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On my honour as a student of the Diplomatische Akademie Wien, I submit this work in good faith and pledge that I have neither given nor received unauthorized assistance on it.

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Abstract

Russia launched an unlawful military invasion in Ukraine, shocking the world on February 24th, 2022. The attack quickly turned into a deadly war where evidence of Russian forces committing genocide and war crimes are emerging from Ukraine. The international community has called for an investigation into these genocide crimes and President Vladimir Putin to be brought to justice. The widespread evidence of Russia's genocidal behaviour has caused legal and political scholars to claim that genocide is occurring. However, there are doubts about these claims as genocide is a brutal crime to prosecute, and the war is far from over. This paper argues that Russia is committing genocide within Ukraine and that a Ukrainian victory could bring President Vladimir Putin to justice, resulting in a regime change. The arguments are supported by a dual analysis of the legality of Russia's genocide crimes within Ukraine and the political future of President Vladimir Putin and Russia following a possible genocide charge.

Russland startete am 24. Februar 2022 eine unrechtmäßige Militärinvasion in der Ukraine und schockierte damit die Welt. Der Angriff verwandelte sich schnell in einen tödlichen Krieg, in dem Beweise für Völkermord und Kriegsverbrechen der russischen Streitkräfte in der Ukraine auftauchen. Die internationale Gemeinschaft hat eine Untersuchung dieser Völkermordverbrechen gefordert, und Präsident Wladimir Putin soll vor Gericht gestellt werden. Die weit verbreiteten Beweise für Russlands völkermörderisches Verhalten haben Rechts- und Politikwissenschaftler dazu veranlasst, von einem Völkermord zu sprechen. Es gibt jedoch Zweifel an diesen Behauptungen, da Völkermord ein brutales Verbrechen ist, das strafrechtlich verfolgt werden muss, und der Krieg noch lange nicht vorbei ist. In diesem Beitrag wird argumentiert, dass Russland in der Ukraine einen Völkermord begeht und dass ein ukrainischer Sieg Präsident Wladimir Putin vor Gericht bringen und zu einem Regimewechsel führen könnte. Die Argumente werden durch eine doppelte Analyse der Rechtmäßigkeit von Russlands Völkermordverbrechen in der Ukraine und der politischen Zukunft von Präsident Wladimir Putin und Russland nach einer möglichen Anklage wegen Völkermordes gestützt.

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Chapter 1: Russia's War in Ukraine

When Russia invaded Ukraine on February 24th, 2022, no one could have expected the chaos and turmoil that the Russian army has caused to date. During this war, Russia has shown a blatant disregard for international law and human rights. The destruction that Russia has caused within Ukraine has been catastrophic for the nation. As the war goes on, the world is continuously shocked by the horrific acts done to Ukrainians by the Russian army. Russian troops have carried out mass killings, torture, and rape. They have also targeted and destroyed civilian infrastructure and deported children. The international community, consisting of academics, political actors, and activists, is questioning if these crimes can be considered genocide. Genocide has been defined as the crime of all crimes and is very hard to prosecute as there are five specific acts that must have occurred plus *dolus specialis*, which is the mental intent to destroy or eradicate a specific group.

Douglas Irvin-Erickson, a genocide expert, explains that “Putin has stated his genocidal intent in Ukraine in no uncertain terms.”² President Zelensky has also come out claiming that “the deportation of our people and the mass killings of civilians, is an obvious policy of genocide pursued by Russia.”³ President Zelensky has not been quiet about the atrocities occurring at the hands of the Russians and is fully adamant on prosecuting Russia for genocide. Political expert Vittorio Bufacchi supports Irvin-Erickson’s claim by stating that “there appears to be evidence of Russia inciting genocide in Ukraine by committing atrocities intended to destroy the Ukrainian people.”⁴ Such evidence includes examples of mass killings, forced deportations, dehumanizing anti-Ukraine rhetoric, and denying the existence of Ukrainian identity. The European Parliament also issued a statement stating that they are “appalled by the war crimes committed by the Russian Federation in Ukraine, which amount to genocide, including those revealed after the liberation of Bucha and other places in Kyiv district, namely executions, rapes, abductions, forced displacement and looting, as well as indiscriminate

² Douglas Irvin-Erickson, “Is Russia Committing Genocide in Ukraine?“, *OpinioJuris*, (2022), 1.

³ David Coffey, “Zelensky accuses Russia of ‘genocide’ in Ukraine’s eastern Donbas region“, (rfi, 2022).

<https://www.rfi.fr/en/europe/20220527-zelensky-accuses-russia-of-genocide-in-ukraine-s-eastern-donbas-region>

⁴ Vittorio Bufacchi, “War crimes in Ukraine: Is Putin responsible?“, (*Journal of Political Power*, 2022). 1.

shelling of civilian infrastructure, including hospitals, ambulances, schools, kindergartens and shelters.”⁵

However, some politicians and international organizations are hesitant to declare the acts committed by the Russians as genocide; instead, they are being labelled as crimes against humanity. Boris Johnson, the Prime Minister of the United Kingdom, was quick to respond after the news of the atrocities in Bucha broke out. He released the following statement “Russia's despicable attacks against innocent civilians in Irpin and Bucha are yet more evidence that Russian President Vladimir Putin and his army are committing war crimes in Ukraine.”⁶ Human Rights Watch, an International non-government organization, issued a statement stating that “since the Russian invasion of Ukraine on February 24, Russian forces have been implicated in numerous violations of the laws of war that may amount to war crimes and crimes against humanity”.⁷ The organization has only called for an investigation into war crimes and has heavily hesitated from labelling the crimes as genocide. Amnesty International was reluctant to use any genocide terminology when they released a statement following the invasion of Ukraine, “Russia’s full-scale invasion of Ukraine in February was a violation of the UN Charter and an act of aggression, a crime under international law. Russian forces conducted indiscriminate attacks resulting in thousands of civilian casualties, amid mounting evidence of other crimes including torture, sexual violence and unlawful killings.”⁸ These actors that are skeptical about using the word genocide are showing caution due to the severity of labelling something as genocide as it is the most serious crime one can commit.

The aim of this thesis is to determine if Russia’s crimes in Ukraine amount to genocide, and what a genocide conviction could mean for Russia. This argument will be supported by a multidisciplinary legal and political analysis. The legal analysis will argue that Russia’s crimes do amount to genocide. The analysis to support the argument of genocide within Ukraine will begin by analyzing the legal definition of genocide and how it was applied by the International Criminal Tribunal for the former Yugoslavia. It is crucial to use the International Criminal

⁵ Elizabeth Whatcott, “Compilation of Countries' Statements Calling Russian Actions in Ukraine ‘Genocide,’” Just Security, June 10, 2022, <https://www.justsecurity.org/81564/compilation-of-countries-statements-calling-russian-actions-in-ukraine-genocide/>.

⁶ “Germany’s Scholz vows response over Bucha deaths”, DW, (2022), <https://www.dw.com/en/ukraine-germanys-scholz-vows-response-over-bucha-deaths-as-it-happened/a-61343522>

⁷ Human rights watch, “Ukraine: Russian Forces’ Trail of Death in Bucha”, (Human Rights Watch, 2022)

⁸ “Human Rights in Ukraine.” Amnesty International. Accessed April 19, 2023.

<https://www.amnesty.org/en/location/europe-and-central-asia/ukraine/report-ukraine/>.

Tribunal for the former Yugoslavia as it was the first tribunal created by the UN to prosecute war crimes and genocide.

In addition, I will also reference the ICJ case ‘Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)’, it was a monumental genocide case as it proved states can be found responsible for genocide and it set the jurisprudence for all future genocide cases. Next, I will analyze and compare the events that occurred during the 1995 Srebrenica massacre with Russia’s crimes so far in Ukraine. The comparative analysis will then be followed by an analysis of whether the crimes in Ukraine demonstrate all five acts of genocide plus *dolus specialis*.

In addition to the legal argument and analysis, I will conduct a political analysis that supports the argument of a Ukrainian victory could bring a prosecution for Putin which could result in a regime change or government breakdown. First, I will discuss the ways in which Putin could be prosecuted under International law. I will then follow with the repercussions a regime faces following a genocide charge, what that means for the political future of that regime, and how the international community can influence the conviction of genocide. In this case, the analysis will cover Russia’s political future if charged with genocide and the current reaction from the international community. Although a genocide charge is challenging to prosecute and will take time, President Putin and Kremlin officials are already being singled out by world leaders from the West and activist organizations for their genocidal discourse and actions.

Genocide within Ukraine has a lengthy historical background starting from the Holodomor. Russia has still not recognized this famine as a crime against Ukrainians. Now, with a spotlight on Ukraine, the atrocities being committed by Russian forces are heavily documented and recorded. Ukrainian activists, legal scholars, and genocide experts are arguing that Russia’s crimes amount to genocide. The case raises new and important issues about what constitutes genocide and the legal and political implications of labelling Russia’s war crimes in Ukraine as genocide.

Historical Background of Russian Aggression and Genocide

The Russian aggression that has been on display since the start of the war in 2022 is not a new occurrence for Ukraine. There is a long history of Russian aggression towards Ukraine. Starting in the medieval times of Kyivan Rus, Ukraine was under constant attack from both Russia and Poland due to Ukraine's geographical position between the two nations. These years of fighting eventually led to the colonization of the Ukrainian people by Russia. The harvests that the soil in Ukraine produced made the nation a target as there was a constant supply of grain which was incredibly valuable to any nation. Russian aggression continued to 1932, when the Soviet government of Joseph Stalin carried out a mass killing of over 3.9 million Ukrainians, which is the event known as the Holodomor. The name Holodomor is derived from the Ukrainian words for hunger and extermination, as the Holodomor was the deliberate mass starvation of Ukrainians by the Soviet Union.⁹

Starting in 1932, Stalin was paranoid that the Ukrainian secret resistance, which consisted of peasant and farming class people, was stealing grain from the state. Stalin had previously set impossible grain quotas which the farmers could not achieve, which launched suspicion amongst the government and eventually a false accusation against the rural farmers. Stalin, along with the General Prosecutor of the Soviet Union, ordered the secret police to go to Ukraine and liquidate the resistance by means of repressive measures.¹⁰ In 1932, the order to implement "merciless measures" was placed, and the Soviet secret police arrested 21,197 people between the months of August and November.¹¹ The people who were arrested were accused of stealing and concealing grain, sabotaging grain deliveries, and speaking out against the state. More aggressive measures were taken against the people in the Ukrainian countryside in the following months, with the secret police confiscating all the grain in storage houses, personal and state farms, and even within the houses of the people. Even with all the grain confiscated, the peasants and farmers were still expected to make grain quotas, and when they failed, this continued to agitate Stalin.

