

An Independent Legal Analysis of the Russian Federation's Breaches of the Genocide Convention in Ukraine and the Duty to Prevent

MAY 2022

Executive Summary

This report comprises an independent inquiry into whether the Russian Federation bears State responsibility for breaches of the Genocide Convention in its invasion of Ukraine and concludes there are:

- 1) reasonable grounds to believe Russia is responsible for (i) direct and public incitement to commit genocide, and (ii) a pattern of atrocities from which an inference of intent to destroy the Ukrainian national group in part can be drawn; and
- 2) the existence of a serious risk of genocide in Ukraine, triggering the legal obligation of all States to prevent genocide.

- I. The Protected Group.** The Ukrainian national group is recognized domestically, internationally, and expressly by Russia in formal interstate relations and is thus protected under the Genocide Convention.
- II. Incitement to Genocide.** Under Art. III (c) of the Genocide Convention, direct and public incitement to commit genocide is a distinct crime whether or not genocide follows.
- III. Russia's State-orchestrated Incitement to Genocide.**

- a) **Denial of the Existence of a Ukrainian Identity.** High level Russian officials and State media commentators repeatedly and publicly deny the existence of a distinct Ukrainian identity, implying that those who self-identify as Ukrainian threaten the unity of Russia or are Nazis, and are therefore deserving of punishment. Denial of the existence of protected groups is a specific indicator of genocide under the United Nations guide to assessing the risk of mass atrocities.
- b) **Accusation in a Mirror.** "Accusation in a mirror" is a powerful, historically recurring form of incitement to genocide. A perpetrator accuses the targeted group of planning, or having committed, atrocities like those the speaker envisions against them, framing the putative victims as an existential threat makes violence against them appear defensive and necessary. Russian President Vladimir Putin and Russian officials did exactly this, making the utterly false claim that Ukraine had committed genocide or exterminated the civilian population in Russian-backed separatist-controlled areas, as their pretext for invading Ukraine.
- c) **"Denazification" and Dehumanization.** Russian officials and State media repeatedly invoke "denazification" as one of the main goals of the invasion and have broadly described Ukrainians as subhuman ("zombified," "bestial," or "subordinate"), diseased or contaminated ("scum," "filth," "disorder") or existential threats and the epitome of evil ("Nazism," "Hitler youth," "Third Reich"). This rhetoric is used to portray a substantial segment or an entire generation of Ukrainians as Nazis and mortal enemies, rendering them legitimate or necessary targets for destruction.
- d) **Construction of Ukrainians as an Existential Threat.** In the Russian context, the State-orchestrated incitement campaign overtly links the current invasion to the Soviet Union's existential battles with Nazi Germany in World War II, amplifying the propaganda's impact on the Russian public to commit or condone mass atrocities. On April 5, 2022, Dmitry Medvedev, current Deputy Chair of the Russian Security Council, posted: "having transformed itself into the Third Reich ... Ukraine will suffer the same fate ... what it deserves! These tasks cannot be completed instantaneously. And they will not only be decided on battlefields." The day before the widely celebrated Victory Day, marking the Soviet victory over Nazi Germany, President Putin sent a Telegram to Russian-backed separatists claiming Russians are fighting "for the liberation of their native land from Nazi filth," vowing that "victory will be ours, like in 1945." The Russian Orthodox Church has publicly reinforced this historical parallel and praised Russia's fight against Nazis.
- e) **Conditioning the Russian Audience to Commit or Condone Atrocities.** The Russian Federation authorities have denied atrocities committed by its forces and rewarded

soldiers suspected of mass killing in Ukraine, enabling soldiers to commit, and the Russian public to condone, further atrocities. These authorities are able to directly incite the public by funnelling and amplifying their propaganda through a controlled media landscape and extreme censorship around the war. The purveyors of incitement propaganda are all highly influential political, religious, and State-run media figures, including President Putin. There is mounting evidence that Russian soldiers have internalized and are responding to the State propaganda campaign by echoing its content while committing atrocities. Reported statements by soldiers include: threats to rape “every Nazi whore,” “hunting Nazis,” “we will liberate you from Nazis,” “we’re here to cleanse you from the dirt” (following a public execution), among others.

IV. Genocidal Intent. What distinguishes genocide from other international crimes is the “intent to destroy, in whole or in part, [a protected group], as such.” This intent can be attributed to a State through evidence of a general plan (derived from official statements, documents, or policy) or can be inferred from a systematic pattern of atrocities targeting the protected group. The five genocidal acts — killing, causing serious harm, deliberately inflicting physically destructive conditions of life, imposing birth prevention measures, and forcibly transferring children to another group — can also point towards genocidal intent when viewed in their totality.

a) **A Genocidal Plan.** A “general plan” to destroy the Ukrainian national group in part may be demonstrated by the incitement to genocide driving the current invasion or by the striking patterns or methods of atrocities suggesting military policy.

V. Genocidal Pattern of Destruction Targeting Ukrainians.

a) **Mass Killings.** Investigations have determined that Russian forces have rounded up Ukrainian civilians for mass executions across occupied territory, marked by a pattern of common killing methods — hands tied, tortured, and shot in the head at close range. The well-documented Bucha massacre may indicate consistent tactics employed by Russian forces across currently inaccessible occupied areas. The number of mass graves in Russian controlled areas are rapidly expanding, as documented by investigators and satellite imagery, though the full extent of the killing will not be known until access to sites controlled by Russian forces is secure.

b) **Deliberate Attacks on Shelters, Evacuation Routes, and Humanitarian Corridors.** Russian forces are systematically attacking shelters and evacuation routes with precision, indicating military policy, killing and trapping civilians in besieged or conflict areas.

c) **Indiscriminate Bombardment of Residential Areas.** Russian forces have extensively used inherently indiscriminate weapons with wide-area effect, or cluster munitions, targeting densely populated areas in at least eight of Ukraine’s oblasts (provinces).

d) **Russian Military Sieges: Deliberate and Systematic Infliction of Life-Threatening Conditions.** While bombarding Ukrainians in besieged areas from within and without, Russian forces have simultaneously and deliberately inflicted life-threatening conditions on them.

i. **Destruction of Vital Infrastructure.** Russian forces follow a similar pattern in besieging Ukrainian cities, first striking water, power, and communication sources, and further targeting medical facilities, grain warehouses, and aid distribution centers, suggesting a military strategy and policy of deliberately inflicting fatal conditions on Ukrainians. These coordinated actions by the Russian military to deprive Ukrainians of basic necessities and trap them under these destructive conditions tend to demonstrate that the sieges are calculated to bring about their physical destruction.

ii. **Attacks on Health Care.** As of May 25, the World Health Organization has documented 248 attacks on Ukraine’s health care system.

iii. **Destruction and Seizure of Necessities, Humanitarian Aid, and Grain.** Russian forces have destroyed and seized vast stores of grain, including

expropriating hundreds of thousands of tons to Russia, and repeatedly blocked or seized humanitarian aid or workers seeking to evacuate civilians, using starvation as a weapon of war.

iv. **Other Sites of Life-Threatening Conditions.** Russian forces have held Ukrainian civilians at other sites where they are deprived of basic necessities, at times leading to more immediate deaths by suffocation or starvation.

e) **Rape and Sexual Violence.** Reports of sexual violence and rape in Russian-occupied areas of Ukraine suggest a widespread and systematic pattern, including gang rape, rape in homes or shelters, rape of parents in front of children and vice versa.

f) **Forcible Transfer of Ukrainians.** Russia has reported the relocation of over one million people from Ukraine to Russia since the invasion began, including over 180,000 children. Refugees and officials have reported being transferred by force or threat of force. According to Ukrainian officials, Russian legislation is being reformed to expedite the adoption of children from the Donbas, while Ukrainian children forcibly sent to Russia are forced to take Russian classes. The forcible transfer of Ukrainian children to Russia is a genocidal act under Art. II(e) of the Genocide Convention.

VI. **Intent to Destroy the Ukrainian National Group in Part.** The intent to destroy a group “in part” has been understood to require the targeting of a substantial or prominent part of the group. To assess this threshold, however, the scale of atrocities targeting Ukrainians must be reviewed relative to Russia’s area of activity or control. Russian forces have left a trail of concentrated physical destruction upon retreat from occupied areas, including mass close-range executions, torture, destruction of vital infrastructure, and rape and sexual violence. The selective targeting of Ukrainian leaders or activists for enforced disappearance or murder is further evidence of intent to destroy the Ukrainian national group in part, as those figures are emblematic of the group or essential to the group’s survival.

VII. **The Duty to Prevent Genocide.** States have a legal obligation to prevent genocide beyond their borders once they become aware of the serious risk of genocide — a threshold that this report clearly establishes has been met, of which States cannot now deny knowledge. The Genocide Convention imposes a minimum legal obligation on States to take reasonable action to contribute toward preventing genocide and protecting vulnerable Ukrainian civilians from the imminent risk of genocide.

This report has been produced with the contributions of, and upon consultation with, numerous independent experts, including the following:

Yonah Diamond (Principal Author)

Prof. John Packer (Principal Advisor)

Erin Farrell Rosenberg (Principal Advisor)

Prof. Susan Benesch

Rayhan Asat

Adejoké Babington-Ashaye

Christopher Atwood

Santiago A. Canton

Hon. Irwin Cotler

Prof. David Crane

Dato Param Cumaraswamy

Amb. Kelley Currie

Prof. Tanya L. Domi

Dr. Tatyana Eatwell

Mark Ellis

Zoe Gladstone

Prof. Max Hilaire

Mofidul Hoque

Prof. Steven T. Katz

Prof. Hiroaki Kuromiya

Prof. Errol Mendes

Prof. Norman M. Naimark

Dr. Melanie O'Brien

Dr. Ewelina U. Ochab

Prof. Maxim Pensky

Emily Prey

Amb. Allan Rock

Dean Michael Scharf

Amb. David J. Scheffer

Prof. Marci Shore

Dr. David Simon

Prof. Timothy Snyder

Dr. Gregory H. Stanton

Chief Charles Taku

Dr. György Tatár

Robert Tyler

Table of Contents

Foreword by Dr. Azeem Ibrahim	6
Introduction	7
Methodology	7
State Responsibility Legal Framework	8
1. The Genocide Convention	8
2. Prevention: The Genocide Convention’s Central Purpose	9
3. Attributing State Responsibility	10
Brief Historical Background	11
The Protected National Group	11
I. Direct and Public Incitement to Commit Genocide	12
Applicable Law	12
Invasion Pretext: “Accusation in a Mirror” and the Construction of a Ukrainian Existential Threat	15
“Denazification” and Dehumanization	16
Conditioning of the Russian Audience to Commit and Condone Atrocities	18
II. Evidence of Genocidal Intent	20
Applicable Law	21
A General Plan	22
Inference of Genocidal Intent From a Pattern of Destruction Targeting Ukrainians	22
Mass Killing	22
Bucha	23
Other Sites of Mass Killing	24
Deliberate Attacks on Shelters, Evacuation Routes, and Humanitarian Corridors	25
Indiscriminate Bombardment of Residential Areas	27
Russian Military Sieges: Deliberate and Systematic Infliction of Life-Threatening Conditions	28
Destruction of Vital Infrastructure	29
Attacks on Health Care	30
Destruction and Seizure of Necessities, Humanitarian Aid, and Grain	30
Other Sites of Life-Threatening Conditions	31
Rape and Sexual Violence	31
Forcible Transfer	34
Destruction of Cultural and Sacred Sites	35
Intent to Destroy In Part	35
Attribution of Genocidal Intent	36
III. The Duty to Prevent Genocide	37
The Imminent Risk of Genocide	37
The Nature of the Duty to Prevent	38
Conclusion	39
Afterword by the Hon. Irwin Cotler	40
Appendix	41
Acknowledgements	47

Foreword by Dr. Azeem Ibrahim

This report is the first to address one of the more contentious and consequential questions of Russia's invasion of Ukraine: whether the war is genocidal in character. With fighting still ongoing, modern tools have made it vital that this question be examined and its truth made known.

With the word genocide so commonly used — and similarly disputed — allowing for a looseness of definition is unhelpful. A clear reckoning of the facts using the opportunities of modern methods of investigation together with legal analysis pursuant to applicable law is essential.

This is a project of the New Lines Institute and the Raoul Wallenberg Centre for Human Rights, which assembled three teams of experts to assess the subject. This included a team of legal scholars and genocide experts, a second group of open-source intelligence investigators, and linguists who were able to make use of the extensive primary source record this war has already created — of communications intercepts and testimonials.

The New Lines Institute and Raoul Wallenberg Centre have done extensive work on the Rohingya and Uyghur genocides — including producing the first report to make a determination of genocide in Xinjiang applying the 1948 Genocide Convention.

This report reasonably concludes that Russia bears State responsibility for breaches of Article II and Article III (c) of the Genocide Convention to which it is bound. The report also concludes that there exists undoubtedly a very serious risk of genocide, triggering States' duty to prevent under Article I of the Genocide Convention.

This is the first report of its kind, but not the final word on the subject. We hope more will follow.

Dr Azeem Ibrahim
Director, Special Initiatives
New Lines Institute for Strategy and Policy
Washington, D.C.

Introduction

This report is an independent inquiry into the Russian Federation’s breaches of the Convention on the Prevention and Punishment of the Crime of Genocide,¹ regarding its invasion of Ukraine, produced in urgent response to the ongoing atrocities. The Genocide Convention imposes legal obligations on all State Parties, including Russia, to take action to prevent genocide as soon as a serious risk arises or halt it as it unfolds. The duty to prevent is a stand-alone legal obligation and, as is evident in the Convention’s name, is triggered *before* a genocide occurs. The report reasonably concludes that Russia is responsible for direct and public incitement to commit genocide and a pattern of atrocities from which an intent to destroy the Ukrainian national group in part can be inferred. The report further definitively concludes that there exists a serious risk of genocide, triggering the duty to prevent.

The Nuremberg Tribunal historically declared in 1947 that “crimes against international law are committed by [individuals], not abstract entities.”² This report is intended to reinforce parallel criminal processes underway internationally, aimed at identifying and holding individual perpetrators accountable for all core crimes, including genocide, crimes against humanity, war crimes, and aggression. The atrocities compiled and analysis conducted herein should be used to advance these criminal investigations and prosecutions. However, this report is meant to put States – the primary actors in interstate relations – on notice about their current and binding legal obligations under the Genocide Convention to ensure they are in full compliance.

Methodology

This report is largely based on verified open source material and should be read in the context of a rapidly evolving situation on the ground. When the only source of an allegation is an official one, the body of the text will explicitly say so. The report applies the Genocide Convention as the primary source of law, applicable to the instant case and as interpreted by the Vienna Convention on the Law of Treaties (to which Russia is also bound), i.e. “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose,”³ and in light of the relevant international jurisprudence, customary international law, State practice, and scholarly work. The report is organized into three main sections— incitement to commit genocide, evidence of genocidal intent, and the duty to prevent genocide.

In genocide cases, the International Court of Justice (ICJ) has applied a higher standard of proof than a balance of probabilities given the exceptional gravity of the charges.⁴ This report, however, applies a “reasonable grounds to believe” standard to the questions of State breaches of the Genocide Convention due to the non-judicial nature of the inquiry amid an ongoing war and at this early stage in the overall investigative process.⁵ The report applies a second “conclusive” or “fully convincing” standard to

¹ Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277 [herein after *Genocide Convention*].

² IMT, judgment of 1 October 1946, in *The Trial of German Major War Criminals. Proceedings of the International Military Tribunal sitting at Nuremberg, Germany, Part 22 (22nd August, 1946 to 1st October, 1946)*, at p. 55.

³ Vienna Convention on the Law of Treaties, 23 May 1969, (VCLT), Vienna Convention on the Law of Treaties. (1969).

⁴ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, I.C.J. Reports 2007, para. 209. The court held that it must be “fully convinced” that the crime or Art. III acts have been committed.

⁵ The Independent International Fact-Finding Mission on Myanmar described this standard as being, with respect to findings of fact, “met when a sufficient and reliable body of primary information, consistent with other information, would allow an ordinarily prudent person to reasonably conclude that an incident or pattern of conduct occurred.” Report of the independent international fact-finding mission on Myanmar, Human Rights Council, Thirty-ninth session, 10–28 September 2018, Agenda item 4, A/HRC/39/64, para. 6.

demonstrate that the threshold of the existence of a serious risk of genocide has been met, triggering the duty of all States to prevent it.

State Responsibility Legal Framework

1. The Genocide Convention

The crime of genocide under international law is codified in the Genocide Convention, a treaty which the Soviet Union (now Russian Federation) ratified in 1954.⁶ Russia's obligations under the Genocide Convention are *erga omnes*, or owed to the international community as a whole, which stems from the *jus cogens* status of the prohibition of genocide.⁷ The Genocide Convention provides for criminal liability of individuals for genocide and related acts, while States can be held responsible for such acts under a distinct, though at times overlapping, legal framework.⁸ Importantly, the standard of proof for breaches of a treaty under international law is lower than that required for criminal proceedings.⁹ State responsibility for breaches of international law follows from international wrongful acts attributed to the State or, in the case of genocide, wrongful conduct of exceptional gravity that is attributable to the State. This report does not contemplate individual criminal liability but rather the question whether Russia bears *State* responsibility for breaches of the Genocide Convention, a legally binding agreement on all 152 State parties.

Article I of the Genocide Convention imposes duties on State parties regarding genocide which “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.”¹⁰

Article II defines genocide as follows:

Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

⁶ *The Convention on the Prevention and Punishment of the Crime of Genocide* (Genocide Convention) was adopted by unanimous vote, U.N. General Assembly resolution 260 (III) of 9 December 1948, https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.I_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf. There are currently 152 States parties, “Status of Treaties: Convention on the Prevention and Punishment of the Crime of Genocide,” *United Nations Treaty Collection* https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4&clang=en#33.

⁷ Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections, Judgment, I. C. J. Reports 1996, p. 595, at para. 31; see also Report of the International Law Commission on the work of its 53rd session (2001) at 112-113, Report of the International Law Commission on the work of its fifty-third session (23 April–1 June and 2 July–10 August 2001). (n.d.) at 112-113, https://legal.un.org/ilc/documentation/english/reports/a_56_10.pdf.

⁸ *Bosnia v. Serbia*, at paras. 167-169, 174. The ICJ bases its conclusion that States may be found to be responsible for genocide and related Art. III acts from the explicit wording of Art. IX of the Genocide Convention, which provides for the distinct “responsibility of a State for genocide or for any of the other acts enumerated in article III.” See also P. Gaeta, “On What Conditions Can a State Be Held Responsible for Genocide?” *European Journal of International Law*, 2007, at 643 (“For the international responsibility of the State to arise, however, there would be no need to demonstrate that the State as such – or one or more of its officials – harboured a genocidal intent in the criminal sense. This is a requirement that only pertains to the criminal liability of individuals.”)

⁹ On the standard of proof in respect of the Genocide Convention, see, amongst others: Stephen Wilkinson, “Standards of Proof in International Humanitarian and Human Rights Fact-Finding and Inquiry Missions”, the Geneva Academy of International Humanitarian Law and Human Rights, at 20, <https://www.geneva-academy.ch/joomlatools-files/docman-files/Standards%20of%20Proof%20in%20Fact-Finding.pdf>.

¹⁰ Genocide Convention Art. I.

- (b) *Causing serious bodily or mental harm to members of the group;*
- (c) *Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
- (d) *Imposing measures intended to prevent births within the group;*
- (e) *Forcibly transferring children of the group to another group.*

There are three constituent elements under Art. II of the Genocide Convention: (1) the commission of any of the genocidal acts committed against (2) a protected group (3) with the intent to destroy the group in whole or in part. Article III lists the punishable acts, including: “(a) genocide; conspiracy to commit genocide; direct and public incitement to commit genocide, attempt to commit genocide, and complicity in genocide.”¹¹

2. Prevention: The Genocide Convention’s Central Purpose

Prevention is the primary purpose of the Genocide Convention, as implied by the operative term in its title — the Convention on the Prevention and Punishment of the Crime of Genocide — and the same express legal duty under Article I. The ICJ has clearly established when the duty to prevent is triggered:

A State’s obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed.¹²

The obligation to prevent genocide is not limited to a State’s own territory but extends to wherever it “may be able to act in ways appropriate.”¹³ The Vienna Convention on the Law of Treaties (VCLT), or the “treaty on treaties,” to which Russia is also a party, sets the parameters for treaty interpretation. Article 31 provides:

A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.¹⁴

Treaties are interpreted with reference to their preambles and related agreements.¹⁵ The Convention’s preamble references the U.N. General Assembly Resolution which mandated its drafting and affirmed the crime of genocide under international law as:

A denial of the *right of existence* of entire human groups ... [which] results in great losses to humanity in the form of cultural and other contributions represented by these human groups and is contrary to moral law and to the spirit and aims of the United Nations.¹⁶

¹¹ Genocide Convention Art. IX; *Bosnia v. Serbia*, at paras. 167-169.

¹² *Bosnia v. Serbia* Para. 431.

¹³ *Id.*, para. 183.

¹⁴ VCLT Art. 31(1).

