

# INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

**Borys Babin, Doctor of Laws**

*Agent of Ukrainian Government before the European Court of Human Rights*

**Eduard Pleshko, PhD in Law**

*Chief of Section of Military Prosecution Office of the Southern Region of Ukraine*

## UNIVERSAL JURISDICTION AS A TOOL OF RUSSIAN AGGRESSION IN UKRAINE

Article contains the analysis of usage the principle of universal jurisdiction by modern Russian investigative practice and legal doctrine for events of Ukrainian-Russian war conflict. Authors establish real impact of international agreements in the field of international humanitarian law on the applicability of universal jurisdiction; they establish also real legal meaning and content of international non-contractual documents that are mentioned by Russian authors for their own reasoning. Previous Russian legal doctrine for possibility of the bringing criminal charges on the basis of universal jurisdiction is examined.

**Key words:** aggression, crimes against humanity, criminal procedure, international humanitarian law, universal jurisdiction, war crimes.

### *The Circumstances of Application of the Universal Jurisdiction Principle by the RF and Attempts of Its Scientific Justification*

After the beginning of Russian aggression in Ukraine, aimed to intensify foreign and domestic political pressure on Ukrainian people and chosen by it authority, in the corresponding propaganda from the Russian Federation (RF) there was repeatedly mentioned the thesis about war crimes, allegedly committed by the Ukrainian Army and law enforcement servicemen against civilians in the area of anti-terrorist operation.

The corresponding authorities of the RF, first of all the Investigative Committee, have initiated a number of criminal proceedings on this matter, aimed uppermost on criminal qualification of actions of the highest public officials of Ukraine, people's deputies of Ukraine, public figures etc. Special structural subdivisions in the Investigative Committee of the RF (ICRF) were created to conduct these criminal proceedings. At the same time it obviously required at least some justification of the extension of jurisdiction of the RF to events in Ukraine in which "the RF did not take part".

As far as the foundation thesis of the Russian propaganda has been and remained the statement that the conflict in Ukraine after the annexation of the Crimea peninsula had purely domestic character, the justification of the very possibility of extension of Russian criminal jurisdiction on the events in Ukraine in the circumstances of such "domestic" conflict had become an apparent task for the Russian legal doctrine.

That's why by a strange coincidence in autumn of 2014 a number of Russian periodicals have published materials on this subject, which had doubled the arguments of the ICRF, stated in the corresponding criminal cases. Published in autumn of 2014, "The Criminal Case on War crimes in Ukraine: On Which Grounds It Was Initiated in Russia?" by Professor Alexander G. Volevodz<sup>1</sup>, "Ukraine: the Civil War and the Trample of the International Law by Ukrainian Armed Formations" by Professor Ivan I. Kotlyarov<sup>2</sup>, "Armed Conflict in the Southern East of Ukraine and the International Criminal Law"

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<sup>1</sup> Волеводз, А.Г. (2014). Уголовное дело о военных преступлениях в Украине: на каком основании оно возбуждено в России? *Криминология: вчера, сегодня, завтра*, 3 (34), 52-57.

<sup>2</sup> Котляров, И.И. (2014). Украина: гражданская война и попрание международного права украинскими вооружёнными формированиями [Против бандеровщины]. *Политическое просвещение. Орган Коммунистической партии Российской Федерации*, 5 (82), 100-118.

by assistant Professor Pavel V. Volosyuk<sup>1</sup> are the briefing articles of Russian authors, which contain the corresponding argumentation.

A.G. Volevodz justifies the initiation of criminal proceedings on the events in Ukraine by the ICRF through the principle of universal jurisdiction (universality), which is “the ability of a Court of any State to bring to trial persons for crimes, committed beyond the boundaries of its territory, not connected to the State of citizenship of the suspected person or victims, or an oppression of the own national interests of the State”. A.G. Volevodz admits that the principle of universality “is usually applied on the grounds of precise treaty provisions, otherwise it is used rarely... it is believed that this principle should be used only in cases of commitment of serious crimes and inability or unwillingness of a State to appeal to the prosecution if its jurisdiction covers this offence on the grounds of the common principles of jurisdiction”.

Herewith A.G. Volevodz thinks that in the RF “the possibility to use this principle is enshrined in the norm of part 3 of article 12 of the Criminal Code (CC) of the RF on the possibility of application of the rules of this Code to foreign citizens and persons without citizenship, who do not permanently reside in the RF in cases, provided by international treaties”. Besides, A.G. Volevodz gives a number of international multilateral treaties, which on his opinion “directly enshrine... the legal institute” of “universal jurisdiction”, including to such treaties the Geneva Conventions 1949 and the Additional Protocols I and II to these Conventions 1977. Onwards, based on information about a number of incidents that allegedly occurred in the conflict zone, distributed in the Russian media by the representatives of the ICRF (!), A.G. Volevodz appraises them as violations of the Geneva Convention for the Protection of Civilian Persons in Time of War 1949 and the Additional Protocol II on protection of victims of armed conflicts of non-international character 1977, committed by “unidentified members of the Armed Forces of Ukraine and armed members of the so-called “National Guard of Ukraine” and “Right Sector”.

Such violations are classified by the author as a “war crime” and it is claimed that “investigation of these crimes are not carried out in Ukraine and the very issue of criminal responsibility of perpetrators of war crimes is not raised”. Therefore, according to A.G. Volevodz, “these war crimes are committed during an armed conflict of non-international character, and the right of the RF to exercise its universal jurisdiction for these actions is based on international humanitarian law”.

Also A.G. Volevodz recalls the legal practice around the world on the use of universal jurisdiction, eight examples all in all, in which courts of European countries (the UK, the Netherlands, Denmark, Switzerland), which supposedly had no relation to the relevant conflict (Bosnia, Congo, Afghanistan, Gaza Strip) condemned the perpetrators of war crimes, who lived in those states by that time. A.G. Volevodz refers to the practice of the European Court of Human Rights (ECHR) as well, which recognizes the principle of universal jurisdiction, particularly, the decisions of the ECHR of 2007 in the case “Jorgic vs. Germany” and of 2009 in the case “Ould Dah vs. France”.

A.G. Volevodz claims for recognition of universal jurisdiction in the modern doctrine of international law, referring to the Princeton Principles of Universal Jurisdiction, 2001 and the Resolution on Universal Jurisdiction of the Institute of International Law (Institute de droit international, IDI) 2005, as well as “the Report of the UN Secretary General “Coverage and Application the Principle of Universal Jurisdiction” in 2013 and the previous Report of the UN Secretary General”. Also Professor A.G. Volevodz argues that “international law does not impose any prohibition on the implementation of this [universal] jurisdiction *in absentia* – in the absence of the suspect or the accused in the state, which carries the proceedings in the criminal case”.

In contrast to the arguments of A.G. Volevodz, publications by Professor I.I. Kotlyarov firstly contain the statements of author’s vision of the causes and course of the armed conflict in Eastern Ukraine, accusations against the authorities of Ukraine in mercenary, use of chemical weapons and “the politics of genocide”. Also I.I. Kotlyarov states that “Ukraine during the hostilities in the Southern East violates state sovereignty and territorial integrity of the RF”, justifying it with shelling of the territory of the RF from the territory of Ukraine.

This author believes that “the government of Ukraine is unwilling to lead the civil war by the rules, i.e. under international humanitarian law... and is discrediting the militias, calling them “separatists”, “terrorists””, which, according to I.I. Kotlyarov, contradicts the laws of Ukraine (!). By restoring numerous historical examples I.I. Kotlyarov justifies not the concept of universal jurisdiction as such, but above all

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<sup>1</sup> Волосюк, П.В. (2014). Вооруженный конфликт на юго-востоке Украины и международное уголовное право. *Вестник Тамбовского университета. Гуманитарные науки*, 11 (139), 211-217.

the possibility of criminal liability of individuals for committed war crimes. In particular, he notes that the belligerent Member-States of the Hague Convention on the Laws and Customs of War on Land 1907 “have to prosecute persons who violate the laws and customs of war in the national courts or transfer cases of this kind to the bodies of international justice by themselves”. I.I. Kotlyarov summarizes the analysis of experience of conviction of individuals for war crimes with the following thesis: “in this respect the position of the RF to collect in due course evidence on individual defendants in Ukraine is quite justified”. He notes that “the Investigative Committee has to prosecute those responsible for organizing “punitive operations”, those who take part in them and those who “give orders and finance killing the civilians””.

In his turn, P.V. Volosyuk considers the fact of the breach of norms of international law by the authorities of Ukraine proven and explores the possibility of initiation of criminal proceedings of these offences by the ICRF primarily through the analysis of the criminal legislation of the RF. Thus, P.V. Volosyuk points out that “partly” part 3 of article 12 of the CC of the RF allegedly said that “Russian criminal law is applicable to foreign citizens or persons without citizenship, who do not permanently reside in the RF, and have committed socially dangerous acts, recognized as crimes under international criminal law, regardless of where they occurred and citizenship (nationality) of guilty persons”. Also, this author proposes his own original interpretation of article 356 of the CC of the RF “Application of prohibited means and methods of warfare”.

Trying to justify the thesis about violations of international humanitarian law by Ukrainian military servicemen, P.V. Volosyuk gives the ECHR ruling “Isayev and others vs. Russia” in 2005 in which the ECHR admitted killing 46 and wounding 53 Chechen villagers, used as human shields, by soldiers of the RF legitimate, but pointed to the violation of the principle of proportionality, because the force used was not strictly appropriate to the objectives pursued. In addition to that P.V. Volosyuk accuses Ukraine of use of mercenaries and thoroughly justifies the crime of mercenary.

Summing up his proposals, the author notes that “Russian criminal law can be fully realized to Ukrainian military and civilian superiors, despite their official status and immunities for violation of universally recognized norms and principles of international humanitarian law”. However, P.V. Volosyuk notes that “while the legal basis for criminal responsibility under international criminal law is applicable to such categories of individuals, it is about political will and, most importantly, the desire of international governmental organizations it is difficult to argue”.