⁹ Anne Applebaum, *The Red Famine: Stalin's war on Ukraine*, First United States edition. (New York: Doubleday, 2017), 17.

¹⁰ Applebaum, *The Red Famine*, 101.

¹¹ *Ibid*, 101.

In 1933, Stalin and his colleagues decided that in addition to the confiscation of grain, and mass arrests, there needed to be a political adjustment which led to the Ukrainian politicians, scholars, and artists being targeted. To conceal the atrocities occurring within Ukraine, Soviet leaders issued an order that only the GPU, which was the secret police within Ukraine, could record deaths related to starvation. They advised the small councils within the countryside not to record any causes of death to hide the fact that large numbers of people were dying from starvation. The starvation of the Ukrainians caused many to try to migrate in search of food, but Stalin then issued a directive titled “On the Prevention of Mass Departures of Starving Peasants of Ukraine and the North Caucasus.”¹² The directive was a statement detailing that the movement of the starving peasants was organized by enemies of the Soviet government. Soviet agencies within Ukraine then prevented the migration of these peasants. By preventing the movement of people, the famine stayed contained within Ukraine, and no word about it could be spread outside the country. Stalin additionally prevented the transportation of food from Russia and Belarus into Ukraine, furthering the isolation.

Following the starvation in 1933, the Soviet Union targeted Ukraine’s nation-building potential, destroying anything or anyone associated with Ukrainian culture and self-identity. Ukrainian writer Khnyl’ovyi described the Holodomor “The famine is a deliberately organized phenomenon. The famine and devastation are a cunning maneuver in order to deal with the perilous Ukrainian problem in one fell swoop.”¹³ Raphael Lemkin, the lawyer who invented the word ‘genocide’ in 1948, claimed that “Ukraine in this era as the ‘classic example’ of his concept: it is a case of genocide, of destruction, not of the individuals only, but of a culture and a nation.”¹⁴ The Holodomor in Russian and Ukrainian history is very crucial to the backstory of the events that are currently happening today. Russian aggression is not a new phenomenon, and there is a recorded history of genocide within Ukraine. There are many similarities between the events that occurred in 1932 and the events currently occurring today, such as starvation, isolation, genocidal acts, and the attempted destruction of Ukrainian sovereignty.

¹² Ibid,106.

¹³ Ibid,117.

¹⁴ Ibid,19.

Chapter Two: Does the Genocide Convention Matter?

The research that has been conducted on genocide in Russia's war on Ukraine has been hotly debated among scholars of international law and related disciplines. There are basically two main arguments about genocide in Ukraine. The first argument is that genocide is indeed occurring and can be proven by the evidence that has been collected at the sites of the mass killings, rape, torture, and mass deportations. The second argument is that these crimes are terrible and could amount to genocide but that the required element of "intent" to commit genocide is missing. Further, many experts think Putin will escape prosecution for genocide but could be prosecuted for war crimes. Two questions arise from this discussion. The first is: do Russia's crimes in Ukraine amount to genocide? Second, what would be the political repercussions for Russia if these killings were to be considered genocide under international law?

Noëlle Quénivet argues in her article, *'The Conflict in Ukraine and Genocide,'* that all five requirements of genocide have been met, especially after the evidence emerging from Bucha detailing mass killings, torture, rape, and violations of human rights. However, she does not feel that there is evidence of *dolus specialis*, the aspect of intent. She states that "the shelling of civilians and civilian infrastructure is indiscriminate rather than targeted at a group and thus tends to demonstrate that the Ukrainian group is not the object of the attack".¹⁶

Legal expert Douglas Irvin- Erikson believes that there is intent to destroy Ukrainians and even eradicate Ukrainian culture as well. He presents two views. The first explains that Russia's original war plan was to overthrow Ukrainian President Volodymyr Zelensky and not wage a genocidal tirade against Ukrainians. This is plausible since no one in the international community believed that the war would last this long. Irvin-Erikson then contradicts this view by suggesting that Russian leaders have long been intent on destroying Ukrainian identity. For example, Dmitry Medvedev, the current Chairman of the Russian Security Council, "called for

¹⁶ Noëlle Quénivet, "The Conflict in Ukraine and Genocide", (Journal of International Peacekeeping, 2022). 151.

the extermination of all Ukrainian radicals who deny that Ukraine and Russia is one nation.”¹⁷ The Ukrainian radicals Medvedev refers to are the people who believe that Ukraine is a different nation. This includes most people who identify themselves as Ukrainian today. President Putin’s basis for the whole war was to rid Ukraine of Nazism and destroy it as a separate nation-state. This goal implies the destruction of Ukrainians, as Russian propaganda has created a direct link between Nazis and Ukrainians.¹⁸

Contributing to the two main arguments about whether Russian aggression in Ukraine constitutes genocide, another common theme in the literature on genocide is that prosecuting genocide is a very arduous task. Specifically, the issue of “state responsibility” is the most complex aspect to prove within a genocide case. The Bosnian genocide case first instituted proceedings against the Federal Republic of Yugoslavia in 1993, and 14 years later, the final decision was delivered on the charge. The judgment declared that Serbia as a state was not found responsible for the genocide of 8000 Bosnian men and boys in the Srebrenica massacre carried out by Bosnian Serbs. Although the court ruled that Serbia was not responsible for the actual crime of genocide, it found that Serbia was still responsible for violating its obligations to prevent genocide, for failing to comply with provisional measures ordered by the court and failing to transfer Ratko Mladić, a former military officer for the Army of Republika Srpska, to the Hague for the indictment of genocide. The Bosnian case created a momentous addition to the Genocide Convention, which was that states could be held directly responsible for their crimes. The ruling gives hope for the future as Russia could still be held accountable for crimes even if Putin himself escapes judgment.

Vittorio Bufacchi, a political expert, expands on the issue of legal responsibility and argues that it is possible that Putin could escape responsibility for the crimes Russia committed.¹⁹ This theory starts with Moscow denying these crimes as this was the Kremlin's response to the mass killings in Bucha. The final part of the theory is that Putin will claim that he himself is not responsible for the crimes and place the blame on rogue soldiers. If Putin and the soldiers

¹⁷ Douglas Irvin-Erickson, “Is Russia Committing Genocide in Ukraine?“, *OpinioJuris*, (2022): 1, <https://opiniojuris.org/2022/04/21/is-russia-committing-genocide-in-ukraine/>.

¹⁸ *Ibid.*

¹⁹ Vittorio Bufacchi, War Crimes in Ukraine: Is Putin Responsible?, *Journal of Political Power*, 2022, 1–6. <https://doi.org/10.1080/2158379x.2022.2105495>.

involved in these horrific crimes can be brought to justice, then it will be a substantial win for international law and Ukraine.

Legal scholar Carrie McDougall illustrates that it is imperative that Putin is prosecuted for these crimes of aggression. When Russia invaded Ukraine, it was a clear violation of international law, specifically Article 2(4) of the United Nations Charter, which prohibits the use of force. The violation that Russia committed was a significant threat to the international system and the rules-based order that it has. McDougall emphasizes that the prosecution of Putin could have multiple benefits. The first is that it is imperative that the international community takes all available steps to reinforce Article 2(4) and hold Putin to account for their crimes, as it will restore faith and trust within the international legal system. The second benefit is that a prosecution could be a deterrent. Using the International Criminal Tribunal for the Former Yugoslavia as an example, “Slobodan Milosevic [former President of Serbia] was initially defiant but, after his indictment by the International Criminal Tribunal for the former Yugoslavia (ICTY), his tone changed; he lost support domestically and was ready to talk...The episode proved that shaming and prosecuting are effective tools in slowing the swagger and diminishing the hold of autocrats.”²⁰ The treatment of Milosevic might help deter future leaders from carrying out war crimes as it has shown that they do not escape their crimes. Whether a prosecution could be a way of deterrence or not, the most essential piece of Carrie McDougall’s argument is that a prosecution of Putin for his crimes could restore the faith and power of the international legal system that he diminished with his unlawful invasion of Ukraine.

Theoretical Framework

The literature presented above shows that there are many contrasting opinions on whether prosecution would be beneficial. In addition, the second question above, ‘what would be the political repercussions for Russia if these killings were to be considered genocide under international law?’ raises two theoretical issues. The first is the effectiveness of international law in restraining state behaviour, especially the behavior of powerful states. The second is the role of rhetoric and discourse within a possible genocide conviction.

²⁰ Carrie McDougall, "The Imperative of Prosecuting Crimes of Aggression Committed against Ukraine." (Journal of Conflict and Security Law, 2023), 9.

In international relations theory, realism, liberalism, and constructivism have different arguments about whether institutions and international law matter in international relations. Can an international court really hold Russians accountable for genocide, and will it make a difference? The international system has been questioned significantly since the start of the war, especially as the Security Council was paralyzed by Russia's veto to a resolution denouncing the invasion of Ukraine on February 24th, 2022. Russia's blatant disregard for international law has enhanced the growing sense that faith placed in the promise of international law and international institutions more generally is misguided.²¹

Realists have quite a dark view of international relations, as they believe that there is very little trust and cooperation between states, there is only power and national security. In realist theory, every state is incredibly selfish, and they only care about power and security for themselves. The need for power and security cannot be contained or regulated by the international institutions or by international law. John Mearsheimer writes that "realists maintain that institutions are basically a reflection of the distribution of power in the world. They are based on the self-interested calculations of the great powers, and they have no independent effect on state behavior."²² Institutions have very little influence on state behavior that is why the competence of the United Nations and the OSCE have been questioned since Russia invaded Ukraine. Realists have a similar view on international law as they question why it matters. To them the rules do not matter, it is only the power that matters. Stephen Krasner argues that "when international law is violated there are no neutral or authoritative enforcement mechanisms to make the offending party pay. A state that transgresses international legal rules will be punished only if other more powerful states want to do it."²³ If many states obey the law but a couple cheat, there is no way that this set of rules can ensure peace on the international level.

Joe Nye, a former American politician, suggests that Russia is a 'very real threat to the international order' because it was in 'long-term decline', and declining states tended to 'become less risk-averse'.²⁴ Russia is a threat to the international order, and Putin's invasion of Ukraine has violated international law in every way possible. Russia proved that state

²¹ Carrie McDougall, "The Imperative of Prosecuting Crimes of Aggression Committed against Ukraine", (2023).

²² John J. Mearsheimer, "The False Promise of International Institutions," No. 3, (International Security 19, 1994).

²³ Stephen D. Krasner, "Realist Views of International Law," (American Society of International Law, 2002).

