

UN General Assembly in its resolution ES-11/2 on 24 March 2022, articles 5 and 8, demanded again full respect for and protection of objects indispensable to the survival of the civilian population and civilian infrastructure that is critical to the delivery of essential services in armed conflict; stressed that the sieges of cities in Ukraine further aggravate the humanitarian situation for the civilian population and hamper evacuation efforts, and therefore demands to put an end to sieges³⁵.

On 7 April 2022 the UN General Assembly adopted a resolution ES-11/3³⁶ calling for Russia to be suspended from the Human Rights Council³⁷.

The UN Human Rights Council adopted on 12th of May a resolution on the deteriorating human rights situation in Ukraine where pointed that Russia should immediately cease its aggression, withdraw all its forces from the whole territory of Ukraine, and provide international human rights and humanitarian institutions with unhindered, immediate and safe access to persons transferred from conflict-affected areas³⁸.

On February, 23, 2023 the UN General Assembly called for ending the war in Ukraine and demanded Russia's immediate withdrawal from the country, in line with the UN Charter; in resolution adopted UN GA deplored the dire human rights and humanitarian consequences of the aggression by the Russian Federation against Ukraine, including the continuous attacks

²⁶ <https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-00-EN.pdf>

²⁷ <https://www.icj-cij.org/public/files/case-related/166/166-20170419-ORD-01-00-EN.pdf>

²⁸ <https://arc.construction/26897>

²⁹ <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session49/Pages/ResDecStat.aspx>

³⁰ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=28231&LangID=E>

³¹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=28200&LangID=E>

³² <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=28201&LangID=E>

³³ <https://www.ohchr.org/en/press-releases/2022/05/ukraine-millions-displaced-traumatised-and-urgently-need-help-say-experts>

³⁴ <https://digitallibrary.un.org/record/3959039?ln=ru>

³⁵ <https://digitallibrary.un.org/record/3966630?ln=en>

³⁶ <https://digitallibrary.un.org/record/3967950?ln=ru>

³⁷ <https://news.un.org/en/story/2022/04/1115782>

³⁸ <https://arc.construction/31039>

against critical infrastructure across Ukraine with devastating consequences for civilians, and expressed grave concern at the high number of civilian casualties, including women and children, the number of internally displaced persons and refugees in need of humanitarian assistance, and violations and abuses committed against children³⁹.

UN GA called for full adherence by the parties to the armed conflict to their obligations under international humanitarian law to take constant care to spare the civilian population and civilian objects, to ensure safe and unhindered humanitarian access to those in need, and to refrain from attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population.

Also UN GA emphasized in that resolution the need to ensure accountability for the most serious crimes under international law committed on the territory of Ukraine through appropriate, fair and independent investigations and prosecutions at the national or international level, and ensure justice for all victims and the prevention of future crimes.

On February 24, 2023 OSCE officials and structures made a number of statements, condemning the Russia's atrocities⁴⁰.

OSCE ODIHR Director pointed out that human rights violations must end, and those responsible be held accountable. He pointed that OSCE Office has conducted interviews with some 140 survivors and witnesses of violations both in Ukraine and outside the country, finding credible evidence that the conduct of hostilities by the Russian Federation has been characterized by a general disregard for the basic principles set out by international humanitarian law⁴¹.

A statement was also made by the current OSCE Troika, stressing that Russia's aggression must stop and states must ensure that there is no impunity for international crimes committed in and against Ukraine, including for war crimes committed in Ukraine, that its perpetrators should be prosecuted before the appropriate court⁴².

Also on February 24, a Joint Statement of the OSCE Parliamentary Assembly Bureau "Action on the One-Year Anniversary of Russia's War Against Ukraine and the International Legal Order", was made. It condemned Russia's conduct of its war of aggression, marked by extreme and deliberate brutality; the indiscriminate targeting of Ukrainian civilians and destruction of civilian infrastructure; the use of torture and rape as weapons of war; and countless other violations of the fundamental tenets of international humanitarian law and human rights law.

In a Joint Statement, the OSCE PA Bureau declared the duty to hold accountable, in coordination with Ukraine, those responsible for such crimes, including by supporting existing international judicial structures or mechanisms, and to consider the establishment of a special international tribunal for the crime of aggression. The OSCE PA Bureau also called to support the children of Ukraine to overcome the trauma they have experienced⁴³.

Those decisions and international resolutions are not executed by Russian troops, Russia-controlled mercenaries and terroristic groups, which established policy of terror and repression over the Russia-occupied territories of Ukraine. Russian troops, fake "administrations" and "commandant's offices" use actively the practice of extrajudicial executions of local civil population⁴⁴.