These thoughts of Russian authors about the possibility of using the principle of “universal jurisdiction” by the RF were depicted in the criminal cases initiated by the ICRF against citizens of Ukraine for their actions allegedly committed in Ukraine, of which the alleged victims became other citizens of Ukraine. This follows at least from the public statements of the ICRF and from the materials of “requests” submitted by the ICRF on these criminal cases to Ukrainian law enforcement bodies. Therefore these theses need to be rated for their objectivity and compliance with international and national law, accumulated legal doctrine on these issues. To achieve this, we need to solve the following problem:

- to establish the real impact of international agreements in the field of international humanitarian law on the applicability of universal jurisdiction;
- to establish a real legal meaning and content of international non-contractual documents that are mentioned by Russian authors for their own reasoning;
- to examine the national practice of bringing criminal charges on the basis of universal jurisdiction.

#### *International Treaties and the Issue of Universal Jurisdiction*

References of Russian authors to the Convention relative to the Protection of Civilian Persons in Time of War (IV Geneva Convention) of August 12, 1949 are not accompanied by an indication of the specific rules of the agreement, which would directly provide for the possibility of prosecuting violations of the Convention in third countries through the application of universal jurisdiction. In addition, all of the authors claim about the alleged “inner nature” of the conflict in Eastern Ukraine. If conditionally agree with this statement, extremely doubtful though, it should be noted that to the question of internal conflicts only article 3 of the Convention is dedicated, which is common to all four Geneva Conventions. According to the norms of this article, in case of armed conflict, which does not have an international character and occurs in one of the Member-States, each party to the conflict must at least apply some provisions on humane treatment (prohibition of murder, degrading treatment, etc.)<sup>1</sup>.

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<sup>1</sup> Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949. ICRC

The rules of this article do not say anything about the mechanisms of punishment for failure to fulfill these prescriptions or about any possibilities of extending to these issues other rules of the Convention, in particular its article 1, which is referred to by these Russian authors. Indeed, in the Russian translation this article obliges states not only to respect, but also “to enforce respect” the Convention, which is repeatedly mentioned by Russian authors. But in the English text of the convention mentioned phrase has meaning “to ensure respect”, in French-speaking – “à faire respecter” (“to ensure respect”) having substantially different semantic load, and reflected in the official Ukrainian translation (“дотримуватися та забезпечувати дотримання цієї Конвенції”). Besides, under article 150 of the Convention it was adopted in English and French, both texts on which are authentic, i.e. have the advantage in any controversial issues on the content of the convention.

It should be added that articles 146 – 149 of the IV Geneva Convention provide a mechanism for establishing effective penal sanctions for persons who commit or order other people to commit any serious violation of the Convention. All Member-States undertake “to track down the persons accused of having committed or in ordering to commit such serious violations”, and “to bring such persons, regardless of their nationality, to trial in their courts”. But these rules contain no direct references to their distribution to internal conflicts, as provided in article 3 of the Convention. However, even this duty consists only of searching persons, who have already been charged, and not in identifying such persons; actually it refers to the possibility of persecution of identified and indicted war criminals in terms of international conflict, and not the possibility of arbitrary charges by relevant third countries.

Article 149 of the Convention generally indicates that the investigation in a manner that is decided between the interested parties, concerning any alleged violation of the Convention can be made only on the “request of a belligerent party”. Comparison of this prescription and the rules of article 146 indicates the difference of procedures to identify war criminals and the investigation of the circumstances of crimes, committed by them (article 149), and the persecution of revealed war crimes and bringing guilty persons to justice (article 146). However, there are some doubts about the possibility of the RF to effectively apply the IV Geneva Convention at all. The fact is that during the signing of the Geneva Conventions by the USSR representatives of this state have made reservations, which were then confirmed when ratifying the Convention by the Presidium of the Supreme Council of the USSR on April 17, 1954 and the Decree of the Supreme Council of the Ukrainian SSR on July 3, 1954 respectively (the RSFSR did not join to these conventions separately)<sup>1</sup>.

In reservations, among other things, it was stated that “the Convention does not apply to civilians who are out of the occupied territories, which is why it does not fully meet the requirements of humanity”. It is obvious that in terms of internal conflict there can be no legal regime of occupation, and thus it clearly implies that the USSR at least did not consider, when acceding to this Convention, the possibility of using its provisions in domestic conflicts. The specified reservation was not withdrawn by the USSR authorities up to its collapse; the authorities of the RF have made no steps on this matter yet; at the same time, in Ukraine this reservation was withdrawn by the Law of February 8, 2006 № 3413-IV<sup>2</sup>.

It should be added that according to part 3 of article 1 of the current Federal Law “On International Treaties of the RF” it “extends to international treaties in which the RF is a party as a State-assignee of the USSR”, without any interpretation of this thesis or establishing any certain legal framework<sup>3</sup>. After the collapse of the USSR the Foreign Ministry of the RF by note of January 13, 1992 declared that the RF “continues to fulfill the rights and obligations arising from international agreements concluded by the USSR”; in this note, the Foreign Ministry requested “to consider the RF as a party to all international treaties instead of the USSR”<sup>4</sup>. This legal structure is unusual for international law; although in general the

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*official web-site.* <<https://www.icrc.org/ihl/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>> (2015, August, 05).

<sup>1</sup> *Указ про ратифікацію Женевських конвенцій від 12 серпня 1949 року про захист жертв війни 1954* (Президія Верховної Ради Української РСР). *Офіційний сайт Верховної Ради України.* <<http://zakon4.rada.gov.ua/laws/show/114a-03>> (2015, August, 05).

<sup>2</sup> *Закон про зняття застережень України до Женевських конвенцій про захист жертв війни від 12 серпня 1949 року 2006* (Верховна Рада України). *Офіційний сайт Верховної Ради України.* <<http://zakon4.rada.gov.ua/laws/show/3413-15>> (2015, August, 05).

<sup>3</sup> *Федеральный закон о международных договорах Российской Федерации 1995* (Государственное собрание). <<http://base.garant.ru/10103790/>> (2015, August, 05).

<sup>4</sup> *Нота Министерства Иностранных Дел Российской Федерации от 13 января 1992 года* (1992).

issue of the RF as a possible assignee to the USSR is very broad and debatable, it should be mentioned that it is Ukraine which consistently does not recognize the RF as an assignee of the USSR. Therefore, a natural and completely unresolved issue of legality of international treaties of the USSR as international treaties of the RF from the point of view of Ukraine arises.

A similar situation exists with the Additional Protocol II to the Geneva Conventions, to which the USSR joined by the Resolution of the Supreme Council of the USSR on August 4, 1989 № 330-I, and the Ukrainian SSR – by the Decree of the Presidium of the Supreme Council of the Ukrainian SSR on August 18, 1989 № 7960-XI<sup>1</sup>. In Soviet Union's level Protocol's ratification procedure was carried out in violation of articles 11, 15 of the USSR Law of July 6, 1978 "On Procedure of Conclusion, Implementation and Denunciation of International Treaties of the USSR", by which that ratification had to be carried out exclusively in the form of a decree of the Presidium of the Supreme Council of the USSR and not the resolution of this Council<sup>2</sup>.

Also, the rules of article 3 of this Additional Protocol should be brought here, as it "develops and supplements article 3, common to all the Geneva Conventions, without changing the existing conditions of its application". This article of the Protocol contains the following provisions: "nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State"<sup>3</sup>. According to part 2 of this article "nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs". One can hardly consider these rules, common for the Geneva Conventions on the Rules of Internal Conflicts, as a basis for use of the principle of universal jurisdiction in the prosecution of perpetrators of war crimes.

Accordingly:

- the IV Geneva Convention provides for universal jurisdiction exclusively for cases of investigation and prosecution of war criminals, identified in armed conflict of an international character;
- the rules of the Geneva Conventions of 1949 and their Additional Protocols do not foresee any possibility of universal jurisdiction for war crimes in armed conflict of non-international character; conversely, the documents warn other countries from interfering in the affairs of the state, where such a conflict took place;
- in 1949 – 1991 the USSR considered the IV Geneva Convention as an instrument applicable only in international armed conflicts under the occupation; the modern RF has positioned itself as an assignee to the USSR on the implementation of international agreements and the USSR officially changed its position on the appropriate application of the Convention;
- in general, the position of the RF on the possibility of fulfillment of international agreements regarding Ukraine without the consent of the latter is shaky because of that Ukraine does not recognize the status of the RF as an assignee of the USSR in terms of imperfections such status from the standpoint of the theory of international law.

Everything said above does not let one agree with the reference of the mentioned Russian authors to the rules of the Geneva Conventions 1949 and their Additional Protocols as the legal basis of applicability of the principle of universal jurisdiction of the RF with "investigating war crimes" allegedly committed during the "internal" armed conflict in Ukraine. Such use is possible only in conditions of international

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*Дипломатический вестник*, 2-3, 34.

<sup>1</sup> Указ про ратифікацію Додаткового протоколу до Женевських конвенцій від 12 серпня 1949 р., що стосується захисту жертв міжнародних збройних конфліктів (Протокол I), і Додаткового протоколу до Женевських конвенцій від 12 серпня 1949 р., що стосується захисту жертв збройних конфліктів неміжнародного характеру (Протокол II) 1989 (Президія Верховної Ради Української РСР). Офіційний сайт Верховної Ради України. <<http://zakon4.rada.gov.ua/laws/show/7960-11>> (2015, August, 05).

<sup>2</sup> Закон о порядке заключения, исполнения и денонсации международных договоров СССР 1978 (Верховный совет СССР). <<http://pravo.levonevsky.org/bazazru/texts25/txt25737.htm>> (2015, August, 05).

<sup>3</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. ICRC official web-site <<https://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=D9E6B6264D7723C3C12563CD002D6CE4&action=openDocument>> (2015, August, 05).

armed conflict. That is why the ICRF by referring to the relevant provisions of the Geneva law thus recognizes the RF as a *de facto* party to the conflict in Ukraine.