²⁴ Stephen D. Krasner, "Realist Views of International Law," (American Society of International Law, 2002), 1881.

security and power cannot be held within the parameters of justice and authority that international law expects.²⁵ The first violation of international order was when Russia first invaded Ukraine, it was an unprovoked attack that violated article 2(4) of the UN Charter. As the war goes on Russian troops are constantly violating international humanitarian law, the Rome Statute, and the Convention on the Punishment and Prevention of Genocide. Towns such as Mariupol, Bucha, Kharviv, and Irpin are examples of Russia's tirade through Ukraine. Russian troops have been killing innocent civilians, detaining innocent men, destroying civilian infrastructure with little regard for the law.

If Russia were to ever be charged for its war crimes or even genocide, it would be at the personal interest of other states not at the power of the law. States from the West would be very interested in punishing Russia as Putin threatened the international system that they built and trust. A genocide conviction and its repercussions for Russia would also be at the power of the other states, as the Bosnian genocide case showed that the conviction of genocide is only a label. By the time that the ICJ delivered their final decision the war was well over, and the title of genocide was only to show recognition for the victims and survivors of Srebrenica. The reparations for Serbia from the court were not enough to restore peace within the Balkans or have a deterring effect for future genocides. Realists have very little faith in international law or institutions bringing Russia to justice, their view for the future of the international stage is to stop relying on international institutions for peace and security as it has only led to failures.

In contrast, liberalism holds that states create international law and institutions because it is in their interests to have common rules. Liberalists believe in the structure of the international system and that all states must follow the authority that it presents. Andrew Moravcsik offers a positive interpretation of liberalist IR theory, the foundation of his interpretation rests in the belief that the relationship states have to the people on a domestic and transnational level is fundamental as the people are driving force behind state policy. Moravcsik elaborates his interpretation with three core ideas. The first is the primacy of societal actors: "the fundamental actors in international politics are individuals and private groups, who are on the average rational and risk-averse and who organize exchange and collective action to promote differentiated interests under constraints imposed by material scarcity, conflicting values, and

²⁵ Harald Edinger, "Offensive ideas: structural realism, classical realism and Putin's war on Ukraine," (International Affairs, 2022).

variations in societal influence.”²⁸ The second is representation and state preferences: “states (or other political institutions) represent some subset of domestic society, on the basis of whose interests state officials define state preferences and act purposively in world politics.”²⁹ The third and final idea is interdependence and the international system: “the configuration of interdependent state preferences determines state behavior.”³⁰ This interpretation of liberal theory provides that states work together to keep international order and that international law serves as a framework to keep the peace and power balance between states. It also shows that institutions provide international progress and serve to keep the cooperation between states.

Institutionalists Robert Keohane and Lisa Martin share that “institutions can provide information, reduce transaction costs, make commitments more credible, establish focal points for coordination, and in general facilitate the operation of reciprocity.”³¹ Liberals see to prosecute Russia for its invasion of Ukraine as it will restore the trust and balance within international order. A charge for Russia will also provide a victory for Ukraine and its people and show that the liberal international system works.

The second theory highlights constructivism as constructivists value the importance of discourse and identity. The theory claims that using genocidal rhetoric and discourse in delegitimizing an actor and spurring political action follows a constructivist approach. Constructivists argue that genocidal rhetoric and discourse is imperative for delegitimizing Putin and spurring political action toward a genocide charge for Russia.

The Ukrainian government and many of their supporters in the international community, including politicians, NGOs and activists, have used the discourse of potential charges of genocide as a tool to bring global attention to the atrocities in Ukraine. Politicians across the West have been using the word ‘genocide’ as a political strategy in their communications about Ukraine to spur an investigation by the ICC into Russian war crimes. Russian leaders

²⁸ Anne-Marie Slaughter, and Jose E. Alvarez, “A Liberal Theory of International Law,” (American Society of International Law, 2000).

²⁹ Slaughter and Alvarez, “A Liberal Theory of International Law” 2000.

³⁰ Ibid.

³¹ Robert O. Keohane, and Lisa L. Martin, “The Promise of Institutional Theory.” (International Security 20, 1995).

have been using genocidal rhetoric through their own communications and through the state-controlled media long before the invasion of Ukraine in 2022. Senior Kremlin officials described “Ukrainians as ‘cockroaches’ while dismissing the Ukrainian nation as ‘mythical’”.³⁵ Meanwhile, on Russia’s carefully curated state TV political talk shows, calls for genocide against Ukrainians have become completely normalized”.³⁶ Putin himself has also questioned the identity of Ukrainians on many occasions calling them one with the Russian people. He has also denounced Ukraine as a state and Ukrainians as a people which shows that he is actively trying to rid the world of the Ukrainian culture and Ukrainian people by starting this war. At first, Russia tried to mask its invasion as an effort to prevent genocide, stating that Russia was preventing genocide by “rescuing” Ukrainians from Nazism but there has been a shift in rhetoric to show that the Russians are trying to de-Ukrainianization. Putin’s emphasis on identity shows that this war is rooted in constructivism and that if Putin can create a social construct about the illegitimacy of the Ukrainian state and people, his war can be justified.

Chapter 3: Is there Genocide in Ukraine?

Genocide has been defined as the crime of all crimes, and past cases of genocide, such as the Rwandan and Bosnian cases, have shown that the crime is tough to prosecute. This chapter analyzes the legal argument that Russia is committing genocide in Ukraine.

The legal definition and requirements of genocide are fundamental as the definition serves as guiding legislation for classifying Russia’s crimes. The requirements of genocide will be further analyzed in the discussion of Russia’s crimes within Ukraine at the end of the chapter.

³⁵ Dudko Oksana, “A conceptual limbo of genocide: Russian rhetoric, mass atrocities in Ukraine, and the current definition’s limits”, (Canadian Slavonic Papers, 2022).

³⁶ Dudko Oksana, “A conceptual limbo of genocide: Russian rhetoric, mass atrocities in Ukraine, and the current definition’s limits”, 2022.

For an act to be considered genocide, it must fall within one of the five categories listed in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

These five acts are listed as follows in Article II of the convention:

- I. Killing members of a group;
- II. Causing serious bodily or mental harm to members of the group;
- III. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- IV. Imposing measures intended to prevent births within the group;
- V. Forcibly transferring children of the group to another.⁴²

In addition to these five acts, *dolus specialis*, which is the intent to destroy the group, must be proven. The intent to commit genocide is what makes the crime unique and distinguishes it as genocide rather than war crimes or crimes against humanity.

The Bosnian Genocide Case

The Bosnian genocide case from the mid-1990s provides insight into how a genocide trial is conducted and how it serves as important precedent for how future genocide trials are to occur. The Bosnian genocide was the first genocide prosecuted under the Geneva Convention. This section will give the historical background that led to the Bosnian genocide and give analyses of both the ICTY and ICJ trials.

The disintegration of the former Yugoslavia led to one of the bloodiest conflicts within Europe since World War Two. The breakup of the federation led to leaders around the region fighting for power using ethno-nationalistic sentiment. In 1992, Bosnian and Herzegovina, a former republic of Yugoslavia voted to become independent.⁴³ Independence did not sit well

⁴² *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, 78 U.N.T.S. 276 (entered into force 12 January 1951), Article II.

⁴³ Arnesa Kurstura, "Bosnian War- A Brief Overview." *Remembering Srebrenica*, June 24, 2021. <https://srebrenica.org.uk/what-happened/bosnian-war-a-brief-overview>.

with the Bosnian-Serb leaderships which led them to launch a military attack on the city of Sarajevo. General Ratko Mladić who was the leader of the Bosnian-Serb forces created a plan to ethnically cleanse Bosnia of non-Serbs, with the majority of the non-Serb population being Bosniak-Muslims.⁴⁴ The attack on Sarajevo lasted from 1992-1995, the citizens of the city were subjected to shelling, sniper attacks, the destruction of all religious, cultural, and residential buildings; as well as being cut off from the rest of the world.⁴⁵ Just within the city of Sarajevo over 11,000 civilians were killed.⁴⁶

The plan to ethnically cleanse Bosnia of non-Serbs caused Bosniak-Muslims to flee to Srebrenica and Žepa as they were UN 'Safe Areas', however the Bosnian Serb forces started focusing their attention on those areas to fulfill their ethnic cleansing campaign. In 1995, Radovan Karadžić, the political leader of the Bosnian Serbs ordered his forces to eliminate the Muslim population within Srebrenica leading to over 7,000 Bosniak Muslims being captured and executed. In addition to the mass executions, 2 million people were forcibly displaced, 100,000 people were killed, and 20,000-50,000 women were systematically raped to prevent future generations of Bosniak-Muslims.⁴⁷ Towards the end of the war the Bosnian Serb army tried to conceal their atrocities by digging up mass graves and reburying the victims in more isolated areas. Since 1995 more than 3,000 mass graves have been uncovered with the remains of the victims of Srebrenica, and there are still more than 40,000 people missing.⁴⁸

The International Tribunal for the former Yugoslavia

The horrible atrocities of the Bosnian war led the UN Security Council to establish the International Criminal Tribunal for the former Yugoslavia in 1993. This tribunal was established to try and convict those responsible for the violations that occurred under international humanitarian law in the former Yugoslavia. After the events of 1995 the tribunal listened to countless survivor testimonies and analyzed thousands of pieces of evidence. They eventually found that the mass killings of Bosniak Muslims in Srebrenica constituted genocide. The first case that constituted genocide was the trial of Radislav Krstić, who was a Bosnian

⁴⁴ Kurstura, "Bosnian War- A Brief Overview."

⁴⁵ Kurstura, "Bosnian War- A Brief Overview."

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

Serb general. During his trial it was found that the “criminal acts committed in Srebrenica in 1995 constituted *inter alia* the crime of genocide.”⁴⁹ Radislav Krstić was sentenced to aiding and abetting genocide as he personally lacked intent. In addition to Krstić, there has been 14 convictions for genocide and other crimes against humanity by the tribunal. The tribunal was monumental as it was the longest trial any tribunal has ever presided over. The ICTY was also crucial in the later ICJ case as its evidence and jurisprudence provided a guide for the outcome of the ICJ case.

International Court of Justice

In 1993, Bosnia and Herzegovina filed an application with the International Court of Justice accusing Serbia of breaching its obligations to prevent and punish genocide under the Genocide Convention. Bosnia also claimed that Serbia had “killed, murdered, wounded, raped, robbed, tortured, kidnapped, illegally detained, and exterminated the citizens of Bosnia and was continuing to do so.”⁵⁰ Serbia countered the allegation by stating to the court that the previously listed acts had not been committed with genocidal intent. It also claimed that the acts could not be attributed to Serbia as they had been carried out by the army of Republika Srpska which was a *de facto* entity that had retained control over the territory of Bosnia and Herzegovina once it had gained independence from the former Yugoslavia.⁵¹ There was contention within the legal community that the ICJ had no jurisdiction as Serbia was not a part of the UN or the Genocide Convention at the time of Bosnia’s application. However, Judge Tomka of the ICJ stated that it would make no sense for Bosnia to re-submit their application now that Serbia is a member, and therefore the court had jurisdiction. Specifically, the Court found that it had jurisdiction over the dispute citing Article 9 of the Genocide Convention which states that “disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State

⁴⁹ “ICTY Remembers: The Srebrenica Genocide (1995 - 2015),” n.d. <https://www.irmct.org/specials/srebrenica20/index.html>.

