

The background of the cover features a stylized, abstract representation of the Ukrainian national flag. It consists of a blue upper half and a yellow lower half, separated by a thick, black, irregular diagonal line that suggests a torn or draped fabric. The colors have a painterly, textured quality.

CHRISTINA DIETL, KHRYSTYNA FOSTYAK,
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NOREEN VAN ELK (EDS.)

WAR IN UKRAINE

THEOLOGICAL, ETHICAL
AND HISTORICAL REFLECTIONS

Christina Dietl – Khrystyna Fostyak – Thomas Schulte-Umberg –
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Punish Russian War Crimes Already Now!

Oleksandra Matviichuk

The legal process of coming to terms with the atrocities in Ukraine must not be postponed. An international tribunal with a hybrid justice mechanism could be a way out of impunity.

The Russian war of aggression is taking a heavy toll on the Ukrainian population. Kyiv and many other Ukrainian cities have been and continue to be shelled incessantly by Russian missiles. Many families have had to flee to save their lives – sometimes only to find that despite fleeing, there is no safe hiding place from Russian missiles and war crimes inside Ukraine.

The war began in February 2014: Ukraine seized the opportunity for a rapid democratic transformation after the collapse of its authoritarian regime in the Revolution of Dignity, also known as the Euromaidan. To stop this democratic process, Russia launched a war of aggression and occupied Crimea and parts of Luhansk and Donetsk.

The current conflict is thus not just a war between two states, but a war between two systems: Authoritarianism and democracy. On the one side is Russian President Vladimir Putin, who repeatedly tries to convince the world that democracy, the rule of law, human rights and freedom are not real values because they cannot guarantee people protection in war. He is opposed by the Ukrainians. They refuse to accept Putin's reasoning and answer him with their fight for justice and the rule of law.

During this bloody war, Ukraine desperately longs for peace, but peace cannot be achieved by forcing the attacked country to cease all hostilities and abandon their defenses. Such an approach would lead not to peace but to occupation. The terror and violence to which people in occupied territories are subjected show this only too well.

The Russian government there deliberately kills committed community members such as mayors, members of parliament, human rights activists, journalists, police officers, artists, or those engaged in volunteer work. Cruelly tortured, dead civilians were found on streets, in gardens and torture chambers. For anyone who has not experienced it themselves, the reality of life under occupation is unimaginable.

Despite these atrocities, Ukrainians continue to fight for their freedom and refuse to become a Russian colony. They are fighting for their freedom to be Ukrainians, to keep their Ukrainian identity, and for the chance to build a country where democracy and the rule of law prevail.

In the face of these adversities, Ukraine has turned to the international community for support in its struggle for democracy and freedom. The country needs modern weapons to defend itself against Russian aggression, as the United Nations has failed to end the atrocities in the occupied territories.

The international community must recognize the suffering of civilians and support the struggle for basic human rights. There is an urgent need to change the way the world deals with human rights violations and war crimes committed by Russian forces and to establish an international tribunal.

In the past, legal processing of the crimes of authoritarian regimes, such as in the case of the Nuremberg Trials, began only after their fall. Today, however, justice must be possible regardless of the power of a regime. Legal proceedings must be initiated without delay. This is not only about punishing the perpetrators, but also about preventing future atrocities. The fear of being held accountable can have a chilling effect on the brutality of human rights violations.

On the road to justice, then, two prejudices must be overcome: First, it must no longer be assumed that such efforts can occur only after the war has ended. International crimes are being committed now; legal proceedings must accordingly be initiated without delay. Second, it must be firmly rejected that only certain categories of people or certain types of crimes are prosecuted. This idea turns people into numbers and denies them their human dignity. Justice must be served to all victims, regardless of their social status or the extent of the cruelty inflicted on them.

One possible approach to escaping impunity is to establish a hybrid justice mechanism. National judges and prosecutors could work together with international judges to effectively investigate and prosecute war crimes. The fight for justice should not be limited to the crime of aggression. In addition to the crime of aggression, there are other international crimes, such as war crimes, crimes against humanity and genocide. Ukraine's legal system is already overloaded with the number of open criminal proceedings. And the International

Criminal Court will limit its investigation to a few selected cases. These crimes should not remain only in our archives or in the reports of international organizations. Therefore, we need to bring the international element to the level of national investigation and justice. We need to create a hybrid mechanism where national investigators investigate together with international investigators, and national judges administer justice together with international judges. The support of foreign experts is needed to properly investigate and prosecute tens of thousands of international crimes in accordance with justice standards, in particular Article 6 of the European Convention on Human Rights.

Russia has instrumentalized the suffering of Ukrainian civilians to win the war. To counter this, an effective justice response is needed. Justice for all victims of war crimes is a moral imperative and a way to prevent future atrocities. By overcoming the aforementioned prejudices and establishing a hybrid justice mechanism, we can restore people's names and human dignity.