*International working papers on the issue of universal jurisdiction*

It is necessary to examine the content of international non-contractual documents on universal jurisdiction, mentioned by Russian researchers, first of all the Princeton Principles of Universal Jurisdiction (PPUJ). The PPUJ as a document were “the result of studying of international legal norms in the field of universal jurisdiction by various scientists and experts within one year”. The initial draft of the PPUJ was prepared by Professor M. Cherif Bassiouni. It was discussed at Princeton University on November 10 – 11, 2000 by a group of scientists who presented working papers on various aspects of universal jurisdiction. Drafting Committee helped to remake project, which later was sent with revised working paper to a group of lawyers which gathered at Princeton on January 25 – 27, 2001 and approved the PPUJ (not unanimously though)<sup>1</sup>.

Then the PPUJ were proposed for consideration by the UN through the verbal note from the Permanent Mission of Canada and the Netherlands to the UN Organization (UN document A/56/677 of December 4, 2001); no decisions on approval or discussion of the PPUJ were approved by the UN. In the same note verbale it was mentioned that the PPUJ “is a good basis for the analysis of the concept of universal jurisdiction and that other Member-States will be interested in further study of the issues contained in the document” and that “due to the spread of the Principles in the international community a great opportunity to continue the discussion on universal jurisdiction can appear”. Hence the provision of the PPUJ to the world community emphasized the preliminary nature of the document, which was seen as the start of processing the relevant doctrine, but not as its objective reflection or incorporation of international custom or practice in this area.

That is why in the introduction to the PPUJ the UN High Commissioner for Human Rights Mary Robinson stressed that “the process of laying a new foundation for the principle of universal jurisdiction is developing. However, this does not mean that the exercise of universal jurisdiction is a simple question. There are significant practical and legal problems associated with the use of this principle”. It’s hard to disagree with this official position of the UN official about the PPUJ; on the merits, the very existence of an appropriate introduction to the project document, which is the PPUJ, can be explained by the fact that the authors of the PPUJ studied the universal jurisdiction principle at the request of the UN.

In the Introduction (task) to the PPUJ it is stated that if in the problem of addressing jurisdiction “there is no binding, national courts may, however, exercise jurisdiction under international law over crimes of exceptional gravity which affect the fundamental interests of the international community as a whole”. Further it is stated that “when national courts exercise universal jurisdiction appropriately, in accordance with internationally recognized standards of law, they are defending not only their own interests and values, but also the basic interests and values of the international community”. So the key to understanding universal jurisdiction by the authors of the PPUJ is its interpretation as protection the interests of the international community against certain attacks, not as the right of a state to protect its own interests in terms of violation of international law.

However, in the introduction to the PPUJ it is stated that “the practice of execution of the universal jurisdiction principle by the courts is inconsistent, incoherent and difficult to understand”. The authors of the PPUJ conducted its analysis in circumstances where the International Criminal Court (ICC) has already been established the Rome Statute, but it has not yet begun to act, because of its “unprecedented opportunity to bring to justice some of those accused of serious crimes under international law” was still unresolved in the future. Today, in actual practice the ICC a legal reality, of course, changed.

Certain rules of the PPUJ are worth additional discussing. Thus, according to part 2 of principle 1 of the Princeton principles of universal jurisdiction, the principle of universal jurisdiction can be exercised by a competent and ordinary judicial body in the State in order to judge a person duly accused of committing serious crimes under international law, provided that the person stood before such a judicial authority (i.e. prosecution *in absentia* is not provided by the PPUJ). According to principle 2 of the PPUJ, only in cases of serious crimes under international law, national courts may invoke universal jurisdiction, even if in their national legislation there is no appropriate provision.

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<sup>1</sup> *Princeton Principles on Universal Jurisdiction*: annex to the note verbale dated 27 November, 2001 from the Permanent Missions of Canada and Netherlands to the UN addressed to the Secretary-General (A/56/677 on 4 December, 2001). *UN official web-site*. <<http://www.un.org/documents/ga/docs/56/a56677.pdf>> (2015, August, 05).

Also principle 8 of the PPUJ refers to a situation where disputes between States regarding jurisdiction over any person exist. In these cases, “when the State, which is in the possession of the person, does not have any grounds for jurisdiction other than the principle of universality”, this State, solving the question whether to prosecute or to give a person to another State, should explain its decision based on the analysis of the established in the PPUJ complex criteria.

Among these criteria are: the place of the offense, citizenship of alleged perpetrators, the relationship between the applicant State and predictable performer, crime or victims, convenience of parties and witnesses, availability of evidence in the requesting State, interests of justice etc. This implies authors’ of the PPUJ understanding of practical problems of crime investigation by the authorities of the State which does not have at the disposal of relevant witnesses, evidence, etc. (the possibility of prosecution of persons in the State that does not control the person actually is not mentioned the authors of the PPUJ).

But of particular importance to us is part 1 of principle 10 the PPUJ, in which a request for extradition on the basis of universal jurisdiction can not be granted if “there is a probability that the extradited person will undergo ostentatious court in which there will be violations of international rule of law, and thus any satisfactory guarantees of the otherwise are not represented”. Such waiver must lead to the proceedings in the State that has refused to give a person or in a third country which guarantees impartiality of the process. Consequently the authors of the PPUJ were aware of the threat of politicization of the principle of universal jurisdiction and the possibility of its misuse by States for their own political interests.

Principle 14 of the PPUJ provides that in a situation of dispute between States on the implementation of universal jurisdiction it has to be settled at the International Court of Justice. Pending a decision on the disputed issue a States seeking to exercise universal jurisdiction can not detain the accused or seek his detention by another State, unless there is a reasonable escape danger and there is no reasonable means to ensure that this person really will be brought to justice in the State which seeks to exercise its jurisdiction. Principle 12 of the PPUJ contains a prescription to the States to include provisions on universal jurisdiction “in all future agreements and protocols to the existing agreements on serious crimes under international law”, from what the position of the authors, at which existing agreements on relevant serious crimes (especially the Geneva Conventions 1949 and the Protocols thereto) do not provide for such jurisdiction, can be understood.

At the same time Commentary to the PPUJ prepared by Steven W. Becker led by Prof. M. Cherif Bassiouni and supported by Stephen Macedo, Stephen A. Oxman and others it is noted that “there are strong fears that some States will abuse universal jurisdiction to carry out politically motivated persecution”. As these researchers stated, “corrupt governments and prosecutors will try to blame the Heads of a State and other senior officials of the States with whom they have political differences” and “a powerful State may seek release of their own leaders from responsibility, while trying to judge others ignoring the basic postulate, according to which equals should be treated equally”. The course of Ukrainian-Russian conflict, unfortunately, shows the loyalty of these hypotheses of the authors of the Princeton principles of universal jurisdiction.

The Commentary explained that the authors of the PPUJ “decided not to include the explicit requirement to form a binding territorial definition” of universal jurisdiction in order “that the accused was physically in the territory of the State which exercises jurisdiction” because of “a sense of restraint”. The authors of the PPUJ decided not to include the principles of the processes specified *in absentia* due to ambiguous and conflicting national practice for most of their opportunities. In addition, in the Commentary the authors of the PPUJ state that they “agreed that universal jurisdiction should be not referred to while prosecuting for minor violations of the Geneva conventions 1949 and Protocol I”.

No prescription of the PPUJ or comments to this document does not cover situations of persecution of unidentified persons on the basis of universal jurisdiction. In addition, it is necessary to give the opinion of Nicolas Browne-Wilkinson as a member of the Princeton process who refused to vote for the text of the PPUJ. According to his statement, “if such legal norms are adopted, the States opposed to the Western powers will apparently arrest both existing and those who have resigned officers and soldiers of the Western powers and organize ostentatious court against them for supposedly committed international crimes”.

Besides the PPUJ the publications of Russian authors contain references to “the Resolution on Universal Jurisdiction of the Institute of International Law 2005”. This relatively brief document called “The Universal Criminal Jurisdiction on Crimes of Genocide, Crimes against Humanity and War Crimes”

was prepared by the prominent German lawyer Christian Tomuschat and was approved by the resolution of the IDI of the same name on August 26, 2005<sup>1</sup>.

As it is stated in article 3 of the Resolution, in the absence of legal agreement of other content, the exercise of universal jurisdiction, “apart from acts of investigation and requests for extradition”, requires the “presence of the alleged offender in the territory of the prosecuting State”, on board a ship or aircraft of that State or another legitimate form of control over the alleged perpetrator. It is necessary to point out that the phrase “state persecution” is clearly different in content than, for example, the phrase “state of the proceedings” and provides for full pre-trial investigation in the presence of alleged offenders and not in the situation *in absentia*.

Additionally, this article of the Resolution it is stated that any State holding an alleged offender under criminal detention, prior to sentencing based on universal jurisdiction, has to ask the State where the offense was committed or the State of citizenship of that person whether they agree to pursue that person legally. “Unless these States are manifestly unwilling or unable to do so”, the State that controls such a person may apply the principle of universal jurisdiction, and only considering competent jurisdiction of international criminal courts. In addition, article 6 of the resolution declares its non-proliferation to cases of immunities established by international law.

Russian authors also mentioned the report of the UN Secretary General “Coverage and Use of the Principle of Universal Jurisdiction” in 2013 and “previous reports of the UN Secretary General”. Actually, since 2010 relevant reports of the UN Secretary-General have been annually provided to the Sixth Committee of the General Assembly (documents A/65/181 of July 29, 2010, A/66/93 of June 20, 2011, A/67/116 of June 28, 2012, A/68/113 of June 26, 2013 and A/69/174 of July 23, 2014)<sup>2</sup>. They contain a synthesis of information provided by the States of the UN and international organizations on the principle of universal jurisdiction pursuant to relevant resolutions of similar annual UN General Assembly resolutions (resolutions 64/117 of December 16, 2009, 65/33 of December 6, 2010, 66/103 of December 9, 2011, 67/98 of December 14, 2012, 68/117 of December 16, 2013 and 69/124 of December 10, 2014)<sup>3</sup>.

It is significant that the RF never gave her views on this subject to the UN Secretary General; during just five years of the relevant process the UN has worked out information about legal practices, relevant national legislation and its own political and legal position, granted by 61 states, as well as by the African Union, the Council of Europe, the IMO, the ICRC and the Organization for the Prohibition of Chemical Weapons. It is interesting that in the above mentioned documents there was never mentioned neither the PPJU nor the Resolution of the IDI, 2005.

