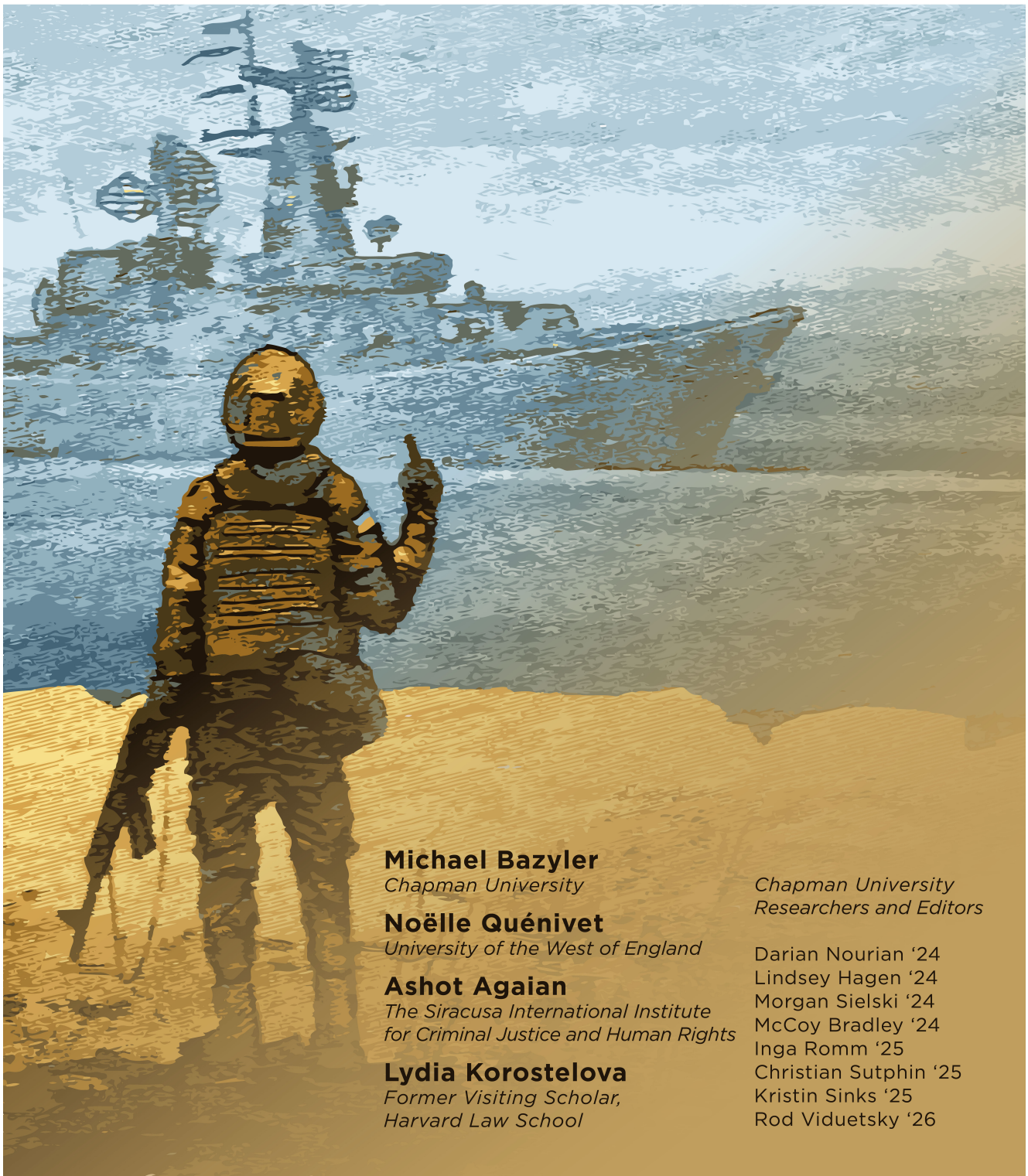
THE RUSSO-UKRAINIAN WAR LAW HANDBOOK



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Preface

You are viewing the first law text on the Russo-Ukrainian War. Not since the beginning of the Second World War in 1939, when Nazi Germany invaded Poland, has a European country brazenly attacked another, took portions of its territory, claimed it as its own, and then launched a full-scale invasion to capture and incorporate the remainder, so that it no longer exists, or create a neighboring puppet state. We regret the need for this volume, and hope that the events analyzed here will serve as a history lesson, rather than a warning of something more devastating. The Russo-Ukrainian War has upended the international legal order created in 1945 through the United Nations (UN). For the first time in its history, a permanent member of the UN Security Council has engaged in a war of aggression of the kind that the UN Charter sought to make obsolete.[1]

The first stage of the invasion of Ukraine (the formal name of the country)[2] by Russia (formally known as the Russian Federation) took place in 2014 when Russian soldiers without insignia ("little green men" as they became known because of the color of their uniform) suddenly appeared in the Ukrainian territory of Crimea[3] and took over that peninsula. The invasion and takeover of Crimea was followed by Russian invasions of the Donbas region in Eastern Ukraine. Over the next few years, Russia continued to take parts of the Donbas, first claiming portions to be independent "people's republics" and then annexing them as new constituent territories of the post-Soviet Russian Federation.

[1] Sacrosanct to that UN-based world order is the international norm that no nation can attack another nation and claim all or part of its territory as its own. See Part III. In 1994, when Saddam Hussein invaded neighboring Kuwait and announced that it was no longer an independent state but a new Iraqi province, the U.S.-led coalition liberated Kuwait.

[2] It would be improper to refer to the country as "the Ukraine" since this signifies a region, not a sovereign state. "Republic of Ukraine" is also not accurate. Upon independence from the Soviet Union in 1991, "Ukraine" was the name chosen by the Ukrainian people and is used in the Constitution of Ukraine. Other countries have done the same. For instance, the formal name of Israel is "the State of Israel."