¹⁵ VCLT, at Art. 31 (2)(a). In terms of “context,” see also Raphael Lemkin’s *Axis Rule in Occupied Europe*, for the origin of the term “genocide” and precursor to the Genocide Convention. Lemkin defined genocide to “not necessarily mean the immediate destruction of a nation ... rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objective of such a plan would be disintegration of the political and social institutions of culture, language, national feelings, religion, and the economic existence of national groups and the destruction of the personal security, liberty, health, dignity and even the lives of the individuals belonging to such groups.” Raphael Lemkin, *Axis Rule in Occupied Europe* (Washington, D.C., 1944), at 79.

¹⁶ U.N. General Assembly, *The Crime of Genocide*, 11 December 1946, A/RES/96, <https://www.refworld.org/docid/3b00f09753.html>.

The object and purpose of the Genocide Convention are expressly stated in both the Convention’s title and Article I: to bind the Contracting Parties to prevent and punish genocide. According to the ICJ, the object of the Convention “is to safeguard the very existence of certain human groups.”¹⁷ This ideal provides “the foundation and measure of all its provisions.”¹⁸ This report should be read in light of this primary purpose of preventing genocide before destruction in whole or in part and safeguarding the protected group.¹⁹

3. Attributing State Responsibility

The International Law Commission’s (ILC) 2001 *Articles on Responsibility of States for Internationally Wrongful Acts* reflect the rules of customary international law, as per the ICJ, for attributing wrongful conduct to a State.²⁰ Pursuant to the Articles on State Responsibility, wrongful acts will be attributed to the State when they are perpetrated by a person or entity who is: (1) a State organ under State law (*de jure*) or that acts in “complete dependence” on the State (*de facto*);²¹ (2) empowered by State law to exercise elements of governmental authority;²² or (3) acting on the instructions, or under direction or “effective control” of State organs, as per settled jurisprudence.²³ The acts of persons or entities exercising governmental authority are even attributable to the State when they exceed their authority or instructions.²⁴ The conduct of the Russian armed forces and officials, as State organs,²⁵ and persons or entities acting under their effective control, including State-owned media operators and officials or entities controlled by the Russian government within the self-proclaimed “republics,” are attributable to

¹⁷ Advisory Opinion on the Genocide Convention, *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, I.C.J. Reports 1951, at p. 12.

¹⁸ *Ibid.*

¹⁹ Under Article 31(3) of the VCLT, treaty terms are to be further interpreted in light of subsequent (a) agreements and (b) practice regarding interpretation and application of the treaty and “(c) any relevant rules of international law applicable in the relations between the parties. VCLT, at Art. 31(2-3). Moreover, Article 31(4) provides: “[A] special meaning shall be given to a term if it is established that the parties so intended.” Under Article 32, supplementary means of interpretation, including the “preparatory work of the treaty,” may be used to confirm the meaning of treaty terms or “to determine the meaning when the interpretation according to article 31 [either]: (a) leaves the meaning ambiguous or obscure or (b) leads to a result which is manifestly absurd or unreasonable.”

²⁰ The ILC was established by the United Nations General Assembly (UNGA) in 1947 to undertake its mandate under Article 13(1)(a) of the Charter of the United Nations to “initiate studies and make recommendations for the purpose of [...] encouraging the progressive development of international law and its codification”; accordingly, its views, as adopted by the UNGA, are authoritative. *See also Bosnia v. Serbia*, at para. 149, 401.

²¹ *Responsibility of States for Internationally Wrongful Acts*, 2001, Article 4, *Conduct of organs of a State*, provides:

“1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.

2. An organ includes any person or entity which has that status in accordance with the internal law of the State.” https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf; *see ICJ Bosnia para. 392 and Nicaragua para. 109.*

²² *Ibid.* Article 5, *Conduct of persons or entities exercising elements of governmental authority*, provides:

“The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.”

²³ *Ibid.* Article 8: “The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of that State in carrying out the conduct.” *See Bosnia v Serbia*, paras. 396-407.

²⁴ *Ibid.* Article 7 provides: “The conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person, or entity acts in that capacity, even if it exceeds its authority or contravenes instructions.”

²⁵ *See Rule 149, International Committee of the Red Cross (ICRC), Customary International Humanitarian Law*, 2005, Volume I: Rules, at 530-531.

Russia.²⁶ This report considers whether the persons or entities perpetrating incitement to commit genocide under Art. III(c) or genocide under Art. II are attributable to Russia.²⁷

Brief Historical Background

In December 1991, Ukraine achieved full independence (with 92 percent of Ukrainians voting in favor) and international recognition as a sovereign State, though a unique Ukrainian national identity long preceded official independence. In June 1996, the Ukrainian parliament ratified a new constitution, recognizing Ukrainian as the State language, among many other indications of nationhood. In April 2021, Russia sent more than 100,000 troops to Ukrainian border areas — the largest build-up since 2014. On Feb. 21, 2022, the Kremlin formally recognized the regions of Luhansk and Donetsk as independent republics. On Feb. 23, 2022, Russian President Vladimir Putin ordered Russian forces to invade Ukraine, which they did the following day.²⁸

The Protected National Group

The jurisprudence has defined a protected group by its positive characteristics, i.e. the group “as such.”²⁹ ³⁰ The Ukrainian people share an internationally recognized nationality and a common identity. In fact, according to recent studies, the vast majority of Ukrainians self-identify as Ukrainian, including those who speak Russian and live in predominantly Russian-speaking areas.³¹ Russia itself has consistently recognized a distinct Ukrainian national identity in international and bilateral relations. In fact, in an agreement with Ukraine, Russia explicitly recognizes the existence of a Ukrainian national minority in Russia and a Russian national minority in Ukraine, and therefore a Ukrainian majority, as follows:

“Parties guarantee free and equal-rights development of the Russian [Rossian] national minority in Ukraine and Ukrainian national minority in the Russian Federation.

The Parties will create favorable conditions with the view of preserving their national originality, culture, language, realization of spiritual and religious needs.”³²

Ukrainians are defined as a national group domestically and internationally, and thus constitute a protected group under the Genocide Convention. Furthermore, Ukrainians have repeatedly been acknowledged as such by Russia itself in formal State relations with Ukraine.

²⁶ The OSCE noted that Russia is responsible for the conduct of “officials instated and/or controlled by the government of the Russian Federation within the self-proclaimed ‘republics’ of Luhansk and Donetsk.” Benede, W., Bílková, V., & Sassòli, M. (2022). Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes against Humanity. Organization for Security and Co-operation in Europe (OSCE), at p. 89 [hereinafter OSCE Report].

²⁷ For a similar analysis, see *Bosnia v. Serbia*, at paras. 384-415.

²⁸ <https://www.pbs.org/newshour/world/a-historical-timeline-of-post-independence-ukraine>

²⁹ *Bosnia v. Serbia*, paras. 193-195 (“The intent must also relate to the group ‘as such’. That means that the crime requires an intent to destroy a collection of people who have a particular group identity. It is a matter of who those people are, not who they are not.”) For an interpretation by the ICTR, see also Prosecutor v. Akayesu, Case No. ICTR-96-4-T. Judgment (2 September 1998), para. 512.

³⁰ ICTR, The Prosecutor v. Akayesu, Case No. ICTR-96-4-T. Judgment (2 September 1998), para. 512.

³¹ Michael Bilewicz. (2022, March 7). Even Russian-speaking Ukrainians don’t want to be evacuated to Russia or Belarus, <https://www.washingtonpost.com/politics/2022/03/07/ukraine-russian-speakers/>

³² Bilateral agreement between the Government of the Russian Federation and the Government of Ukraine on Collaboration in the Fields of Culture, Science and Education <https://docs.cntd.ru/document/902056509> ; Russia has further recognized a “Ukrainian society” before the Human Rights Council. See Thematic list of UPR recommendations to Ukraine (2nd cycle)

I. Direct and Public Incitement to Commit Genocide

This section will: (1) lay out the legal and empirical elements for “direct and public incitement to commit genocide;” and (2) apply these factors to the present situation by analyzing Russian State or State-controlled propaganda leading up to the invasion of Ukraine.

Applicable Law

The Genocide Convention provides for the distinct punishable or internationally wrongful act of “direct and public incitement to commit genocide” under Art. III (c). Although the ICJ has yet to consider the issue of State responsibility for breach of Art. III (c), international criminal law and scholarly works on well-documented historical trajectories of genocide provide guidance for determining State responsibility. According to the international criminal jurisprudence, direct and public incitement to commit genocide is a crime in and of itself under the Genocide Convention, irrespective of whether or not genocide or genocidal acts follow (as opposed to instigation).³³ A finding of incitement rather depends on “the *potential* of the communication to cause genocide.”³⁴ In the individual criminal context, the four elements of the crime include: (1) public, (2) direct, (3) incitement (encouragement or provocation to commit genocide), and (4) the intent to destroy, in whole or in part, the protected group, as such.³⁵ This section will apply the first three elements, as the following section will examine the question of attributing genocidal intent to the State based on either an official statement of a general plan or an inference of intent from a pattern of atrocities.

The public element considers whether the incitement is directed at the general public, including through media.³⁶ The direct element considers whether the audience immediately understood the implication of the message, which is principally determined by its meaning in context, including the environment at the time and the cultural nuances.³⁷ The incitement need not be explicit to be direct, particularly during heightened unrest, war, or an already “explosive situation.”³⁸ Common hallmarks of incitement to commit genocide include dehumanization, accusing the targeted victims of plotting or committing atrocities (“accusation in a mirror”), and condoning or congratulating violence, among others.³⁹ Other factors to consider include the speaker’s influence, the audience’s susceptibility to commit genocide, the historical

³³ Akayesu, para. 562; *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze (Appeal Judgment)*, Case No. ICTR-99-52-A, International Criminal Tribunal for Rwanda (ICTR), 28 November 2007, para. 678; *Mugesera v. Canada* (Minister of Citizenship and Immigration), [2005] 2 S.C.R. 100, 2005 SCC 40, para. 85.

³⁴ *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze (Media Case)*, Judgement and Sentence, Case No. ICTR-99-52-T (3 December 2003), para. 1015.

³⁵ Akayesu 556-560. See also, Gregory Gordon, *Atrocity, Speech Law: Foundation, Fragmentation, Fruition*, Oxford University Press, Oxford, 2017, at p. 185, describing the content of the elements: (“(1) “direct” (whether the persons for whom the message was intended immediately grasped the implication thereof—from this one can deduce that the message can be implicit); (2) “public” (a call for criminal action to a number of individuals in a public place or to members of the general public via mass media); (3) incitement (illegal urging to commit genocide parsed by reference to purpose and context); and (4) *mens rea* (the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, as such).”

³⁶ Akayesu, para. 556. The International Law Commission defined the public incitement element as “communicating the call for criminal action to a number of individuals in a public place or to members of the general public at large. Thus, an individual may communicate the call for criminal action in person in a public place or by technical means of mass communication, such as by radio or television.”, Draft Code of Crimes Against the Peace and Security of Mankind, art. 2(3)(f); Report of the International Law Commission to the General Assembly, 51 U.N. ORGA Supp. (No. 10), at 26, U.N. Doc. A/51/10(1996).

³⁷ *Nahimana (Media Case) Appeal Judgment* at paras. 698-701; *ICTR Bikindi TC Judgment Para 387*.

³⁸ *Nahimana*, para. 1004; *Prosecutor v. Bikindi*, Case No. ICTR-01-72-A. Judgment (18 March 2010), para 387.

³⁹ Susan Benesch, “Vile Crime or Inalienable Right: Defining Incitement to Genocide,” (2008) 48:3 *Virginia Journal of International Law*, at 503-506. See also Gordon, *Atrocity, Speech Law*, at p. 284 (adding “euphemisms and metaphors; justification during contemporaneous violence... and victim-sympathizer conflation.”)

and social context of the messages, whether the targeted group suffered recent violence, availability of alternative sources of information, and whether the audience was conditioned by the repetition of incitement.⁴⁰

Laying the Groundwork for Incitement to Genocide: Denying the Existence of the Ukrainian Group

Even as they signed treaties acknowledging Ukrainian nationality internationally, Russian officials and State media commentators have long denied the legitimacy of a distinct Ukrainian identity to the Russian public. As early as April 2016, then-Prime Minister and current Deputy Chairman of the Russian Security Council Dmitry Medvedev denied the existence of a legitimate Ukrainian State.⁴¹ On Feb. 26, 2020, former Assistant to President Putin, Vladislav Surkov, widely believed to be the architect behind Putinism and Russia’s Ukraine policy,⁴² stated that “there is no Ukraine. There is Ukrainian-ness. That is, a specific disorder of the mind ... there is no nation.”⁴³

High-level Russian officials have repeatedly denied the existence of Ukrainian language, culture, and national identity, implying instead that those who identify as distinctly Ukrainian threaten the “unity” of Russians and Ukrainians.⁴⁴ The Russian Institute for Strategic Studies (RISS), a Russian government think tank that informs policy “in the area of national security,”⁴⁵ has a long history of denying the right of Ukraine to exist. In 2014, after the seizure of territories in Crimea and Donbas, the center published a

⁴⁰ See *Id.*, at 498; See also “Dangerous Speech: A Practical Guide,” the Dangerous Speech Project, 2021, at 10-24; UN Rabat Plan of Action, addendum to the Annual report of the United Nations High Commissioner for Human Rights, A/HRC/22/17/Add.4, 11 January 2013, para. 29.

⁴¹ *Russian Prime Minister: Ukraine Has “No Industry, or State.”* (n.d.). Retrieved May 26, 2022, from <https://www.themoscowtimes.com/2016/04/05/russian-prime-minister-ukraine-has-no-industry-or-state-a52385>

⁴² For Surkov as the “Architect of Putinism,” see: Pomerantsev, P. (2014, November 7). *The Hidden Author of Putinism*. The Atlantic. <https://www.theatlantic.com/international/archive/2014/11/hidden-author-putinism-russia-vladislav-surkov/382489/>, For his role in Ukraine policy, see:

“There is no Ukraine”: Fact-Checking the Kremlin’s Version of Ukrainian History. (2020, July 1). *LSE International History*. <https://blogs.lse.ac.uk/lseih/2020/07/01/there-is-no-ukraine-fact-checking-the-kremlins-version-of-ukrainian-history/>, *Ex-rebel leaders detail role played by Putin aide in east Ukraine*. Reuters. from <https://www.reuters.com/article/us-ukraine-crisis-russia-surkov-insight/ex-rebel-leaders-detail-role-played-by-putin-aide-in-east-ukraine-idUSKBN1870TJ>

⁴³ Сурков: Мне интересно действовать против реальности. (n.d.). Актуальные комментарии. Retrieved May 20, 2022, from <http://actualcomment.ru/surkov-mne-interesno-deystvovat-protiv-realnosti-2002260855.html>

⁴⁴ On Oct. 8, 2018, Deputy Chairman of the State Duma Pyotr Tolstoy declared on the first episode of his talk show on Russian State television Channel One, “Tolstoy. Sunday,” that the Ukrainian language was “artificial” and largely not spoken in Ukraine,” *Толстой. Воскресенье. Выпуск от 07.10.2018*. (n.d.). Retrieved May 26, 2022, from <https://www.1tv.ru/shows/tolstoy-voskresene/vypuski/tolstoy-voskresene-vypusk-ot-07-10-2018>. In a March 2019 article published by the State media website RT Russian, then-Deputy Chairman of the Russian State Duma Committee on Culture Vladimir Bortko argued that Ukrainians “talk about their own language, their own culture... [and that] Ukraine wants to position itself as a separate nation. They're trying to highlight some kind of difference, but it doesn't exist.” The article cited a language professor insisting that the “Ukrainian literary language... is very artificial, «Расколоть братские народы»: В Москве ответили на слова Климкина об «украинском происхождении» России и Белоруссии. (n.d.). RT на русском. <https://russian.rt.com/ussr/article/607001-rossiya-belorussiya-proishozhdenie-ukraina-klimkin>. In January 2022, during a plenary session of the Russian parliament, Member of the Russian State Duma Committee on Education Anatoly Vasserman argued that the Ukrainian language does not exist and that “Ukrainians are an inalienable part of the Russian people.” Вассерман заявил, что украинский народ «сочинили» националисты—Газета.Ru | Новости. (n.d.). Газета.Ru. Retrieved May 20, 2022, from <https://www.gazeta.ru/social/news/2022/01/25/17192923.shtml>. He described Ukrainian as a “dialect” of Russian, comparing it to Russian criminal slang. Рустем Адагамов [@adagamov]. (2022, January 25). ru Депутат Государственной Думы РФ Анатолий Вассерман назвал украинский язык диалектом русского и сравнил его словарь с блатной феней: “Она тоже мало кому понятна, но это же не повод считать уголовников отдельным народом”. Офигеть. <https://t.co/vIcZ3JpXtY> [Tweet]. Twitter. <https://twitter.com/adagamov/status/1486054196373864452>

⁴⁵ About us. (n.d.). en.riss.ru. Retrieved May 20, 2022, from <http://en.riss.ru/about-us/>

collection of essays titled, “Ukraine is Russia,” which was “dedicated to the unity of the Russian world” and describes “Ukrainian-ness” as “a peculiar South Russian regional Westernism.”⁴⁶ In March 2016, RISS analyst Oleg Nemensky argued that “the majority of the Ukrainian public have nothing to do with that [Ukrainian] culture.”⁴⁷ In February 2020, Putin repeated the notion that the peoples of Ukraine and Russia are “one people,” and suggested that the Orthodox Church of Ukraine, which had been granted autocephaly in 2018, destroyed “the unity of the Russian Orthodox Church.”⁴⁸

In July 2021, Putin published an essay titled, “On the Historical Unity of Russians and Ukrainians,” in which he re-asserts that Ukrainians and Russians are “one people, a single whole.”⁴⁹ In the essay, Putin argues that “modern Ukraine is entirely the product of the Soviet era” and that “true sovereignty of Ukraine is possible only in partnership with Russia.”⁵⁰ He further suggested that when the Ukrainian government rejects the idea that Russians and Ukrainians are the same people, they are indulging neo-Nazis and Nazism.⁵¹

On Feb. 21, 2022, three days before the start of the full-scale invasion, Putin gave a speech insisting that “modern Ukraine was entirely created by Russia or, to be more precise, by Bolshevik, Communist Russia” and that Russia was “ready to show what real decommunization would mean for Ukraine.”⁵² In his speech announcing the invasion of Ukraine, Putin urged Ukrainians to reject their elected officials to strengthen Ukraine and Russia “from within as a single whole, despite the existence of state borders.”⁵³ On April 5, 2022, Security Council Deputy Chairman Dmitry Medvedev posted on Telegram the following: “Ukrainian-ness, which is fueled by anti-Russian poison and is consumed by the lie concerning its own identity, — this is all one big fake. This phenomenon has never existed in history. And it does not exist now.”⁵⁴

The official Russian propaganda denying the existence of a Ukrainian national group implicitly designates those who consider themselves distinctly Ukrainian as deserving of punishment, either by threatening the unity of Russia, and thus guilty of treason, which Putin declared to be “the gravest crime possible,”⁵⁵ or by indulging Nazism, as suggested in Putin’s essay. It should be noted that the denial of

⁴⁶ Книга «Украина—Это Россия». (n.d.). Retrieved May 20, 2022, from <https://www.livelib.ru/book/1001469412-ukraina-eto-rossiya-mihail-smolin>

⁴⁷ Борцы за украинский язык оказывают «мове» медвежью услугу. (n.d.). РИСИ. Retrieved May 20, 2022, from <http://riss.ru/article/9462/>

⁴⁸ *Vladimir Putin on Ukraine*. (n.d.). Retrieved May 26, 2022, from <https://putin.tass.ru/en/ob-ukraine/>, Notably, the Head of the Russian Orthodox Church, Patriarch Kirill of Moscow, has further emphasized that Russians and Ukrainians “emerged from a common Kyiv Baptismal font, are united by Orthodox faith and bound by a common historical destiny.” *Святейший Патриарх Кирилл: У народов России и Украины нет и не может быть заинтересованности в конфликте / Новости / Патриархия.ru*. (n.d.). Патриархия.ru. Retrieved May 26, 2022, from <http://www.patriarchia.ru/db/text/5926180.html>

⁴⁹ Putin added that his position is “not driven by some short-term considerations or prompted by the current political context.” Article by Vladimir Putin “On the Historical Unity of Russians and Ukrainians.” President of Russia. Retrieved May 20, 2022, <http://en.kremlin.ru/events/president/news/66181>

⁵⁰ Ibid

⁵¹ Ibid

⁵² *Address by the President of the Russian Federation*. (n.d.). President of Russia. Retrieved May 20, 2022, from <http://en.kremlin.ru/events/president/news/67828>

⁵³ *Address by the President of the Russian Federation • President of Russia*. (n.d.). Retrieved May 20, 2022, from <http://en.kremlin.ru/events/president/news/67843>

⁵⁴ Dmitry Medvedev, Telegram: Contact @medvedev_telegram. (n.d.). Retrieved May 20, 2022, from https://t.me/medvedev_telegram/34

⁵⁵ Troianovski, A. (2022, April 17). Atrocities in Ukraine War Have Deep Roots in Russian Military. *The New York Times*. <https://www.nytimes.com/2022/04/17/world/europe/ukraine-war-russia-atrocities.html>

the existence of protected groups or elements of their identity is an indicator of the specific risk of genocide under the UN Framework of Analysis for Atrocity Crimes.⁵⁶

Invasion Pretext: “Accusation in a Mirror” and the Construction of a Ukrainian Existential Threat

The term “accusation in a mirror” characterizes one of the most common and powerful hallmarks of incitement that accuses the targeted group of the same or other atrocities the speaker intends to inflict on them.⁵⁷ The framing of a targeted group as an existential threat renders violence against them to appear defensive and necessary.⁵⁸ The official Russian pretext for its invasion resembles some of the most extreme recurring forms of accusation in a mirror, including perpetrator statements during the Holocaust and preceding the Srebrenica massacre.⁵⁹ On Feb. 8, 2022, Putin addressed Ukraine’s hesitancy to fulfill the Minsk Peace Agreements during a major Russian troop buildup with the loaded phrase, “like it or not, take it, my beauty,” a reference to a vulgar Russian rhyme about necrophiliac rape, implying an intention to inflict similar destruction on Ukraine and a view of Ukraine as a corpse.⁶⁰ On Feb. 15, 2022, President Putin delivered an address in which he accused Ukraine of genocide in the Donbas,⁶¹ a baseless allegation he has repeated for years, which has been echoed by senior Russian officials and State media. On Feb. 17, 2022, Russia’s Permanent Mission to the UN circulated a document to the UN Security Council accusing Ukraine of “exterminating the civilian population” in areas controlled by Russian-backed separatist groups.⁶² Russian State media has extensively reported on Russians fleeing persecution by the Ukrainian government—a long-repeated charge that served as a pretext for Russia’s annexation of Crimea in 2014.⁶³ On Feb. 21, 2022, in another national address three days before the invasion, Putin repeated claims that Ukraine is an illegitimate invention and that the Ukrainians are amassing troops, shelling the Russian-backed separatist held areas, and torturing Russians held there.⁶⁴ On Feb. 26, after the start of the invasion, an essay published on a Kremlin-controlled platform, later removed, praised Putin for “deciding not to leave the *solution of the Ukrainian question* to future generations.”⁶⁵

⁵⁶ See United Nations. “Framework of Analysis for Atrocity Crimes: a tool for prevention.” *United Nations Office on Genocide Prevention and the Responsibility to Protect* (2014), Indicator 9.2.