³⁹ <https://documents-dds-ny.un.org/doc/UNDOC/LTD/N23/048/58/PDF/N2304858.pdf?OpenElement>

⁴⁰ <https://arcrimea.org/en/news/2023/02/25/osce-statements-were-made-on-large-scale-russian-aggression-anniversary/>

⁴¹ <https://www.osce.org/odihr/537933>

⁴² <https://www.osce.org/chairpersonship/537999>

⁴³ <https://www.oscepa.org/en/documents/officers-of-the-assembly/4627-joint-statement-of-the-osce-pa-bureau-action-on-the-one-year-anniversary-of-russia-s-war-against-ukraine-and-the-international-legal-order-24-february-2023/file>

⁴⁴ <https://hromadske.radio/en/news/2022/03/09/members-of-the-wagner-group-have-been-killed-in-ukraine>

Also, the politicization and obviousness of these Russian aggressor's crimes, accompanied by statements and demands from both the leaders of the occupying "authorities" in the Crimea, and the Russian leadership as a whole, has all the signs of state terrorism, which was adopted by the Parliamentary Assembly of the Council of Europe on 13th of October 2022 that declared the current Russian regime as a terrorist one⁴⁶.

Before, on 10th May, 2022, Lithuanian Seimas unanimously adopted a resolution declaring Russia to be a terrorist state that is carrying out genocide against the Ukrainian people. "The Russian Federation, whose military forces deliberately and systematically target civilian targets, is a state that supports and perpetrates terrorism", the resolution reads. According to the document, the Russia's intent is to wholly or partially destroy the Ukrainian nation and break its spirit by killing entire families, including children, abducting and raping people, and mocking them and the bodies of the murdered⁴⁷.

Also on 11th August 11, the Latvian Saeima declared Russia a state sponsor of terrorism, citing attacks on civilians. Declaration pointed that Russia has been providing support and financing for terrorist regimes and organizations for many years, directly and indirectly⁴⁸.

Later Riigikogu, Estonia's parliament declared on 18th of October 2022 Russia a terrorist regime over its unprovoked invasion of Ukraine and moves it has made since, including the illegal annexation of parts of Ukraine and thinly veiled threats by President Putin concerning the possible use of nuclear weapons. "Riigikogu declares Russia a terrorist regime and Russia a country that supports terrorism, whose actions we must confront together. The Riigikogu calls on the international community to adopt similar declarations", a statement said⁴⁹.

On 26th of October 2022 Poland's upper house of parliament, the Senate, has unanimously adopted a resolution recognising Russia as a terrorist regime for its aggression against Ukraine and the Ukrainian people. Resolution stresses that Vladimir Putin and his apparatus of violence returned to the cruel practices of the Stalinist and Nazi regimes⁵⁰. Lated the similar statements were made by parliaments of Czech Republic and of Slovakia⁵¹.

In this situaiton the Crimean Tatar Resource Center sent on 25th of October, 2022 an appeal to UN General Secretary, stressing that in the period from the beginning of Russian invaders' "partial mobilization" from September 21 till October 13, about 100 "mobilized" representatives of the Indigenous Crimean Tatar People from Russia-occupie Crimea who died in the war were already brought to the occupied Crimea, and mush more of them cot casualties. The vast majority of them did not "sign contracts" with the Russian army and ended up in the war zone against their will.

Indigenous Crimean Tatars' Appeal points that any military activity on the lands of indigenous peoples, carried out without their consent, including the recruitment and mobilization of representatives of indigenous peoples into the armed forces, is a direct and flagrant violation of the UN Declaration on the Rights of Indigenous Peoples.

These actions of Russian are a continuation of the discriminatory policy of the occupying administration, the purpose of which is the physical destruction of the ethnic Ukrainian and indigenous Crimean Tatar people, who became a numerical minority in their homeland as a result of the colonial policy of the Russian Empire, stressed the Appeal of Crimean Tatar

⁴⁵ <https://www.bbc.com/news/world-europe-60547807>

⁴⁶ <https://pace.coe.int/en/files/31390/html>

⁴⁷ <https://www.lrt.lt/en/news-in-english/19/1691202/lithuania-recognises-war-in-ukraine-as-genocide-russia-as-terrorist-state>

⁴⁸ <https://www.saeima.lv/lv/aktualitates/saeimas-zinas/31308-saeima-pazinojuma-atzist-krieviju-par-terorismu-atbalstosu-valsti>

⁴⁹ <https://www.riigikogu.ee/en/news-from-committees/foreign-affairs-committee/riigikogu-declared-russia-a-terrorist-regime/>

⁵⁰ <https://www.senat.gov.pl/aktualnosclista/art,15100,uchwala-senatu-o-uznaniu-wladz-federacji-rosyjskiej-za-rezim-terrorystyczny.html>

⁵¹ <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=519169>

Resource Center signed by Member of Mejlis of Crimean Tatar People Eskender Bariiev⁵².

On December 15, 2022 the UN General Assembly adopted the regular annual resolution “Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine”. This resolution condemns the use of Crimea for unprovoked aggression against mainland Ukraine and for the attempted illegal annexation of the Kherson and Zaporizhzhya regions⁵³.

The resolution indicates that the aggression of Russia against Ukraine has significant long-term negative consequences for the environment of the occupied Crimea. The resolution requires the Russian invaders to stop the illegal “conscription” and “mobilization” of the inhabitants of Crimea.