[3] The formal name is the "Autonomous Republic of Crimea of Ukraine."

Bottom Caption: Poster marking September 30 as a new Russian national holiday to commemorate the supposed annexation of Kherson, Melitopol, Donetsk, and Luhansk regions of Ukraine as new territories of the Russian Federation.

The second stage was a full-scale invasion of Ukraine. The invasion began at 5 a.m. on February 24, 2022, with a military blitzkrieg of Russian troops, tanks, and planes crossing into Ukraine.[4] It was preceded by a month-long Russian military buildup on the Ukrainian border, a flurry of European top diplomats visiting the Kremlin to stave off the invasion, and false assurances by Russian officials that no attack was imminent.

When the invasion transpired, almost every military analyst, including those in the United States, predicted a quick Russian military victory. The United States was prepared to send a military plane to carry Ukrainian President Volodymyr Zelensky into exile, as it had done just six months earlier for Afghan President Ashraf Ghani as the Taliban was on the brink of capturing the country's capital and as Russia did for Syrian President Bashar al-Assad in December 2024. Russian President Vladimir Putin's top military brass apparently informed him of the almost certain victory of Russia's so-called "special military operation" (SMO).[5] The invading Russian troops were even instructed to bring decorative military uniforms for the impending victory parade in Maidan Square in the city center of Kyiv.

And why not expect immediate victory? Russia had the world's third-largest military after the United States and China. Zelensky, the Ukrainian leader in charge of resisting the Russian invasion, was a former comedian, actor, screenwriter, producer, and the main star of a Ukrainian political satire comedy series.[6] Before running for the actual presidency, Zelensky had no political experience.[7] But, as Winston Churchill cautioned in his autobiography, *My Early Life: A Roving Commission*:

> Never, never, never believe any war will be smooth and easy, or that anyone who embarks on the strange voyage can measure the tides and hurricanes he will encounter. The statesman who yields to war fever must realize that once the signal is given, he is no longer the master of policy but the slave of unforeseeable and uncontrollable events.