⁵⁷ See *Dangerous Speech: A Practical Guide*. (2021). Dangerous Speech Project, at 15-16.

⁵⁸ Id. 16.

⁵⁹ Id. (citing statements by Nazi SS Reichsführer Heinrich Himmler telling senior officers in 1943 “we had the moral right ... to wipe out [the Jewish people] bent on wiping us out” and General Ratko Mladić, known as the “Butcher of Bosnia,” found responsible for the Srebrenica massacre of more than 8,000 Bosnian Muslim men and boys in 1995 claiming that Muslims, Germans, and Croats were planning for “the complete annihilation of the Serbian people.”)

⁶⁰ For the comment, see *Пресс-конференция по итогам российско-французских переговоров*. (n.d.). Президент России. Retrieved May 26, 2022, from <http://kremlin.ru/events/president/news/67735> For background on the reference to a rhyme, see: *«Терпи, моя красавица» Все решили, что Путин слушает «Красную плесень». На самом деле президент цитировал частушки (но все равно матерные)*.

⁶¹ *News conference following Russian-German talks • President of Russia*. (n.d.). Retrieved May 26, 2022, from <http://en.kremlin.ru/events/president/news/67774>

⁶² *Biden to host call with Nato allies as invasion fears grow – as it happened | Ukraine | The Guardian*. (n.d.). Retrieved May 26, 2022, from <https://www.theguardian.com/world/live/2022/feb/17/russia-ukraine-news-troops-border-latest-live-putin-biden-kyiv-russian-invasion-threat?page=with:block-620e7dc98f0866a40a9d7c6c#block-620e7dc98f0866a40a9d7c6c>

⁶³ Max Fisher, (2022, February 19) Putin’s Baseless claims of Genocide Hint at more than War. *The New York Times*. <https://www.nytimes.com/2022/02/19/world/europe/putin-ukraine-genocide.html>

⁶⁴ Max Fisher, (2022, February 23) Word by Word and Between Lines: A close look at Putin’s Speech. *The New York Times*. <https://www.nytimes.com/2022/02/23/world/europe/putin-speech-russia-ukraine.html>

⁶⁵ *Наступление России и нового мира—РИА Новости*, 26.02.2022. (n.d.). Retrieved May 20, 2022, from <https://web.archive.org/web/20220226051154/https://ria.ru/20220226/rossiya-1775162336.html>

“Denazification” and Dehumanization

In the lead-up to the invasion, Russian officials repeatedly invoked “Nazi” terminology to refer to the Ukrainian leadership, and “denazification” as one of the goals of invasion.⁶⁶ However, this rhetoric has continually expanded in scope, suggesting that a substantial segment, or the majority of the population are Nazis, terminology used to cast Ukrainians as posing an existential threat to Russians. On March 31, 2022, State Duma Deputy Chairman Pyotr Tolstoy wrote that the situation with Nazism in Ukraine “is even worse than we thought” and that “the Ukrainian youth were made into Hitler Youth.”⁶⁷ On March 26, 2022, Margarita Simonyan, the editor-in-chief of the RT news network, and head of the media group managing Sputnik and RIA Novosti, offered similar comments on a national broadcast, stating, “I also thought there weren’t that many ... it can’t be that our people, who fought Nazism with us, that suddenly so many of them became [Nazis]. But alas ...”⁶⁸

As the invasion continues, high-level officials, and State-run media commentators are painting Ukrainians more broadly in dehumanizing terms to justify atrocities. On March 17, 2022, Tolstoy appeared on Channel One and argued that Russia had “lost at least one generation of Ukrainians. The youth have been zombified.”⁶⁹ On March 26, 2022, the influential propagandist Margarita Simonyan asserted, “it’s no accident we call them Nazis ... What makes you a Nazi is your bestial nature, your bestial hatred and your bestial willingness to tear out the eyes of children on the basis of nationality,” adding that “a significant part of Ukraine, of the Ukrainian people, turned out to be in the grip of a Nazi frenzy.”⁷⁰

Increasingly, such propaganda is being used to justify atrocities beyond the battlefield. The Ukrainian civilian population and elites are being described to Russians as their mortal enemies, some of whom must be “liquidated.” In an April 3 RIA Novosti editorial entitled “What Russia should do with Ukraine,” author Timofey Sergeytsev refers to Ukrainians in the following terms: “a considerable portion of the population — very likely, a majority of it — has been subjected to the Nazi regime and dragged into its agenda ...” one that is “a bigger threat ... than German Nazism in the style of Hitler;” a “significant part of the masses ... are passive Nazis and accomplices;” “a nazified bulk of the population;” and “a Nazi society.” In addition, he asserts that Ukraine’s elites “must be liquidated as re-education is impossible;” “denazification will inevitably include de-ukrainization;” and “Ukrainism is ... a subordinate element of a different and alien civilization.”⁷¹ In his April 5 Telegram post, Medvedev uses fictitious rhetoric, though vivid and detailed, which tends to make it more believable, to justify violence against an entire generation of Ukrainians he describes as Nazis: “For the past 30 years, a passionate segment of Ukrainians has prayed for the Third Reich. Literally. Nazi symbolism that provokes disgust can be found on photos from practically every military unit in Ukraine taken by our army — there are banners, literature, posters. Even

⁶⁶ Troianovski, A. (2022, March 17). Why Vladimir Putin Invokes Nazis to Justify His Invasion of Ukraine. The New York Times. <https://www.nytimes.com/2022/03/17/world/europe/ukraine-putin-nazis.html>;

Putin says he will ‘denazify’ Ukraine. Here’s the history behind that claim. (n.d.). Washington Post. Retrieved May 20, 2022, from <https://www.washingtonpost.com/world/2022/02/24/putin-denazify-ukraine/>

⁶⁷ Pyotr Tolstoy Telegram: Contact @petr_tolstoy. (n.d.). Retrieved May 20, 2022, from https://t.me/petr_tolstoy/1300

⁶⁸ *Своя правда / Выпуски программы / Новый мировой порядок?* (n.d.). Retrieved May 26, 2022, from <https://www.ntv.ru/peredacha/SvoyaPravda/m78960/o693638/video/>

⁶⁹ Pyotr Tolstoy Telegram: Contact @petr_tolstoy. (n.d.). Retrieved May 20, 2022, from https://t.me/petr_tolstoy/1286

⁷⁰ For the full episode: *Своя правда / Выпуски программы / Новый мировой порядок?* (n.d.). Retrieved May 26, 2022, from <https://www.ntv.ru/peredacha/SvoyaPravda/m78960/o693638/video/>, For the clip: НТВ [@ntvru]. (2022, March 26).

«Значительная часть Украины оказалась охвачена этим безумием нацизма». Маргарита Симоньян рассказала об украинских нацистах, которых на деле оказалось так много, что никто не мог себе даже представить <https://t.co/VC0GRQ1lwk> [Tweet]. НТВ [@ntvru], Twitter. «Значительная часть Украины оказалась охвачена этим безумием нацизма». Маргарита Симоньян рассказала об украинских нацистах, которых на деле оказалось так много, что никто не мог себе даже представить <https://twitter.com/ntvru/status/1507605586447327234>

⁷¹ Что Россия должна сделать с Украиной. РИА Новости. <https://ria.ru/20220403/ukraina-1781469605.html>

cups with swastikas! ... It's no wonder that, having transformed itself into the Third Reich, and having written into its history textbooks the names of traitors and Nazi henchmen, Ukraine will suffer the same fate. This kind of Ukraine gets what it deserves!... These difficult tasks cannot be completed instantaneously. And they will not only be decided on battlefields.⁷² [emphasis added]

On April 8, 2022, the host of *Rossia-1*'s flagship talk show, Vladimir Solovyov, stated that "there won't be any Ukraine after [Zelenskyy]."⁷³ Solovyov has been a vocal supporter of the invasion and has regularly engaged in extreme rhetoric. On March 29, he declared on his talk show a "patriotic consensus" in Russia that "Nazi scum" must be "finished off."⁷⁴ On April 21, Solovyov shared on Telegram a clip from an interview with a Russian state media reporter claiming that "the youth there [in Ukraine] have been zombified." On May 21, 2022, Solovyov shared (and subsequently deleted) a Telegram post from the popular Russian Telegram channel "Kremlin laundress," stating that "Ukraine is a Nazi tumor," similar to "brain cancer," and that Russians "are liberating part of Russia."⁷⁵

On May 5, 2022, Russian political scientist and MGIMO University Professor Elena Ponomareva argued on *Rossia-1* that "Ukraine is a place where this revival [of a global Nazi project] starts ... as antisemitism against Russians, against everything connected to Russia."⁷⁶ This definition reflects the vague Nazi movement perceived to be anti-Russian by the Kremlin. On May 8, 2022, a day before Victory Day, known as the most important and widely celebrated national holiday in Russia, marking the Soviet victory over Nazi Germany in World War II, which is also known in Russia as the "Great Fatherland War,"⁷⁷ Putin sent a telegram to Russian-backed separatists in eastern Ukraine asserting that Russians were "fighting shoulder to shoulder for the liberation of their native land from Nazi filth" and vowed that "victory will be ours, like in 1945."⁷⁸

Religious authorities have reinforced the narrative praising the invasion with innuendo and spiritual meaning. On March 13, the Head of the Russian Orthodox Church, Patriarch Kirill of Moscow, gifted an

⁷² Dmitry Medvedev Telegram: Contact @medvedev_telegram. https://t.me/medvedev_telegram/34

⁷³ *Вечер с Владимиром Соловьевым. Политика на хрустальном шаре и предсказания Жириновского. Эфир от 08.04.2022 // Смотрим.* (n.d.). Retrieved May 22, 2022, <https://smotrim.ru/video/2399418>, For the clip: Francis Scarr [@francis_scarr], Twitter, *Last night Russian state TV got as close as I've seen it get to that horrifying article published by RIA Novosti I've added some subtitles (I hope you'll excuse my rushed job) The first man speaking is a pro-Kremlin former Ukrainian MP. The second is presenter Vladimir Solovyov,* <https://twitter.com/franciska1/status/1512348114254020609>

⁷⁴ *Вечер с Владимиром Соловьевым. Переговоры в Турции. Эфир от 29.03.2022. // Смотрим.* (n.d.). Retrieved May 26, 2022, from <https://smotrim.ru/video/2396405>, For the clip: Julia Davis [@JuliaDavisNews]. (2022, April 9). *Meanwhile on Russian state TV: along with losing his Italian villas to sanctions, state TV host Vladimir Solovyov seems to have lost his mind. This messaging—Portraying Ukrainians as "satanic Nazis" and claiming Zelensky is not a Jew—Is commonplace on Kremlin-controlled state TV,* <https://twitter.com/JuliaDavisNews/status/1512834235937267716>

⁷⁵ For a screenshot:

Anton Barbashin [@ABarbashin], Twitter, *Russia's chief propagandist Vladimir Soloviev shares a message that helps clarify what is already obvious. Russia is waging war to occupy Ukraine and eliminate Ukrainian statehood, "liberating it from German, Anglo-Saxon and Jewish colonizers",* <https://twitter.com/abarbashin/status/152839928954243586>, Original link from Solovyov's account (now deleted/not working): Vladimir Solovyov Telegram: Contact @SolovievLive. <https://t.me/SolovievLive/108219>

⁷⁶ *Вечер с Владимиром Соловьевым. "Отечественная война" с Западом. Эфир от 05.05.2022 // Смотрим.* (n.d.). Retrieved May 26, 2022, from <https://smotrim.ru/video/2408041>, For the clip: Julia Davis [@JuliaDavisNews], Twitter, *After Lavrov's hideous antisemitic Nazi remarks, for which Putin had to apologize to Israel, new directives apparently landed at the state TV studios. Now they claim that Nazism doesn't have to be antisemitic and in its new iteration it is [drumroll] anti-Slavic and anti-Russian.,* <https://twitter.com/JuliaDavisNews/status/1522403876040855554>

⁷⁷ *History repeats 'endlessly' in Ukraine, as specter of WWII looms | Cornell Chronicle.* (n.d.). Retrieved May 20, 2022 <https://news.cornell.edu/media-relations/tip-sheets/history-repeats-endlessly-ukraine-specter-wwii-looms>

⁷⁸ *Поздравления лидерам и гражданам иностранных государств по случаю 77-й годовщины Победы в Великой Отечественной войне • Президент России.* (n.d.). Retrieved May 26, 2022, from <http://kremlin.ru/events/president/news/68363>

Orthodox icon to Gen. and Director of the Russian National Guard Viktor Zolotov in order to “inspire young soldiers” who are “on the path to defending the Fatherland.”⁷⁹ General Zolotov accepted the icon, saying it would “protect the Russian army and speed up our victory” over “Nazis.”⁸⁰ On March 15, 2022, Aleksandr Shchipkov, First Deputy Chairman of the Russian Orthodox Church’s Synodal Department of the Moscow Patriarchate for relations with Society and the Media, spoke at a theological conference, arguing that Ukraine was the “brightest example” of “Nazism” adding:

His Holiness the Patriarch Kirill maintains a close connection with the people of God... especially noticeable during days of trials. This includes now, when Russia is fighting the most inhuman ideology in history - Nazism.⁸¹

Within the cultural and national context of Russian history, these references to World War II overtly link the current invasion with the Soviet Union’s existential war with Nazi Germany — amplifying the propaganda’s impact on its audience by injecting it with a potent element of Russian identity, imposing a personal duty on the soldiers and potential conscripts.⁸²

This incitement echoes other historically recurring catalysts of genocide, including justifying the violence on the basis of virtue and future goods, or a personal and national duty to liberate and unite Russians and Ukrainians.⁸³

The propaganda messages are collectively laden with terms that have been found to have incited other genocides,⁸⁴ describing Ukrainians or Ukrainian-ness as subhuman (“zombified,” “bestial nature,” “subordinate element of a different and alien civilization”), diseased or contaminated (“disorder of the mind,” “fed by anti-Russian poison,” “liberate their homeland from Nazi filth”), and as the epitome of evil and an existential threat (“a bigger threat than ... German Nazism,” “a global Nazi project,” “Hitler youth,” etc.).

Conditioning of the Russian Audience to Commit and Condone Atrocities

The Kremlin has repeatedly denied that its forces have committed atrocities, referring to them as “fakes,” thereby enabling soldiers to commit and the Russian public to condone further atrocities.⁸⁵ The Kremlin has even celebrated soldiers from the 64th Separate Guards Motor Rifle Brigade suspected of mass killing in Bucha. On April 18, Putin awarded the brigade an honorary title for “protecting Russia’s sovereignty,” praising the unit’s “great heroism and courage ... a role model in fulfilling its military duty, valor, dedication and professionalism.”⁸⁶ Russian soldiers of impressionable military age are further

⁷⁹ *Генерал армии Виктор Золотов принял из рук Святейшего Патриарха Московского и всея Руси Кирилла икону Августовской иконы Божией Матери для главного храма Росгвардии – Новости Росгвардии.* (n.d.). Retrieved May 20, 2022, from <https://web.archive.org/web/20220418063718/https://rosguard.gov.ru/News/Article/general-armii-viktor-zolotov-prinyal-iz-ruk-svyatejshego-patriarxa-moskovskogo-i-vseya-rusi-kirilla--ikonu--avgustovskoj-ikony-bozhiej-materi-dlya-gll>

⁸⁰ *Ibid.*

⁸¹ *Святейший Патриарх Кирилл. Концептуальное влияние на общественные процессы / Статьи / Патриархия.ru.* (n.d.). Retrieved May 26, 2022, from <http://www.patriarchia.ru/db/text/5908596.html>

⁸² Troianovski, A. (2022, March 17). Why Vladimir Putin Invokes Nazis to Justify His Invasion of Ukraine. *The New York Times*. <https://www.nytimes.com/2022/03/17/world/europe/ukraine-putin-nazis.html>

⁸³ Leader Maynard, Jonathan and Benesch, Susan “Dangerous Speech and Dangerous Ideology: An Integrated Model for Monitoring and Prevention,” (2016) 9:3 *Genocide Studies and Prevention: An International Journal*, at 84-86.

⁸⁴ *Id.*, at 80

⁸⁵ Dmitry Medvedev Telegram: Contact @medvedev_telegram. (n.d.). Retrieved May 20, 2022, from https://t.me/medvedev_telegram/34

⁸⁶ *Командованию и личному составу 64 отдельной гвардейской мотострелковой бригады • Президент России.* (n.d.). Retrieved May 20, 2022, from <http://www.kremlin.ru/events/president/letters/68234>

indoctrinated through the required reading of Putin’s essay on the “Unity of Russians and Ukrainians” and daily “informational television programs” (other than Sunday).⁸⁷

All of the purveyors of the propaganda messages encouraging violence against Ukrainians hold highly influential positions, including political leaders, religious figures, and journalists for State-run media with a near-monopoly on the dissemination of information on which the population depends.⁸⁸ Their incitement is all the more influential against the backdrop of unprecedented censorship measures imposed recently, on top of the already restrictive media environment. At the start of the invasion, Russia passed a law with new criminal penalties for the “dissemination of deliberately false information about” the armed forces, punishable by up to 15 years in prison; proposed another law to allow for bans on foreign media,⁸⁹ blocked major foreign news outlets and Facebook and Instagram (later, a Moscow court upheld the ban and the Russian-backed separatist held areas blocked access to the platforms);⁹⁰ and restricted access to Twitter.⁹¹ Other foreign media and independent news sources similarly shut down under the pressure.⁹² By controlling the media landscape, the State is more directly feeding its incitement propaganda to soldiers through the only remaining sources of information, including online platforms, such as the popular Telegram or VK. The heightened State control over the media also allows the Kremlin to indoctrinate the general public to tolerate, if not support, the invasion and its atrocities without popular domestic resistance.

In fact, there is evidence indicating that Russian soldiers are encouraged by social media users or relatives in Russia to perpetrate atrocities, because of vicious propaganda depicting Ukrainians, including civilians, as Nazis. According to an analysis of Russian users’ reactions to the news of mass killing in Bucha on nationalist Telegram channels, at least half of the sample urged the Russian army to be more violent, including comments like “death penalty for all the *khokhols* (a derogatory term for Ukrainians), there’s no place for them in this world, time to destroy this fucking race” and “we’ve got to kill these fuckers.”⁹³ In

⁸⁷ Troianovski, A. (2022, April 17). Atrocities in Ukraine War Have Deep Roots in Russian Military. *The New York Times*. <https://www.nytimes.com/2022/04/17/world/europe/ukraine-war-russia-atrocities.html>

⁸⁸ See Benesch and Maynard, *Dangerous Speech* at 77-79. There’s no indication that State media owners, hosts, or editors distanced themselves from any of the incitement propaganda. In fact, the RT news editor-in-chief and head of the media group managing Sputnik and RIA Novosti, Margarita Simonyan, herself explicitly suggested that a “significant part of the Ukrainian nation turned out to be in the grip of a Nazi frenzy,” which she defines as consisting of a “bestial nature.” See also *Nahimana* Trial Judgment, para. 1024.