The Report A/65/181 of 2010 has actually become the main of the mentioned ones (engulfed reports of 43 states), and later reports serve primarily as its supplement and contain appropriate comments. In point 5 of the Report A/65/181 it is noted that “it is important the goal to eliminate impunity by itself did not lead to abuse, and appropriate actions did not enter into conflict with other applicable rules of international law”. Point 6 of the report indicated that “the State in which the crime was committed (the State of territorial jurisdiction), and the State of citizenship of the offender (the State of citizenship) shall usually have priority rights in the struggle against impunity for individuals, acts or property”, as a minimum, “because the State of territorial jurisdiction is often found in the most favourable position in terms of getting the evidence, finding witnesses, execution of punishments and informing the accused, victims and affected communities about the inevitability of punishment”.

In point 9 of the Report A/65/181 the UN Secretary General gave the respondents’ opinion about “the importance of ensuring the independence and impartiality of the judiciary in order to prevent manipulations with the principle of universal jurisdiction for political purposes”. In point 24 of the Report it

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<sup>1</sup> *Universal criminal jurisdiction with regard to the crime of genocide, crimes against humanity and war crimes* [rapporteur M. Christian Tomuschat]: adopted on August 26, 2005 on 17th Krakow Session of Institute of International Law. <[http://www.idi-iil.org/idiE/resolutionsE/2005\\_kra\\_03\\_en.pdf](http://www.idi-iil.org/idiE/resolutionsE/2005_kra_03_en.pdf)> (2015, August, 05).

<sup>2</sup> *The Scope and Application of the Principle of Universal Jurisdiction: Reports of the Secretary-General prepared on the basis of comments and observations of Governments* [A/65/181 on 29 July 2010, A/66/93 on 20 June 2011, A/67/116 on 28 June 2012, A/68/113 on 26 June 2013, A/69/174 on 23 June 2014]. *UN official web-site*. <<http://daccess-dds-ny.un.org>> (2015, August, 05).

<sup>3</sup> *The Scope and Application of the Principle of Universal Jurisdiction : Resolutions of UN General Assembly* [65/33 on 6 December 2010, 66/103 on 9 December 2011, 67/98 on 14 December 2012, 68/117 on 16 December 2013, 69/124 on 10 December 2014]. *UN official web-site*. <<http://daccess-dds-ny.un.org>> (2015, August, 05).

is noted that some States associate universal jurisdiction with the activities of the International Criminal Court and that “according to some governments, the legitimacy of universal jurisdiction in their country is based on accepted domestically measures for the ratification and implementation of the Rome Statute”. It should be added that the RF is not a member of the Rome Statute of the ICC. The reports of the African Union to the UN in the form of preparation of related reports contained a consistent critic of the concept of universal jurisdiction. In point 103 of the Report A/66/93 of 2011 it is noted that there are legal restrictions on the exercise of universal jurisdiction in the legislative practice of the Members of the African Union; for example, a requirement that at the beginning of the criminal trial the suspect was in the pursuing state, also there is a requirement to respect the criminal immunity of state officials under international law.

The Member States of the African Union believe that they have become some kind of target, indicting their officials to criminal charges and arresting such persons, and that “the exercise of universal jurisdiction by European countries, especially Spain and France, is politically selective against them”. The opinion of the African Union is that such situation “raises disturbing sense of double standards, which is increased by the multiplicity of charges, pressed in the legal framework of the various European states against the officials of African states”.

In points 161, 162 of the Report of 2011 there was added the position of the African Union that “when the State seeks to use universal jurisdiction, first it should have the consent of the State where the alleged violation occurred, and the State, whose citizenship the alleged offender has”. In addition, it was noted that “while exercising the criminal prosecution for serious offenses causing international concern, the States should give priority to the territorial principle as the basis for jurisdiction, as such crimes (though they harm the entire international community as a whole, encroaching on universal values) cause damage first of all to the community where they were committed, and not only violate the rights of the victims, but hit the general needs of the community order and security”.

Point 33 of the report A/68/113 of 2013 gives the position of the African Union, especially the decision adopted by the Assembly of Heads of States and Governments of this Organization on the issue of misuse of the principle of universal jurisdiction (Assembly / AU / Dec.420 (XIX)). In that decision the Assembly urged the Member States of the African Union to use the principle of mutuality to protect themselves from abuse of the principle of universal jurisdiction. Such attention to the decision of the African Union position in the context of discussions of Russian scientists is logical at least, considering the political orientations of the modern RF, its enhanced political cooperation is with particular African states and the common views of the RF and those states on the value and meaning of international relations, about which the Foreign Ministry of the RF has made repeated official statements during 2014 – 2015.

As it was noted in the Reports of the Council of Europe (CoE) to the UN (points 110, 112 of the Report A/66/93 in 2011), none of the agreements drawn up within the CoE, contained a provision that clearly recognizes the principle of universal jurisdiction. Point 6 of the Report in 2013 cited the opinion of the Committee of Ministers, according to which only some Member States of the CoE have recognized the principle of universal jurisdiction and at the same time “there is no international consensus on the definition and scope of this principle because the exercise of universal jurisdiction in practice often connected to the legal limitations established in national legislation”. In this regard, as it was noted in the Report of the CoE to the UN, “in the national legal systems there remain considerable difficulties in ensuring the implementation of universal jurisdiction efficient and effective manner”.

As noted in point 35 of the Report A/68/113 in the ECHR judgment of July 12, 2007 in the case “Jorgic vs. Germany”, the application of universal jurisdiction was not defined as a violation, but the report indicates that the feature of this case was that sentenced Jorgic had lived in Germany for 23 years before the events, for which he was brought to justice. With reference to the ECHR ruling in 2009 in the case “Ould Dah vs. France”, it was noted in the Report in 2011 that the ECHR prevented the implementation of universal jurisdiction and determined that it is not a violation of the Convention on Human Rights 1950. However, as stated in the UN report, in the said decision the ECHR ruled that, even considering the precedent of its practice, the States are “competent to determine their own criminal law policy, and the Court is not basically called to comment it on”. In point 50 of the Report A/69/174 of 2014 it is confirmed that the ECHR is “unable to analyse *in abstracto* the issue of “universal jurisdiction””. Therefore, the examples of the ECHR judgments on cases brought by the principle of universal jurisdiction, used by the Russian authors, should be perceived through this position of the ECHR.

Points 122, 123 of the Report A/65/181 of 2010 present the ICRC’s position that “the contractual framework of universal jurisdiction was introduced by the four Geneva Conventions on the Protection of

Victims of War and spread to such violations of the Conventions, which are defined there as “serious””. It is recognized that the Geneva Conventions have “no direct statements that the jurisdiction should be established regardless of where the crime was committed, but they are usually interpreted as providing for universal jurisdiction”. In addition, “at least 97 states to some extent gave their national courts universal jurisdiction over serious violations of international humanitarian law” (point 134 of the Report).

It should be added that the ICRC statement of October 18, 2013 to the regular report of the Secretary-General also has a provision that “although the Geneva Conventions do not state directly that the jurisdiction should be implemented regardless of the place where the crime was committed, the position of the Geneva Conventions is interpreted as a rule as providing for universal jurisdiction”. But while the ICRC recognized the importance and the fact that “most of the states of citizenship of the defendants did not object to the implementation of universal jurisdiction”<sup>1</sup>.

At the same time reports of the UN Secretary General of 2010 – 2014 recognize the different approaches of the respondents to the question of universal jurisdiction for war crimes. According to the tables contained in the annexes to the reports, the Geneva Conventions 1949 as the international legal basis for the implementation of universal jurisdiction was mentioned in 2010 – 2014 by only 20 states in their reports, and the Protocol I they had correctly recognized as a corresponding source by 14 of these 20 states (and one more state) and the Protocol II – only by 11 of these states. Therefore, the position of the ICRC and the data processed by the UN indicate varying degrees of recognition the Geneva Conventions and particularly their Additional Protocols in the context of the application of universal jurisdiction by the international community.

It is interesting that point 63 of the UN Report A/69/174 of 2014 once again provides the ICRC’s position that ostensibly more than 100 states have established “in some form” universal jurisdiction over serious violations of international humanitarian law in their national legal systems. However, as a legal basis of such jurisdiction these states considered not only the Geneva Conventions and Additional Protocol I (even the ICRC does not mention the application of universal jurisdiction according to Additional Protocol II in this Report), but the Rome Statute of the International Criminal Court and other documents. And only a “minority” of those listed by the ICRC states “have carried out an investigation and prosecution of suspected criminals, basing their jurisdiction not on a particular national law, but directly on the international law”, i.e. exactly as the mentioned Russian authors offer to do.

Thus, it is not surprising that the result of these discussions of the specified Secretary General’s Reports of 2010 – 2014 in the UN was the General Assembly’s approval of the above mentioned Resolutions 65/33, 66/103, 67/98, 68/117 and 69/124, based on the Reports of the Sixth Committee, which contain the absolutely identical recognition on “differences of opinion expressed by the States, and the need for further consideration in order to achieve a better understanding of the scope and application of universal jurisdiction”. In all of these Resolutions it was also taken into account that “the States have expressed views that the legitimacy and feasibility of universal jurisdiction the most efficiently is provided with its responsible and prudent application in accordance with the international law”. So no surprise that Russian authors, referring to the UN Secretary General’s Report on universal jurisdiction “have forgotten” to indicate the relevant resolutions of the General Assembly approved in the development and discussion of the results of relevant reports.

Thus the analysis of international instruments mentioned by the Russian authors during the apology of applicability of universal jurisdiction over war crimes, the Geneva Conventions and the Additional Protocols thereto indicates the following:

- such documents as the PPUJ and the Resolution of IDI, 2005 were positioned by their developers only as intermediate and contributing to further processing of the universal jurisdiction application problems; they are not reflected in the consistent and not yet completed process of elaboration of the practice of universal jurisdiction embodied in a number of Reports of the UN Secretary General and General Assembly resolutions 2010 – 2014;
- all considered papers on universal jurisdiction ascertain the real threat of politicization of the principle of universal jurisdiction and the possibility of abuse of it by the States in their own political interests (which actually is demonstrated by the RF);

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<sup>1</sup> *The Scope and Application of the Principle of Universal Jurisdiction* : ICRC statement for UN on 18 October, 2013 ICRC official web-site. <<https://www.icrc.org/rus/resources/documents/statement/2013/united-nations-universal-jurisdiction-statement-2013-10-18.htm>> (2015, August, 05).