In Ukraine's case, Zelensky did not flee. In a statement that reverberated around the world, he announced: "I don't need a ride; I need ammunition." He and his top officials then convened the various local governors and instructed them to stay at their posts and defend every inch of

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[4] Residents of Kyiv and Kharkiv, Ukraine's two largest cities, woke up to bombs being dropped on their homes. Millions fled; eventually, nearly four million Ukrainians became internally displaced and 6.8 million people have crossed into neighboring countries in the region including Poland, making it the largest flight of civilian populations in Europe since the Second World War. See Part II.

[5] It became illegal in Russia to call the SMO a war, with criminal prosecutions and other repressive measures following.

[6] Zelensky is a lawyer by training who went into comedy, including writing and producing the successful *Servant of the People* (2015-2019) TV show (which he filmed in Russian for wider distribution throughout the entire former USSR, where Russian is still the *lingua franca* of the region). In the show, Zelensky played a popular high school teacher who is suddenly thrust into the presidency when students unknowingly film his after-class tirade against corruption. The video goes viral when the students post it on social media and then nominate him for the presidency. This all happens in Episode 1. The rest of the series, running for the next three years, deal with the fictional president's efforts to fight corruption as a servant of the people. Zelensky named his party "Servant of the People" when he ran for president in 2022 and beat out incumbent Petro Poroshenko, who four years earlier also ran on an anti-corruption platform.

[7] Zelensky is a native Russian speaker and not an ethnic Ukrainian. He is a Ukrainian Jew whose grandparents fought the Nazis.

Ukrainian territory. Many have described Zelensky's decision to stay in Ukraine and fight back against the Russian invasion as Churchillian, harking back to the days of Winston Churchill rallying the British people in their stand against Nazi Germany during the Battle of Britain.[8]

President Zelensky spoke on live television with his ministers behind him on the streets of Kyiv on the morning of the invasion.

Another iconic act of defiance came from Ukrainian border guard Roman Hrybov at Ukraine's Snake Island. In response to a radio message from a Russian missile cruiser requesting surrender, Hrybov replied: "Russian warship, go fuck yourself."[9] A Ukrainian stamp now commemorates this event.

[8] A Google Scholar search yields an average of about 1,000 results when using the terms "Zelensky + Churchill" and "Zelensky + Churchillian."

[9] Hrybov was captured but eventually released in a prisoner exchange a month later. The Russian battleship Moskva was sunk by Ukrainian forces on April 14, 2022.

As of December 2024, – nearly three years since the beginning of the full-scale invasion – the conflict continues with no resolution in sight. According to President Zelensky, as of December 2024, approximately 43,000 Ukrainian soldiers have been killed and 370,000 wounded. On the Russian side, approximately 198,000 Russian soldiers had been killed and a 550,000 wounded.

Russia is still occupying Crimea and portions of the Donbas, Kherson, Zaporizhzhia, and Kharkiv oblasts. As of December 2024, Russia controls 18% of Ukraine, including just over 80% of the industrialised eastern Donbas region made up of Luhansk and Donetsk. The Russian army's advances have gradually increased since the late spring of 2024. In November 2024, Russian forces seized more than 725 square kilometers (279.9 square miles) of Ukrainian land, an area larger than the size of Singapore.

But Ukraine is not without its own victories. A December 2024 analysis reports:

> Even though it's outnumbered and now faces the introduction of more than 10,000 North Korean soldiers onto the battlefield, Ukraine has managed to destroy Russia's Black Sea fleet; regain more than 50 percent of the territory Russia occupied in the initial stages of the full-scale invasion; inflict losses of more than 700,000 Russians killed and wounded; and taken over chunks of the Kursk region. Yes, Russian forces are on a very slow, but accelerating march in the Donbas part of Ukraine, but at enormous cost. Western intelligence agencies estimate that September and October were Russia's bloodiest months in the full-scale war. The North Koreans' arrival signaled both a disturbing widening of the conflict but also Putin's desperation to avoid a second mobilization that risks angering Russians in Moscow and St. Petersburg. He does not have enough troops to win unless he risks serious domestic unrest.

