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 funneling 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.
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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.

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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, 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.” 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,” 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. 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. The report applies a second “conclusive” or “fully convincing” standard to

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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.
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. 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. 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. Importantly, the standard of proof for breaches of a treaty
under international law is lower than that required for criminal proceedings. 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.”

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;

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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,
1&chapter=4&clang=_en#33.

7 Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections, Judgment,
1. 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

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-

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.”

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.

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.” 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 in their context and in the light of its object and purpose.

Treaties are interpreted with reference to their preambles and related agreements. 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.

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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.
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

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.”
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.”
Russia. 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.

**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.

**The Protected National Group**

The jurisprudence has defined a protected group by its positive characteristics, i.e. the group “as such.” 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. 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:


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

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.

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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.


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

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.
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

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.” In March 2016, RISS analyst Oleg Nemensky argued that “the majority of the Ukrainian public have nothing to do with that [Ukrainian] culture.” 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.”

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.” 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.” 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.

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.” 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.” 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.”

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,” or by indulging Nazism, as suggested in Putin’s essay. It should be noted that the denial of

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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, from http://en.kremlin.ru/events/president/news/66181
50 Ibid
51 Ibid
54 Dmitry Medvedev, Telegram: Contact @medvedev_telegram. (n.d.). Retrieved May 20, 2022, from https://t.me/medvedev_telegram/34
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

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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 Croatians were planning for “the complete annihilation of the Serbian people.”)
"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. 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.” 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 ...”

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.” 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.”

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.”

67 Pyotr Tolstoy Telegram: Contact @petr_tolstoy. (n.d.). Retrieved May 20, 2022, from https://t.me/petr_tolstoy/1300
69 Pyotr Tolstoy Telegram: Contact @petr_tolstoy. (n.d.). Retrieved May 20, 2022, from https://t.me/petr_tolstoy/1286
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].” 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.” 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.”

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.” 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,” 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.”

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
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.” General Zolotov accepted the icon, saying it would “protect the Russian army and speed up our victory” over “Nazis.” 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.

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. 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.

The propaganda messages are collectively laden with terms that have been found to have incited other genocides, 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. 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.” Russian soldiers of impressionable military age are further

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80 Ibid.


84 Ibid., at 80

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

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

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.
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.”

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.”

According to the head of a UNICEF-supported hotline for victims, soldiers have explicitly threatened to rape “every Nazi whore.” According to witnesses in Bucha, Russian forces went door to door, claiming they were “hunting Nazis,” and rounding up men of military age. 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.” A Hostomel resident recalled a senior Russian officer telling an eight-year-old girl “we will liberate you from Nazis.”

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.

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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. 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, or “actions which had a logical and coherent sequence.”

A general plan can be evidenced by, among other things, official statements, directives, a policy and “the invariability of the killing methods applied.”

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.” 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.

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.” 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.”

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 Bosna 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, Bosna 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 Krstic (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.”
107 Id. at 199.
group, including particularly the group’s leadership, or individuals emblematic of the group or essential to its survival.

**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.” 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. Throughout these areas, national and international investigators and analysts have documented rapidly expanding mass graves and a pattern of Ukrainian civilian corpses

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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.’”


110 https://t.me/medvedev_telegram/34

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, Avril 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=15bc935fa1ccbb65;


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


\(^{114}\) 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;


\(^{117}\) 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.
122 Ibid.
123 Kvočka et al. (IT-98-30/1), para. 149.
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
129 Ibid.
to the back of the head, execution-style, including 20 percent with hands tied. In various Ukrainian towns and cities, residents reported that Russian forces were openly shooting civilians in the street. In Irpin, Russian soldiers reportedly shot residents walking on the street and ran over their bodies with tanks. 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. Russian soldiers have further gone directly to homes and shelters to kill civilians. On March 7, in Vorzel, Russian soldiers reportedly stormed a basement, threw a smoke grenade inside, and fired on civilians who tried to escape. 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.

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.

**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.”

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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]

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


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, killing close to 600 civilians. 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.” 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. On March 17, Russian artillery struck at a school and community center near Kharkiv, killing at least 21 people, according to Ukrainian officials. On May 7, Russian aircraft bombed a school in Luhansk Oblast, killing around 60 civilians sheltering there.