- all considered documents recognize the diversity of approaches to universal jurisdiction and final pendency of the issue in the international law;
- all considered documents mention the Geneva Conventions and Additional Protocol I to them as a possible basis of universal jurisdiction, but with some reservations, especially on the desired anticipation of such special jurisdiction at national level and on threats that arise in the case *in absentia*; Additional Protocol II is seen as a potential basis for universal jurisdiction in the least degree compared to other treaty sources of international humanitarian law;
- the RF and its representatives were not consistently involved in the process of developing of any of the considered international documents; these documents do not take into account or reflect Russian legislation, doctrine and practice.

Therefore the international non-contractual documents mentioned by the Russian authors can not be regarded as a legal basis of the principle of universal jurisdiction applicability during “the investigation of war crimes” allegedly committed during the armed conflict in Ukraine. Moreover, the cautions of the documents on abuse of universal jurisdiction can safely be used in the analysis of the Russian “law enforcement” practices.

#### *Legal Precedents of the Application of Universal Jurisdiction*

We should focus on the practice of national criminal prosecution on the basis of universal jurisdiction and the legal assessment of this practice in the decisions of international organizations and other states. One of these cases was the subject of the UN International Court of Justice (ICJ) (“Congo vs. Belgium” in 2002, or a “Case of an arrest warrant”) for which Belgium according to the national law of June 16, 1993, which introduced universal jurisdiction for punishment of serious violations of international humanitarian law, in April 2000 brought the Minister of Foreign Affairs of DR Congo – the former Belgian colony. Representatives of DR Congo in the UN ICJ noted that the application of such jurisdiction is possible only in case of the presence of appropriate persecuted person in that state<sup>1</sup>.

The UN ICJ in that case declined to evaluating the application of universal jurisdiction (the case was decided in favour of DR Congo through the recognition of the Minister’s immunity by the Court), but in this case the *ad hoc* judge Christine van den Wyngaert protected the possibility of application of universal jurisdiction *in absentia* in her dissenting opinion<sup>2</sup>. However, judges Rosalyn Higgins, Peter Kooymans and Thomas Buergenthal in their joint dissenting opinion on this particular decision noticed that in the Geneva Conventions and Additional Protocols there was enshrined not the principle of universality, but “the mandatory territorial jurisdiction over persons who have committed crimes in any place”. After the approval of this decision by the UN ICJ Belgium in April 2003 abolished the rules of its legislation on the application of absolute universal jurisdiction<sup>3</sup>, with the possibility of its own jurisdiction over war crimes committed by foreigners living in Belgium for more than 3 years<sup>4</sup>.

Chinese Professor Sienho Yee cites evidence of political pressure on the Belgium by other NATO countries that lead to the rejection of its intentions to apply universal jurisdiction. He gives the example of abolition of a similar law in Spain in 2009 after attempts of its application to prosecute participants of the civil war in the 30-ies of the 20<sup>th</sup> century in this country. As the researcher points out, “cautious” decision of the UN ICJ in the “Congo vs. Belgium” case “significantly influenced the subsequent practice of the exercise of universal jurisdiction”<sup>5</sup>. In publications of L. Reydams and Sienho Yee joint analysis of about 20 cases in the national courts of Austria, Belgium, Great Britain, Spain, Denmark, the Netherlands, Germany, Switzerland, Finland, France on bringing foreigners to justice for war crimes, committed abroad (including all cases cited by Russian authors) allowed to distinguish the following common features:

- in all cases before the prosecution a residence was granted to the accused by the state of prosecution, they were in that state at the time of their detention;

<sup>1</sup> Штурма, П. (2010). Универсальная юрисдикция и наказание за серьезные нарушения Женевских конвенций 1949 г. *Правоведение*, 4, 85.

<sup>2</sup> Сафаров, Н.А. (2007). *Экстрадиция в международном уголовном праве : проблемы теории и практики*: дисс. ...доктора юрид. наук; 12.00.10. Москва, 275.

<sup>3</sup> Русинова, В.Н. (2005). Преследование нарушений международного гуманитарного права на основании принципа универсальности. *Международное публичное и частное право*, 6, 22, 24.

<sup>4</sup> Штурма, П. (2010). Универсальная юрисдикция и наказание за серьезные нарушения Женевских конвенций 1949 г. *Правоведение*, 4, 85.

<sup>5</sup> Сиенхо, Йии (2012). Универсальная юрисдикция: понятие, теория и практика. *Российский юридический журнал*, 4, 8-13.

- all accused resisted the possibility of their transfer to the authorities of the State where they have likely committed war crimes;
- such extradition was often impossible legally or practically;
- the state where war crimes were committed in most cases actively agreed or acquiesce with the relevant prosecution;
- the majority of cases was related to events in the former Yugoslavia and Rwanda, for which there have been special decisions of the relevant international tribunals prosecutors and the UN Security Council about the need to search for the perpetrators and holding court over them with all the nations of the world<sup>1</sup>.

It is worth mentioning that two of the cases were the subject of the ECHR, which declined to provide comments on the legal policy on universal jurisdiction and did not give in these cases any relevant considerations *in abstracto*. Therefore, the current legal practice suggests the use of “universal jurisdiction” in circumstances where the state of application had some connection with the person brought to justice when the person has been predetermined, single, present in the country for a period of proceedings. The only attempt to use national universal jurisdiction *in absentia* have led to political pressure on the state of proceedings, and to the proceedings in the UN International Court of Justice, which did not share the position of that State, and ultimately – to its rejection of the principle of universal jurisdiction. This allows us to critically take foreign examples given by Russian authors as a legal justification for criminal policy of the RF in the conditions of Ukraine-Russia conflict.

*The Legislation of the RF  
on the Application of Universal Jurisdiction*

At the same time, the correlation of proposals of the named authors and of previous practice on universal jurisdiction, as well as attitude to this phenomenon, which has formed in the Russian doctrine up to 2014, is of significant interest for us. To resolve this scientific goal we must determine the actual location of universal jurisdiction in the Russian legal system and compile views on this issue, which have formed in international legal doctrine, particularly in Russian legal doctrine before the events of 2014 – 2015.

Interestingly, the legislation of the RF, to which the mentioned authors refer, *per se* contains no mention of the mechanisms of the application of universal jurisdiction. In part 3 of article 12 of the CC of the RF on June 13, 1996 noted that foreign citizens and persons without citizenship not residing permanently in the RF who have committed a crime outside of the RF shall be criminally liable for the CC of the RF, if the offense is directed against the interests of the RF or a citizen of the RF, or persons without citizenship permanently residing in the RF, and in cases provided by international treaty of the RF, if foreign citizens or persons without citizenship who permanently reside in the RF, were not convicted in a foreign country and are brought to criminal responsibility in the RF<sup>2</sup>.

From the mentioned norm it does not follow which international treaties of the RF were intended, but at the same time it is obvious that such agreements should:

- be the agreements, concluded exactly by the RF in accordance with the requirements of the international law;
- clearly and consistently provide mechanisms for universal jurisdiction.

The Geneva Conventions 1949 and the Additional Protocols do not fully meet both these requirements (because they were joined not by the RF, but by the USSR, furthermore, with violations of the procedure – on Additional Protocols). Moreover, analysis of article 356 of the CC of the RF “The Use of Prohibited Means and Methods of War”, on which in fact a criminal case was brought by the Investigative Committee of the RF on the basis of “universal jurisdiction”, indicates its blanket and yet imperfect character. According to part 1 of this article, “ill-treatment of prisoners of war or civilians, deportation of civilians, looting of national property in occupied territory, the use of prohibited by international treaties of the RF means and methods in armed conflict – is punishable by imprisonment for up to 20 years”; by imprisonment for the same period under part 2 of this article shall be punished “the use of weapons of mass destruction, prohibited by international treaties of the RF”.

Thus we can observe such weaknesses of the respective criminal legal structures: disproportion

<sup>1</sup> Сиенхо, Ёии (2012). Универсальная юрисдикция: понятие, теория и практика. *Российский юридический журнал*, 4, 20.

<sup>2</sup> *Уголовный кодекс Российской Федерации 1996* (Государственное собрание). <<http://base.garant.ru/10108000/>> (2015, August, 05).

between the severe punishment and the status of “the most serious crime” with such a composition as any ill-treatment of prisoners of war or non-combatants; extremely wide variation in the size of penalties to be applied; uncritical blanket rules.

However, such blanket character of norms provides essentially extending the same rules of international treaties of the RF (not “international humanitarian law” or “generally recognized principles and norms of international law” referred to in article 1 of the CC of the RF) in terms of so called “universal jurisdiction” by investigative and judicial authorities of the RF on non-residents who basically should not be acquainted with the details of contractual practices of the RF, specific perception of the international treaties of the USSR by the RF, with appropriate reservations to treaties, etc. Such construction, clearly designed for use on residents (especially military servicemen) of the RF increases the risk of violating the principle of “*nulla poena sine lege*”, “*nullum crimen sine lege*” and the application of criminal law by analogy, which is directly prohibited by part 2 of article 3 of the CC of the RF.

It is interesting that imperfection and ambiguity of the given blanket (reference) norms of the CC of the RF, which increased in terms of coming into force of the Rome Statute of the International Criminal Court, has been recognized by Russian authors. Thus, in 2006 I.A. Salkin and O.G. Kibalnik noted the inconsistency between norms of the CC of the RF concerning war crimes and norms of article 8 of the Rome Statute, the norms of the CC of the RF on crimes against humanity and article 7 of the Rome Statute<sup>1</sup>. Additionally, since article 356 of the CC of the RF is a part of Chapter 34 of the CC “Crimes against the Peace and Security of Mankind” general question arises as to its affiliation with crimes against humanity and not to war crimes (which is not separately allocated in the CC of the RF at all).