⁵⁰ Sam Clearwater, “Holding States Accountable for the Crime of Crimes: An Analysis of Direct State Responsibility for Genocide in Light of the ICJ’s 2007 Decision in ‘Bosnia v Serbia’,” (Auckland University Law Review, 2009), 1.

⁵¹ Susane SáCouto, “Reflections on the Judgment of the International Court of Justice in Bosnia’s Genocide Case against Serbia and Montenegro.” (Human Rights Brief 15, 2007), 2.

for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.”⁵²

In 2007, the Court delivered a landmark decision in the case ‘*Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Serbia and Montenegro)’. This case was significant in many ways, it was the first judgement interpreting the 1948 Genocide Convention, and additionally it was the first court to consider whether a state could be charged for genocide under the Convention.

This trial presented the court with one major question and that is if sovereign states can be held responsible for genocide. In previous genocide trials the Convention has only been interpreted in the way that only an individual can be held responsible for genocide as the Convention is a criminal-law based instrument that can only apply to persons. States cannot commit crimes under criminal law. Additionally, the Convention “clearly requires states to prevent and punish the commission of genocide.”⁵³ Along with the requirement to prevent and punish genocide, it is clearly included that states may not commit genocide as it is their duty to prevent and punish the crime.

The Court disclosed that article I and article IX of the Convention prove that states can be held accountable for genocide. Article I states that “the Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”⁵⁴ Although this doesn’t explicitly say that the contracting parties must not commit genocide, the Court found that when interpreted under the purpose of the Convention, it does prohibit states from committing genocide.⁵⁵ The interpretation of Article 1 by the Court was founded by two reasons, the first being that Article I categorizes genocide as a crime under international law and by agreeing to the article the

⁵² *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, 78 U.N.T.S. 276 (entered into force 12 January 1951), Article II.

⁵³ Sam Clearwater, "Holding States Accountable for the Crime of Crimes: An Analysis of Direct State Responsibility for Genocide in Light of the ICJ's 2007 Decision in 'Bosnia v Serbia'," (Auckland University Law Review, 2009).

⁵⁴ *U Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, 78 U.N.T.S. 276 (entered into force 12 January 1951), Article II.

⁵⁵ Sam Clearwater, "Holding States Accountable for the Crime of Crimes: An Analysis of Direct State Responsibility for Genocide in Light of the ICJ's 2007 Decision in 'Bosnia v Serbia'," (Auckland University Law Review, 2009).

contracting parties must not commit the described crime. Secondly, it was believed that with an obligation to prevent genocide it is implied that committing an act of genocide is prohibited.

Article IX was also able to prove states accountability, article IX was referenced to previously in relation to the ICJ's jurisdiction over Serbia. The Court "noted that the use of the word 'including' confirms that disputes relating to the responsibility of states for genocide and the related offences under Article III are part of a broader group of disputes relating to the interpretation, application or fulfilment of the Convention."⁵⁶ States are not only responsible for preventing genocide, but they are now able to be charged with genocide.

In February 2007 the ICJ finally delivered the final judgement which was 175 pages with an additional 392 pages of opinions and declarations.⁵⁷ This was the longest and most complex case the ICJ has ever dealt with, and after 14 years from the initial application there was a judgment. The first part of the judgement outlined whether the acts committed by Serbia within Bosnia and Herzegovina constituted genocide. For this judgement the court relied on the jurisprudence and proceedings of the ICTY, as well as the evidence presented to both courts. The Court found that the mass killings and atrocities carried out throughout the war from 1992-1995 in Bosnia and Herzegovina did not constitute genocide as the intent to destroy a protected group in whole or in part was unable to be proven. However, the Court did find that the killings carried out in Srebrenica in 1995 did have genocidal intent to destroy the Muslim population and it constitutes genocide.⁵⁸ It was proven that the Republika Srpska Army was carrying out a plan to destroy the Bosniak-Muslim male population.

The following judgement outlined whether Serbia should be held responsible for committing acts of genocide, and the court found that Serbia was not responsible for the genocide, but they were responsible for not preventing genocide therefore in violation of article I. Serbia was also found to be negligent in its obligation to prevent genocide as they failed to co-operate with the ICTY trial and failed to hand General Ratko Mladić over to the tribunal.⁵⁹ Although Serbia was

⁵⁶ Sam Clearwater, "Holding States Accountable for the Crime of Crimes: An Analysis of Direct State Responsibility for Genocide in Light of the ICJ's 2007 Decision in 'Bosnia v Serbia'," 2009.

⁵⁷ Ibid.

⁵⁸ Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Bosnia and Herzegovina v Yugoslavia, Order, Provisional Measures, [1993] ICJ Rep 3, ICGJ 67 (ICJ 1993), 8th April 1993, United Nations [UN]; International Court of Justice [ICJ].

⁵⁹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Bosnia and Herzegovina v Yugoslavia, Order, Provisional Measures, [1993] ICJ Rep 3, ICGJ 67 (ICJ 1993), 8th April 1993, United Nations [UN]; International Court of Justice [ICJ].

not found responsible for the genocide of Srebrenica, this case proved that states can be held accountable for genocide which will be essential for future genocide trials.

Evidence of a Possible Genocide within Ukraine

Officials and experts have been calling for Russia to be charged with war crimes for the acts committed at the start of the war on February 24th, 2022, however their rhetoric changed to calling for a genocide investigation following the hastily retreat of Russian soldiers from the towns in the Kyiv and Kharkiv regions. This section will first analyze the statements of experts, and international actors after the discovery of these crimes. Then the evidence of genocidal intent and genocide will be presented through the five categories of genocide listed in the Genocide Convention. These crimes suggest that genocide is occurring in Ukraine.

The atrocities committed against the civilians of these towns shocked the global community causing experts and political actors to call for investigations into the crimes. The United Nations human rights chief, Michelle Bachelet released a statement following the liberation of Bucha, “I am horrified by the images of civilians lying dead on the streets and in improvised graves in the town of Bucha in Ukraine... reports emerging from this, and other areas raise serious and disturbing questions about possible war crimes, grave breaches of international humanitarian law and serious violations of international human rights law.”⁶⁰ President Zelensky called “Russian forces as ‘murderers, torturers and rapists’ who were committing ‘genocide’ in [Ukraine].”⁶¹ Two experts were called to Ukraine after the massacres were discovered, Clint Williamson who is a lead advisor to the Atrocity Crimes Advisory Group, and Azeem Ibrahim who is the director of special initiatives at New Lines Institute. Williamson who is working on the ground in these newly liberated territories said “the scale of crimes committed by Russian forces is almost unimaginable and overwhelming. Scenes that stretch for miles, hundreds of bodies and 33,000 cases of war crimes.”⁶² Additionally he stated that

⁶⁰ Al Jazeera, “‘Unbearable’: World Reacts to Civilian Killings in Bucha.” Russia-Ukraine war News, Al Jazeera. 2022. <https://www.aljazeera.com/news/2022/4/4/unbearable-world-reacts-to-civilian-killings-in-bucha-ukraine>.

⁶¹ Al Jazeera, ‘Unbearable’: World Reacts to Civilian Killings in Bucha.”, 2022.

⁶² Ashish Kumar Sen, “Is Russia Committing Genocide in Ukraine?” (United States Institute of Peace, 2022).<https://www.usip.org/publications/2022/09/russia-committing-genocide-ukraine>.

what he is witnessing are very compelling indications that these acts are genocide.⁶³ Ibrahim was invited by the Ukrainian government along with a team of experts to investigate if Russia is committing genocide in Ukraine. Upon the completion of their investigation last year Ibrahim concluded that “Russia is in breach of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention), Russia bears state responsibility for inciting genocide and the pattern of atrocities indicates an intent to destroy “Ukrainian-ness”.⁶⁴ Experts have also commented on the pattern of atrocities in that they all follow a very similar pattern and it does not look like random acts of violence from the Russian forces which draws many to think that this is Kremlin policy. While intent is hard to prove, there is considerable evidence that there is intent by the Kremlin to destroy Ukrainians from the rapidly increasing death toll to the public incitement of anti-Ukrainian sentiment from Putin and his officials before the war began.

Intent

While intent is hard to prove, there is considerable evidence that there is intent by the Kremlin to destroy Ukrainians from the public incitement of anti-Ukrainian sentiment from Putin and his officials before the war began to the rapidly increasing list of atrocities committed against Ukrainian civilians. Investigators will be looking at Russian rhetoric from before and during the war as the remarks suggest intent. Russian leaders have been using genocidal rhetoric through their own communications and through the state-controlled media long before the invasion of Ukraine in 2022. In April of 2008, President Putin made a comment to President George Bush stating that “You don’t understand, George, that Ukraine is not even a state. What is Ukraine? Part of its territories is Eastern Europe, but the greater part is a gift from us.”⁶⁵ Dmitry Medvedev stated in 2016 when he was Prime Minister that “There is neither industry, nor a state there in Ukraine. In 2013, there was “industry there, but there was no state even then.”⁶⁶ Russian economist Mikhail Khazin published a youtube video in 2016 expelling some disturbing remarks about Ukraine and its people; he stated that “Ukraine has several million people [not loyal to Russia] who need to be partially eliminated and partially squeezed out.”⁶⁷

⁶³ Ashish Kumar Sen, “Is Russia Committing Genocide in Ukraine?” (United States Institute of Peace, 2022)

⁶⁴ Ibid.

⁶⁵ Clara Apt, “Russia’s Eliminationist Rhetoric Against Ukraine: A Collection.” Just Security, June 7, 2023. <https://www.justsecurity.org/81789/russias-eliminationist-rhetoric-against-ukraine-a-collection/>.

⁶⁶ Clara Apt, “Russia’s Eliminationist Rhetoric Against Ukraine: A Collection.” Just Security, June 7, 2023.

⁶⁷ Clara Apt, “Russia’s Eliminationist Rhetoric Against Ukraine: A Collection.” Just Security, June 7, 2023.

He also called for the elimination of Ukrainian culture stating that “Russia should institute a complete ban on Ukrainian fonts, Ukrainian texts, programs on [the] Ukrainian language, on teaching Ukrainian – ie completely.”⁶⁸ The former aide to Putin Vladislav Surkov made a comment on a question and answer broadcast where he explained that “there is ‘no Ukraine,’ although there is ‘Ukrainianism’– a specific mental disorder.”⁶⁹ The genocidal comments before the war show that there has always been intent to destroy Ukraine and its culture, even the denial of Ukraine as a state can prove intent.

