

A USELESS AND CRIMINAL WAR

Yves Beigbeder was the assistant of Judge Donnedieu de Vabres at the International Military Tribunal of Nuremberg (1946). He will publish his memoirs in May, under the title "Le temps de la paix. Memories of a Century of International Justice".

Benjamin Ferencz was a prosecutor at Nuremberg, notably leading the prosecution of the Einsatzgruppen (1947). He has published his memories of his work for international criminal justice: "Memoirs of Ben", (Michalon, 2011).

Mr Putin is a dictator, who like others, seeks to maintain his power. He locks up, exiles or poisons his opponents. He is a greedy predator, on the lookout for any opportunity to extend his influence (Georgia, Kazakhstan, Belarus, etc.), having annexed Crimea by force. He is also a lonely man, pretending to reject the constraint of international law and disregarding human rights.

Mr Putin sacrifices peace and prefers war, having fought in Chechnya, Syria and then in Ukraine, and supported with arms the separatists in South Ossetia (Georgia) and those in Donbass, a province of Ukraine.

Mr Putin loves Ukraine. He maintains that Russia and Ukraine are one people with one language. Although he is a permanent member of the UN Security Council, and therefore responsible for maintaining peace in the world, he (single-handedly) decides, for no reason at all, to launch a brutal and bloody war against Ukraine in violation of the UN Charter, which prohibits the use of weapons except in response to an external attack. Its aggression caused destruction comparable to that of the Second World War: we remember the ruined German cities in 1946 at the time of the Nuremberg trials. It was not thought that a new war could arise in Europe when the peoples of Europe had been reconciled through the Common Market and then the European Union, under American protection.

Mr Putin finds this situation unbearable and says he is threatened by NATO. Basically, his nationalism is peacefully challenged by the Western democratic proposal. He is launching his armed forces against Ukraine, which posed no danger or threat to Russia, except for the right of a nation to autonomy and the independence of mind of its president.

This new war has already resulted in thousands of deaths and injuries, both Russian and Ukrainian, and millions of refugees. War causes great suffering and impoverishes the world. Some people speak of genocide, which requires the intention to exterminate an entire people, as was once the case with the Armenians, the Jews, or the Rwandan Tutsis. The qualification of "genocide" to the situation in Ukraine is debatable since the aggression was not aimed at destroying Ukrainians as a group, despite many murders of civilians: the judges will have to rule on the possible commission of genocide in Ukraine (which is invoked by both belligerents) but already the proof of innumerable war crimes and crimes against humanity

has been brought. The Russians are bombing hospitals, schools, killing civilians, committing as many violations as possible of the laws of war. The Hague and Geneva Conventions are systematically denied by Putin, although they are applicable to this situation.

As a result of the actions of its leaders, Russia is now hated by most nations and subject to harsh economic sanctions. It is rejected by the Council of Europe, to which it should never have been admitted.

In reality, the only recourse to violence then requires recourse to law. By an order of 16 March 2022, the International Court of Justice prescribed as interim measures that "The Russian Federation shall immediately suspend the military operations which it commenced on 24 February 2022 on the territory of Ukraine" and that "The Russian Federation shall ensure that none of the military units or irregular armed units which may be acting under its direction or support, nor any organisation or person which may be under its control or direction, commits any acts tending to the continuation of the military operations. The current continuation of hostilities contravenes this decision.

In 1945, the Russian jurist Trainin wrote: "In order to rebuild what the Hitlerites have destroyed, great and long efforts of all mankind will be necessary. These efforts will succeed only if the end of this war also puts an end to all attacks on the independence, freedom, and even the existence and cultural development of all peoples.

The argument still holds. The many crimes committed by the Russians will have to be punished, either by the International Criminal Court or by a new international criminal tribunal for Ukraine that has yet to be created. The main crimes to be tried will be the crime of aggression, war crimes, and crimes against humanity.

In fact, there are already many judicial proceedings.

Since 25 April 2014, the prosecutor has been undertaking a preliminary examination of the situation in Ukraine, including crimes committed since 21 November 2013, in the Donetsk and Luhansk regions.

Despite the Russian Federation's veto of the creation of a special tribunal to investigate the conditions of the 2014 destruction in Ukrainian airspace of the MH17 aircraft, a multi-state criminal proceeding is currently taking place in the Netherlands.

As of 18 March 2022, 43 states, including France and the United Kingdom, had referred the current actions in Ukraine to the International Criminal Court. The Prosecutor announced that he has started collecting evidence and intends to open a new investigation.

In addition, supporting the existence of an international armed conflict between Georgia and the Russian Federation and separatist forces in South Ossetia since 8 August 2008, the ICC prosecutor announced on 10 March 2022, an application for the issuance of three arrest warrants, including one for a Russian general who had de facto exercised the functions of Minister of the Interior in the province.

The main perpetrators, including Vladimir Putin and his political and military associates, must be identified, charged and tried. The defendants at the Nuremberg trials were all in prison when they were tried. The main problem for Ukraine and Russia will obviously be the arrest and detention of the accused, but their indictment would at the very least result in their being ostracised from society and possibly banned or only barred from holding any official, governmental, diplomatic, or military position. Trials in absentia could be envisaged, as several international judges have recently advocated.

The emotion aroused by the reappearance in Europe of the scourge of war renews the support of populations and democratic regimes for international criminal justice, which appeared at Nuremberg. It must inspire the rapid initiation of international and impartial judicial proceedings. It also invites the democratic powers supporting these jurisdictions to join the International Criminal Court by ratifying the Rome Treaty (in particular the United States), and to strengthen the repression of the crime of aggression by ratifying the special amendment for the States already party to this convention (in particular France and the United Kingdom).

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