All wars end eventually and so will this one. This work seeks to make sense of what has happened through the prism of the law and what can be done legally to reconstruct Ukraine, Europe, and the post-World War II legal order.

Introduction

> *"President Putin, stop your troops from attacking Ukraine, give peace a chance… In the name of humanity bring your troops back to Russia. In the name of humanity do not start what may be the most devastating war since the start of the century."*
>
> **— February 24, 2022 statement by UN Secretary-General António Guterres at the start of an emergency meeting of the UN Security Council, on the first day of Russia's full-scale invasion of Ukraine**
>
> "*We are seeing Russian military operations inside the sovereign territory of Ukraine on a scale that Europe has not seen in decades. Day after day, I have been clear that such unilateral measures conflict directly with the United Nations Charter. The Charter is clear: 'All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.' The use of force by one country against another is the repudiation of the principles that every country has committed to uphold. This applies to the present military offensive. It is wrong. It is against the Charter. It is unacceptable. But it is not irreversible. I repeat my appeal from last night to President Putin: Stop the military operation. Bring the troops back to Russia."*
>
> **—February 24, 2023 statement by UN Secretary-General António Gutteres on the first anniversary of Russia's full-scale invasion of Ukraine**
>
> *"If every country fulfilled its obligations under the (U.N.) Charter, the right to peace would be guaranteed. When countries break those pledges, they create a world of insecurity for everyone. Exhibit A: Russia's invasion of Ukraine. The war, in violation of the United Nations Charter and international law, has unleashed a nexus of horror: lives destroyed; human rights abused; families torn apart; children traumatized; hopes and dreams shattered."*
>
> **—September 19, 2023 statement by UN Secretary-General António Guterres before the UN Security Council**

In the summer of 1945, Europe lay in ruins. Hundreds of cities were reduced to rubble. Eight million people were displaced. The continent was on the brink of famine. The death toll and destruction caused by the Nazis and their collaborators during their twelve-year reign was unprecedented in human history. As described by Keith Lowe in his *Savage Continent*

> Imagine a world without institutions. It is a world where borders between countries seem to have dissolved, leaving a single, endless landscape over which people travel in search of communities that no longer exist. There are no governments anymore, on either a national scale or even a local one. There are no schools or

> universities, no libraries or archives, no access to any information whatsoever. There is no cinema or theatre, and certainly no television… There are no banks, but that is no great hardship because money no longer has any worth. There are no shops[] because no one has anything to sell. Nothing is made here: the great factories and businesses that used to exist have all been destroyed or dismantled, as have most of the other buildings. There are no tools, save what can be dug out of the rubble. There is no food. Law and order are virtually non-existent[] because there is no police force and no judiciary… There is no shame. There is no morality. There is only survival. For modern generations[,] it is difficult to picture such a world existing outside the imaginations of Hollywood script-writers. However, there are still hundreds of thousands of people alive today who experienced exactly these conditions – not in far-flung corners of the globe, but at the heart of what has for decades been considered one of the most stable and developed regions on earth… The Second World War – easily the most destructive war in history – had devastated not only the physical infrastructure, but also the institutions that held countries together… "Europe," claimed the New York Times in March 1945, "is in a condition which no American can hope to understand."

In the Pacific, Japan unconditionally surrendered only after the United States dropped atomic bombs on two Japanese cities – the first and only time that nuclear weapons have been utilized. To prevent such cataclysms from being repeated, international bodies such as the UN and its Security Council were created. As of this writing in December 2024, the world has avoided the introduction of nuclear arms into the war, though Putin and other Russian officials have warned of this scenario.