⁸⁹ *Текст правового акта в ИПС «Законодательство России» • Официальный интернет-портал правовой информации.* (n.d.). Retrieved May 26, 2022, from <http://ips.pravo.gov.ru:8080/default.aspx?pn=0001202203040007>, Reuters. (2022, April 5). Russian draft law paves way for fast retaliation against foreign media. <https://www.reuters.com/business/media-telecom/russian-draft-law-paves-way-fast-retaliation-against-foreign-media-2022-04-05/>

⁹⁰ Reuters. (2022, May 11). Russian-backed separatist regions of east Ukraine block Facebook, Instagram. <https://www.reuters.com/legal/transactional/russian-backed-separatist-region-east-ukraine-blocks-facebook-instagram-2022-05-11/>

⁹¹ *Russia Takes Censorship to New Extremes, Stifling War Coverage—The New York Times.* (n.d.). Retrieved May 26, 2022, from <https://www.nytimes.com/2022/03/04/world/europe/russia-censorship-media-crackdown.html>
Russian law aimed at curbing Ukraine war criticism casts chill over critics. CBC. <https://www.cbc.ca/news/world/russia-laws-ukraine-invasion-war-critics-1.6382168>; Dan Milmo, (2022, March 4). Russia blocks access to Facebook and Twitter. *The Guardian*. <https://www.theguardian.com/world/2022/mar/04/russia-completely-blocks-access-to-facebook-and-twitter>; Elizabeth Culliford. (2022, February 26). Twitter says its site is being restricted in Russia. Reuters. <https://www.reuters.com/technology/twitter-says-its-site-is-being-restricted-russia-2022-02-26/>.

⁹² AP News. (2022, March 21). Russia court bans Facebook, Instagram on “extremism” charges. <https://apnews.com/article/russia-ukraine-technology-business-moscow-facebook-456db70cbe8e9bb639fca9fe2d793b10> ; Jillian Deutsch & Aaron Eglitis (2022, May 10) Putin’s Crackdown Pushes Independent Russian Media Into Crypto. Bloomberg UK. <https://www.bloomberg.com/news/articles/2022-05-10/putin-s-crackdown-pushes-independent-russian-media-into-crypto>
⁹³ Garner, Ian. “ ‘We’ve Got to Kill Them’: Responses to Bucha on Russian Social Media Groups.” (2022) *Journal of Genocide Research*, at 2-5.

one published recording of a phone conversation, a Russian soldier is told by a relative to “shoot the motherfuckers ... as long as it’s not you. Fuck them. Fucking drug addicts and Nazis.”⁹⁴

There is considerable evidence demonstrating that Russian soldiers have internalized State propaganda and either expressed genocidal intent or carried out atrocities in response to it, though a causal nexus is not required for a finding of incitement. A Ukrainian who managed to flee Mariupol told the New York Times that when she asked a Russian soldier at a checkpoint to direct her to Ukraine, he replied, “we will exterminate everyone there, go to Russia.”⁹⁵ According to the head of a UNICEF-supported hotline for victims, soldiers have explicitly threatened to rape “every Nazi whore.”⁹⁶ According to witnesses in Bucha, Russian forces went door to door, claiming they were “hunting Nazis,” and rounding up men of military age.⁹⁷ On one occasion, a crowd was assembled in a square to watch five men kneel with their heads covered. Following the execution of one of the men with a shot to the back of the head, a commander told the crowd “...this is dirt. We are here to cleanse you from the dirt.”⁹⁸ A Hostomel resident recalled a senior Russian officer telling an eight-year-old girl “we will liberate you from Nazis.”⁹⁹

Under the State responsibility legal framework, there are reasonable grounds to conclude that Russia’s escalating propaganda campaign cumulatively amounts to direct and public incitement to commit genocide against Ukrainians as a group in part. The direct causal nexus between this State-sanctioned incitement and atrocities only increases as the invasion continues. The conduct of the figures disseminating the incitement messages are attributable to the State as they are all either *de jure* or *de facto* State organs, including the head of State, key members of the State Duma, and heads of the security establishment, or State media outlets owned by or under the effective control of the Kremlin. As such, there are reasonable grounds to conclude that Russia bears State responsibility for breach of Art. III(c) of the Genocide Convention.

II. Evidence of Genocidal Intent

The following section will describe 1) the applicable law on how genocidal intent can be demonstrated by a general or concerted plan or inferred from a pattern of destructive campaigns targeting the Ukrainian national group and 2) lay out the evidence that may establish genocidal intent.

⁹⁴ Anne Applebaum. (2022, April 25). Ukraine and the Words That Lead to Mass Murder. The Atlantic.

<https://www.theatlantic.com/magazine/archive/2022/06/ukraine-mass-murder-hate-speech-soviet/629629/>

⁹⁵ Tavernise, S., Toeniskoetter, C., Novetsky, R., Chaturvedi, A., Feldman, N., Daniel, C., Baylen, L. O., Benoist, M., Powell, D., Bonja, R., Lozano, M., Ittoop, E., & Wood, C. (2022, May 18). The Battle for Azovstal: A Soldier’s Story. *The New York Times*. <https://www.nytimes.com/2022/05/18/podcasts/the-daily/the-battle-for-azovstal-a-soldiers-story.html> at 15:56-16:52.

⁹⁶ Tara John, Oleksandra Ochman & Sandi Sidhu. (2022, April 22). Russian troops use rape as 'an instrument of war' in Ukraine, rights groups allege. CNN. <https://www.cnn.com/2022/04/22/europe/ukraine-sexual-violence-allegations-russia-cmd-intl/index.html>

⁹⁷ Human Rights Watch. (2022, April 21). Ukraine: Russian Forces’ Trail of Death in Bucha.

<https://www.hrw.org/news/2022/04/21/ukraine-russian-forces-trail-death-bucha>; Oleksandr Stashevskiy & Nebi Qena. (2022, April 4) Ukraine accuses Russia of massacre, city strewn with bodies. AP News. <https://apnews.com/article/russia-ukraine-zelenskyy-kyiv-europe-evacuations-665fd06b92852547d7b27627b99509a6>; Amnesty He’s Not Coming Back, at 7.

⁹⁸ Human Rights Watch. (2022, April 3). Ukraine: Apparent War Crimes in Russia-Controlled Areas.

<https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas>;

⁹⁹ Brenna Smith & Masha Froliak. (2022, March 23) Russian Soldiers Took Their City, Then Their Homes. The New York Times. <https://www.nytimes.com/2022/03/20/world/europe/russian-soldiers-video-kyiv-invasion.html>

Applicable Law

What distinguishes genocide as a unique international crime is the “intent” to destroy a protected group in whole or in part. International courts recognize that an inquiry into the mind of perpetrators is a futile, if not impossible, exercise, in the absence of a confession.¹⁰⁰ Instead, courts and commissions look to other manifestations of intent, including a “general plan” or a systematic pattern of atrocities directed against a specific group from which to infer specific intent,¹⁰¹ or “actions which had a logical and coherent sequence.”¹⁰² A general plan can be evidenced by, among other things, official statements, directives, a policy and “the invariability of the killing methods applied.”¹⁰³

International jurisprudence and practice have also looked at the specific Art. II genocidal acts as illuminating the question of genocidal intent where, as the ICJ held, “the characterization of the acts and their mutual relationship can contribute to an inference of intent.”¹⁰⁴ The acts under Art. II are constitutive of genocide and, therefore, can point toward genocidal intent when viewed in their totality. While killing demonstrates the most immediate method of physical destruction, genocide can be committed by “any” of the other listed acts, which contribute toward a more incremental destruction of the group, in whole or in part, particularly when committed systematically.¹⁰⁵ The following sections should be considered particularly in light of the jurisprudence on genocide committed with intent to destroy the group “in part.” The ICJ has considered three factors drawn from the jurisprudence to interpret whether the part of a group targeted rises to the level of genocide based on an intent to destroy “in part.” The first is whether the targeted part is substantial or “significant enough to have an impact on the group as a whole.”¹⁰⁶ The second is the perpetrator’s domain of control: “it is widely accepted that genocide may be found to have been committed where the intent is to destroy the group within a geographically limited area ... [and therefore] the area of the perpetrator’s activity and control are to be considered ... [or] the opportunity available.”¹⁰⁷ The third is the “qualitative” criterion, or the targeted part’s “prominence within the

¹⁰⁰ ICTY, *Prosecutor v. Jelisić Appeals Judgment*; ICTR *Akayesu Trial Judgment* 523.

¹⁰¹ *Bosnia v. Serbia*, para. 373

¹⁰² “Guatemala: Memory of Silence,” *Commission for Historical Clarification*, February 1999, para. 120, describing the acts of genocide as “obeying a higher, strategically planned policy.” See also para. 111, “Considering the series of criminal acts and human rights violations which occurred in the regions and periods indicated and which were analysed for the purpose of determining whether they constituted the crime of genocide, the CEH concludes that the reiteration of destructive acts, directed systematically against groups of the Mayan population, within which can be mentioned the elimination of leaders and criminal acts against minors who could not possibly have been military targets, demonstrates that the only common denominator for all the victims was the fact that they belonged to a specific ethnic group and makes it evident that these acts were committed ‘with intent to destroy, in whole or in part’ these groups.” The pleadings of Bosnia and Herzegovina described the inference of State intent usefully: “an operational plan for the destruction of the group... can readily be ascertained by induction through a global analysis of the criminal actions taken by the state against the targeted group.” ICJ, *Bosnia v. Serbia*, Oral pleadings, 20 April 2006, CR/2006/34, para. 33. See also *Bosnia Judgment* 371. The notion of a State’s “intent” can be conceptually understood as attributing “fault” to a State. Beatrice I. Bonafè, *The Relationship Between State and Individual Responsibility for International Crimes*, at 123-24.

¹⁰³ *Prosecutor v Krstić (Judgment)* (International Criminal Tribunal for the former Yugoslavia, Trial Chamber, Case No IT-98-33-T, 2 August 2001) para. 572 (evidence showing the planning of genocide included “the number and nature of the forces involved, the standardised coded language used by the units in communicating information about the killings, the scale of the executions, the invariability of the killing methods applied, indicate that a decision was made to kill all the Bosnian Muslim military aged men.”)

¹⁰⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, para. 130.

¹⁰⁵ For a deeper discussion on the spectrum of non-killing genocidal violence too often overlooked in prosecutorial decisions, see *Global Justice Center*, *Beyond Killing: Gender, Genocide, and Obligations Under International Law*, Dec. 2018, available at <https://globaljusticecenter.net/files/Gender-and-Genocide-Whitepaper-FINAL.pdf>.

¹⁰⁶ *Bosnia v. Serbia*, at para. 198.

¹⁰⁷ *Id.* at 199.

group,”¹⁰⁸ including particularly the group’s leadership, or individuals emblematic of the group or essential to its survival.¹⁰⁹

A General Plan

The official or officially endorsed Russian statements quoted in the previous incitement section and taken as a whole may point toward a “general plan” to destroy the Ukrainian national group in part, thereby demonstrating genocidal intent. Russia’s highest-ranking officials and State media have denied the existence of a Ukrainian nation, expressed a vague goal of “denazifying” Ukraine, and characterized a significant undefined segment of the population (or “them”) as Nazis or mortal threats, rendering this group a legitimate target for destruction. Tolstoy and Medvedev, Deputy Chairs of the State Duma and Security Council, have both painted an entire generation of Ukrainians as Nazis (“the Ukrainian youth were made into Hitler Youth,” and “For the past 30 years, a passionate segment of Ukrainians has prayed for the Third Reich. Literally.”). The April 5 Telegram post by Medvedev well into the invasion is perhaps the most revealing statement of a long-term genocidal plan by a high-level official in a particular position of authority over the security establishment: “It’s no wonder that, having transformed itself into the Third Reich, and having written into its history textbooks the names of traitors and Nazi henchmen, Ukraine will suffer the same fate. This kind of Ukraine gets what it deserves!... These difficult tasks cannot be completed instantaneously. And they will not only be decided on battlefields.”¹¹⁰ Russian soldiers have also made reported statements which may point toward the existence of a higher plan (“we will exterminate everyone there [in Ukraine], go to Russia,” or “we are here to cleanse you from the dirt” following a public summary execution in Bucha).

Inference of Genocidal Intent From a Pattern of Destruction Targeting Ukrainians

Russian forces have carried out a pattern of consistent and pervasive atrocities against Ukrainian civilians collectively in the course of the invasion.

Mass Killing

Russian forces have rounded up Ukrainian civilians for mass summary executions across occupied locations in Ukraine, including in the Kyiv, Sumy, and Chernihiv oblasts (provinces), marked by common characteristic killing methods.¹¹¹ Throughout these areas, national and international investigators and analysts have documented rapidly expanding mass graves and a pattern of Ukrainian civilian corpses

¹⁰⁸ *Prosecutor v. Krstic*, Case No. ICTY-IT-98-33, Judgment, at paras. 12 and 587 (“If a specific part of the group is emblematic of the overall group, or is essential to its survival, that may support a finding that the part qualifies as substantial within the meaning of Article [II].”), and citing the Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992) “that an intent to destroy a specific part of a group, such as its political, administrative, intellectual or business leaders, ‘may be a strong indication of genocide regardless of the actual numbers killed.’”

¹⁰⁹ *Bosnia v. Serbia*, para. 200; *Prosecutor v. Zdravko Tolimir*, Appeals Judgment, 8 Apr. 2015, para. 263, https://www.icty.org/x/cases/tolimir/acjug/en/150408_judgement.pdf; see also *Croatia v. Serbia*, Separate Opinion of Judge Bhandari, at paras. 15-21.

¹¹⁰ https://t.me/medvedev_telegram/34

¹¹¹ International Partnership for Human Rights (IPHR) and Truth Hounds, Evidence of war crimes and violations of international humanitarian law committed by the Russian Federation during its campaign of military aggression against Ukraine [hereinafter Truth Hounds-IPHR Apr. 6-20 Report], at 2-3.

https://truth-hounds.org/wp-content/uploads/2022/05/analytical-report_-6-20-april-2022-1.pdf

found with hands tied, tortured, and shot at close range.¹¹² The full extent of the killings will not be known until investigators secure access to sites controlled by Russian forces.

Bucha

The documented massacres committed in Bucha may indicate a pattern under Russian occupied territories. After Russian forces retreated, national and international investigators documented widespread summary executions of residents killed at close range with hands bound and marked by torture.¹¹³ Observers consistently reported that civilian bodies were strewn throughout the city, including the body of a woman found in a cellar after she was raped and shot in the head and five tortured corpses, hands bound and crouching, in the cellar of a children's summer camp that was used as a base by Russian soldiers.¹¹⁴ The U.N. has documented hundreds of unlawful killings of civilians in Bucha, a city with a pre-war population of about 35,000, and other settlements north of Kyiv.¹¹⁵ According to the head of the municipal funeral home in Bucha, only two of the bodies his team buried in mass graves were Ukrainian servicemembers.¹¹⁶

According to a funeral worker, who collected about 200 bodies in Bucha:

Almost all were killed with a bullet shot from close distance, either in the head or in an eye... [including] approximately 50 bodies with tied hands... [with] signs of torture. Their hands and legs were shot through. Some of their skulls were broken with blunt objects.¹¹⁷

¹¹² Anthony Faiola, Michael Birnbaum & Mary Ilyushina (2022, April 24). In Mariupol echoes of history, utter devastation and a last stand. The Washington Post. <https://www.washingtonpost.com/world/2022/04/24/mariupol-ukraine-last-days/?variant=15bc93f5a1cbb65>;

Paulina Villegas (2022, April 21) New mass graves point to war crimes in Mariupol, Ukrainian officials say. The Washington Post. <https://www.washingtonpost.com/world/2022/04/21/new-mass-grave-manhush-near-mariupol/>;

Jack Watling. (2022, April 23) In Mariupol, Putin now rules a wasteland pitted with mass graves. The Guardian <https://www.theguardian.com/world/2022/apr/23/in-mariupol-putin-now-rules-a-wasteland-pitted-with-mass-graves>;

Human Rights watch. (2022, April 26). Urgently Help Ukraine Civilians Flee Mariupol.

<https://www.hrw.org/news/2022/04/26/urgently-help-ukraine-civilians-flee-mariupol>;

Nicole Werbeck & Dustin Jones. (2022, April 22) Another possible mass grave with as many as 9000 bodies is found near Mariupol. NPR. <https://www.npr.org/sections/pictureshow/2022/04/22/1094234731/possible-mass-graves-near-mariupol-shown-in-satellite-images>

¹¹³ Oleksandr Stashevskiy & Nebi Qena. (2022, April 4). Ukraine accuses Russia of massacre, city strewn with bodies. AP NEWS. <https://apnews.com/article/russia-ukraine-zelenskyy-kyiv-europe-evacuations-665fd06b92852547d7b27627b99509a6>;

Carlotta Gall. (2022, April 11). "They shot my son. I was next to him. It would be better if it had been me": Bucha's Month of Terror. The New York Times. <https://www.nytimes.com/interactive/2022/04/11/world/europe/bucha-terror.html?searchResultPosition=1>;

Malachy Browne, David Botti & Haley Willis. (2022, April 4). Satellite images show bodies lay in Bucha for weeks, despite Russian claims. The New York Times.

<https://www.nytimes.com/2022/04/04/world/europe/bucha-ukraine-bodies.html>; Reality Check & BBC Monitoring. (2022, April 11) BBC News. <https://www.bbc.com/news/60981238>. See also Amnesty He's Not Coming Back.

¹¹⁴ Carlotta Gall. (2022, April 11). "They shot my son. I was next to him. It would be better if it had been me": Bucha's Month of Terror. The New York Times. <https://www.nytimes.com/interactive/2022/04/11/world/europe/bucha-terror.html?searchResultPosition=1>;

France 24 (2022, April 21). Bucha: A street filled with bodies. <https://www.france24.com/en/live-news/20220421-bucha-a-street-filled-with-bodies>;

Sarah Rainsford (2022, May 16) Ukraine: The children's camp that became an execution ground. BBC News. <https://www.bbc.com/news/world-europe-61442387>

¹¹⁵ Office of the High Commissioner for Human Rights. (2022, May 10). Plight of civilians in Ukraine. <https://www.ohchr.org/en/press-briefing-notes/2022/05/plight-civilians-ukraine>

¹¹⁶ Human Rights Watch. (2022, April 21). Ukraine: Russian Forces' Trail of Death in Bucha. <https://www.hrw.org/news/2022/04/21/ukraine-russian-forces-trail-death-bucha>

¹¹⁷ Ibid.

Another funeral worker confirmed that those residents summarily killed were found with hands tied and marked by torture.¹¹⁸ Russian occupying forces went door to door rounding up men of military age for public summary executions.¹¹⁹ According to one witness, Russian soldiers carried out executions “simply for having a tattoo of Ukraine’s national emblem.”¹²⁰ On March 4, Russian soldiers forced around 40 residents to watch five men undress and kneel with shirts over their heads, followed by the shooting of at least one in the back of the head.¹²¹ A witness reported seeing a large pool of blood along the walls of what appeared to be used as a Russian headquarters nearby.¹²² These public executions would additionally constitute genocidal acts under Art. II(b) in inflicting serious harm against both the Ukrainians murdered and those forced to watch the execution or severe mistreatment of a relative.¹²³

In addition to close-range executions, investigators further documented a pattern of Russian forces shooting Bucha residents found outside or sheltering inside. An Amnesty International investigation found that Russian soldiers threw grenades into homes and shot at virtually any resident outside.¹²⁴ One soldier warned a resident that “we have orders to shoot [anyone out on the street].”¹²⁵ During this time, victim-activated explosive devices were placed on dead bodies, a tactic that maximizes killing by targeting residents collecting the bodies and hampers investigations by destroying evidence.¹²⁶

Other Sites of Mass Killing

Russian soldiers terrorized and summarily executed civilians in other areas under Russian occupation. On Feb. 27, in Staryi Bykiv, Russian forces rounded up at least six men, whose bodies were reportedly later found, some with severe signs of torture.¹²⁷ In Novyi Bykiv, on March 30, a day before Russian forces withdrew, Russian soldiers took 8 of 21 villagers held in a boiler room after saying they had an order to execute 8 detainees, several of whose bodies were reportedly found a day later, heads smashed.¹²⁸ Investigators have further identified executions of civilians in public in the Chernihiv region.¹²⁹ The deputy director of the Chernihiv regional morgue reported a large number of corpses arriving with shots

¹¹⁸ Ibid.

¹¹⁹ Mari Saito. (2022, May 5) Love letter, ID card point to Russian units that terrorised Bucha. Reuters. <https://www.reuters.com/investigates/special-report/ukraine-crisis-bucha-killings-soldiers/>

¹²⁰ Eliot Higgins (2022, May 6). Russia’s Bucha ‘Facts’ Versus the Evidence. Bellingcat. <https://www.bellingcat.com/news/2022/04/04/russias-bucha-facts-versus-the-evidence/>;

«Стреляли либо в затылок, либо в сердце». Рассказ свидетеля казней жителей Бучи в оккупации. (n.d.). Вот Так. Retrieved May 22, 2022, from <https://vot-tak.tv/novosti/03-04-2022-rasstrely-zhitelej-buchi/>

¹²¹ Human Rights Watch. (2022, April 3). Ukraine: Apparent War Crimes in Russia-Controlled Areas. <https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas>

¹²² Ibid.