On January 6 the Statement, calling for the creation of a special tribunal for the punishment of the crime of aggression against Ukraine, was published by the former British prime minister Gordon Brown and later was broadcasted by key media such as Observer and Guardian⁵⁴.

Statement was prepared with participating of Philippe Sands, a law professor who was the first to raise the idea of a special tribunal. Others who signed the statement include the human rights barristers Cherie Blair and Helena Kennedy, and such figures including the Labour leader Keir Starmer, the former NATO Secretary General George Robertson, the former foreign secretary David Owen, and former Tory leader Iain Duncan Smith.

Statement points that it has been 10 months since Russia, backed by Belarus, launched one of the largest ground invasions in Europe since the Second World War. And, statement adds, the acts of aggression can be traced back not only to the February invasion but to the decision of Russia’s military and political leadership to attack and occupy Crimea, the City of Sevastopol, and the Donbas from 2014 onwards.

Since Russia has not ratified Rome statute and would exercise its illegal “veto” in the UN Security Council against a referral, the International Criminal Court cannot, as things presently stand, investigate exactly crimes of aggression against Ukraine, investigating Russia’s war crimes and genocide issues, adds Statement.

So, the authors point, the Special Tribunal should be constituted to investigate the acts of aggression by Russia, aided by Belarus, in Ukraine. As well as investigating and indicting President Putin, the tribunal could also hold to account the members of Russia, and possibly Belarus’, national security council, as well as the Russian political and military leaders of this manifestly illegal war, adds the Statement.

Statement reminds the support of this concept by international lawyers, European Commission’s President Ursula von der Leyen, the French foreign ministry and the Dutch Foreign Minister Wopke Hoekstra and called for the UK government to support a Special Tribunal for the Crime of Aggression being committed in Ukraine.

ARC’s expert, professor Borys Babin discussed with mentioned professor Philippe Sands those issues in Lviv forum on October, 2022 and all relevant our Association researches of 2020-2022 were granted for Dr. Sands in framework of next co-operation, regarding the vital importance of this issue⁵⁵.

Later, on January 8, the special statement was published by UK Ministry of Justice that announced meeting at Lancaster House will be hosted by Deputy Prime Minister Dominic

⁵² <https://ctrcenter.org/uk/news/8087-zvernennya-krc-u-zv-yazku-z-nezakonnouy-masovoyu-mobilizaciyeyu-korinnogo-krimskotatarskogo-narodu-do-zbrojnih-struktur-rosiyi>

⁵³ <https://arcrimea.org/en/news/2022/12/16/new-un-resolution-on-human-rights-in-crimea/>

⁵⁴ <https://arcrimea.org/en/news/2023/01/08/british-politic-figures-demand-special-tribunal-to-investigate-russias-for-aggression/>

⁵⁵ <https://infonavigator.com.ua/novosti/rossijskie-voennye-prestupleniya-i-propaganda-agressora-protiv-mirovoj-kultury/>

Raab and the Minister of Justice and Security of the Netherlands, Dilan Yeşilgöz-Zegerius. On this meeting Justice Ministers from around the world will convene in London in March to support the International Criminal Court (ICC) investigating Russia's war crimes in Ukraine.

The group will hear from Prosecutor of the ICC, Karim Khan KC, on the Court's work and the role of the international community in supporting its investigations. The meeting, UK Ministry stresses, comes as Russia steps up its campaign of terror against Ukraine, striking at crucial energy infrastructure and plunging people into the dark and freezing cold of winter. In de-occupied areas of Ukraine, prosecutors continue to gather evidence of Russian invaders' atrocities and sexual violence, adds the UK Ministry.

Also new statement points that almost a year on from the illegal invasion, the international community must give its strongest backing to the ICC so war criminals to be held to account for the atrocities we're witnessing. Ministers will also discuss how to help victims and witnesses provide testimonies without causing them further distress, the UK officials stress, reminding that it follows action taken by the UK to galvanise allies to refer aggressor's atrocities in Ukraine to the ICC.

As Association's expert professor Borys Babin commented regarding this issue, including role of such procedures for punishment the international crimes, committed in the Russia-occupied Crimea, it is obvious that the discussion about special tribunals will at least give rise to healthy competition of the international bureaucracy, this is important in terms of the terms of approval of relevant decisions by ICC and other bodies such as European Court on Human Rights⁵⁶. Issues of casualties recording are extremely important for relevant proceedings.

Our Association believes that urgent, immediate steps of the UN OHCHR must be done including all observation procedures and immediate visits to Ukraine. Monitoring procedure, mentioned in HRC resolution 49/1, must be enforced immediately.

We hope that previous special statements of the UN experts and rapporteurs regarding situation in Ukraine must be supported by next UN OHCHR's steps reacting the Russia's ongoing terrorist policy and aggression in Ukraine, in framework of UN mandate.

25th February, 2023

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⁵⁶ <https://arcrimea.org/en/news/2023/01/09/uk-announced-meeting-of-justice-ministers-on-russian-aggression/>