The rhetoric transitioned from de-Ukrainianization to de-natzification just before and after the invasion to match up with Putin’s reasoning that he needs to save Ukraine from the Nazi’s. The head of the occupation authority Sergey Aksyonov posted a telegram on March 30th, 2022 just a month after the invasion.⁷⁰ His post stated “does anyone still have doubts that Russia is freeing the Ukrainian people from absolute evil? It was grown in the ideological laboratories of Western intelligence services, pumped up with hatred and armed to the teeth, its goal is the destruction of our common values, everything that is dear to us. Therefore, only demilitarization, denazification and the trial of Nazi criminals. Therefore – only victory!”⁷¹ However, just a couple months later on July 12th, 2022, Sergey posted another telegram which called for de-Ukrainianization, “Ukraine has already committed so many terrorist attacks, so many crimes against humanity that it has lost all right to its statehood. The sooner Ukraine in its current form disappears from the political map of the world, the better it will be for the peoples of this country, the Ukrainian state has become a source of endless problems and tension.”⁷²

In addition to the rhetoric, investigators should look at the pattern of civilian killings as that could also prove intent. The Russian soldiers within Ukraine have committed war crimes in towns that follow very similar patterns, such as summary executions of men, the raping of women, and the unlawful detainment and torture of civilians. Since these atrocities follow a uniform pattern, it could be connected to orders from the Kremlin to carry out these crimes.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

Evidence of Genocide

Killing Members of the group

The first act of genocide as listed in Article II of the genocide convention is killing members of the group. There are substantial events proving that this act has been carried out by Russian soldiers. In the town of Bucha, 700 civilians were killed and there were 9,000 war crimes committed.⁷³ When the city was liberated in early April by the Ukrainian forces, they were met with scenes of summary executions, dead civilians on the streets, in gardens, and in buildings. There were also mass graves filled with bodies located throughout the area and shallow graves scattered around. Residential buildings and houses were also destroyed as the Russian soldiers open fired on civilians within their homes.

The first account is details Olexandr Sechevsky, who along with his family tried to flee the heavy fighting of Bucha mid-way through the occupation, but he and his daughter in law were killed when a convoy of fleeing Ukrainians were fired on by Russian soldiers hiding in a treeline.⁷⁴ They had reached a Russian checkpoint in which 15 cars were allowed to pass through and they were the 12th car in the convoy line, all of the cars were families attempting to flee to a nearby town.⁷⁵ Olexandr's son recounts the horrors to Amnesty International who were on the ground in Ukraine. He explained:

“they told us to go forward at a slow pace, with the cars in single file formation. We drove slowly, about 30 km an hour, for a short while. When our car had just reached a line of trees, I heard shots – first single shots, then a burst of gunfire. At a certain point I heard what sounded like a heavier weapon, maybe a machine gun. The shots hit the first vehicle in the convoy, and it stopped. We were the second vehicle and we had to stop, too. Then we were hit. At least six or seven shots hit our car. My dad was killed

⁷³ OHCHR. “Killings of Civilians: Summary Executions and Attacks on Individual Civilians in Kyiv, Chernihiv, and Sumy Regions in the Context of the Russian Federation’s Armed Attack against Ukraine,” December 7, 2022. <https://www.ohchr.org/en/documents/country-reports/killings-civilians-summary-executions-and-attacks-individual-civilians>.

⁷⁴ Amnesty International, “Ukraine: ‘He’s Not Coming Back’. War Crimes in Northwest Areas of Kyiv Oblast - Amnesty International,” May 10, 2022.

⁷⁵ Amnesty International, “Ukraine: ‘He’s Not Coming Back’. War Crimes in Northwest Areas of Kyiv Oblast - Amnesty International,” May 10, 2022.

instantly by a bullet to the head. My wife was hit by metal shrapnel and my kid was also hit. Then the lead car came alive and started moving again. I was driving our car and I accelerated. At some point I looked back and saw other cars in the convoy on fire. Only about five cars got away”.⁷⁶

There is another account of Russian soldiers targeting civilian convoys, Oleksii Sychevsky told Amnesty International:

“the convoy was all fleeing civilians. Almost all of the cars had kids inside. When our car had just reached a line of trees, I heard shots - first single shots, then a burst of gunfire. The shots hit the first vehicle in the convoy, and it stopped. We were the second vehicle and we had to stop, too. Then we were hit. At least six or seven shots hit our car. My dad was killed instantly by a bullet to the head. My wife was hit by metal shrapnel, and my kid was also hit.”⁷⁷

Many of the killings of civilians took place in a cluster of streets within Bucha. Along these streets Russian soldiers would execute civilians on the spot or detain civilians that would end up being tortured and executed. Most of these victims were men who were either accused of either being a part of the Ukrainian forces or assisting the Ukrainian forces in any way. However, the Russians did not investigate if these men were a part of the Ukrainian armed forces or not as they were usually shot at point blank or summarily executed in groups. A Bucha resident named Vasyl Yushenko, who was 32, was shot in the neck as he went to smoke a cigarette in the balcony of his apartment.⁷⁸

The OHCHR was sent a video of an execution in the streets of Bucha, and they included the horrible details in a report about the killings of civilians in Ukraine. The details are as follows:

“on 10 March 2022, at around 10:00 a.m., five Russian soldiers led three men (aged 30, 30 and 35) to the junction of Yablunska and Yaremchuka streets. The victims’ hands were tied behind their backs. The Russian soldiers shot all victims dead on the street.

⁷⁶ Ibid, 17.

⁷⁷ Amnesty International UK. “Ukraine: Further Evidence of Russian War Crimes in Bucha and Other Towns - New Report.” *Amnesty International UK*, May 6, 2022. <https://www.amnesty.org.uk/press-releases/ukraine-further-evidence-russian-war-crimes-bucha-and-other-towns-new-report>.

⁷⁸ Human Rights Watch. “Ukraine: Russian Forces’ Trail of Death in Bucha,” January 31, 2023. <https://www.hrw.org/news/2022/04/21/ukraine-russian-forces-trail-death-bucha>.

A witness interviewed by OHCHR said that one perpetrator had the call-sign ‘Tsygan’ (‘Gypsy’).”⁷⁹

In the town of Irpin, which is only a short distance away from Bucha the Russians also carried out killings of Ukrainians. However unlike Bucha, so many of the civilian killings in residential areas were women that the mayor renamed the area as the place of “women’s killings”.⁸⁰ There have been 290 recorded victims in Irpin, with majority of the crimes being committed towards the end of the occupation as the Russians became more agitated by the Ukrainian army regaining territory and control of Kyiv.⁸¹ The agitation felt by the Russians became deadly for citizens of Irpin as troops began shooting on site or executing civilians for the smallest infraction such as misunderstanding an order or for even just being on the street. The relatives of two victims told the OHCHR that a 57-year-old man and his brother were shot trying to deliver food to an elderly neighbour across the street in a Russian controlled area around the time of March 16th, 2022.⁸² Both men died on the street and their bodies were unable to be collected until the Russians left the area weeks later.

There are accounts of Russian troops shooting into residential buildings killing whoever is inside. The OHCHR reports that on “25 March 2022, a Russian armoured vehicle stationed at a checkpoint on Mechnykova Street opened fire on a house, setting it on fire. A neighbour saw a 70-year-old woman and a 76-year-old man fleeing from the burning house. The man moved slowly, using a walking aid. As soon as he reached the street, he was hit by bullets coming from the direction of the Russian checkpoint. His wife followed him in the street and was killed immediately after, by what the forensic examination later assessed as secondary fragmentation.”⁸³

⁷⁹ OHCHR. “Killings of Civilians: Summary Executions and Attacks on Individual Civilians in Kyiv, Chernihiv, and Sumy Regions in the Context of the Russian Federation’s Armed Attack against Ukraine,” December 7, 2022. 26

⁸⁰ Zhanna Bezpiatchuk, “Irpin: Russia’s Reign of Terror in a Quiet Neighbourhood near Kyiv.” *BBC News*, June 7, 2022. <https://www.bbc.com/news/world-europe-61667500>.

⁸¹ Zhanna Bezpiatchuk, “Irpin: Russia’s Reign of Terror in a Quiet Neighbourhood near Kyiv.” *BBC News*, June 7, 2022.

⁸² OHCHR. “Killings of Civilians: Summary Executions and Attacks on Individual Civilians in Kyiv, Chernihiv, and Sumy Regions in the Context of the Russian Federation’s Armed Attack against Ukraine,” December 7, 2022.

⁸³ OHCHR. “Killings of Civilians: Summary Executions and Attacks on Individual Civilians in Kyiv, Chernihiv, and Sumy Regions in the Context of the Russian Federation’s Armed Attack against Ukraine,” December 7, 2022. 31.

A resident of Irpin recounted his brother's death to Amnesty International, he explained that

“on 4 or 5 March — I cannot remember exactly which day — shortly before curfew, at around 4:30 to 4:45pm, my brother went out to the courtyard to smoke. He and a 15-year-old neighbour stood by the corner of the building near the basement entrance facing Yablunska Street. When they saw some Russian soldiers approach from Yablunska Street they retreated into the courtyard. The boy ran into the basement and my brother sat on the second highest step of the basement stairs smoking. Soldiers came around the corner of the building into the courtyard and shot him several time in the neck, chest, and face.”⁸⁴

The number of shots that the soldiers fired at the brother shows that there was aggression and anger shown towards him. All the shots as well are fired in areas that would have killed him immediately without needing to be shot multiple times.

Causing serious bodily or mental harm to members of the group

The second act of Article II is causing serious bodily or mental harm to members of the group, this constitutes torture, rape, and forced detainment. In Kharkiv, Ukraine's second largest city that lies on the eastern side of the country and very close to Russia's boarder. At the very beginning of the war Kharkiv has faced bombardment and occupation from Russia's forces and there is still no break to the violence as citizens of the city are still under constant attack from shelling despite there being no active occupation of the city. The citizens of Kharkiv had gone through a brutal occupation by Russian troops that once again had targeted civilians. Around 606 civilian deaths have been recorded due to shelling, although the number is probably significantly higher as summary executions and shootings of civilians have not been included in official death tolls.⁸⁵ In addition to the shelling and executions many citizens

⁸⁴ Amnesty International, “Ukraine: ‘He’s Not Coming Back’. War Crimes in Northwest Areas of Kyiv Oblast - Amnesty International,” May 10, 2022. 7.