Since this is a legal text, precise terminology and word choice are critical. First, every war has a name. In the earlier wars when Russia was one of the belligerent parties, the custom was to list Russia first and then, followed by a hyphen, the other belligerent party.[10] Others, including Harvard historian Serhii Plokhii, have followed this formulation in his own work, *The Russo-Ukrainian War: The Return of History*, and we follow his lead here. We do so realizing that this is not a perfect formulation because it makes it appear that Russia and Ukraine are equal belligerents, both at fault for this war. But make no mistake; the guilty party here is Russia, and the victim is Ukraine.

Second, we need to define the words Ukraine and Ukrainian. Ukraine, formerly the Ukrainian Soviet Socialist Republic and a constituent part of the Union of Soviet Socialist Republics (USSR or the Soviet Union), became an independent country in 1991 after the dissolution of the USSR. The leaders of the three Soviet Slavic republics – President Boris Yeltsin of Russia, President Leonid Kravchuk of Ukraine, and Chairman of the Supreme Soviet Stanislav Shushkevich of the Republic of Belarus – met on December 8, 1991, in the Białowieża Forest, the last primordial forest in Europe. There, they they signed a treaty formally dissolving the USSR. By that time, the Baltic Soviet states of Latvia, Lithuania, and Estonia had already unilaterally bolted from the Soviet Union.[11]

Four months earlier, Ukraine signed its Declaration of Independence, a day commemorated today as Ukrainian Independence Day. The remaining nine Soviet republics had no choice but to

[10] E.g., the Russo-Japanese War of 1904-1905; the Russo-Polish War of 1654-1667.

[11] The three Slavic republics had special status under international law by being granted their own seats in the UN General Assembly along with the USSR.

go along with the decision and declared themselves independent states. Fifteen new states soon took their seats at the UN.

Upon the dissolution of the Soviet Union, Ukraine and Russia suddenly became independent, nuclear-armed countries. In the Budapest Memorandum of 1994, Ukraine voluntarily sent its nuclear weapons to Russia in exchange for receiving security guarantees from Russia, the U.S., and the United Kingdom to "respect the independence and sovereignty and the existing borders of Ukraine." The fall of the Berlin Wall and the eventual union of the two Germanys marked the beginning of what we naïvely believed, until 2022, to be the end of the Cold War.

American political scientist Francis Fukuyama labeled this moment as the "end of history." According to Fukuyama, "humanity has reached not just…the passing of a particular period of post-war history, but the end of history as such. That is, the end-point of mankind's ideological evolution and the universalization of Western liberal democracy as the final form of human government." We now know that 1991-2022 was only an interregnum: a three-decade pause, with the first signs of the return of the Cold War first appearing in 2014 with Russia's takeover of Crimea and then made clear in 2022 with its full-scale invasion. Plokhii thus subtitles his book *The Return of History*.

The first sign that Putin was trying to reassemble the Soviet Union –he called its breakup "the great geopolitical catastrophe of the [20th] century" – was Russia's 2008 invasion of Georgia, also a former Soviet republic. Russia's eventual takeover of slices of Georgia (South Ossetia and Abkhazia) after a six-day war was the first breach by post-Soviet Russia of the territorial sovereignty of a neighboring state. At that time, presciently observed:

> Historians will come to view Aug. 8, 2008, as a turning point no less significant than Nov. 9, 1989, when the Berlin Wall fell. Russia's attack on sovereign Georgian territory marked the official return of history, indeed to an almost 19th-century style of great-power competition, complete with virulent nationalisms, battles for resources, struggles over spheres of influence and territory, and even – though it shocks our 21st-century sensibilities – the use of military power to obtain geopolitical objectives.

Next, what do we mean by Ukrainians? This question can be subdivided into the following questions: What is Ukraine as a nation? Who are Ukrainians as a people? Who are Russians as a people? Are there separate Ukrainian and Russian nations or societies?