¹²³ Kvočka et al. (IT-98-30/1), para. 149.

¹²⁴ Amnesty International. (2022, May 6). “He’s Not Coming Back.” War Crimes in Northwest Areas of Kyiv Oblast, at 7-9,16.

¹²⁵ Carlotta Gall. (2022, April 11). “They shot my son. I was next to him. It would be better if it had been me”: Bucha’s Month of Terror. The New York Times. <https://www.nytimes.com/interactive/2022/04/11/world/europe/bucha-terror.html?searchResultPosition=1>

¹²⁶ Human Rights Watch. (2022, April 21). Ukraine: Russian Forces’ Trail of Death in Bucha. <https://www.hrw.org/news/2022/04/21/ukraine-russian-forces-trail-death-bucha>

¹²⁷ Human Rights Watch. (2022, April 3). Ukraine: Apparent War Crimes in Russia-Controlled Areas.

<https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas>; Ukraine: Executions, Torture During Russian Occupation. (2022, May 18). *Human Rights Watch*. <https://www.hrw.org/news/2022/05/18/ukraine-executions-torture-during-russian-occupation>

¹²⁸ Ukraine: Executions, Torture During Russian Occupation. (2022, May 18). *Human Rights Watch*.

<https://www.hrw.org/news/2022/05/18/ukraine-executions-torture-during-russian-occupation>

¹²⁹ Ibid.

to the back of the head, execution-style, including 20 percent with hands tied.¹³⁰ In various Ukrainian towns and cities, residents reported that Russian forces were openly shooting civilians in the street.¹³¹ In Irpin, Russian soldiers reportedly shot residents walking on the street and ran over their bodies with tanks.¹³² According to a regional official, 100 civilians died under Russian occupation in Sumy, including bodies found handcuffed with signs of torture and shots to the head.¹³³ Russian soldiers have further gone directly to homes and shelters to kill civilians.¹³⁴ On March 7, in Vorzel, Russian soldiers reportedly stormed a basement, threw a smoke grenade inside, and fired on civilians who tried to escape.¹³⁵ According to the head of a unit of volunteer soldiers in the nearby village of Motyzhyn, a Russian armored carrier drove through a street firing randomly into homes with a heavy machine gun.¹³⁶

Though Mariupol is under Russian control and therefore remains blocked to ground investigations, satellite imagery analyses have uncovered the rapid and massive expansion of cemeteries and mass graves in the area starting in March.¹³⁷

Deliberate Attacks on Shelters, Evacuation Routes, and Humanitarian Corridors

Russian forces have systematically attacked places of shelter, escape routes, and evacuation convoys travelling by train, boat, car, or bus, including those with white cloths and signs reading “children.”¹³⁸

¹³⁰ Mark MacKinnon. (2022, April 18). The bodies, like the bad memories, keep coming at the Chernihiv regional morgue in Ukraine. *The Globe and Mail*. <https://www.theglobeandmail.com/world/article-ukraine-russia-chernihiv-civilian-deaths/>

¹³¹ Amnesty Int'l, *He's Not Coming Back*, at 26.

¹³² International Partnership for Human Rights (IPHR) and Truth Hounds, Evidence of war crimes and violations of international humanitarian law committed by the Russian Federation during its campaign of military aggression against Ukraine. (2022, May 5) [hereinafter Truth Hounds-IPHR Mar. 22- Apr. 5 Report]

https://truth-hounds.org/wp-content/uploads/2022/04/final_22-march-5-april-3_eng_proof.pdf; In ruined Kyiv suburb, residents ask, “What have we done to Putin to be slaughtered like this?” *France 24*.

<https://www.france24.com/en/europe/20220422-in-ruined-kyiv-suburb-residents-ask-what-have-we-done-to-putin-to-be-slaughtered-like-this>

¹³³ Truth Hounds-IPHR Mar. 22- Apr. 5 Report, at 3.

¹³⁴ Amnesty International. (2022, April 7). Ukraine: Russian forces extrajudicially executing civilians in apparent war crimes – new testimony. <https://www.amnesty.org/en/latest/news/2022/04/ukraine-russian-forces-extrajudicially-executing-civilians-in-apparent-war-crimes-new-testimony/>;

¹³⁵ Human Rights Watch. (2022, April 3). Ukraine: Apparent War Crimes in Russia-Controlled Areas.

<https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas>

¹³⁶ Carlotta Gall. (2022, April 11). “They shot my son. I was next to him. It would be better if it had been me”: Bucha’s Month of Terror. *The New York Times*. <https://www.nytimes.com/interactive/2022/04/11/world/europe/bucha-terror.html?searchResultPosition=1>

¹³⁷ Stephanie Stamm & Emma Brown. (2022, May 6) Mass Graves in Ukraine Reveal Mounting Death Toll. *The Wall Street Journal*. <https://www.wsj.com/articles/mass-graves-in-ukraine-reveal-mounting-death-toll-11651829402>;

Anthony Faiola, Michael Birnbaum & Mary Ilyushina (2022, April 24). In Mariupol echoes of history, utter devastation and a last stand. *The Washington Post*.

<https://www.washingtonpost.com/world/2022/04/24/mariupol-ukraine-last-days/?variant=15bc93f5a1ccbb65>;

Paulina Villegas (2022, April 21) New mass graves point to war crimes in Mariupol, Ukrainian officials say. *The Washington Post*. <https://www.washingtonpost.com/world/2022/04/21/new-mass-grave-manhush-near-mariupol/>;

Jack Watling. (2022, April 23) In Mariupol, Putin now rules a wasteland pitted with mass graves. *The Guardian*

<https://www.theguardian.com/world/2022/apr/23/in-mariupol-putin-now-rules-a-wasteland-pitted-with-mass-graves>;

Human Rights watch. (2022, April 26). Urgently Help Ukraine Civilians Flee Mariupol.

<https://www.hrw.org/news/2022/04/26/urgently-help-ukraine-civilians-flee-mariupol>;

Nicole Werbeck & Dustin Jones. (2022, April 22) Another possible mass grave with as many as 9000 bodies is found near Mariupol. *NPR*.

<https://www.npr.org/sections/pictureshow/2022/04/22/1094234731/possible-mass-graves-near-mariupol-shown-in-satellite-images>

¹³⁸ Sullivan, B. (2022, March 31). Ukrainians navigate a perilous route to safety out of besieged Mariupol. *NPR*.

On March 16, Russian forces launched precision airstrikes (laser-guided bombs) at the Regional Drama Theater in a square in the heart of Mariupol,¹³⁹ killing close to 600 civilians.¹⁴⁰ According to the OSCE, it is “undisputed” that the “destruction of the theater, which was clearly marked as housing children by signs on both sides, and in which many civilians had taken refuge, was deliberate.”¹⁴¹ At the time of the airstrike, the theater was known to be the city’s main shelter, the site of Red Cross supplies and evacuation related information, and with the words “children” painted in giant letters on the pavement flanking the front and back entrances, clearly visible from the sky and satellites.¹⁴² On March 17, Russian artillery struck at a school and community center near Kharkiv, killing at least 21 people, according to Ukrainian officials.¹⁴³ On May 7, Russian aircraft bombed a school in Luhansk Oblast, killing around 60 civilians sheltering there.¹⁴⁴

Between late February and early March, according to an in-depth investigation, Russian forces continuously shelled the only remaining escape route for civilians fleeing from Motyzhyn.¹⁴⁵ From March 24, 2022 to early April, during the 39-day siege of Chernihiv, Russian forces attacked the city’s only remaining access route to Ukrainian-controlled areas at the time.¹⁴⁶ In early March, an ICRC representative stated that an agreed-upon evacuation route from Mariupol was mined.¹⁴⁷ On March 6, Russian forces persistently shelled a main intersection on the road to Kyiv at hundreds of civilians fleeing from the north, as often as every ten minutes, according to witnesses.¹⁴⁸ In Irpin that day, Russian forces shelled a battered bridge as evacuees fled, killing at least four people, according to the New York Times (the attack was verified by photos and videos).¹⁴⁹ On April 8, Russian forces shelled a train station in

<https://www.npr.org/2022/03/31/1089705434/ukraine-russia-war-mariupol-zaporizhzhia>

¹³⁹ Local authorities removed “Russian” from the theater’s name in 2015 and ordered all performances to be conducted in Ukrainian in July 2021. <https://apnews.com/article/Russia-ukraine-war-mariupol-theater-c321a196fbd568899841b506afcac7a1>

¹⁴⁰ Para. 26 https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf;
<https://www.reuters.com/world/europe/thousands-civilians-mariupol-may-have-died-past-month-un-tells-reuters-2022-03-29/>

¹⁴¹ OSCE Report at 48.

¹⁴² Local authorities removed “Russian” from the theatre’s name in 2015 and ordered all performances to be conducted in Ukrainian in July 2021. <https://apnews.com/article/Russia-ukraine-war-mariupol-theater-c321a196fbd568899841b506afcac7a1>; *A bomb hit this theatre hiding hundreds—Here’s how one woman survived—BBC News*. (n.d.). Retrieved May 26, 2022, from <https://www.bbc.com/news/world-europe-60835106>.

¹⁴³ CBS News. (2022, March 17). Ukrainian mayor says 21 killed as school and community center hit by Russian artillery strike. <https://www.cbsnews.com/news/russia-ukraine-war-merfa-mayor-kharkiv-21-killed-school-community-center-shelling/>

¹⁴⁴ Rob Picheta, Olga Voitovych, Lizzy Yee, Svitlana Budzhak-Jones, Mick Krever & Olha Konovalova (2022, May 8). Dozens feared dead after Russia bombs school where Ukrainians were sheltering, official says. CNN. <https://www.cnn.com/2022/05/08/europe/luhansk-school-bombing-ukraine-russia-intl/index.html>

¹⁴⁵ Wall Street Journal. (2022, May 12). Ukraine ‘Road of Death’ Shows Russians Fired on Civilians: A Video Investigation. <https://www.youtube.com/watch?v=OUHU5UjnGtw>

¹⁴⁶ *Ukraine: Civilians in Besieged Chernihiv Need Access to Essentials | Human Rights Watch*. (n.d.). Retrieved May 26, 2022, from <https://www.hrw.org/news/2022/03/31/ukraine-civilians-besieged-chernihiv-need-access-essentials>; *The Siege of Chernihiv, Ukraine | The New Yorker*. (n.d.). Retrieved May 26, 2022, from <https://www.newyorker.com/news/dispatch/the-siege-of-chernihiv>

¹⁴⁷ *As it happened: Russian shelling prevents evacuations once again—Ukraine—BBC News*. (n.d.). Retrieved May 26, 2022, from https://www.bbc.com/news/live/world-europe-60635927ns_mchannel=social&ns_source=twitter&ns_campaign=bbc_live&ns_linkname=6225c463980bea49f4b7b73c%26Evacuation%20route%20out%20of%20Mariupol%20was%20mined%2C%20Red%20Cross%20says%262022-03-07T08%3A47%3A05%2B00%3A00&ns_fee=0&pinned_post_locator=urn:asset:db771701-6dc4-4ec6-80c5-bf4be97ab054&pinned_post_asset_id=6225c463980bea49f4b7b73c&pinned_post_type=share

¹⁴⁸ Human Rights Watch. (2022, March 8). Ukraine: Russian Assault Kills Fleeing Civilians. <https://www.hrw.org/news/2022/03/08/ukraine-russian-assault-kills-fleeing-civilians>

¹⁴⁹ Two Ukrainian children killed ‘in front of my own eyes’ while trying to evacuate, official says. (n.d.). Washington Post. Retrieved May 20, 2022, from <https://www.washingtonpost.com/world/2022/03/06/russian-forces-shelling-irpin>

Kramatorsk where about 4,000 civilians were waiting to be evacuated, killing 57 and resulting in around 100 hospitalizations.¹⁵⁰

Russian forces have also fired upon other evacuation convoys, killing civilians fleeing violence in the Kyiv, Kharkiv, and Chernihiv oblasts, including immediately after granting them permission to leave.¹⁵¹ On Feb. 28, Russian forces opened fire on civilian vehicles in the Chernihiv and Kyiv regions with no Ukrainian forces in the vicinity, killing and wounding passengers, including most members of a family evacuating Hostomel.¹⁵² On March 12, Russian forces shot at a civilian convoy of 12-15 cars fleeing Makariv with heavy gunfire after allowing them to pass, killing a number of the passengers, according to a survivor.¹⁵³ On March 15, according to an eyewitness, Russian soldiers shot at a convoy after allowing them to leave Havronshchyna, killing passengers.¹⁵⁴ On April 12, Russian forces shot at convoys evacuating towns in Kyiv Oblast, including killing five civilians in one car.¹⁵⁵ On April 14, Russian forces shelled a civilian bus in Kharkiv Oblast, killing seven and injuring 27.¹⁵⁶

These attacks on shelters and evacuation routes destroy possible safe haven or escape for Ukrainian civilians, while often trapping them in areas where Russian forces are depriving the population of life necessities, as will be discussed below.

Indiscriminate Bombardment of Residential Areas

In addition to deliberately attacking areas of refuge for Ukrainians, Russian forces have extensively used inherently indiscriminate weapons with wide-area effect, or cluster munitions,¹⁵⁷ targeting densely populated areas in at least eight of Ukraine's oblasts (provinces), including Chernihiv, Dnipropetrovsk, Donetsk, Kharkiv, Kherson, Mykolaiv, Odesa, and Sumy.¹⁵⁸ In Chernihiv, locals reported that Russian forces repeatedly used cluster munitions and targeted a queue of civilians waiting for bread, killing at least 12 and injuring dozens of others who were taken to a hospital that was shelled the following day by

¹⁵⁰ CNN, C. W., Frederik Pleitgen, Ben Wedeman, Vasco Cotovio and Ivana Kottasová. (n.d.). Atrocities are piling up across Ukraine. CNN witnessed some of the horrors. CNN. Retrieved May 20, 2022, from <https://www.cnn.com/2022/04/14/europe/ukraine-russia-atrocities-eyewitness-intl-cmd/index.html>; Truth Hounds-IPHR Apr. 6-20 Report, at 6.

¹⁵¹ International Partnership for Human Rights. (n.d.). Evidence of war crimes and violations of international humanitarian law committed by the Russian Federation during its campaign of military aggression against Ukraine. Truth Hounds. https://truth-hounds.org/wp-content/uploads/2022/05/analytical-report_-6-20-april-2022-1.pdf; *Kharkiv: Russia's retreat from another key Ukrainian city reveals new evidence of atrocities—CNN*. (n.d.). Retrieved May 26, 2022, from <https://edition.cnn.com/2022/05/13/europe/ukraine-russia-kharkiv-atrocities-intl/index.html>.

¹⁵² Human Rights Watch. (2022, May 2). Ukraine: Russian Forces Fired On Civilian Vehicles. <https://www.hrw.org/news/2022/05/02/ukraine-russian-forces-fired-civilian-vehicles>

¹⁵³ Amnesty Int'l, *He's Not Coming Back*, at 17.

¹⁵⁴ Mo Abbas, Matt Bradley, Yelyzaveta Kovtun (2022, April 24). "They were trying to escape": Ukrainian man says he saw Russian forces shooting civilians. NBC News. <https://www.nbcnews.com/news/world/russia-ukraine-war-attack-civilian-convoy-havronschchyna-war-crime-rcna25628>

¹⁵⁵ Truth Hounds-IPHR Apr. 6-20 Report, at 5.

¹⁵⁶ *Ibid.*

¹⁵⁷ Banned by the 2010 Convention on Cluster Munitions to which 110 States are party.

¹⁵⁸ Human Rights Watch. (2022, May 11) Intense and Lasting Harm: Cluster Munition Attacks in Ukraine. <https://www.hrw.org/report/2022/05/11/intense-and-lasting-harm/cluster-munition-attacks-ukraine>; *Update on the human rights situation in Ukraine*. (n.d.). United Nations.

https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf Paras. 9-11;

Ukraine: Deadly Attacks Kill, Injure Civilians, Destroy Homes | Human Rights Watch. (n.d.). Retrieved May 22, 2022, from <https://www.hrw.org/news/2022/03/18/ukraine-deadly-attacks-kill-injure-civilians-destroy-homes>; Interview: Weapons of War in Ukraine. (2022). Human Rights Watch. <https://www.hrw.org/news/2022/03/24/interview-weapons-war-ukraine>; Truth Hounds-IPHR Mar. 22- Apr. 5 Report.

Russian forces.¹⁵⁹ In Borodianka, on March 1-2, Russian forces launched a sustained series of major airstrikes hitting eight residential buildings, home to 600 families, and killing at least 40 residents — many of whom were sheltering out of fear of being shot outside.¹⁶⁰ On April 7, according to Ukraine’s Prosecutor’s Office, 26 people were killed as a result of shelling against residential buildings in Borodianka during the Russian occupation.¹⁶¹ On April 10, Russian forces shelled residential areas in Kharkiv Oblast, killing 10 civilians.¹⁶²

On March 3, Russian forces dropped 8 unguided aerial (“dumb”) bombs in close succession in Chernihiv near food stores, hospitals, and a pre-school, killing 47 civilians, most of whom were queuing for bread.¹⁶³ That day, in the town of Iziium, Russian strikes killed at least eight civilians and significantly damaged the central hospital.¹⁶⁴ Residents have consistently reported that Russian forces openly shoot civilians and bomb residential buildings, schools, churches, hospitals — which appear to amount to military policy.¹⁶⁵ According to UNICEF, hundreds of schools have been hit by explosive weapons.¹⁶⁶

Russian Military Sieges: Deliberate and Systematic Infliction of Life-Threatening Conditions

While relentlessly bombarding Ukrainians from within and without, Russian forces have simultaneously and deliberately imposed brutal sieges on cities, amounting to systematic acts under Art. II (c) of the Genocide Convention (which constitute genocide when committed with specific intent).¹⁶⁷ The coordinated actions by the Russian military to deprive Ukrainian residents of basic necessities and trap them under these life-threatening conditions demonstrate that the sieges are calculated to bring about their physical destruction.¹⁶⁸ According to UNICEF, as of April 15, 1.4 million people in conflict-affected

¹⁵⁹ In Chernihiv, scenes of death and destruction after Russian occupation—The Washington Post. (n.d.). Retrieved May 22, 2022, from <https://www.washingtonpost.com/world/2022/04/05/chernihiv-scene-death-destruction/>

¹⁶⁰ Amnesty Int’l, *He’s Not Coming Back*, at 21-26.

¹⁶¹ Truth Hounds-IPHR Apr. 6-20 Report, at 6.

¹⁶² *Ibid.*

¹⁶³ Amnesty International (2022, March 9) Ukraine: Russian “dumb bomb” air strike killed civilians in Chernihiv- new investigation and testimony. <https://www.amnesty.org/en/latest/news/2022/03/ukraine-russian-dumb-bomb-air-strike-kills-civilians-in-chernihiv-new-investigation-and-testimony/>;

Human Rights Watch (2022, March 10) Ukraine: Russian Air- Dropped Bombs Hit Residential Area. <https://www.hrw.org/news/2022/03/10/ukraine-russian-air-dropped-bombs-hit-residential-area>;

Ashleigh Stewart. (2022, May 4). The siege of Chernihiv: Residents recount five weeks of horror under Russian terror. Global News. <https://globalnews.ca/news/8808055/chernihiv-ukraine-war-aftermath/>

¹⁶⁴ Amnesty International. (2022, March 16). Ukraine: Beleaguered town of Iziium at breaking point after constant attack from Russian forces – new testimony. <https://www.amnesty.org/en/latest/news/2022/03/ukraine-beleaguered-town-of-izium-at-breaking-point-after-constant-attack-from-russian-forces-new-testimony/>

¹⁶⁵ At Least 200 Feared Dead in Apartments Hit by Russia, Officials Say—The New York Times. (n.d.). Retrieved May 20, 2022, from <https://www.nytimes.com/2022/04/05/world/asia/ukraine-civilians-russia-borodyanka.html>;

Ukraine: Deadly Attacks Kill, Injure Civilians, Destroy Homes | Human Rights Watch. (n.d.). Retrieved May 20, 2022, from <https://www.hrw.org/news/2022/03/18/ukraine-deadly-attacks-kill-injure-civilians-destroy-homes>;

In eastern Ukraine, Russian military razing towns to take them over. (n.d.). Washington Post. Retrieved May 20, 2022, from <https://www.washingtonpost.com/world/2022/04/07/izyum-eastern-ukraine-razing-towns/>;

Collins, K., Ivory, D., Huang, J., Queen, C. S., Higgins, L., Ruderman, J., White, K., & Wong, B. G. (2022, March 23). Russia’s Attacks on Civilian Targets Have Obliterated Everyday Life in Ukraine. The New York Times. <https://www.nytimes.com/interactive/2022/03/23/world/europe/ukraine-civilian-attacks.html>

¹⁶⁶ Children in Ukraine need an end to this war – their futures hang in the balance. (n.d.). Retrieved May 20, 2022, from <https://www.unicef.org/press-releases/children-ukraine-need-end-war-their-futures-hang-balance>

¹⁶⁷ In eastern Ukraine, Russian military razing towns to take them over. (n.d.). Washington Post. Retrieved May 20, 2022, from <https://www.washingtonpost.com/world/2022/04/07/izyum-eastern-ukraine-razing-towns/>

¹⁶⁸ *Evidence of war crimes and violations of international humanitarian law committed by the Russian Federation during its campaign of military aggression against Ukraine.* (2022). International Partnership for Human Rights.

eastern Ukraine are without access to safe water and an additional 4.6 million people are without adequate access to water.