⁸⁵ Amnesty International, “Ukraine: ‘He’s Not Coming Back’. War Crimes in Northwest Areas of Kyiv Oblast - Amnesty International,” May 10, 2022.

were detained in basements and buildings by Russian soldiers. The unlawful detainment was dangerous as men were shot on the spot and women faced sexual violence and death.

A 31-year-old woman from a suburb in Kharkiv conveys her experience of being detained and raped by a Russian.⁸⁶ She discloses that she was sheltering in a basement of a school with other women and children when a Russian soldier entered the school and threatened to kill everyone if they did not obey orders. The soldier then approached the women and took her to another classroom where he raped her repeatedly at gun point. She explains that he “put a knife to her throat and cut the skin on her neck. He also cut her cheek with the knife and cut off some of her hair. He hit her on the face with a book and repeatedly slapped her.”⁸⁷ The soldier also threatened that if she did not comply, she would never see her daughter again. Human Rights Watch was able to get the name and age of the soldier, he was only 20 years old.⁸⁸

Russian soldiers would also detain civilians if they felt that they had any connection of being combatants. These civilians, mostly men, were detained for random amounts of time with some detention periods being a couple hours to others being over a month. Detention areas used by the Russians were basements, houses, public buildings, or other civilian infrastructure. Many bodies were found in these unofficial detention centers, and they showed signs of torture, gunshot wounds, stab wounds, mutilated limbs, and their hands were bound by tape or rope. Human Rights Watch was on the ground in Bucha when five bodies were discovered at a children’s camp, they released that:

“on April 4, Human Rights Watch saw five bodies in the basement of a dormitory building in a children’s camp on Vokzalna St, 123, which some Russian forces in Bucha had used as their base. The bodies were of men wearing civilian clothes who appeared to have been killed by gunshot. There were three distinct bloodstains on the wall of the room. The hands of four of the men were zip-tied behind their backs. The fifth man appeared to have been shot twice in the chest – the stuffing of his thick jacket was protruding at two locations on his chest, which was covered in dried blood.”⁸⁹

⁸⁶ Human Rights Watch. “Ukraine: Apparent War Crimes in Russia-Controlled Areas,” October 11, 2022. <https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas>.

⁸⁷ Human Rights Watch. “Ukraine: Apparent War Crimes in Russia-Controlled Areas,” October 11, 2022.

⁸⁸ Ibid.

⁸⁹ Ibid.

The OHCHR recorded an instance of forced detainment that involved torture and death to the victims. In their report they detailed:

“on 27 February 2022, Russian forces entered Staryi Bykiv village and then while moving on the nearby H07 highway, their military convoy came under sniper fire.⁷⁹ At around 17:00, Russian soldiers approached a man on Zaozerna Street and questioned him about the attack on the convoy and the presence of military- aged men in the area. They then proceeded to check the houses on the street and arrested two local men, aged 27 and 39. According to a witness, the soldiers did not speak Russian among themselves, but she could not identify the language. The soldiers took the two detainees to a nearby facility known as ‘bania’ (sauna), which they used as a temporary base. At approximately 17:20, a relative of one of the detainees and a neighbour approached the base to inquire about the detainees. The soldiers said they would be “interrogated and released”. At approximately 18:00, the relative and the neighbour heard screaming and gunshots coming from the facility. On the morning of 28 February, they returned to the base. The soldiers were gone. A few hundred meters away, they found the bodies of six local men, including those of the two men arrested the previous day. The bodies bore gunshot wounds and torture marks.”⁹⁰

There are many accounts of forced detainment and torture from victims in Ukraine, however many of the detainees ended up dead as the Russians were trying to hide their crimes of torture and unlawful imprisonment.

Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part

The third act detailed in Article II is tough to prove as the destruction of civilian infrastructure could apply to this act, but there is no way to prove if the Russians were deliberately targeting civilian infrastructure. However, the destruction of civilian homes, the curfews, and the withholding of basic necessities such as food, water, and electricity has been recorded in Ukraine at the hands of Russians. In the town of Borodyanka, which is northwest of Kyiv, the Russians precisely bombed eight residential buildings in one day, these buildings

⁹⁰ OHCHR. “Killings of Civilians: Summary Executions and Attacks on Individual Civilians in Kyiv, Chernihiv, and Sumy Regions in the Context of the Russian Federation’s Armed Attack against Ukraine,” December 7, 2022. 24

were home to around 600 families.⁹¹ The destruction of homes has caused many Ukrainians to die from starvation or exposure to the elements. Towns such as Bucha and Irpin were completely destroyed by Russian forces leaving the citizens to fend for themselves amongst the wreck.

The Russian soldiers would do door to door raids along residential streets, and during these raids soldiers would loot and destroy civilian homes, and in many cases execute Ukrainians in their own homes or in the street in front. The Russians would take anything that they could get their hands on, or they would simply kick the residents out of their own homes without any warning.

One recorded experience is from a woman who lives on Yablunska Street in Bucha, on 5 March 2022 at the beginning of the invasion. She describes her experience that eventually led to her husband being executed. She details that the Russians:

“confiscated the residents’ phones, searched the house, and asked: “Where are the Nazis?” They then took [her husband] to the street and ordered him to undress. She did not hear any gunshot, but shortly thereafter, she went out and saw the body of her husband lying on the ground with a gunshot wound to the head. The soldiers then ordered the rest of [her] family to leave in five minutes or be killed.”⁹²

The woman recalls hearing the soldiers say, “there will be a zachistka”, zachistka is a Russian word for a military clearing operation, meaning that more clearing raids will be taking place.⁹³ In another documented case a young woman and an elderly couple were killed in the yard of their home on Tarasivska street during a raid.

Forcibly transferring children of the group to another group

⁹¹ Amnesty International, “Ukraine: ‘He’s Not Coming Back’. War Crimes in Northwest Areas of Kyiv Oblast - Amnesty International,” May 10, 2022.

⁹² OHCHR. “Killings of Civilians: Summary Executions and Attacks on Individual Civilians in Kyiv, Chernihiv, and Sumy Regions in the Context of the Russian Federation’s Armed Attack against Ukraine,” December 7, 2022. 26.

⁹³ OHCHR. “Killings of Civilians: Summary Executions and Attacks on Individual Civilians in Kyiv, Chernihiv, and Sumy Regions in the Context of the Russian Federation’s Armed Attack against Ukraine,” December 7, 2022.

The 5th and final act of genocide detailed in Article II, is significant as it has already been proved by the ICC and an arrest warrant has been issued against Putin and Maria Lvova-Belova, the Russian Presidential Commissioner for Children's Rights. As of January 2023 728,000 children have been deported to Russia from Ukraine.⁹⁴ The ICC detailed that there is reasonable grounds to believe that Putin has committed these acts directly as a way to de-Ukrainianize these children. The children that have been deported into Russia are subjected to "re-education", military training, and "patriotic adoptions".⁹⁵ The European Parliament gave context to the re-education of children that has been reported in Russia as:

"involving the promotion of 'cultural, historical, societal, and patriotic messages that serve the political interests of Russia'. The report depicts a system with an unprecedentedly broad geographic scale, indeterminate duration and logistical complexity, which appears to be designed to 'politically integrate' children and to 'enforce a version of Russia's history, culture and society that serves the political interests of Russia's government'. The system includes field trips, lectures from Russian veterans and historians, as well as in some cases military training or 'military-patriotic education'. Another report claims that the facilities hosting the Ukrainian children in Russia declared they are pursuing educational objectives including 'fostering patriotism' and teaching children to 'identify as citizens of a multinational Russia'. Other commentators argued that this would result in a policy of 'cultural erasure', which implies the removal of Ukrainian tradition and customs."⁹⁶

The children involved in these deportations are unable to be traced as they are given new names and new families, there are also cases of Russian passports being issued to these children under their new identities. The deportation which is a forcible transfer, is still occurring, and there are plans to expand the program as Maria Lvova-Belova detailed to the press.⁹⁷

⁹⁴ Micaela Del Monte, and Nefeli Barlaoura. "Russia's War on Ukraine: Forcibly Displaced Ukrainian Children," *European Parliament Briefing*, April 2023.

⁹⁵ Del Monte, and Nefeli Barlaoura. "Russia's War on Ukraine: Forcibly Displaced Ukrainian Children," 2023.

⁹⁶ Ibid, 3.

⁹⁷ Ibid.

The evidence of the crimes of genocide within Ukraine show that there is not only the intent to destroy Ukrainians, but also being carried out as well with four out of the five acts of genocide being met with more evidence coming to surface every day. This war has been able to be documented so thoroughly by Ukrainians and by international organizations on the ground, and this will be crucial for bringing Putin to justice as these crimes cannot be denied.

Comparison of the Bosnian genocide and the crimes within Ukraine

The war in Ukraine and the former Yugoslavian war are constantly being compared, especially when war crimes are reported within Ukraine. While there are some big differences between the conflicts such as how the wars began as the war in the former Yugoslavia was the result of the break-up of a communist federation with different ethnic and religious groups fighting for power. Meanwhile the war in Ukraine was started by illegal invasion by Russia after many years of tension following the Crimean war in 2014. When comparing both wars there are three instances where similarities can be found. Before the war and killing had commenced political leaders of both Serbia and Russia were seen inciting genocide through comments and speeches. The Bosnian Serb political leader Radovan Karadžić who was one of the key perpetrators in the Srebrenica genocide opening declared that Bosnia and Bosnians had no valid reason to survive after the breakdown of the federation and openly threatened the Bosnians with genocide.⁹⁸ President Putin has publicly denied Ukraine's right to exist as a nation in his essay that he published in 2021, he has also denied the existence of Ukrainians and calls them Russians who have been separated from the motherland.⁹⁹ State run media has also published a post-Russian victory policy that calls for the word "Ukraine from to be erased from the map and to liquidate the nationalist elite and a substantial part of the populace who are beyond reeducation out of their Ukrainian nationalism, while the rest of the population who are guilty of being Ukrainians but could still be saved through reeducation that would require a generation-long program of ideological repression."¹⁰⁰ Putin's reason for the war was the denazification of Ukraine however denazification is only a facade for Putin's true plan of de-

⁹⁸ Bruno Tertrais. "From Sarajevo to Mariupol: What the Yugoslav Wars Can Teach Us about Ukraine's Fate." *Institut Montaigne*, April 21, 2022.

⁹⁹ Peter Dickinson, "Vladimir Putin's Ukrainian Genocide: Nobody Can Claim They Did Not Know." *Atlantic Council*, December 1, 2022.

¹⁰⁰ Douglas Irvin-Erickson, "Is Russia Committing Genocide in Ukraine?" *Opinio Juris*, April 22, 2022. <http://opiniojuris.org/2022/04/21/is-russia-committing-genocide-in-ukraine/>.