However, the given problems of substantive law are relatively small considering the situation with the procedural legislation of the RF in the context of applicability of the principle of universal jurisdiction for any crimes in this state. It should be noted that the procedure of criminal justice in the RF is regulated solely by the Criminal Procedural Code (CPC) of the RF, adopted on December 18, 2001 (article 1 of the Code) [23], according to which the proceedings in criminal cases should be conducted in the RF regardless of where the crime was committed “if an international treaty of the RF provides otherwise”. Of course, if the order of scientific discussion can be argued (as the mentioned Russian authors do) that the Geneva Conventions and the Additional Protocols to them can somehow be used instead of the norms of the CC of the RF, they can not be used instead of the rules of the CPC of the RF and these issues are not regulate in any way.

Analysis of the CPC of the RF allows asserting that in case of the criminal proceedings in the RF “on the basis of universal jurisdiction” the fundamentally insoluble problems will arise from a place of the beginning of proceedings, the status of its participants and the need to cooperate with foreign states.

Thus, the rules of article 152 of the CPC of the RF “Location of the preliminary investigation” for a long time have avoided the problem of the place of the beginning of proceedings for crimes committed outside the RF. Only the Federal Law of October 21, 2013 № 271-ФЗ article 152 of the Code was supplemented by part 4.1, according to which “if the offense is committed outside of the RF, the criminal case shall be investigated on the basis of article 12 of the CC of the RF ... at the place of residence or place of stay of the victim or at the location of the majority of witnesses or at the place of residence or place of stay of the accused in the RF, if the victim lives or stays outside of the RF”.

From this rule it follows that if in the RF there is no victim, “the majority of witnesses” or accused of crimes committed outside of the RF, the place of the beginning of proceedings remains uncertain. Exactly to be able to circumvent the requirements of the CPC of the RF, the representative of the ICRF tried to combine the proceedings of different content – under article 105 of the CC of the RF “Murder” of Russian citizens and under article 356 of the CC of the RF, as for the first one they had “victims” on the territory of the RF. Let’s add that the place of the beginning of proceedings is an essential element of the resolution on the beginning of proceedings under article 146 of the CPC of the RF.

However, after the beginning of proceedings its effective investigation according to the CPC of the RF is impossible without the granting of the status of suspect and accused to certain persons. At the same time, under article 46 of the CPC of the RF the suspect may be a person:

- against whom criminal proceedings were instituted (article 146 of the Code);

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<sup>1</sup> Салкин, И.А. Кибальник, А.Г. (2006). Римский статут Международного уголовного суда и криминализация деяний в уголовном законодательстве России. *Вестник Северо-Кавказского федерального университета*, 4, 72, 73.

- detained under articles 91, 92 of the Code;
- against whom preventive measure was defined under article 100 of the Code;
- notified of the suspicion in accordance with article 223.1 of the Code<sup>1</sup>.

By analysing these norms it is easy to see that a person can become a suspect without personal contact with the investigation bodies only when the criminal proceeding is initiated. But according to articles 172, 173 of the CPC of the RF, an indictment is possible only in presence of a person and within three days after the decision to prosecute a defendant; the Code does not provide the possibility of indictment *in absentia*.

Part Five of the CPC of the RF “International cooperation in criminal justice” in article 460 provides for the ability of the RF to direct a request a foreign state to give it a person for prosecution or execution of sentence – solely on the basis of international agreements with the RF with that State or on the basis of written obligation of the Prosecutor General of the RF to give that State according to the principle of reciprocity persons under the law of the RF in the future. The condition for such a request should be a punishable criminal act both in the RF and in the state where the request is directed. Therefore, the CPC of the RF contains a clear presumption of consent of the foreign state in the prosecution of its citizens in the RF (residents), without any exceptions.

Also under article 461 of the CPC of the RF, a person given to the RF according to such a request, can not be detained, prosecuted as an accused or convicted for another crime, not specified in the request, without the consent of the State which has given him (except the cases of committing a new crime after extradition, the voluntary return of the person to the RF, etc.). Such guarantee is provided by article 456 of the Code, under which a witness, victim, expert, civil defendant and plaintiff, who are outside of the RF, can be called for legal proceedings in the RF for the needs of a criminal investigation that is conducted according to the Code, only with their consent.

These individuals may not be detained, prosecuted as accused or subjected to other restrictions of personal liberty for acts or convictions on the basis that occurred before crossing the border of the RF (unless they have left the territory of the RF within 15 days or voluntarily returned to it – than the corresponding immunities shall be removed).

These rules, on one hand, indicate that during the development of the CPC of the RF the very possibility of bringing a person to criminal liability in the RF for acts committed abroad, was being considered quite realistically, without considerations of “universal jurisdiction”, especially *in absentia*. We can confidently assert that the investigating bodies, which are now conducting criminal proceedings against “unidentified persons” who have allegedly committed war crimes in Ukraine, will be forced at some point to bypass its own criminal procedural legislation, because it does not allow such proceedings.

The agencies of the ICRF have already faced such situation in 2008 – 2009, when as a result of Georgian-Russian war they have initiated criminal proceedings (criminal case № 201/374108-08) against the Georgian leaders for “the facts of mass murder and genocide of the civilians of the Republic of South Ossetia” under points “a”, “e”, “l” of part 2 of article 105 and article 357 of the CC of the RF. Since the RF did not object the participation of Russian authorities, Russian citizens and Russia military servicemen in the conflict, there was no need for justification of “universal jurisdiction” on this case.

However, that time the position of the Prosecutor General’s Office of the RF was that “testimonies and evidence collected by Russian investigators” will not be considered by the Russian or “South Ossetia” courts, but “will be presented in international courts”, and for this purpose “a special brigade of prosecutors, who provided legal assistance in drafting appeals and complaints to the ECHR” and the ICC (Georgia is a member of the Rome Statute since 2003) was formed. Such a position or even offer (after the ECHR and the ICC have not found the signs of genocide in the actions of the Georgian officials) to form “the Special Tribunal on Georgia” despite of their politicization was more rational from the standpoint of international and criminal law than the trial on these cases by Russian courts (which had not been done until now). It is interesting that using the materials of relevant proceedings as a basis, Russian authors directly recognized the absence of “relevant procedural rights to protect the rights and interests of Russian citizens abroad”<sup>2</sup> in disposal of the ICRF; the relevant legislation of the RF has undergone significant changes since

<sup>1</sup> Уголовно-процессуальный кодекс Российской Федерации 2001 (Государственное собрание). <<http://base.garant.ru/12125178/>> (2015, August, 05).

<sup>2</sup> Стремоухов, А.В., Иванов, И.А. (2010). Проблемы предупреждения преступления геноцида и ответственности за него в контексте агрессии Грузии против Южной Осетии в 2008 году. *Ленинградский юридический журнал*, 4, 130-136, 137.

then. It is also interesting that none of the given Russian authors in their publications in 2014 on the persecution of “war crimes” in Ukraine in the RF mention the CPC of the RF at all.

The analysis of Russian criminal and criminal procedural legislation suggests the following:

- blanket rules of articles 12, 356 of the CC of the RF 1996, which refer to the uncertain international treaties of the RF, can not be considered as a mechanism for applying the principle of universal jurisdiction over war crimes and crimes against humanity;
- the rules of Chapter 34 of the CC of the RF “Crimes Against the Peace and Security of Mankind” as a whole are comparable neither with the norms of the Geneva Conventions 1949 and their Additional Protocols, nor with the provisions of the Rome Statute of the ICC, to which Russia did not accede;
- the rules of the CPC of the RF 2001 do not provide the possibility of determining the location of a criminal case under the conditions of the proceedings of this case in terms of universal jurisdiction and the possibility of bringing a person as an accused *in absentia*; they make the effective investigation of difficult, complex cases, where witnesses and victims are mass outside the RF, almost impossible;
- these procedural features have led to the suspension of proceedings on criminal case against the leaders of Georgia on “genocide in South Ossetia” during the Georgian-Russian conflict; at the same time the criminal policy of the RF during this conflict, despite its obvious bias, did not provide for the possibility of the use of “universal jurisdiction” or the proceedings of the case in the Russian court.

#### *Russian and Russian-Speaking Legal Doctrine on Universal Jurisdiction Before 2014*

It is also necessary to define the doctrinal considerations on universal jurisdiction, which existed in the Russian scientific community before 2014. It should be indicated that the above mentioned Russian authors (A.G. Volevodz, P.V. Volosyuk and I.I. Kotlyarov) have never covered the issues of universal jurisdiction in their scientific publications before 2014. At the same time it is necessary to point out the profound scientific article “Persecution of Violations of International Humanitarian Law Based on the Principle of Universality” by Vera N. Rusinova, published in 2005 – the year of defence of the thesis work of this scientist, and an interesting PhD thesis by Georgyi A. Korolev “Universal Jurisdiction for Serious Violations of International Law: the Basis and Procedure of Application”, defended in 2010.

V.N. Rusinova states in her own work that “the specific content of the principle of universal criminal jurisdiction remains a controversial topic. In particular, a lot of controversy raises regarding the question of whether the principle of universality implies the need for the presence of the suspect in the state, law enforcement bodies of which are going to initiate a criminal prosecution”. The author states that “those authors who insist on the admissibility of prosecution *in absentia* denote it as “a true universality principle”, but in the literature can often be found the use of the term “principle of universality” in the sense that the presence of the suspect in the State is required as a compulsory condition for prosecution”.

V.N. Rusinova underscores the unresolved question of “whether the state can prosecute perpetrators of serious violations of international humanitarian law on the basis of universal principle in their absence on the territory of the state”. This author points out that “a well-known formula “either give or pursue” (*aut dedere aut prosequi*) is embodied in formulated in the same way articles 49, 50, 129 and 146 of the Geneva Conventions 1949”, “gives reason to some authors to believe that the guilty person must be present in the state”. Therefore, V.N. Rusinova adds, “interpretation of the text of the Geneva Conventions does not allow to definite conclusions about the legality prosecution of serious violations of international humanitarian law in the absence of the accused”; “neither the Geneva Conventions with the Additional Protocol II nor the Rome Statute of the International Criminal Court contain rules relevant to address this issue”.