Destruction of Vital Infrastructure

In besieging cities, Russian forces have followed a similar pattern of striking water, power, and communication sources early on, and further targeting medical facilities, grain warehouses,¹⁶⁹ and aid distribution centers, demonstrating a military strategy and policy of deliberately inflicting fatal conditions on Ukrainian inhabitants.¹⁷⁰

In Bucha, on March 4, within a week of arriving, Russian forces struck the water tower and gas plant, cutting off residents from water, gas, and heating.¹⁷¹ Similarly, in late March, within a week of Russian forces laying siege to Chernihiv, a city with a pre-war population of about 300,000, most of the city lost nearly all access to water, electricity, heating, and phone communications.¹⁷² Forensic pathologists estimate that approximately 700 people died under the 39-day siege of Chernihiv, including some with signs of torture, though the death toll continues to rise.¹⁷³ When Russian forces began attacking Izium, with a prewar population of about 45,000, the entire city quickly became entirely dependent on personal food and humanitarian aid, which only reached some civilians, mainly in large bomb shelters.¹⁷⁴

Likewise, early on in its siege of Mariupol, the port city with a prewar population of about 450,000, around March 2, the Russian military bombed the city's sources of electricity, water, gas, and communications in close succession.¹⁷⁵

There is also evidence emerging that Russia has launched cyberattacks against critical Ukrainian infrastructure, including its communication systems and power grid, with the potential to cut off millions of Ukrainians from the electricity they rely on to survive, including access to information about the

https://truth-hounds.org/wp-content/uploads/2022/04/final_22-march-5-april-3_eng_proof.pdf; Reuters. (2022, March 10). Russia blocked evacuation from part of Ukrainian town - regional governor. <https://www.reuters.com/world/russia-blocked-evacuation-part-ukrainian-town-regional-governor-2022-03-10/>;

BBC News. (2022, March 31). Ukraine war: Russia blocks buses heading to Mariupol, says Ukraine. <https://www.bbc.co.uk/news/world-europe-60938429>

¹⁶⁹ Ukraine says Russia is stealing grain, which could worsen food crisis. (n.d.). Washington Post. Retrieved May 20, 2022, from <https://www.washingtonpost.com/world/2022/05/05/ukraine-grain-theft-russia-hunger-war>

¹⁷⁰ Truth Hounds-IPHR Apr. 6-20 Report, at 10.

¹⁷¹ Yulia Gorbunova. (2022, March 30). Devastation and Loss in Bucha, Ukraine. Human Rights Watch. <https://www.hrw.org/news/2022/03/30/devastation-and-loss-bucha-ukraine>

¹⁷² Human Rights Watch. (2022, March 31). Ukraine: Civilians in Besieged Chernihiv Need Access to Essentials. <https://www.hrw.org/news/2022/03/31/ukraine-civilians-besieged-chernihiv-need-access-essentials>

¹⁷³ Ashleigh Stewart. (2022, May 4) The siege of Chernihiv: Residents recount five weeks of horror under Russian terror. Global News. <https://globalnews.ca/news/8808055/chernihiv-ukraine-war-aftermath/>; International Partnership for Human Rights. (2022, April 6 – 2022, April 20). Evidence of war crimes and violations of international humanitarian law committed by the Russian Federation during its campaign of military aggression against Ukraine. Truth Hounds.

¹⁷⁴ Amnesty International. (2022, March 16). Ukraine: Beleaguered town of Izium at breaking point after constant attack from Russian forces – new testimony. <https://www.amnesty.org/en/latest/news/2022/03/ukraine-beleaguered-town-of-izium-at-breaking-point-after-constant-attack-from-russian-forces-new-testimony/>

¹⁷⁵ First Person: A month in a Mariupol basement. (2022, April 19). UN News. <https://news.un.org/en/story/2022/04/1116422>; Voices from the siege of Mariupol. (2022, March 30). Washington Post. <https://www.washingtonpost.com/world/2022/03/30/mariupol-siege-voices-ukraine-war/>

war.¹⁷⁶ Russian forces have also destroyed TV towers, cutting off older residents who rely on TV broadcasts for emergency information.¹⁷⁷

Attacks on Health Care

As of May 25, the World Health Organization (WHO) has documented 248 attacks against Ukraine's health care system.¹⁷⁸ Russian forces' consistent attacks against perinatal centers and maternity hospitals are particularly probative of genocidal intent. These attacks constitute four of the five genocidal acts under Arts. II (a)-(d) in killing or causing serious harm to civilians inside or affected, exacerbating the already imposed life-threatening conditions, and preventing Ukrainian women from safely giving birth. The attacks on health care in Mariupol provide a stark pattern. On March 9, Russian forces bombed the clearly identifiable and operational Mariupol Maternity House and Children's Hospital.¹⁷⁹ By March 26, at a very early stage of the siege, out of the six hospitals, two were already destroyed and three were damaged, while the remaining facilities operated with limited staff and without heating, adequate supplies, electricity, or water.¹⁸⁰ During the Russian sieges, residents have spoken of resorting to boiling snow for water or drawing water from boilers.¹⁸¹

Destruction and Seizure of Necessities, Humanitarian Aid, and Grain

According to Ukrainian officials and agricultural workers, Russian forces have destroyed warehouses and farms or seized farm holdings, machinery, and vast stores of grain in Russian occupied territory, including expropriating hundreds of thousands of tons of grain to Russia.¹⁸² Russian forces have repeatedly blocked or seized humanitarian aid supplies and workers or convoys seeking to evacuate Ukrainian civilians, and

¹⁷⁶ Ukraine says potent Russian hack against power grid thwarted. (2022, April 12). AP NEWS.

<https://apnews.com/article/russia-ukraine-kyiv-technology-business-hacking-0147e33bc1846a3f8039f9c65a1b4b50>;

Ukraine says it thwarted Russian cyberattack on electricity grid | Reuters. (n.d.). Retrieved May 20, 2022, from <https://www.reuters.com/world/europe/russian-hackers-tried-sabotage-ukrainian-power-grid-officials-researchers-2022-04-12/>;

Sanger, D. E., & Conger, K. (2022, May 10). Russia Was Behind Cyberattack in Run-Up to Ukraine War, Investigation Finds. The New York Times. <https://www.nytimes.com/2022/05/10/us/politics/russia-cyberattack-ukraine-war.html>

¹⁷⁷ Amnesty International. (2022, April 1). Ukraine: Russia's cruel siege warfare tactics unlawfully killing civilians – new testimony and investigation. <https://www.amnesty.org/en/latest/news/2022/04/ukraine-russias-cruel-siege-warfare-tactics-unlawfully-killing-civilians-new-testimony-and-investigation/>

¹⁷⁸ World Health Organization. Surveillance System for Attacks on Health Care (SSA).

<https://extranet.who.int/ssa/LeftMenu/PublicReportList.aspx?start=2022-02-24&end=2022-05-26&countryList=229&typeList=0>

¹⁷⁹ OSCE Report, at 46-47; *Mariupol hospital attack: Examining how Russian forces hit a Ukraine maternity and children's hospital*. (n.d.). Retrieved May 20, 2022, from

<https://www.cnn.com/interactive/2022/03/europe/mariupol-maternity-hospital-attack/index.html>; *Update on the human rights situation in Ukraine*. (2022). United Nations Human Rights Office of the High Commissioner, para. 18.

https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf

¹⁸⁰ *Update on the human rights situation in Ukraine*. (2022). United Nations Human Rights Office of the High Commissioner.

[https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf_Para.25; Last stand of Mariupol,](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf_Para.25;LaststandofMariupol)

leveled by Russia's merciless assault—The Washington Post. (n.d.). Retrieved May 26, 2022, from

<https://www.washingtonpost.com/world/2022/04/24/mariupol-ukraine-last-days/?variant=15bc93f5a1ccbb65>; Toby Luckhurst & Olga Pona. (2022, April 25). 'You can't imagine the conditions' - Accounts emerge of Russian detention camps. BBC.

<https://www.bbc.com/news/world-europe-61208404>

¹⁸¹ Amnesty International. (2022, April 1). Ukraine: Russia's cruel siege warfare tactics unlawfully killing civilians – new testimony and investigation. <https://www.amnesty.org/en/latest/news/2022/04/ukraine-russias-cruel-siege-warfare-tactics-unlawfully-killing-civilians-new-testimony-and-investigation/>

¹⁸² Ukraine says Russia is stealing grain, which could worsen food crisis. (n.d.). Washington Post. Retrieved May 20, 2022, from <https://www.washingtonpost.com/world/2022/05/05/ukraine-grain-theft-russia-hunger-war/>; Russia accused of industrial-scale farm plunder in Ukraine. (2022, May 12). *Financial Times*. <https://www.ft.com/content/d28cc77d-9de3-4988-bdba-cfab77268ea3>

stolen basic necessities from residents under siege.¹⁸³ In response to an interview question on whether Russia is using starvation as a weapon, the Executive Director of the U.N. World Food Programme, David Beasley, asserted “there is no question food is being used as a weapon of war in many different ways.” Regarding supply lines to civilians most in need, Beasley echoed the same concern as other U.N. spokespersons in noting that there are “places where Russian forces have besieged the city and are not allowing us the access we need.”¹⁸⁴

Other Sites of Life-Threatening Conditions

In Yahidne, a village south of Chernihiv, Russian soldiers held over 350 people, nearly the entire population, in a school basement for 28 days without ventilation in extremely overcrowded and unsanitary conditions, resulting in the deaths of ten by suffocation and fatal conditions.¹⁸⁵ Civilians from the Kyiv and Chernihiv regions interviewed by Human Rights Watch described being held for days or weeks in unsanitary and suffocating conditions with little to no food, inadequate water, and no access to toilets.¹⁸⁶ During the occupation of Bucha, six people in a seniors’ home died of hunger, according to cemetery workers.¹⁸⁷ On April 21, President Putin directly ordered a complete blockade of the Azovstal steelworks “so that a fly can’t get through,” despite 1,000 civilians remaining at the time.¹⁸⁸ According to satellite imagery, videos released by Ukrainian officials, and witnesses, Russian forces have also set up so-called “filtration” camps, where residents are interrogated, tortured, and deprived of basic necessities.¹⁸⁹

Rape and Sexual Violence

The magnitude of the reports of sexual violence and rape in Russian-occupied areas suggests a widespread and systematic pattern committed by Russian forces.¹⁹⁰ The United Nations Human Rights

¹⁸³ Human Rights Watch. (2022, April 3). Ukraine: Apparent War Crimes in Russia-Controlled Areas.

<https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas>

¹⁸⁴ Full interview: World Food Programme chief David Beasley on “Face the Nation”—CBS News. (n.d.). Retrieved May 20, 2022, from <https://www.cbsnews.com/video/full-interview-world-food-programme-chief-david-beasley-on-face-the-nation/>; see also *Ukraine: Second UN convoy reaches Sumy, Mariupol access thwarted* | UN News. (n.d.). Retrieved May 20, 2022, from <https://news.un.org/en/story/2022/03/1115252>

¹⁸⁵ <https://www.hrw.org/news/2022/05/18/ukraine-executions-torture-during-russian-occupation>

¹⁸⁶ Ukraine: Executions, Torture During Russian Occupation. (2022, May 18). *Human Rights Watch*.

<https://www.hrw.org/news/2022/05/18/ukraine-executions-torture-during-russian-occupation>

¹⁸⁷ Bridget Sleep. (2022, May 2). Older People No Longer Invisible Casualties of War in Ukraine. Human Rights Watch.

<https://www.hrw.org/news/2022/05/02/older-people-no-longer-invisible-casualties-war-ukraine>

¹⁸⁸ Luke Harding & Andrew Roth (2022, April 22). Russian forces accused of secret burials of Mariupol civilians in mass graves.

The Guardian. <https://www.theguardian.com/world/2022/apr/21/russian-forces-accused-of-secret-burials-of-civilians-in-mariupol>

¹⁸⁹ Russian filtration camps: Ukrainians must endure a brutal process to escape Russian-held territory. Here’s what that means—

CNN. (n.d.). <https://edition.cnn.com/2022/05/23/europe/russia-ukraine-filtration-camps-intl-cmd/index.html>; Toby Luckhurst &

Olga Pona. (2022, April 25) “You can’t imagine the conditions”—Accounts emerge of Russian detention camps. BBC News.

<https://www.bbc.com/news/world-europe-61208404>; Video shows Russian ‘filtration camp,’ Mariupol mayor’s office says.

(n.d.). Washington Post. <https://www.washingtonpost.com/world/2022/05/06/ukraine-mariupol-russian-filtration-camp-video/>;

Satellite images show Russian ‘tent city’ built for Ukrainians. (n.d.). Washington Post.

<https://www.washingtonpost.com/world/2022/03/27/russian-camps-outside-mariupol/>; Truth Hounds-IPHR Mar. 22- Apr. 5

Report, at 13.

¹⁹⁰ Tara John, Oleksandra Ochman & Sandi Sidhu. (2022, April 22). Russian troops use rape as ‘an instrument of war’ in Ukraine, rights groups allege. CNN.

<https://www.cnn.com/2022/04/22/europe/ukraine-sexual-violence-allegations-russia-cmd-intl/index.html>; Human Rights Watch. (2022, April 3). Ukraine: Apparent War Crimes in Russia-Controlled Areas.

<https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas>;

Monitoring Mission in Ukraine continues “to receive allegations of rape, including gang rape, attempted rape, forced nudity, threats of sexual violence against civilian women and girls, men and boys.”¹⁹¹ Local residents, coroners, volunteers, Ukrainian officials, and international investigators have further uncovered a pattern of sexual violence across Ukraine, including in the Donetsk, Kharkiv, Kherson, Kyiv, Mykolaiv, and Vinnystia oblasts.¹⁹² The reports include gang rape of mothers and their children together, rape in the victims’ homes or shelters, and rape of parents in front of children and vice versa.¹⁹³ Human Rights Watch verified brutal acts of sexual violence in a village in the Kharkiv region under Russian control at the time, where a Russian soldier repeatedly raped a villager at gunpoint and lacerated her neck and face at a school sheltering mostly women and girls.¹⁹⁴ According to Ukraine’s Ombudswoman, Russian soldiers raped an 11-year-old boy in Bucha while his mother was tied to a chair and forced to watch.¹⁹⁵ Amnesty International documented an account of a woman in a village east of Kyiv in which “two Russian soldiers had entered her house, killed her husband, then repeatedly raped her at gunpoint while her young son hid in a boiler room nearby.”¹⁹⁶ These cases inflict additional genocidal acts of serious mental harm on the family members forced to witness.

Rape and sexual violence can be probative of genocide, as evidence of both genocidal intent and acts under Arts. II(b), (c), and (d), and Art. II(a) when followed by execution or death caused by torture.¹⁹⁷ Rape and sexual violence inflict well-documented long-term physical and biological destruction through extreme trauma, leading to suicides, sexually transmitted diseases, and an inability or unwillingness to procreate.

In concluding that ISIS imposed birth prevention measures on the Yazidi community through rape, the Commission of Inquiry on the Syrian Arab Republic cited the testimony of a trauma psychology expert

Bethan McKernan. (2022, April 4). Rape as a weapon: huge scale of sexual violence inflicted in Ukraine emerges. *The Guardian*. <https://www.theguardian.com/world/2022/apr/03/all-wars-are-like-this-used-as-a-weapon-of-war-in-ukraine>;

International Partnership for Human Rights. (2022, March 22- 2022, April 5). Evidence of war crimes and violations of international humanitarian law committed by the Russian Federation during its campaign of military aggression against Ukraine. *Truth Hounds*.

¹⁹¹ *Press briefing by the Head of UN Human Rights Monitoring Mission in Ukraine Matilda Bogner | United Nations in Ukraine*. (n.d.). Retrieved May 20, 2022, from

<https://ukraine.un.org/en/181201-press-briefing-head-un-human-rights-monitoring-mission-ukraine-matilda-bogner>; While women and girls make up the majority of victims, men and boys have also been targeted for sexual violence. See e.g. Graham-Emma Graham- Harrison. (2022, May 3). Men and boys among alleged rape victims of Russian soldiers in Ukraine. *The Guardian*. <https://www.theguardian.com/world/2022/may/03/men-and-boys-among-alleged-victims-by-russian-soldiers-in-ukraine>

¹⁹² Lorenzo Tondo & Isobel Koshiw (2022, April 25). Evidence some Ukrainian women raped before being killed, say doctors. *The Guardian*. <https://www.theguardian.com/world/2022/apr/25/evidence-ukraine-women-raped-before-being-killed-say-doctors-russia-war>

¹⁹³ ReliefWeb. (2022, April 19). Sexual Violence and the Ukraine Conflict - April 2022 - Ukraine.

<https://reliefweb.int/report/ukraine/sexual-violence-and-ukraine-conflict-april-2022>;

Garin Flowers. (2022, May 6). Russian soldiers accused of raping women, men and children in Ukraine. *Yahoo! News*

<https://news.yahoo.com/russian-soldiers-accused-of-raping-women-men-and-children-in-ukraine-224021315.html>

¹⁹⁴ Human Rights Watch. (2022, April 3). Ukraine: Apparent War Crimes in Russia-Controlled Areas.

<https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas>

¹⁹⁵ Garin Flowers. (2022, May 6). Russian soldiers accused of raping women, men and children in Ukraine. *Yahoo! News*

<https://news.yahoo.com/russian-soldiers-accused-of-raping-women-men-and-children-in-ukraine-224021315.html>

¹⁹⁶ Amnesty International. (2022, April 7). Ukraine: Russian forces extrajudicially executing civilians in apparent war crimes – new testimony. <https://www.amnesty.org/en/latest/news/2022/04/ukraine-russian-forces-extrajudicially-executing-civilians-in-apparent-war-crimes-new-testimony/>

¹⁹⁷ See *Croatia v. Serbia*, para. 166. See also UN Human Rights Council, “They came to destroy”: ISIS Crimes Against the Yazidis, 15 June 2016, A/HRC/32/CRP.2, para. 140. <https://www.refworld.org/docid/57679c324.html>.

The Commission of Inquiry on the Syrian Arab Republic found that ISIS committed the prohibited act under Art. II (c) by sexually enslaving Yazidi women and girls, subjected to multiple rapes, while deprived of food, water, and medical care.

who treated hundreds of Yazidi women and girls after being held by ISIS, to the effect that the women and girls “did not want to marry, or to contemplate relationships with men now or in the future.”¹⁹⁸ According to Ukraine’s Ombudswoman, Russian soldiers told the women and girls held in a basement for 25 days that “they would rape them to the point where they wouldn’t want sexual contact with any man, to prevent them from having Ukrainian children.”¹⁹⁹

In 2016, the Commission of Inquiry found genocidal rape to constitute birth prevention measures under Art. II(d), as likewise recognized by the ICJ when “the capacity of members of the group to procreate is affected.”²⁰⁰ In the first two weeks of April, Ukraine’s Ombudswoman for Human Rights, Lyudmyla Denisova, received 400 reported cases of rape committed by Russian troops.²⁰¹ In Bucha, the Ombudswoman reported that Russian soldiers held and systematically raped a group of about 25 women and girls aged 14-24 in a basement for 25 days, resulting in nine pregnancies.²⁰² According to a firsthand witness recorded by the U.N., there is a widespread fear among Ukrainians that rape is used by Russia as a weapon of war.²⁰³

Other cases suggest that murder was preceded or precipitated by rape or resulted in suicidal thoughts. Near Kyiv, the corpses of naked women were found on the side of the road partially burned.²⁰⁴ In Borodianka, a man’s body was found heavily bruised, with a bag over his head, hands tied, and pants pulled down.²⁰⁵ A Ukrainian psychologist recounted treating three victims aged 16-20 who were all suffering suicidal thoughts after gang rapes by Russian soldiers, “all basically telling the same story,” (indicating a systematic practice) of three to five soldiers invading their homes, forcing them into domestic servitude and subjecting them to gang rape.²⁰⁶

There are also recordings available, released by the Secret Service of Ukraine (SBU), of Russian soldiers confessing to having committed and being encouraged by their spouses to commit rape.²⁰⁷ The magnitude

¹⁹⁸ *Id.*, para. 145. See also Human Rights Watch’s finding regarding the Kosovo war: “One purpose that rape in the war may have served was discouraging women from reproducing in the future.” Human Rights Watch, Kosovo: Rape as a Weapon of “Ethnic Cleansing.” (2000, March 1). https://www.hrw.org/legacy/reports/2000/fry/Kosov003-02.htm#P186_35892

¹⁹⁹ Yogita Limaye. (2022, April 11) Ukraine conflict: “Russian soldiers raped me and killed my husband”. BBC News. <https://www.bbc.com/news/world-europe-61071243>

²⁰⁰ Croatia at para. 166.