Ukrainization. The incitement of genocide is a violation of Article III (c) of the Convention on the Prevention and Punishment of the Crime of Genocide. The genocidal incitement is an offence that is an independent charge as it cannot be charged alongside of a genocide charge and historically has led to genocidal acts being committed.

Secondly, the summary executions of civilians, particularly men are common throughout both conflicts, with some experts calling Bucha the “new Srebrenica”.¹⁰¹ Although the death toll difference between Srebrenica and Bucha is quite significant, genocide expert Azeem Ibrahim says that “it has nothing to do with numbers. It is about intent”.¹⁰² In Srebrenica 8000 boys and men were killed, they were all unlawfully detained and executed. Bosnian Serb forces tried to argue that majority of these men died in battle as they were combatants, but the ICTY found that these claims were incorrect as the age of some of the victims were not fighting age and some were disabled. The ICTY also found evidence of Serbian forces torturing and shooting the Bosnian Muslim prisoners whose hands were bound behind their backs. Investigators from the ICTY found 448 blindfolds on or with the victims’ bodies as well as 423 pieces of cloth, string or wire that were used to tie the victims’ hands.¹⁰³ Similarly in Ukraine, men and boys made up 88% of civilian summary executions as Russians perceived them as combatants despite them being civilians and having protection under international law.¹⁰⁴ The Russian soldiers would also illegally detain the male victims if they had any suspicion of them being combatants, majority of the men who were detained and killed were not involved in the fighting as their loved ones told the authorities after liberation that they were innocent. The bodies found in the makeshift detention centers of towns around Ukraine had their hands bound with tape and signs of torture were present on the bodies. The victims of detainment were killed with one or multiple gunshots to the head, showing evidence of short-range executions. Men would also be executed in the streets without detainment as bodies were found on street corners or up against buildings with either their hands bound or their shirts over their heads with gunshot wounds to the head. Just like Srebrenica, most of the killings in these towns and cities

¹⁰¹ Bruno Tertrais. “From Sarajevo to Mariupol: What the Yugoslav Wars Can Teach Us about Ukraine’s Fate.” *Institut Maigne*, April 21, 2022.

¹⁰² Douglas Irvin-Erickson, “Is Russia Committing Genocide in Ukraine?” *Opinio Juris*, April 22, 2022. <http://opiniojuris.org/2022/04/21/is-russia-committing-genocide-in-ukraine/>.

¹⁰³ International Criminal Tribunal for the Former Yugoslavia. “Facts About Srebrenica,” 2014.

¹⁰⁴ OHCHR. “Killings of Civilians: Summary Executions and Attacks on Individual Civilians in Kyiv, Chernihiv, and Sumy Regions in the Context of the Russian Federation’s Armed Attack against Ukraine,” December 7, 2022.

around Ukraine happened in a short amount of time showing the efficiency and intent of Russian troops to kill Ukrainians.

Chapter 4: Will Putin Ever Face Justice?

This chapter will consist of the political analysis that argues that a post- Ukrainian victory could bring a possible genocide charge for Putin and a regime change within Russia. I will first discuss how Putin could possibly be prosecuted by the ICC for genocide, then I will follow with what the political repercussions for Russia might be. Finally, I will analyze how the international community can influence a genocide charge.

How Can Putin Be Charged?

Russian forces have left a trail of death in Ukraine as their unlawful occupation continues which has left many legal and political experts to wonder how can Putin and his armed forces be held responsible for these crimes? Some experts believe that Putin will not be held for his crimes as the international justice system has failed many times before giving the examples of President Bashar al-Assad who has not been held accountable for his war crimes within Syria. They have also addressed that Russia will do everything in their power to not cooperate with any investigations and deny every charge brought against them which could be true as they have denied all the atrocities in Ukraine. However, on the positive side, there are a significant number of experts that believe Putin will be held accountable for his crimes, along with his fellow Kremlin officials and soldiers. David Scheffer who served as the first U.S. ambassador for war crimes and is also the director at the Center for International

Human Rights at Northwestern University's law school believes that Putin will be charged. He states that "It will be inevitable that Putin will be indicted at the International Criminal Court. He is at the very top of the command chain in Russia," and that "it is by omission that you would get to Putin on those atrocity crimes. Crimes of omission can be as powerful as the crimes of commission," he added. "He has obviously failed as top commander to stop those crimes from being committed on a daily basis. He has the power to do it."¹⁰⁵ Scheffer further explains that Russia's refusal to halt the invasion despite the calls from many international institutions and countries to stop and with the widespread attacks on civilians, he is exposed to criminal charges.¹⁰⁶ There are three avenues that Putin could be charged for his crimes, the first is by the ICJ, the second is by the ICC, and the third is through universal jurisdiction. Although the outcome of the war will decide the outcome of Putin and his army, the mountain of evidence against Putin keeps building that there is a solid chance that he can be brought to justice.

ICJ

As the UN's primary judicial organ, the ICJ has clear jurisdiction over Russia. When Russia violated the Geneva Conventions and the UN Charter by invading another sovereign territory without reasonable cause, the ICJ can bring action against this offence. However, the ICJ has very little strength against Russia for the following reasons. Since the ICJ is a body of the UN, the Security Council needs to implement the decision for the ICJ to take Russia to trial which will be automatically vetoed by Russia therefore disabling the ICJ.¹⁰⁷ The ICJ would also be unable to bring charges against Putin since they only preside over disputes between states. Russia could be held accountable as a state after the precedent set by the '*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*'. The precedent of states being held accountable for genocide could bring some sort of conviction or conversation towards Russia but since the ICJ has no enforcement body against states Putin could stay in power. Russia

¹⁰⁵ Colum Lynch, "Will Putin Be Tried for War Crimes in Ukraine?" *Foreign Policy*, March 29, 2022. <https://foreignpolicy.com/2022/03/24/putin-war-crimes-prosecute-trial-ukraine/>.

¹⁰⁶ Lynch, "Will Putin Be Tried for War Crimes in Ukraine?" *Foreign Policy*, March 29, 2022.

¹⁰⁷ Lawrence J. Trautman, and Maia McFarlin. "Putin, Russia And Ukraine: International Human Rights Violations, War Crimes, & Future Implications," (War Crimes, & Future Implications, 2023).

has continued to disregard the ICJ and their call for Russia to halt its invasion of Ukraine, so it is very unlikely that the ICJ could bring Putin to justice for his crimes.

The ICC

The ICC brings the strongest case against Putin for a genocide conviction. The ICC was established under the Rome Statute, and it is the only permanent international court designed to address genocide, wars of aggression, war crimes, and crimes against humanity.¹⁰⁸ 123 members have ratified the Rome Statute and belong to the ICC but the United States, Russia, and Ukraine are not members nor have they ratified the statute.¹⁰⁹ The court still is able to claim jurisdiction over the crimes, and the court has even preparing to prosecute Russia for genocide and war crimes within Ukraine. The lead prosecutor Karim Khan has said that he will fast-track the investigation as it is important to investigate these crimes as they are being committed.¹¹⁰ Ukrainian investigators and prosecutors are working closely with the ICC to provide evidence and speed up the investigation. The US, despite not belonging to the ICC has pushed for the ICC investigation and offered to provide intelligence and evidence that they have collected towards the investigation. While genocide and war crimes are hard to prosecute, the case of Putin is proving to be unprecedented as 41 states have requested for the ICC to investigate the crimes in Ukraine.¹¹¹ Prosecutors at the ICC usually have to wait months for approval from the sitting panel of judges but since there has been such a push from the international community, an investigation has already been launched. What has aided the push as well is that the crimes within Ukraine are so well documented that it will be hard to deny what is occurring at the hands of the Russian army.

Although it may be hard to prosecute Putin for genocide as he is a head of state and most likely will not be handed over by Russia, the ICC is able to prosecute the crime of aggression. The crime of aggression under Article 8 bis.1 of the Rome Statute is defined as “the planning, preparation, initiation or execution, by a person in a position effectively to exercise control

¹⁰⁸ Trautman, and McFarlin. "Putin, Russia And Ukraine: International Human Rights Violations, War Crimes, & Future Implications." 2023.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Colum Lynch, "Will Putin Be Tried for War Crimes in Ukraine?" *Foreign Policy*, March 29, 2022. <https://foreignpolicy.com/2022/03/24/putin-war-crimes-prosecute-trial-ukraine/>.

over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.”¹¹² This article allows the ICC to individually charge a person who gives the orders from the top, which in this case would be President Putin. As the ICJ is only able to prosecute a state, the ICC can prosecute individuals. The ICC also defines the act of aggression which is “the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.”¹¹³ The definition of acts of aggression located in Article 8 bis. 2 allows the court to define the violations which can provide a clear interpretation of the law. It also works together with Article 2(4) of the United Nations Charter.

The ICC has already issued an arrest warrant for Vladimir Putin and Maria Lvova-Belova. The arrest warrants were issued against the two individuals for the unlawful transportation of children from Ukraine to the Russian Federation under articles 25(3)(a), 8(2)(a)(vii), and 8(2)(b)(viii) of the Rome Statute.¹¹⁴ Additionally, the illegal transportation of children is listed under the fifth act of genocide under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

Although this arrest warrant does not offer much immediate action, it has proved to be a strong tool in the case against Putin. The judges who issued this warrant and laid out the charges cited the need for urgent action since the deportations are currently ongoing.¹¹⁵ The arrest warrant is also binding for the 123 member states of the ICC which pushes Putin and Maria Lvova-Belova into a political isolation which has proved to be successful in the past. The ICC indicted Sudanese leader Omar al-Bashir in 2009 and it was successful in isolating and limiting his travel which eventually pushed the Sudanese people to force him from power.¹¹⁶ The arrest warrant also allows for other nations to prosecute Putin if he ever travels to into their territory which can fall under universal jurisdiction.

¹¹² The United Nations Rome Statute of the International Criminal Court . International Organizations, 2001.

¹¹³ The United Nations Rome Statute of the International Criminal Court . International Organizations, 2001. Article II.

¹¹⁴ Ibid.

¹¹⁵ Lawrence J. Trautman, and Maia McFarlin. "Putin, Russia And Ukraine: International Human Rights Violations, War Crimes, & Future Implications," (War Crimes, & Future Implications, 2023).

¹¹⁶ Colum Lynch, "Will Putin Be Tried for War Crimes in Ukraine?" *Foreign Policy*, March 29, 2022. <https://foreignpolicy.com/2022/03/24/putin-war-crimes-prosecute-trial-ukraine/>.