Analysing the practice of universal jurisdiction, V.N. Rusinova states that “in the aftermath of the World War II and the beginning of the 90-ies of the 20<sup>th</sup> century there were no cases of use of the principle of universality regarding violations of international humanitarian law”. Later, recognizes this researcher, “the prosecution of violations of international law on the principle of universality has been approved by the courts of several states”, but with the following features: virtually all processes have been violated by law enforcement agencies of European states; they were “against citizens of so-called “failed states” such as Yugoslavia and Rwanda”, and they were reinforced by the criminal proceedings in the relevant international tribunals, which were held in parallel.

The most interesting for us is V.N. Rusinova’s reasoning, who, while investigating the introduction of universal jurisdiction in national law by reference rules, gives an example of part 3 of article 12 of the CC of the RF in the current edition. As it is pointed out by this author, “fixing of such rules in national

legislation does not allow applying a universal principle in the implementation of prosecution of violations of international humanitarian law committed in non-international armed conflict”<sup>1</sup>. Thus, we can conclude that these V.N. Rusinova’s findings do not differ significantly from our generalizations on these issues.

In his turn, G.A. Korolev said that “the use of universal jurisdiction should be carried out in accordance with certain conditions”. In particular, he believes that the State, which established universal jurisdiction, deciding whether to extradite or persecute a person has to make a decision based on the totality of criteria: multilateral or bilateral treaty obligations; the place of the crime; citizenship of the accused person; citizenship of the victim; other links with the State making the request, the perpetrator or the victim of a crime; probability, integrity, efficiency of justice in the requesting State; fairness and impartiality of the judiciary in the requesting State; facilities for the participants of the process, as well as the availability of obtaining evidence by the requesting State; the interests of justice.

However, according to G.A. Korolev, “the use of universal jurisdiction on persons missing in that state at the time of adoption of the procedural decision (universal jurisdiction *in absentia*), is valid (because there is no prohibitive rules of international law in this regard), but often impractical”. Thus G.A. Korolev recognizes that “legislation and judicial practice of applying universal jurisdiction differ in the categories of crimes that fall under the principle of universality, as well as the implementation of universal jurisdiction *in absentia*». In particular, he points out the impossibility of exercise of universal jurisdiction *in absentia* in France; on the applicability of universal jurisdiction *in absentia* of the suspect, but only up to the judicial phase of the criminal process (Denmark, Spain, the UK); to exercise universal jurisdiction *in absentia* in the presence of legal or factual elements of connection of state of committed offense (Belgium, Germany); the application of the principle of universality *in absentia* only to certain offenses (Austria, Sweden)<sup>2</sup>. These G.A. Korolev’s opinions suggest the possibility of ambiguity of his statement of universal jurisdiction *in absentia*; but this author did not mention about any possibility of introducing universal jurisdiction in the RF.

It is characteristic that the works by V.N. Rusinova and G.A. Korolev are not mentioned and evaluated in the publications by A.G. Volevodz, P.V. Volosyuk and I.I. Kotlyarov in 2014. It is necessary to point out that in addition to these works in 2014 several publications in Russian language by qualified researchers from third countries on issues of universal jurisdiction in popular scientific journals were made. This is primarily defended in Moscow in 2007 Dr.Hab thesis of Azerbaijani scientist Nizamy A. Safarov “Extradition in International Law: Problems of Theory and Practice” and a number of specialized articles of this author, particularly published in the MGIMO journal in 2005 article “Universal Jurisdiction in the Mechanism of Prosecution for International Crimes” and published in 2011 article “Persecution for International Crimes: Universal Jurisdiction vs. Diplomatic Immunity”; article by Czech Professor Pavel Šturma “Universal Jurisdiction and Punishment of Serious Violations of the Geneva Convention 1949”, published in 2010, and the fundamental article by the editor of “Chinese Journal of International Law” Chinese Professor Sienho Yee “Universal Jurisdiction: the Concept, Theory and Practice”, published in translation in the “Russian Law Journal” in 2012. None of these publications is mentioned and analysed in the works of Russian authors in 2014, devoted to “war crimes” in Ukraine. This topic is more important since these researchers’ position on the application of universal jurisdiction is even more critical than the above mentioned views of V.N. Rusinova and G.A. Korolev.

Thus, P. Šturma indicates that “universal jurisdiction ... is controversial and insufficiently supported in practice by States” and that “narrow understanding of universality” by which the state, at the mercy of which the accused is, can be applied to criminal sanctions for certain act is more promising than “a broad understanding of the universality”, which provides for the criminal proceedings *in absentia*. The said author acknowledges that “a broad understanding of universal jurisdiction comprises the laws of only several states, including Spain and Belgium” (this information is already obsolete) and that “a broad understanding of the universality may also face obstacles of political or practical nature”<sup>3</sup>. N.A. Safarov in his turn recognizes the hypothetical possibility of “absolute universal jurisdiction” *in absentia*, but points to

<sup>1</sup> Русинова, В.Н. (2005). Преследование нарушений международного гуманитарного права на основании принципа универсальности. *Международное публичное и частное право*, 6, 22-25.

<sup>2</sup> Королёв, Г.А. (2010). *Универсальная юрисдикция государств в отношении серьезных нарушений норм международного права: основания применения и порядок осуществления*: дисс. ... канд. юрид. наук; 12.00.10. Москва, 10-13.

<sup>3</sup> Штурма, П. (2010). Универсальная юрисдикция и наказание за серьезные нарушения Женевских конвенций 1949 г. *Правоведение*, 4, 85-87, 88.

the need for the formulation of criteria that will “distinguish between international cooperation in fighting crime and an illegal intrusion into the sovereign jurisdiction of the states”<sup>1</sup>.

However, the most uncompromising position on the issue of universal jurisdiction has the publication by Sienho Yee, who claims that “the debate over universal jurisdiction, continuing the UN General Assembly since 2009, reflects the uncertainty of the concept of universal jurisdiction, scope and characteristics of its application” and that “comments and statements by officials of states indicate the uncertainty of concepts, goals and features of the application of universal jurisdiction”. This author notes that “the exercise of universal jurisdiction may counter the principles of independence and sovereign equality of States and in case of misuse – destabilize interstate relations”.

In his own study, he consistently defends the thesis that “nowadays the only crime on which the universal jurisdiction is applied is piracy”. Quite valuable is the Sienho Yee’s thesis stating that in case of application in the field of war crimes and crimes against humanity “the regime of universal jurisdiction could pose a serious problem on the way to national reconciliation”. This author rejects the theory that universal jurisdiction is permitted over war crimes, because there is no direct prohibition on it in international agreements; he believes that allowing the country to pursue these crimes committed by persons, with whom they have no legal bounds, should be clearly spelled out in the relevant documents<sup>2</sup>.

In addition to the impartial doctrinal considerations, which the authors of articles on “war crimes” in Ukraine would have to at least criticize, one more interesting phenomenon of the Russian legal doctrine relating to the issue of universal jurisdiction is worth mentioning. That is a formal response of the Russian scientific community on the case “Kononov vs. Latvia” which was considered by the ECHR and ended with the decision of the Grand Chamber of the ECHR on May 17, 2010.

This response was embodied in the round table on January 28, 2011, which was attended by 14 professors, who at that time headed the departments of international legal orientation: Aslan H. Abashydzhe (Russian Peoples` Friendship University, RPFU), Lyudmila P. Anufrieva (Moscow State Law Academy named after O.E. Kutafin), P.M. Biryukov (Voronezh State University), L.I. Volova (Southern Federal University), Alexander N. Vylegzhanin (Moscow State Institute of International Relations, MGIMO), V.S. Ivanenko (St. Petersburg State University), A.O. Inshakova (Volgograd State University), A.S. Ispolinov (Moscow State University named after M.V. Lomonosov), Yu.S. Romashev (the FSS Academy) H.S. Starodubtsev (Russian Law Academy), D.D. Shalyagin (the MIA University of Russia), V.M. Shumilov (All-Russian Academy of Foreign Trade), A.A. Kovalev (Diplomatic Academy of the Russian Foreign Ministry, correspondence participation), G.I. Kurdyukova (Kazan State University, correspondence participation).

In addition, the round table was attended by professors Vladymyr A. Kartashkin, Vladymyr V. Shtoll, Vladymyr P. Galitskiy, associate professors A.B. Mezyaev and M.V. Fedorov, and other lecturers of the International Law Departments of RPFU and MGIMO, representatives of the Russian Ministry of Foreign Affairs S.K. Tolkalina and M.O. Molodtsova. The draft of the final document prepared in advance by the departments staff – participants of the round table and the representatives of the Ministry of Foreign Affairs of the RF “with minor amendments” was adopted unanimously. Through the open voting of the participants it was decided to pass the reports on progress, as well as the final document, to further publication in leading scientific journals, refereed by the High Attested Commission of RF. Indeed, according to the results of the round table the relevant document has been repeatedly published in scientific journals of the RF, in particular, under different authorship<sup>3</sup>.

<sup>1</sup> Сафаров, Н.А. (2007). *Экстрадиция в международном уголовном праве: проблемы теории и практики*: дисс. ...доктора юрид. наук; 12.00.10. Москва, 401.

<sup>2</sup> Сиенхо, Йии (2012). Универсальная юрисдикция: понятие, теория и практика. *Российский юридический журнал*, 4, 7-31.

<sup>3</sup> Абашидзе, А.Х. (2011). Мнение российских юристов-международников о решении ЕСПЧ по делу «В.М. Кононов против Латвии». *Обозреватель – Observer. Научно-аналитический журнал*, 2 (253), 118-126; Иншакова, А.О. (2011). Несовпадающее особое мнение научного сообщества с решением Большой палаты ЕСПЧ по делу «Кононов против Латвии»: правовые аргументы. *Вестник Волгоградского государственного университета. Серия 5. Юриспруденция*, Т. 1, 5-14, 89-98; Иншакова, А.О., Алисиевич, Е.С. (2011). Постановление Большой палаты Европейского суда по правам человека по делу «Кононов против Латвии»: мнение научного сообщества. *Законы России: опыт, анализ, практика*, 4, 29-37; Иоффе, М.Л. (2011). Правовые аспекты уголовного преследования ветерана Великой Отечественной войны В.М. Кононова. *Библиотека криминалиста. Научный журнал*, 1, 208-240.