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. 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. In early March, an ICRC representative stated that an agreed-upon evacuation route from Mariupol was mined. 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. 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). 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-c321a196fbd568899841b506afcaec7a1


141 OSCE Report at 48.


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-60635927/ns_mchannel=social&ns_source=twitter&ns_campaign=bbclive&ns_linkname=6225c463980bea49f4b7b73c%26Evacuation%20route%20out%20of%20Mariupol%20was%20mined%2C%20Red%20Cross%20says%262022-03-07T18%3A47%3A05%2B00%3A00&ns_fee=0&pinned_post_locator=urn:asset:db771701-6dc4-4ec6-88c5-bf4f897ab54&pinned_post_asset_id=6225c463980bea49f4b7b73c&pinned_post_type=share


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

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


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.

Russian forces.\(^{159}\) In Borodianika, 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 Borodianika 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 Izium, 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

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\(^{161}\) Truth Hounds-IPHR Apr. 6-20 Report, at 6.

\(^{162}\) Ibid.


\(^{166}\) 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, and aid distribution centers, demonstrating a military strategy and policy of deliberately inflicting fatal conditions on Ukrainian inhabitants.

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. 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. 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. 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.

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.

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

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


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

**Attacks on Health Care**

As of May 25, the World Health Organization (WHO) has documented 248 attacks against Ukraine’s health care system. 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. 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. During the Russian sieges, residents have spoken of resorting to boiling snow for water or drawing water from boilers.

**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. Russian forces have repeatedly blocked or seized humanitarian aid supplies and workers or convoys seeking to evacuate Ukrainian civilians, and

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stolen basic necessities from residents under siege. 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.”

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. 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. During the occupation of Bucha, six people in a seniors’ home died of hunger, according to cemetery workers. 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. 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.

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. The United Nations Human Rights

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


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/57679e324.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.”

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.”

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.” 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. 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. 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.

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. In Borodianka, a man’s body was found heavily bruised, with a bag over his head, hands tied, and pants pulled down. 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.

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. The magnitude

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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
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
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.). Mediapost. 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 ввати жінок Це шокуюче перехоплення СБУ відображає моральні цінності не лише окупантів, а й їхніх близьких та рідних, 80% яких зараховують війну в Україні 🎯 https://t.co/2C0vF0Msb8 [Tweet]. Twitter. https://twitter.com/ServiceSsu/status/151387621315757056;
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. 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. 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.

**Forcible Transfer**

The large-scale transfer of Ukrainian children to Russia or Russian-controlled territory can amount to “[forcibly 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. 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. 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. Ukrainian and Russian officials further reported that some Ukrainian children deported to Russia will have to take Russian classes. 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. On April 18, Ukrainian officials reported that

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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.”)


Russian forces forcibly transferred 40,000 Mariupol residents to Russia. 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].”

**Destruction of Cultural and Sacred Sites**

As of May 2, UNESCO has verified damage to 120 cultural and sacred sites since Feb. 24. On March 12, Russian forces targeted and damaged one of Ukraine’s most sacred Orthodox Christian sites in an airstrike. In Izium, Russian bombardment damaged another Ukrainian Orthodox Church that survived World War II. 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. According to the jurisprudence, attacks against cultural and religious sites “may legitimately be considered as evidence of an intent to physically destroy the group.”

**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, though warns that the number of deaths are thousands higher, as documentation is delayed in areas of intense hostilities. 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. 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

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217 Bosnia Para. 190.
225 Bosnia v. Serbia, para. 199.
local heads of government and community leaders,\textsuperscript{226} as in Hostomel,\textsuperscript{227} Chernihiv,\textsuperscript{228} Motyzhyn, Nova Kakhovka and Melitol,\textsuperscript{229} including killing the entire family of the Mayor of Motyzhyn dumped in a mass grave.\textsuperscript{230} According to a local NGO, as of April 9, Russian forces have abducted at least 11 mayors.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{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.”\textsuperscript{234}


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


\textsuperscript{230} Truth Hounds-IPHR Apr. 6-20 Report, at 13.


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.”\textsuperscript{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 76\textsuperscript{th} 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.\textsuperscript{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 64\textsuperscript{th} Separate Motorized Infantry Brigade as responsible for atrocities in Bucha, including killing civilians with starvation.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{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.\textsuperscript{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

\textsuperscript{235} OSCE report at 28.
\textsuperscript{239} Bosnia v Serbia, para. 431.
\textsuperscript{241} UN Framework of Analysis for Atrocity Crimes, at 18.
Ukrainians with Nazis. 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, and attacks against homes, farms, and cultural or religious symbols and property.

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”), 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.”

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.” 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.
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. 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.

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
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