²⁰¹ The Kyiv Independent [@KyivIndependent]. (2022, April 27). ⚡ *In the first two weeks of April, the Ukrainian ombudsman received 400 reports of rape committed by Russian soldiers. Ombudsman Lyudmyla Denisova told Suspilne the reports were mostly coming from the temporary occupied territories or recently liberated areas.* [Tweet]. Twitter. <https://twitter.com/KyivIndependent/status/1519320459115966466>

²⁰² Yogita Limaye. (2022, April 11) Ukraine conflict: “Russian soldiers raped me and killed my husband”. BBC News. <https://www.bbc.com/news/world-europe-61071243>;

Carlotta Gall. (2022, April 11) “They shot my son. I was next to him. It would be better if it had been me”: Bucha’s Month of Terror. The New York Times. <https://www.nytimes.com/interactive/2022/04/11/world/europe/bucha-terror.html?searchResultPosition=1>.

²⁰³ *First Person: A month in a Mariupol basement.* (2022, April 19). UN News. <https://news.un.org/en/story/2022/04/1116422>

²⁰⁴ Bethan McKernan. (2022, April 4). Rape as a weapon: huge scale of sexual violence inflicted in Ukraine emerges. The Guardian. <https://www.theguardian.com/world/2022/apr/03/all-wars-are-like-this-used-as-a-weapon-of-war-in-ukraine>

²⁰⁵ CNN, C. W., Frederik Pleitgen, Ben Wedeman, Vasco Cotovio and Ivana Kottasová. (n.d.). Atrocities are piling up across Ukraine. CNN witnessed some of the horrors. CNN. Retrieved May 20, 2022, <https://www.cnn.com/2022/04/14/europe/ukraine-russia-atrocities-eyewitness-intl-cmd/index.html>

²⁰⁶ “*She lost consciousness as it was happening and she’s actually grateful she did.*” *What we know about the rapes perpetrated in Ukraine by Russian soldiers.* (n.d.). Медіазона. Retrieved May 20, 2022, from https://zona.media/translate/2022/04/19/rape_eng

²⁰⁷ СБ України [@ServiceSsu]. (2022, April 12). *Дружини російських загарбників закликають своїх чоловіків гвалтувати українських жінок Це шокує перехоплення СБУ відображає моральні цінності не лише окупантів, а й їхніх близьких та рідних, 80% яких зараз підтримують війну в Україні* <https://t.co/2C0vF0Msb8> [Tweet]. Twitter. <https://twitter.com/ServiceSsu/status/1513867211315757056>;

of sexual violence from this war will only emerge over time, though will likely never fully come to light. There is a wide range of reasons why survivors are unwilling to report rape, even to their families, which include stigma, self-blame, extreme trauma, shame, safety concerns, or a lack of services and options for justice.²⁰⁸ Survivors of sexual violence in conflict can face exclusion from their communities, rejection from their families, or be deemed unfit for marriage, particularly in more patriarchal societies.²⁰⁹ In Ukraine, two women survivors of rape in Brovary District reported being victimized a second time when accused by their community of collaborating or receiving special favors from Russian soldiers for sex.²¹⁰

Forcible Transfer

The large-scale transfer of Ukrainian children to Russia or Russian-controlled territory can amount to “[f]orcibly transferring children of the group to another group,” under Art. II (e) of the Genocide Convention. By the last week of April, Russia’s Foreign Minister announced that over 1 million people have been relocated from Ukraine to Russia since Feb. 24, including over 180,000 children according to Russia’s Defense Ministry.²¹¹ While Russia claims the evacuations are voluntary, Ukrainians are clearly largely forced to flee due to Russia’s invasion, and refugees and officials have further reported being transferred by force or the threat of force.²¹² According to Ukraine’s Human Rights Commissioner, more than 121,000 children have been forcibly deported to Russia where changes are being made to legislation to expedite the adoption of children from the Donbas.²¹³ Ukrainian and Russian officials further reported that some Ukrainian children deported to Russia will have to take Russian classes.²¹⁴ In late March, Ukraine’s Foreign Ministry reported the forcible transfer of more than 2,000 children from the Donbas region to Russia. Russia’s Defense Ministry later confirmed a similar number of children transferred from the region to Russia without Ukraine’s involvement.²¹⁵ On April 18, Ukrainian officials reported that

²⁰⁸ See Statements by the U.N. Human Rights High Commissioner and the Head of U.N. Human Rights Monitoring Mission in Ukraine, <https://www.ohchr.org/en/statements-and-speeches/2022/05/ukraine-update-human-rights-council-special-session> (“Survivors are often unwilling to be interviewed because of fear and stigma”); and <https://ukraine.un.org/en/181201-press-briefing-head-un-human-rights-monitoring-mission-ukraine-matilda-bogner> (“In general, however, we found that victims of sexual violence and their families and friends are reluctant to speak due to stigma... Over time the scale of these violations will become clearer.”)

²⁰⁹ Rosenberg, E. F. (2021). *Gender and Genocide in the 21st Century: How Understanding Gender Can Improve Genocide Prevention and Response*. New Lines Institute.

https://newlinesinstitute.org/wp-content/uploads/Final-Edits_Gender-and-Genocide-Conference-Report_ep-Final.pdf, 6.

²¹⁰ *Ukraine has accused Russian soldiers of using rape as a tool of war. These two women say justice is hard to come by—CNN*. Retrieved May 26, 2022, from <https://edition.cnn.com/2022/05/09/europe/ukraine-russian-soldiers-brovary-rape-victims/index.html>

²¹¹ Reuters. (2022, April 30). More than 1 mln people evacuated from Ukraine to Russia since Feb. 24, says Lavrov. <https://www.reuters.com/world/more-than-1-mln-people-evacuated-ukraine-russia-since-feb-24-says-lavrov-2022-04-30/>;

What Happened on Day 66 of the War in Ukraine. (2022, April 30) The New York Times.

<https://www.nytimes.com/live/2022/04/30/world/ukraine-russia-war-news>

²¹² Mary Ilyushina (2022, March 30). Ukraine says Russia forcibly relocated thousands from Mariupol. Here’s one dramatic account. The Washington Post. <https://www.washingtonpost.com/world/2022/03/30/ukraine-mariupol-russia-evacuation-filtration/>; What Happened on Day 66 of the War in Ukraine. (2022, April 30) The New York Times.

<https://www.nytimes.com/live/2022/04/30/world/ukraine-russia-war-news>

²¹³ Ewelina U. Ochab (2022, April 10). Ukrainian Children Forcibly Transferred And Subjected To Illegal Adoptions. Forbes. <https://www.forbes.com/sites/ewelinaochab/2022/04/10/ukrainian-children-forcibly-transferred-and-subjected-to-illegal-adoptions/?sh=5072c55c30e0>

²¹⁴ Joahua Zitser (2022, April 23). Russia forcibly resettled dozens of Mariupol children in the far east, 6,000 miles away from their homes, Ukrainian official says. Business Insider. <https://www.businessinsider.com/russia-forcibly-moved-mariupol-children-6000-miles-away-ukraine-official-2022-4?r=US&IR=T>

²¹⁵ Reuters. (2022, May 3). Moscow says 1,847 children among thousands transported from Ukraine to Russia. <https://www.reuters.com/world/europe/moscow-says-1847-children-among-thousands-transported-ukraine-russia-2022-05-03/>

Russian forces forcibly transferred 40,000 Mariupol residents to Russia.²¹⁶ In addition to Art. II (e) acts, these large-scale transfers by force may be characterized as ethnic cleansing. The ICJ has noted that ethnic cleansing or “‘rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area’...may be significant as indicative of the presence of a specific intent [to destroy].”²¹⁷

Destruction of Cultural and Sacred Sites

As of May 2, UNESCO has verified damage to 120 cultural and sacred sites since Feb. 24.²¹⁸ On March 12, Russian forces targeted and damaged one of Ukraine’s most sacred Orthodox Christian sites in an airstrike.²¹⁹ In Izium, Russian bombardment damaged another Ukrainian Orthodox Church that survived World War II.²²⁰ In Irpin, residents indicated that Russian forces deliberately targeted Irpin’s cultural center with artillery fire, in an attempt to erase the city’s Ukrainian heritage.²²¹ According to the jurisprudence, attacks against cultural and religious sites “may legitimately be considered as evidence of an intent to physically destroy the group.”²²²

Intent to Destroy In Part

As indicated above, the “part” of the group targeted may constitute genocide when considering the part’s size or prominence and the perpetrator’s control. As of May 24, 2022, the U.N.’s Office of the High Commissioner for Human Rights officially recorded 3,930 civilians killed and 4,532 injured in the war,²²³ though warns that the number of deaths are thousands higher, as documentation is delayed in areas of intense hostilities.²²⁴ The “part” of the group targeted is not only demonstrated by the sheer estimated number of civilians killed, a drastic undercount. The scale of atrocities targeting Ukrainians must be assessed relative to Russia’s area of activity or control.²²⁵ Russian forces have left a trail of concentrated physical destruction upon retreat from occupied areas, including mass close-range executions, torture, destruction of vital infrastructure, and rape and sexual violence.

Lastly, the qualitative dimension of the targeted part of the group must be considered, including its political and community leaders or other emblematic members, as those figures are emblematic of the group or essential to the group’s survival. Russian forces have forcibly disappeared, tortured, and killed

²¹⁶ Human Rights Watch. (2022, April 26). Urgently Help Ukraine Civilians Flee Mariupol.

<https://www.hrw.org/news/2022/04/26/urgently-help-ukraine-civilians-flee-mariupol>

²¹⁷ Bosnia Para. 190.

²¹⁸ *Damaged cultural sites in Ukraine verified by UNESCO* | UNESCO. (n.d.). Retrieved May 23, 2022, from

<https://www.unesco.org/en/articles/damaged-cultural-sites-ukraine-verified-unesco>

²¹⁹ Kramer, A. E. (2022, March 13). Shelling damages a revered monastery, and injures some seeking shelter there. *The New York Times*. <https://www.nytimes.com/2022/03/13/world/europe/monastery-shelling-ukraine.html>

²²⁰ In eastern Ukraine, Russian military razing towns to take them over. (n.d.). *Washington Post*. Retrieved May 23, 2022, from <https://www.washingtonpost.com/world/2022/04/07/izyum-eastern-ukraine-razing-towns/>

²²¹ *In the ruins of Irpin, Ukraine begins a slow, painful search for justice* | CBC News. (n.d.). Retrieved May 23, 2022, from <https://www.cbc.ca/news/politics/ukraine-russia-irpin-putin-war-crimes-atrocity-1.6440301>

²²² *Bosnia v. Serbia*, para. 344, quoting Krstic, Trial Judgment, para. 580.

²²³ *Ukraine: Civilian casualty update 23 May 2022*. (n.d.). OHCHR.

<https://www.ohchr.org/en/news/2022/05/ukraine-civilian-casualty-update-23-may-2022>

²²⁴ *Ukraine civilian deaths thousands higher than official toll, warns UN* | Ukraine | *The Guardian*. (n.d.). Retrieved May 26, 2022, from <https://www.theguardian.com/world/2022/may/10/ukraine-civilian-deaths-higher-official-toll-un-warns>

²²⁵ *Bosnia v. Serbia*, para. 199.

local heads of government and community leaders,²²⁶ as in Hostomel,²²⁷ Chernihiv,²²⁸ Motyzhyn, Nova Kakhovka and Melitol,²²⁹ including killing the entire family of the Mayor of Motyzhyn dumped in a mass grave.²³⁰ According to a local NGO, as of April 9, Russian forces have abducted at least 11 mayors.²³¹ In a letter to the U.N. OHCHR, the US informed the High Commissioner of intelligence indicating that “Russian forces are creating lists of identified Ukrainians to be killed or sent to camps following a military occupation.”²³² Other members of the group who may play a more informal leadership role or are emblematic of Ukrainians are also being targeted. At the so-called “filtration” camps, according to witnesses, Ukrainians are being tortured, disappeared, or killed for any semblance of loyalty to Ukraine, expression of Ukrainian national identity, or activism.²³³ In sum, the totality of concentrated atrocities committed by Russian forces against Ukrainians in Russian-occupied areas and the singling out of identifiable Ukrainians or leaders for physical destruction evinces an intent to destroy the Ukrainian national group in part.

Attribution of Genocidal Intent

The pattern of atrocities targeting Ukrainian civilians as committed by the Russian military or Russian-backed separatists are attributable to Russia as persons and entities acting as State organs or under the effective control of State officials. The same conclusion regarding attribution of genocidal acts to the State that the UN Independent Fact-Finding Mission on Myanmar found with respect to the “clearance operations” by Myanmar’s military and other forces against the Rohingya applies here: “the vastness of the State’s involvement is inescapable.”²³⁴

²²⁶ OSCE Report, at 55, 59, 60; *Ukrainian official says Russian forces have abducted another mayor* | *The Hill*. (n.d.). Retrieved May 23, 2022, from <https://thehill.com/policy/international/598700-ukrainian-officials-say-russian-forces-have-abducted-third-mayor/>; In eastern Ukraine, Russian military razing towns to take them over. *Washington Post*, <https://www.washingtonpost.com/world/2022/04/07/izyum-eastern-ukraine-razing-towns/>

²²⁷ Human Rights Watch. (2022, May 2). Ukraine: Russian Forces Fired On Civilian Vehicles. <https://www.hrw.org/news/2022/05/02/ukraine-russian-forces-fired-civilian-vehicles>

²²⁸ *In shattered Chernihiv, Russian siege leaves a city asking, ‘Why?’* (2022, April 5). *Washington Post*. <https://www.washingtonpost.com/world/2022/04/05/chernihiv-scene-death-destruction/>

²²⁹ *Ukraine War: Civilians abducted as Russia tries to assert control—BBC News*. (n.d.). Retrieved May 26, 2022, from <https://www.bbc.com/news/world-europe-60858363>

²³⁰ Amnesty International. (2022, April 7). Ukraine: Russian forces extrajudicially executing civilians in apparent war crimes – new testimony. <https://www.amnesty.org/en/latest/news/2022/04/ukraine-russian-forces-extrajudicially-executing-civilians-in-apparent-war-crimes-new-testimony/>; Oleksandr Stashevskiy & Nebi Qena. (2022, April 4). Ukraine accuses Russia of massacre, city strewn with bodies. AP NEWS. <https://apnews.com/article/russia-ukraine-zelenskyy-kyiv-europe-evacuations-665fd06b92852547d7b27627b99509a6>; Truth Hounds-IPHR Mar. 22- Apr. 5 Report, at 2-3. *Update on the human rights situation in Ukraine*, OHCHR, https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf; *Ukraine: Executions, Torture During Russian Occupation* | *Human Rights Watch*. (n.d.).

<https://www.hrw.org/news/2022/05/18/ukraine-executions-torture-during-russian-occupation>

²³¹ Truth Hounds-IPHR Apr. 6-20 Report, at 13.

²³² *The Washington Post*. (2022, February 21). Read: U.S. letter to the U.N. alleging Russia is planning human rights abuses in Ukraine. <https://www.washingtonpost.com/context/read-u-s-letter-to-the-u-n-alleging-russia-is-planning-human-rights-abuses-in-ukraine/93a8d6a1-5b44-4ae8-89e5-cd5d328dd150/>

²³³ *Russian filtration camps: Ukrainians must endure a brutal process to escape Russian-held territory. Here’s what that means—CNN*. (n.d.). Retrieved May 26, 2022, from <https://edition.cnn.com/2022/05/23/europe/russia-ukraine-filtration-camps-intl-cmd/index.html>; *U.S. believes Russia plans to “engineer a more pliant population” in part by processing Ukrainians through camps, official says*. (n.d.). Retrieved May 26, 2022, from <https://www.cbsnews.com/news/russia-ukraine-camps-pliant-population/>

²³⁴ Detailed findings of the Independent International Fact-Finding Mission on Myanmar, Sept. 16, 2019, A/HRC/42/CRP.5, Para. 222

Early investigations have directly attributed some of the most destructive atrocities to Russian forces. According to the OSCE, “in most cases [of large-scale destruction of civilian objects,] attack angles, munitions used and objects hit clearly demonstrate that such attacks are attributable to Russia.”²³⁵ Investigative journalists and Amnesty International have traced the presence or involvement of Russian occupying forces to multiple sites of mass extrajudicial killings and torture of civilians. In the vicinity of Bucha, these forces included Russia’s Vityaz security force, the 76th Guards Air Assault Division (a paratrooper force under the Russian Defence Minister Sergei Shoigu) and Chechen units linked to the head of the Chechen Republic, and fervent Putin supporter, Ramzan Kadyrov.²³⁶ Vityaz is under the command of the National Guard, Rosgvardiya, and run by Viktor Zolotov, who reports directly to President Putin. Ukrainian authorities identified Russia’s 64th Separate Motorized Infantry Brigade as responsible for atrocities in Bucha, including killing civilians with starvation.²³⁷ Moreover, NGOs, reporters and weapons experts have traced many of the extensive cluster munition attacks directly to Russian forces, including to Russia’s 79th Rocket Artillery Brigade launching directly from Russia under the command of Col. Gen. Alexander Zhuravlyov.²³⁸

III. The Duty to Prevent Genocide

As the ICJ has held, a “State’s obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed.”²³⁹ The totality of destruction by Russian forces against Ukrainians documented in this report can guide an assessment by the international community and individual States as to whether genocide is underway or, at a minimum, whether there exists a serious risk of genocide, triggering the corresponding duty to prevent.

The Imminent Risk of Genocide

The UN Framework of Analysis for the Prevention of Atrocity Crimes provides an additional guide to assessing the degree to which such a serious risk of genocide exists, including the risk factors specific to genocide: 1) intergroup tensions and 2) signs of intent to destroy a protected group, and their indicators.²⁴⁰ Under the first risk factor, most of the indicators are prominently featured in the present situation, including Russia’s denial of the existence of a Ukrainian group, history of atrocities committed with impunity, and past conflicts over resources or political participation.²⁴¹ In this regard, the ICJ has underscored the relevance of a “climate of deep-seated hatred” to the question of a serious risk, a climate that undoubtedly exists where Russian soldiers have been conditioned to internalize messages that equate

²³⁵ OSCE report at 28.

²³⁶ <https://www.reuters.com/investigates/special-report/ukraine-crisis-bucha-killings-soldiers/>; see also Amnesty at 6-16, <https://www.amnesty.org/en/documents/eur50/5561/2022/en/>.

²³⁷ Jeffrey Gettleman. (2022, April 29) Ukraine singles out Russian soldiers for atrocities in Bucha. The New York Times. <https://www.nytimes.com/2022/04/29/world/europe/bucha-russian-soldiers-atrocities.html>

²³⁸ Human Rights Watch. (2022, May 11) Intense and Lasting Harm: Cluster Munition Attacks in Ukraine.

<https://www.hrw.org/report/2022/05/11/intense-and-lasting-harm/cluster-munition-attacks-ukraine>;

Nima Elbagir, Barbara Arvanitidis, Gianluca Mezzofiore, Katie Polglase, Tamara Qiblawi, Alex Pratt, Victoria Butenko, Darya Tarasova & Maria Avdeeva. (2022, May 14) Exclusive: Russian general who oversaw atrocities in Syria led cluster bomb attacks on civilians in Ukraine. CNN. <https://www.cnn.com/2022/05/12/world/russia-general-ukraine-syria-cluster-bombs-intl-cmd/index.html>

²³⁹ *Bosnia v Serbia*, para. 431.

²⁴⁰ *UN Framework of Analysis for Atrocity Crimes*, at 18-19. See also *Compilation of Risk Factors and Legal Norms for the Prevention of Genocide*. (2011). Jacob Blaustein Institute for the Advancement of Human Rights, at 2-4. <https://www.jbi-humanrights.org/files/jbi-compilation-on-genocide-prevention.pdf>

²⁴¹ *UN Framework of Analysis for Atrocity Crimes*, at 18.

Ukrainians with Nazis.²⁴² The signs of genocidal intent under the second risk factor targeting Ukrainians have *all* been amply demonstrated in this report, including documentation of incitement, targeted physical destruction, widespread or systematic violence, measures that seriously affect reproductive rights or contemplate forcible transfer of children, dehumanizing violence, use of prohibited weapons, strong expressions of approval at control over the protected group,²⁴³ and attacks against homes, farms, and cultural or religious symbols and property.²⁴⁴

There are also a number of additional triggering factors present, or events that may spark the onset of genocide, including armed hostilities, measures perceived as threatening to a State's sovereignty (increasing application of neighboring countries to join NATO, which Russia has proclaimed to be a threat to its national security, requiring "retaliatory steps"²⁴⁵), acts of incitement or hate propaganda, and commemoration of traumatic or historical episodes that can exacerbate tensions (denazification invasion harkening to Russia's traumatic historical episode in World War II).

The evidence in this report establishing the clear existence of a serious risk of genocide is entirely based on open sources, of which States cannot deny knowledge.