By the way, it is difficult to imagine that Russian authors, who dedicated their work to the issue of “war crimes” in Ukraine in 2014, have not been aware of the relevant round table and its final document – but they did not mention these facts in their publications. It is easy to understand, as among the “key” arguments about the innocence of the Soviet partisan V.M. Kononov, accused of war crimes against the Latvian population in the village of Mazie Bati in 1944, the final document of the round table contained a denial of the principle of universal jurisdiction.

The fact that the ECHR in its decision recognized (something really difficult to accept) that the place of the commission of war crimes by V.M. Kononov was in the USSR. As this issue is considered in the final document of the round table, “if Mazie Bati was in the USSR, then the villagers should be regarded as Soviet citizens. Accordingly, in the incident with Kononov’s squad Soviet citizens suffered from the Soviet partisans on the Soviet territory. Meanwhile, international humanitarian law, referring to the civilian population, regulates (and even more so at that time regulated) only the relationships between the armed forces of one side and the civilian population of the other side. Relations between the military servicemen and civilians of the same party of the conflict fall out of this scheme”. In addition, the final document noted that “for this reason, if the killed villagers are considered as civilians, war crimes from the side of V.M. Kononov against them are basically impossible”.

Also the final document of the round table stated that “justifying the applicability of the Charter of the Nuremberg Tribunal to V.M. Kononov, the Court gave examples of judicial practice, entirely related to prosecution by the state either of its own military servicemen, or of the Nazis. The explanation of why it gives Latvia the right to prosecute the Soviet partisan V.M. Kononov, the Court did not give”.

The last phrase of the final document of the round table in its overall context clearly and unequivocally indicates its authors’ denial of the principle of universal jurisdiction, which allowed Latvia to spread its jurisdiction on V.M. Kononov, even provided the nonrecognition of connection between the modern state and events on its territory in 1944. In addition, as it follows from the above, the Russian legal doctrine in the face of 14 leading universities and scientific institutions and the relevant professors denies the very possibility of qualification of any acts committed in an internal conflict as war crimes.

Everything said would be enough to describe the real attitude of legal doctrine to the issue of prosecution of war crimes committed in conditions of internal conflict on the basis of universal jurisdiction. But in addition it is interesting to give the considerations of the participants of the round table on the issue of V.M. Kononov’s awareness of criminality of his acts. In its judgement, the Grand Chamber of the ECHR pays great attention to that V.M. Kononov as a “professional partisan” should have known about the regulation of partisan activity, understood the risks of future operations and ultimately understood that it could be referred to as criminal and result in criminal liability.

On this occasion in the final document of 2011 the above mentioned representatives of Russian science unanimously consider that “is hardly correct to equate partisan combat activity to the profession, which requires knowledge of its legal regulation. It is well known that partisans (like the majority of other soldiers during the war) got only a minor specialized training, and had other professions in their civilian life. The war was a compelled temporary occupation for them”. As Russian scientists indicated in this document, the V.M. Kononov’s case “caused considerable controversy in public, including among international lawyers”.

In other words, they say, “if even today when international humanitarian law has made significant steps forward, among experts there is no consensus on the legality of the operation in Mazie Bati, how can it be possible to require a clear understanding of a crime of the operation from 19 years old partisan, unfamiliar with the legal nuances and certainly unable to foresee political and legal changes that will occur over the next 50 years?” So let us offer the ICRF, qualifying the acts of Ukrainian combatants, not to forget to use an appropriate consentient and unanimous position of the legal doctrine of the RF on realization of their actions in Ukraine by such combatants, which, according to these Russian scholars and practitioners, break none other than “international agreements of the RF”, to which actually the USSR joined with reservations 60 years ago.

Also, during the classification of “war crimes” of the Ukrainian combatants against “civilian population” in Ukraine, it would be useful for the RF investigative bodies to borrow the following position on the status of the population in terms of internal conflict from Russian legal doctrine. As stated in the final document of the round table on the V.M. Kononov’s case, “under international humanitarian law all persons in the armed conflict, with few exceptions, belong either to combatants or to civilians. Both must comply with obligations arising from their status. In particular, civilians, to use appropriate legal

safeguards, must not take part in hostilities. This notion of participation in hostilities is widely interpreted: these include, in particular, supplying troops with food, exercise the functions of communication, etc. If civilians are engaged in such activities, they shall not only lose their right to protection, but shall be seen as people who have gone over to the enemy”.

Thus the logic of the authors of the final document is the following: any civilian who indicated to the combatant the location of his colleagues in his own village or gave him a piece of bread, may be regarded as an enemy combatant because of such actions. Unfortunately, such a politically biased and simplistic attitude to international humanitarian law was characteristic for Russian scientific publications on both the V.M. Kononov’s case and the issue of “war crimes” in Ukraine. By the way, we have not found any Russian scientific publications containing criticism of the mentioned final document 2011, including the above provisions.

So, on the issue of attitude of Russian legal doctrine to the problem of universal jurisdiction the following should be stated:

- there are some fundamental publications of Russian authors before 2014, devoted to the issue of the application of universal jurisdiction in criminal proceedings, containing criticism of the relevant concepts, quite acute regarding “the general universal jurisdiction”, which provides for criminal proceedings *in absentia*;

- devoted to this subject publications of foreign professors in Russian scientific journals are critical to the concept of universal jurisdiction up to its denial;

- the opinion of a significant number of leading Russian scientists in the field of international law, accumulated in the final document of the round table on the case “Kononov vs. Latvia”, indicates the *denial of the principle of universal jurisdiction* and the very possibility of punishment for war crimes in terms of internal conflict by Russian scientific doctrine – in the situation where it is required by the political interests of the RF;

- all those positions on universal jurisdiction are not mentioned or discussed in the publications of Russian authors devoted to “war crimes” in Ukraine.

Additionally, it is worth analyzing the scientific style, the objectivity of facts and the level of bias of the mentioned Russian authors’ publications about the persecution of “war crimes” in Ukraine by the ICRF. Unfortunately, the level of appropriate indicators is poor. Thus, in the above mentioned article by A.G. Volevodz the author’s position on the development of events in Ukraine with abstract reference to Russian media or security agencies without reference to the source is described. Such arbitrary manipulation of “commonly known facts”, however, extremely controversial, such as information on the use of the UN symbols by Ukrainian combatants in the conflict zone, by the author can not lead to any objective assessment.

In addition, during 2014 A.G. Volevodz published a series of other articles on development of events in Ukraine, which are already politically engaged and even journalistic. These articles are “The 104<sup>th</sup> anniversary of Bandera: Ukrainian nationalists against the UN”, “Lies of the Ukrainian representative in the UN”, “Who is trying to initiate the alliance of Ukrainian nationalists and the International Criminal Court”, “The cunning move of Ukrainian nationalists”<sup>1</sup>; these publications show the author’s sincere aversion to the ideas of Ukrainian nationalism, which by themselves have little in common with international humanitarian law and criminal law.

In the mentioned article by P.V. Volosyuk a technique, that allows presenting of certain interpretations of events or the author’s evaluation as commonly known facts, is widely used. The political attitude of the author to the subject of scientific research can be argued, citing his remarks that “the inhabitants of the rebel regions of Ukraine in response to the atrocities that took place in the capital of their native state, demanded decentralization of authority” and the ones about “the union of Donetsk and Luhansk regions into Novorossia and its potential desire to join the RF”. Article by I.I. Kotlyarov at all was published in the periodical of the Communist Party of the RF under the heading “Against the Banderovites”

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<sup>1</sup> Волеводз, А. (2014). 104-я годовщина Бандеры: украинские националисты против Организации Объединенных Наций. <<http://viperson.ru/wind.php?ID=657500&soch=1>> (2015, August, 05);

Волеводз, А. (2014). Кто пытается инициировать союз украинских националистов и Международного уголовного суда <<http://viperson.ru/wind.php?ID=670045&soch=1>> (2015, August, 05); Волеводз, А. (2014). Ложь представителя Украины при ООН. <<http://www.mgimo.ru/news/experts/document249230.phtml>> (2015, August, 05); Волеводз, А. (2014). Хитрый ход украинских националистов. <<http://www.mgimo.ru/news/experts/document249114.phtml>> (2015, August, 05).

and contains terms like “Ukrainian pro-fascist-bandera regime”, although unlike the articles by P.V. Volosyuk and A.G. Volevodz gives references to sources in the Russian media, from which “the commonly known facts” were borrowed. The above suggests the political bias and lack of attention to the sources of all publications by Russian scientists in 2014, which set out the vision on application of universal jurisdiction to prosecute persons who committed “war crimes” in a conflict in Eastern Ukraine.

In summary, it is necessary to state the following. The thesis of Russian authors in scientific publications of 2014 – 2015 argue the legality of the use of the principle of universal jurisdiction by the ICRF for prosecution of the Ukrainian combatants and their leaders who have committed “war crimes” in the conflict in Eastern Ukraine, but they have no adequate scientific justification. The Geneva Conventions 1949 and the Additional Protocols, the international working papers on universal jurisdiction, the norms of the CC of the RF, foreign precedents on the application of universal jurisdiction over war criminals mentioned by these authors, are extremely diverse and sometimes contradictory. In addition, these authors do not mention the achievements of Russian and Russian-speaking legal doctrine on universal jurisdiction, which has critical and controversial nature, do not mention the regulations that do not meet their proposed structures, in particular the UN General Assembly Resolution on universal jurisdiction and the norms of the CPC of the RF. Scientific positions of these researchers have clearly expressed politicized nature.

Therefore, to determine the format and possibilities of prosecuting persons who have committed crimes against humanity and war crimes during the events in Kiev, occupation and annexation of the Crimea, hostilities in the East of Ukraine – in jurisdictions of Ukraine, the RF and third states as well as international judicial institutions a special scientific discussion of maximum level of representativeness and minimum level of politicization should be organized.

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