Universal Jurisdiction

Universal Jurisdiction is the third avenue to prosecute and charge Putin. Universal jurisdiction is the “authority of national judicial systems to investigate and prosecute certain of the most serious crimes under international law no matter where they were committed, and regardless of the nationality of the suspects or their victims.”¹¹⁷ Domestic courts may try matters of international law which is traditionally not allowed but universal jurisdiction can be used as last resort. The reasoning behind universal jurisdiction is that states have a legal obligation to search and prosecute those who committed crimes known as “grave breaches” which is genocide and war crimes, therefore giving countries the jurisdiction to prosecute Putin and his officials.¹¹⁸ Additionally state practice and *opinio juris* have consolidated a customary rule where states have the legal right to use universal jurisdiction within their courts over serious violations of international humanitarian law.¹¹⁹ Prosecutors in European countries such as Germany, Poland, and Lithuania are preparing to try Russian offenders in their domestic courts under universal jurisdiction. Universal jurisdiction can prove to be very helpful in the case against Putin as they can move quicker, and they do not need to collaborate with international bodies. States can issue their own arrest warrants within domestic courts which further hinders Putin’s and other Russian official’s movements. If Putin decides to disregard his ICC warrant, which could be possible as Putin has showed a complete disregard for international law, individual nation states will be able to prosecute him for his crimes. There are problems with universal jurisdiction, but it offers a promising avenue for retribution.

Russia’s political future

It is unknown what will happen after this grueling war but that has not stopped experts and scholars from thinking about what comes next. The following analysis hypothesises what

¹¹⁷Lawrence J. Trautman, and Maia McFarlin. "Putin, Russia And Ukraine: International Human Rights Violations, War Crimes, & Future Implications," (War Crimes, & Future Implications, 2023).

¹¹⁸ “Concluding Debate on Universal Jurisdiction Principle, Sixth Committee Speakers Wrestle with Challenging Balance between State Sovereignty, Fighting Impunity” UN Press, October 22, 2021.

¹¹⁹ “Concluding Debate on Universal Jurisdiction Principle, Sixth Committee Speakers Wrestle with Challenging Balance between State Sovereignty, Fighting Impunity”, 2021.

could happen to Putin and his regime following a Ukrainian victory and a genocide prosecution.

The first thing hypothesis is that Putin will face extreme political isolation. Putin already is politically isolated within the Kremlin as it has been reported that he only surrounds himself with a selected group of officials, but a possible genocide or war crimes charge will bring him political isolation on the world stage. The arrest warrant issued by the ICC has already created political isolation as Putin's name was added "to a notorious list of despots and dictators accused of humanity's worst atrocities."¹²⁰ The label of being accused of humanity's worst atrocities has caused other leaders to suspend relations with Russia and caused Putin to be excluded from international gatherings. The arrest warrant in addition with the domestic courts of other nations building cases against Putin, has limited abilities to travel to international events causing Putin and Russia to be excluded on the world stage. Even if Putin never stands trial for his crimes, the identity of being a war criminal has stained his image forever. No leader or political official will want to continue relations with Putin. The United Nations General Assembly has suspended Russia's membership in the Human Rights Council and the Council of Europe has excluded Russia from future membership.

The second hypothesis is that there could be a regime change or a government breakdown. Putin and the Kremlin are in a very precarious position because of this war. If Putin loses the war, their previously occupied territories, and is politically isolated due to a genocide charge, the people of Russia could push for a regime change. The war has showed how poorly run and corrupt the Russian State is, and this has tarnished Putin's great reputation. Putin has turned Russia into a totalitarian state that is constantly limiting the freedoms of his people. His carefully curated state media has been able to influence the people and show a very different reality to what is occurring outside the borders of Russia. State force has also been a very useful tool for Putin as he is able to squash any opposition to him and to his war further creating the imagine that his war is justified within Russia. However, a post-war Russia could show the people how delusional Putin really is as they will have to bear the brunt of the damages. The economic sanctions that will be continually put against Russia while also being cut off from international trade and facing political isolation the country could be put into

¹²⁰ Lawrence J. Trautman, and Maia McFarlin. "Putin, Russia And Ukraine: International Human Rights Violations, War Crimes, & Future Implications," (War Crimes, & Future Implications, 2023).

economic decline.¹²¹ The West has also sent the message that Russia will face crushing reparations if Ukraine is victorious.¹²²

Russia's military has proven to be unsuccessful and suffering on the battlefield, the combination of unprepared soldiers, low morale, and old equipment has exploited the weakness of the army. The result of the military loss and the rising death toll of Russian soldiers, Putin called for a mobilization and that is where the people have started to turn against Putin for the first time since this war started. More than a million people have fled to escape the mobilization, and the mobilized soldiers that are rushed to the front-lines are only contributing to the rising death toll creating a decreasing population that will be felt in the work force. The mobilization prompted the most significant decline in Putin's approval ratings since the start of the full-scale invasion of Ukraine with the ratings dropping 6 percentage points in one month, the support of the special military operation also dropped 4 percentage points in one month.¹²³ The messaging around the mobilization and the decreasing living standards of the Russian people has failed to bolster support. Russia is also facing a brain drain as most of the people who have fled Russia are the young and educated of the Russian population. The percentage of the population who are against Putin are typically younger and educated as they do not fall victim to Putin's state control. The decline of educated population will be a hindrance for the advancement of the Russian workforce and could play a role in the economic downfall of the country.

One can look at what happened to President Milosevic of Serbia when he was put on trial for genocide and crimes against humanity in Bosnia and crimes against humanity in Kosovo and Croatia.¹²⁴ The trial and tribunal was a success in the way that Milosevic was no longer a respected figure in Serbia.¹²⁵ In 1999, before Milosevic ran for re-election he was indicted as a war criminal which made him unfavorable as a leader.¹²⁶ He lost the election, but only

¹²¹ Anastasia Edel, "Russia's Survival Depends on Ukrainian Victory." *Foreign Policy*, June 2, 2023. <https://foreignpolicy.com/2023/03/10/russia-ukraine-putin-war-future/>.

¹²² Max Bergmann, "What Could Come Next? Assessing the Putin Regime's Stability and Western Policy Options," January 24, 2023. <https://www.csis.org/analysis/what-could-come-next-assessing-putin-regimes-stability-and-western-policy-options>.

¹²³ Ivan Fomin, "Putin Against the Clock." *CEPA*, February 22, 2023. <https://cepa.org/article/vladimir-putin-against-the-clock/>.

¹²⁴ Gary J. Bass, "Milosevic in the Hague." (*Foreign Affairs*, 2003).

¹²⁵ Bass, "Milosevic in the Hague." 2003.

¹²⁶ "Timeline: The Political Career Of Slobodan Milosevic." *RadioFreeEurope/RadioLiberty*, February 2, 2012. <https://www.rferl.org/a/1066641.html>.

conceded when mass demonstrations erupted calling for him to step down. When he stood trial in 2003, his courtroom theatrics and his constant claims that the killings in Srebrenica were faked by French intelligence, he remained extremely unfavorable among Serbians.¹²⁷ Although Milosevic still had his conspiracy supporters within Serbia, the younger and more educated generation consistently showed their dislike for the past president as 66 percent of the population found him unfavorable.¹²⁸ Milosevic was only to be remembered as a “man who lost an election, tried to rig the results, was overthrown in a popular revolution, and finally was arrested and deported by his successors.”¹²⁹

Putin could follow the path of Milosevic if there is a Ukrainian victory. The image of Putin is already at risk as he sacrifices his people for his war and is leading the country into economic turmoil. The political isolation and genocide charge will damage Putin’s credibility as a leader beyond repair. Putin could try to spin his enormous loss when it occurs, but he will not be able to avoid the suffering of his people when the effects of his war finally take shape in Russia. The future of Russia and Putin are entirely dependent on the outcome of the war, but what is known is that Putin and his regime are extremely vulnerable and there could be an end to Putin. An end to Putin does not mean an end to Putinism as it is most likely that his following successors will share his ideals, but there is a chance that Putin will be seen as the delusional war criminal he is.

The influence of the international community on a genocide prosecution

The international community has been very vocal about calling for Putin to be investigated for genocide and war crimes. The international community has a large influence on whether Putin will face charges. Its influence can already be seen with the ICC investigation into Russia’s war crimes as the process of launching the investigation has been fast tracked as 41 states have called for an investigation. When the crimes within Ukraine first came to light many leaders and international organizations made it very clear that genocide is being committed within Ukraine.

¹²⁷ Gary J. Bass, “Milosevic in the Hague.” (*Foreign Affairs*, 2003).

¹²⁸ Bass, “Milosevic in the Hague.” 2003.

¹²⁹ Ibid,93.

Ukrainian President Zelensky has accused Russia of genocide, along with President Biden of the United States and Ukraine's Foreign Minister, who labelled the attacks in Bucha as 'deliberate'.¹³⁰ Following President Biden's genocide claims, the governments of Estonia, Latvia, Lithuania, and the Czech Republic all declared that the mass killing of Ukrainian civilians is to be considered acts of genocide. Canadian Prime Minister Justin Trudeau supported President Biden's claim. Canadian lawmakers were called to vote "unanimously to call Russia's invasion of Ukraine as genocide, arguing that 'ample evidence of systemic and massive war crimes against humanity' were being committed by Russia. The motion which the Canadian lawmakers voted said that 'war crimes by Russia include mass atrocities, systematic instances of wilful killing of Ukrainian civilians, the desecration of corpses, forcible transfer of Ukrainian children, torture, physical harm, mental harm, and rape'".¹³¹ The discourse was also used to spur action eventually causing the ICC to issue arrest warrants for President Putin and Maria Lvova-Belova, the Children's Rights Commissioner for the President of Russia.¹³² In order to keep Putin accountable the International community will keep having to push for Putin to be put on trial for genocide. Since these institutions are heavily influenced by the will of the people, it is crucial for the calls and claims to keep being published.

¹³⁰ "Germany's Scholz vows response over Bucha deaths", DW, (2022), <https://www.dw.com/en/ukraine-germanys-scholz-vows-response-over-bucha-deaths-as-it-happened/a-61343522>

¹³¹ Shpend Kursani, "Beyond Putin's Analogies: The Genocide Debate on Ukraine and the Balkan Analogy Worth Noting", (Journal of Genocide Research, 2022).6.

¹³² "Situation in Ukraine: ICC Judges Issue Arrest Warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova," International Criminal Court, <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>.

Conclusion

The evidence presented in this paper proves that there is genocide within Ukraine, all the civilian targeted atrocities and rising death tolls cannot be denied or ignored. The international community is working to build a case against Russia, but it will be the true test of the international justice system. If Putin is not brought to justice, the belief and trust within the international system will be forever diminished and the rhetoric of powerful countries being immune to justice will be proven to be true. If Putin can be brought to justice either by the ICJ, the ICC, or by universal jurisdiction and charged with war crimes, Russia will be facing a regime change which could change the country forever. However, the outcome of this war is unknown, but it will be a major moment in history.

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