The Nature of the Duty to Prevent

The Genocide Convention imposes a minimum legal obligation on States to each take reasonable action to contribute toward preventing genocide, a duty that extends extraterritorially and applies regardless of whether any one State's actions alone are sufficient to prevent genocide. States with strong political links to Russia have a greater duty to use their influence in this regard, as the duty to prevent varies from State to State depending on its:

"capacity to influence effectively the action of persons likely to commit, or already committing, genocide. This capacity itself depends, among other things, on the geographical distance of the State concerned from the scene of the events, and on the strength of the political links, as well as links of all other kinds, between the authorities of that State and the main actors in the events."²⁴⁶

The ICJ has very clearly defined the obligation as requiring States parties "to employ all means reasonably available to them, so as to prevent genocide so far as possible."²⁴⁷ In this context, all States must employ all means reasonably available to influence Russian leaders publicly and privately to take action to protect vulnerable Ukrainian civilians from the imminent risk of genocide through, among other things, securing guarantees for safe humanitarian zones and corridors, access to medical care and basic necessities, and accountability processes for atrocity crimes committed by Russian soldiers.

²⁴² Bosnia v. Serbia Para 438.

²⁴³ See Russia's treatment of Russian forces responsible for atrocities. For instance, Putin has awarded the brigade suspected of atrocities in Bucha with an honorary title for "protecting Russia's sovereignty," praising the unit's "great heroism and courage ... a role model in fulfilling its military duty, valor, dedication and professionalism."

²⁴⁴ *UN Framework of Analysis for Atrocity Crimes*, at 19.

²⁴⁵ Oleksandr Stashevskiy (2022, May 13). Russian threats push Finland toward joining NATO alliance. AP NEWS. <https://apnews.com/article/russia-ukraine-putin-kyiv-western-europe-4e2a185188fa94200161b831d6692683>

²⁴⁶ Bosnia v. Serbia para. 430.

²⁴⁷ Id.

Conclusion

In 1995, the details of the mass murder of over 7,000 Bosnian Muslim boys and men in Srebrenica only emerged before the international community when it was too late to prevent a genocide that occurred in a matter of days.²⁴⁸ In 2022, we have the capabilities to accurately track similar atrocities as they unfold and respond accordingly.

This report establishes reasonable grounds to conclude that Russia bears State responsibility for (a) direct and public incitement to commit genocide and (b) a pattern of atrocities from which an inference of intent to destroy the Ukrainian national group in part can be drawn, in breach of Art. III(c) and Art. II. In addition, the report conclusively establishes the existence of a serious risk of genocide, triggering the legal duty of all States to prevent genocide under Art. I of the Genocide Convention.

²⁴⁸ *Report of the Secretary-General pursuant to General Assembly resolution 53/35, The Fall of Srebrenica*, United Nations Secretary General, at 72 https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_549_1999.pdf.

Afterword by the Hon. Irwin Cotler

The Raoul Wallenberg Centre for Human Rights and the New Lines Institute have produced a comprehensive and compelling evidence-based report of international criminality by Russia in its unprovoked and premeditated aggression in Ukraine. We trust that the critical mass of evidence - anchored in authoritative legal determinations - will serve as an important resource for international institutions, governments, parliaments, courts and civil society leaders, in helping to secure justice for the Ukrainian people and accountability for Russian mass atrocities.

The report makes three compelling determinations:

First, that Russia has been engaged in incitement to genocide, a stand-alone crime under the Genocide Convention; second that genocidal intent and action can be inferred from Russia's criminal aggression and mass atrocity crimes; third, that State Parties have a Responsibility to Prevent and hold Russia accountable.

We understand there is a reluctance to invoke the Genocide Convention - and that this might invite a debate on definition rather than the necessary action to be taken - but in this instance, the pervasive and systematic atrocities targeting Ukrainians mandate these determinations and the responsibility to act.

In summary, the report highlights our responsibility to prevent, and protect, further mass atrocities and incitement to genocide. As the international community confronts the greatest threat to the international legal order in recent history-on the political independence and territorial integrity of the Ukrainian State and the Ukrainian people-we can no longer say that we do not know. We know and we must act.

Honourable Irwin Cotler
International Chair
Raoul Wallenberg Centre for Human Rights Montreal, QC

Appendix

This report has been produced with the contributions of, and upon consultation with, numerous independent experts, including the following who have agreed to be identified publicly:

Yonah Diamond

Yonah Diamond, principal author of this report, is an international human rights lawyer specializing in atrocity prevention, international justice, and political prisoner advocacy at the Raoul Wallenberg Centre for Human Rights. He is also principal author and co-author of the independent reports *The Uyghur Genocide: An Examination of China's Breaches of the 1948 Genocide Convention* (2021) and *Cameroon's Unfolding Catastrophe: Evidence of Human Rights Violations and Crimes against Humanity* (2019), respectively.

Professor John Packer

Professor John Packer is the Neuberger-Jesin Professor of International Conflict Resolution in the Faculty of Law and Director of the Human Rights Research and Education Centre at the University of Ottawa. For over 20 years he worked for intergovernmental organizations (UNHCR, ILO, OHCHR, UNDP, OSCE) which included investigations of serious violations of human rights notably in Iraq, Afghanistan, and Burma/Myanmar. He is a former Senior Legal Adviser and the first Director of the Office of the High Commissioner on National Minorities of the Organisation for Security and Cooperation in Europe. Professor Packer served this project as a principal advisor.

Erin Farrell Rosenberg

Erin Farrell Rosenberg is a Visiting Scholar with the Urban Morgan Institute for Human Rights at the University of Cincinnati College of Law. She is an attorney specializing in international criminal law and reparations, having worked at the ICTY and the International Criminal Court for a decade. She is the former Senior Advisor for the Center for the Prevention of Genocide at the US Holocaust Memorial Museum, where she was the lead author for the report series, *Practical Prevention: How the Genocide Convention's Obligation to Prevent Applies to Burma*. She is a member of the Editorial Committee of the Journal of International Criminal Justice (JICJ) and the ABA Working Group on Crimes Against Humanity. Farrell Rosenberg served this project as a principal advisor.

Professor Susan Benesch

Professor Susan Benesch founded and directs the Dangerous Speech Project (dangerousspeech.org), to study speech that can inspire violence - and to find ways to prevent this, without infringing on freedom of expression. An international human rights lawyer, she is also Faculty Associate of the Berkman Klein Center for Internet & Society at Harvard University.

Rayhan Asat

Rayhan Asat is a human rights attorney based in Washington DC. A graduate of Harvard Law School and former anti-corruption attorney at a major U.S. law firm, she specializes in international human rights law. She is currently a Senior Fellow at the Raoul Wallenberg Center for Human Rights and is also the Founder and President of the American Turkic International Lawyers Association.

Adejoké Babington-Ashaye

Adejoké Babington-Ashaye is an international law expert. She is actively engaged in the provision of technical support and advice for national prosecution and investigation of international crimes through UNODC and The Wayamo Foundation, and was an investigator at the International Criminal Court (2005 - 2010). Babington-Ashaye has also served as the Former Senior Counsel at the World Bank (2012 -

2021) and Former Associate Legal Officer at the International Court of Justice (2010 - 2012).

Christopher Atwood

Christopher Atwood is a graduate student at the Harriman Institute of Columbia University. He researches regional perceptions of identity, culture, and communications. He has advised several media, advertising, and marketing organizations and NGOs in both Ukraine and Russia. He served this project as an advisor.

Santiago A. Canton

Santiago A. Canton is the director of the Peter D. Bell Rule of Law Program at the Inter-American Dialogue and an international visiting scholar at the American University Washington College of Law. In 1998, he served as the first Special Rapporteur for Freedom of Expression in the Inter-American System. From 2001 - 2012, he was the Executive Secretary of the Inter-American Commission on Human Rights of the Organization of American States. In 2005, Canton was awarded the Inter-American Press Association's Chapultepec Grand Prize for his contributions to the promotion, development, strengthening, and defense of the principles of freedom of expression.

Honorable Irwin Cotler

The Honorable Irwin Cotler is the International Chair of the Raoul Wallenberg Centre for Human Rights, an Emeritus Professor of Law at McGill University, former Minister of Justice and Attorney General of Canada and longtime Member of Parliament, and an international human rights lawyer.

Professor David Crane

Professor David Crane is a Professor of Practice at Syracuse University College of Law. He teaches international law, international criminal law, international humanitarian law, national security law, and other related subjects. He is also the founder of the "I am Syria" campaign and "Impunity Watch." Previously, Crane served as the Chief Prosecutor of the International War Crimes Tribunal in West Africa, known as the Special Court for Sierra Leone, appointed by U.N. Secretary General Kofi Annan, from 2002-2005.

Dato Param Cumaraswamy

Dato Param Cumaraswamy is a distinguished international lawyer who served as the Chair of the Malaysian Bar Council from 1986 to 1988 and United Nations Special Rapporteur on the Independence of Judges and Lawyers by the UN Commission on Human Rights from 1994 to 2003. He has written extensively about the independence of the legal profession and the judiciary and about the importance of human rights. He has lectured widely on a variety of legal topics, notably on the role of an independent and responsible judiciary in fostering democracy.

Ambassador Kelley Currie

Ambassador Kelley Currie is a human rights lawyer who has served as US Ambassador-at-Large for Global Women's Issues (2019 - 2021) and US Representative to the United Nations Economic and Social Council (2017 - 2019). Throughout her career in foreign policy, Ambassador Currie has specialized in human rights, political reform, development and humanitarian issues. She is currently an Adjunct Senior Fellow at the Center for New American Security and Senior Non Resident Fellow at the New Lines Institute.

Professor Tanya L. Domi

Professor Tanya L. Domi is an Adjunct Assistant Professor of International and Public Affairs at Columbia University's School of International and Public Affairs and is an affiliate faculty member of the Harriman Institute. Domi has researched EU integration of Western Balkan countries and NATO

enlargement in the region.

Dr. Tatyana Eatwell

Dr. Tatyana Eatwell is a Barrister at Doughty Street Chambers in London, U.K., who specialises in public international law and international human rights law. She has acted in high-profile criminal appeals before the UK Supreme Court concerning the interpretation of international law on, for example, war crimes, terrorism, and torture, and the application of international law in domestic proceedings. She has a PhD from the University of Cambridge in Public International Law. Her thesis focuses on questions of attribution and is titled ‘State Responsibility for the Unlawful Conduct of Armed Groups’ (due to be published by Cambridge University Press in 2022).

Mark Ellis

Mark Ellis is the Director of the International Bar Association and is the chair of the UN-created Advisory Panel on Matters Relating to Defence Counsel of the Mechanism for International Criminal Tribunals. Ellis has also served as Legal Advisor to the Independent International Commission on Kosovo and was appointed by OSCE to advise on the creation of Serbia’s War Crimes Tribunal. He was actively involved with the Iraqi High Tribunal and acted as legal consultant to the defense team of Nuon Chea at the Cambodian War Crimes Tribunal (ECCC).

Zoe Gladstone

Zoe Gladstone has a JD from the University of Ottawa where she specialized in human rights and international law. She has varied work experience in the public sector, including through Canada’s Department of Justice and Department of Foreign Affairs, as a former Project Manager at the Raoul Wallenberg Centre for Human Rights, and as a Policy and Legal Intern at the Human Rights Foundation.

Professor Max Hilaire

Professor Max Hilaire is a Professor at New York University, Prague. He holds an M.A, M.Phil, and Ph.D in International Relations from Columbia University. His expertise includes Public International Law, International Human Rights & International Humanitarian Law, United Nations Law, and U.S. Foreign Relations Law. He is the former Professor & Chair of the Department of Political Science at Morgan State University. He is a two-time Fulbright Scholar, and a recipient of a number of Fulbright-Hayes award and other distinguished faculty awards. He is the author of several books, most recently *The Evolution and Transformation of International Law*.

Mofidul Hoque

Mofidul Hoque is the Founding Trustee of the Liberation War Museum in Bangladesh and the Director of the Centre for Studies on Genocide and Peace. He is a recipient of the second-highest civilian award in Bangladesh, the Ekushey Padak, and is recognized internationally for his work as a genocide scholar, an activist, and a researcher.

Professor Steven T. Katz

Professor Steven T. Katz holds the Alvin J. And Shirley Slater Chair in Jewish Holocaust Studies at Boston University and is the former Director of the Elie Wiesel Center for Jewish Studies. He previously taught at Dartmouth College and has published numerous works on the Holocaust and Jewish philosophy.

Professor Hiroaki Kuromiya

Professor Hiroaki Kuromiya is a Professor of History Emeritus at Indiana University. He studies modern and contemporary Ukraine in the wider context of Eurasian history. Professor Kuromiya has written on the Donbass (historical and contemporary), the Holodomor, the Great Terror, along with other subjects,

mainly focusing on the Stalin era.

Professor Errol Mendes

Professor Errol Mendes is a lawyer, author, and Professor at the University of Ottawa. He has previously served as Director of the Human Rights Research and Education Centre, the oldest University-based bilingual human rights research and education institution in Canada. Professor Mendes has also served as an adviser to corporations, governments, civil society groups, and the United Nations. His interests include constitutional and human rights law, public international law, including humanitarian and international criminal law, and international business and trade law.

Professor Norman M. Naimark

Professor Norman M. Naimark is the Robert and Florence McDonnell Professor of East European Studies at Stanford University. Naimark is interested in modern Eastern European and Russian history as well as genocide and ethnic cleansing in the 20th century. He is the author of *Genocide: A World History*. Naimark earned his Ph.D. in History from Stanford University in 1972. In addition to his myriad academic positions, he has been awarded the Officer's Cross of the Order of Merit of the Federal Republic of Germany in 1996.

Dr. Melanie O'Brien

Dr. Melanie O'Brien is an Associate Professor of International Law at the University of Western Australia's Law School. She is the President of the International Association of Genocide Scholars, and a member of the WA International Humanitarian Law Committee of the Australian Red Cross. Dr. O'Brien's research and supervision areas include international criminal law, genocide studies, international human rights law, international humanitarian law, feminist legal theory, public international law, comparative criminal law, peacekeeping, and military law. O'Brien's work on forced marriage has been cited by the International Criminal Court, and she has been an *amicus curiae* before the ICC.

Dr. Ewelina U. Ochab

Dr. Ewelina U. Ochab is a human rights advocate, author and co-founder of the Coalition for Genocide Response. Dr. Ochab works on the topic of genocide, with specific focus on the persecution of ethnic and religious minorities around the world. Her main projects focus on the Daesh genocide in Syria and Iraq, Boko Haram atrocities in West Africa, the situation of the Rohingya Muslims in Myanmar and of the Uyghurs in China. She has written over 30 reports for the UN and has made oral and written submissions at the Human Rights Council, the UN Forum on Minority Issues, PACE, and other international and regional fora.

Professor Maxim Pensky

Professor Max Pensky is a Professor of Philosophy at Binghamton University, the State University of New York, where he is a founding Co-Director of the Institute for Genocide and Mass Atrocity Prevention (I-GMAP). He has held fellowships at Goethe University Frankfurt as well as Oxford and Cornell Universities.

Emily Prey

Emily Prey is a Senior Analyst at The New Lines Institute for Strategy and Policy. She is a gender expert specializing in genocide and transitional justice with a Master's in Gender Analysis and Human Security from The Fletcher School of Law and Diplomacy. She contributed to the independent expert report *The Uyghur Genocide: An Examination of China's Breaches of the Genocide Convention*. She served this project as an advisor.

Ambassador Allan Rock

Ambassador Allan Rock is President Emeritus and Professor of Law at the University of Ottawa. He practiced for 20 years as a trial lawyer in Toronto before his election to Parliament, where he held multiple Cabinet posts. He later served as Canadian Ambassador to the United Nations in New York, where he led the successful Canadian effort to secure the unanimous adoption by UN member states of The Responsibility to Protect.

Dean Michael Scharf

Dean Michael Scharf has been Co-Dean of the Case Western Reserve University School of Law since 2013. He also serves as Managing Director of the Public International Law and Policy Group, a Nobel Peace Prize-nominated NGO. He has led USAID-funded transitional justice projects in Uganda, Côte d'Ivoire, Libya, and Turkey (for Syria), and maritime piracy projects in Kenya, Mauritius, and The Seychelles. Scharf has also held numerous positions with the U.S. Department of State as an attorney.

Ambassador David J. Scheffer

Ambassador David J. Scheffer is the International Francqui Professor, KU Leuven, and was the first US Ambassador at Large for War Crimes Issues (1997 - 2001). Scheffer participated in the creation of the International Criminal Tribunals for the former Yugoslavia and Rwanda, the Special Court for Sierra Leone, and the Khmer Rouge tribunal. He also led the U.S. negotiating team in United Nations talks on the International Criminal Court. Scheffer is Clinical Professor Emeritus and Director Emeritus of the Center for International Human Rights at Northwestern Pritzker School of Law.

Professor Marci Shore

Professor Marci Shore is an Associate Professor of History at Yale University and a regular visiting fellow at the Institut für die Wissenschaften vom Menschen in Vienna. She is the translator of Michał Głowiński's *The Black Seasons* and the author of *Caviar and Ashes: A Warsaw Generation's Life and Death in Marxism* (1918-1968), *The Taste of Ashes: The Afterlife of Totalitarianism in Eastern Europe*, and *The Ukrainian Night: An Intimate History of Revolution*. She received a Guggenheim Fellowship for her current project about phenomenology in East-Central Europe, tentatively titled *Eyeglasses Floating in the Sky: Central European Encounters that Took Place while Searching for Truth*.

Dr. David Simon

Dr. David Simon serves on the Executive Committee of the Consortium of Higher Education Centers for Holocaust, Genocide, and Human Rights Studies. Simon studies how states and societies commit and experience mass atrocities, and their subsequent recovery. He serves as the Director of Undergraduate Studies at Yale and has served as a consultant for several U.N. agencies, including UNDP, UNITAR, Office of the Special Adviser for the Prevention of Genocide, and the Millennium Development Project.

Prof. Timothy Snyder

Prof. Timothy Snyder is the Richard C. Levin Professor of History at Yale University and a permanent fellow at the Institute for Human Sciences in Vienna. His books include *The Reconstruction of Nations: Poland, Ukraine, Lithuania, Belarus, 1569-1999* (2003), *Bloodlands: Europe Between Hitler and Stalin* (2010), *Black Earth: The Holocaust as History and Warning* (2015), and *On Tyranny: Twenty Lessons from the Twentieth Century* (2017). He was a Marshall Scholar at Oxford, and has received the Carnegie and Guggenheim fellowships. Among other distinctions are the Emerson Prize in the Humanities, the Literature Award of the American Academy of Arts and Letters, the Foundation for Polish Science prize in the social sciences, the Leipzig Award for European Understanding, the Dutch Auschwitz Committee award, and the Hannah Arendt Prize in Political Thought.

Dr. Gregory H. Stanton

Dr. Gregory H. Stanton is the Founding President of Genocide Watch, founder of the Cambodian Genocide Project, and founder of the Alliance Against Genocide. He was President (2007 - 2009) of the International Association of Genocide Scholars (IAGS). While in the US State Department, he drafted the UN Security Council Resolutions that created the International Criminal Tribunal for Rwanda.

Chief Charles Taku

Chief Taku is a certified leading international law expert with forty years of professional and trial experience. He is the immediate past President of the International Criminal Court Bar Association (ICCBA) and a Trustee and Member for Life of the Executive Governing Council of the African Bar Association (AfBA). Over the last two decades, he represented clients at the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, the International Criminal Court, the United Nations Human Rights Committee in Geneva and the African Court on Human and Peoples' Rights in Arusha Tanzania.

Dr. György Tatár

Dr. György Tatár is the Chair of the Board of Trustees of the Foundation for the International Prevention of Genocide and Mass Atrocities established in Budapest, Hungary, since 2011. Prior to joining the Foundation, from 2004 to 2010 he worked for the EU High Representative for Common Foreign and Security Policy in the capacity of Head of Task Force for Horizontal Security Issues and Conflict Prevention within the Policy Planning and Early Warning Unit. From 1977 to 2004, he served in the Ministry for Foreign Affairs of Hungary in various positions in Budapest and in the Embassies of Hungary in Baghdad, Prague and Vienna.

Robert Tyler

Robert Tyler is a Senior Policy Advisor at New Direction – Foundation for European Reform, a Brussels-based think tank founded by Margaret Thatcher in 2009 as the official foundation of the European Conservative Movement. Prior to working for New Direction, he worked as policy adviser in the European Parliament, focused on foreign policy and counterterrorism.

Acknowledgements

The New Lines Institute and The Raoul Wallenberg Centre for Human Rights would like to thank the following people for their invaluable support, without which this report would not have been possible:

Robert Tyler, Senior Policy Advisor, New Direction
Aram Shabanian, OSINT Specialist, New Lines Institute
Skylar Banks, Policy Intern, Raoul Wallenberg Centre for Human Rights
Clément Gun Cuninghame, Research Intern, New Lines Institute
Ella Johnson, Legal Intern, Raoul Wallenberg Centre for Human Rights
Alec Dionne, Research Intern, New Lines Institute
Kanalya Arivalagan, Director, Ukraine Task Force, Global Accountability Network

For translation works:

Dr. Aboubacar Dakuyo, Human Rights Research Education Centre, University of Ottawa
Yurii Popovych, Translator
Maksym Popovych, Legal Editor
Ganna Huemer, Translator
Peter Marius Huemer, Translator
Pavel Havlicek, Research Fellow at the Research Centre, Association for International Affairs