According to pseudo-historian Vladimir Putin, the answer to the last question is "no." In an essay found on the Kremlin website and translated into English titled "The Historical Unity of Russians and Ukrainians," Putin states: "[Recently], when I was asked about Russian-Ukrainian relations, I said that Russians and Ukrainians were one people – a single whole." With that answer, Putin also gives his answers to the other questions: Ukraine is not a separate nation; Ukrainians are not a separate people; Russians are a separate people; and Ukrainians are no more than "little Russians" who pretend that they are a separate ethnic, national, and cultural group.

In our formulation, we view Ukraine as an independent sovereign country recognized by the UN, and a multiethnic, multi-religious, and multicultural nation-state. One of this text's authors (Michael Bazyler) is a Ukrainian-American Jew.[12] Another (Ashot Agaian) is a Ukrainian

[12] Today, there are today approximately 40,000 Jews living in Ukraine with their own synagogues and cultural centers.

Armenian.[13] Our co-author Lydia Korostelova is an ethnic Ukrainian. Our friend lawyer Andrei Bogancha, who fled Kharkiv with his family on the day of the invasion, is an ethnic Russian on his mother's side and ethnic Ukrainian on his father's side. But we are all Ukrainians. Lydia is no more a real Ukrainian than Michael, Ashot, or Andrei.

Large parts of Ukraine, primarily in the east, are populated with Ukrainians who are ethnically Russian and consider Russian as their native language, but who are full and equal citizens of Ukraine. A significant part of the population of Ukraine are Ukrainian Tatars –Muslim descendants of the Turkish peoples native to the Crimean Peninsula who were conquered by the Turks in the 15th century when they captured Crimea and made it part of the Ottoman Empire. The current defense minister of Ukraine, Rustem Omerov, was born in the former Soviet republic (and now independent) Uzbekistan. His family, along with millions of Crimean Tatars, were forcibly relocated by Josef Stalin from their native Crimea in 1942 to the Soviet hinterlands. After the fall of the Soviet Union, many Crimean Tatars returned to their native Crimea. According to the last Ukrainian census in 2001, the nation is also home to 267,000 Belarussians, 259,000 Moldavians, 205,000 Bulgarians, 48,000 Roma (formerly called Gypsies), and a patchwork of other nationalities. All these different peoples come together to formulate the answer to the previously posed question of what it means to be a Ukrainian.

We must address the significance of the way certain words are used. Throughout this text, we make historical comparisons to the Nazi era. Whenever one does so, they should do so with caution because the analogy to another Nazi, another Hitler, another fascist, is severely overused in today's debates to paint the other side with the terrible brush of Nazism. There is even a popular adage coined Godwin's Law, which posits that the longer a debate goes on, the likelihood of making a comparison to Nazis approaches 100%.

Putin, in his role as historian has been guilty of this misuse of Nazi terminology when he claims that the Russians are in Ukraine to free them from neo-Nazis. But if the analogy is helpful and accurate, it should not be done away with. And, so, we will periodically make historical parallels to the Nazi era.

A final point: there is a group of pundits in the West, some with prominent credentials, who blame the U.S. and the North Atlantic Treaty Organization (NATO) for Russia's invasion of Ukraine.[14] In their version of the story, the expansion of NATO forced Putin to attack Ukraine, in 2014 and 2022, to prevent NATO from expanding to the very borders of Russia.

We do not subscribe to this historiography. At the time of the 2014 invasion and the full-scale invasion in 2022, no one seriously believed that Ukraine would become a NATO member anytime soon. But Russia invaded anyway. And as a result of Russia's full-scale invasion, its supposed nightmare of having NATO abutting its borders actually came true when neutral Finland (along with Sweden) joined NATO in 2023. Former US ambassador to Russia in a December 2024 article in *Foreign Affairs* explained: "Putin did not invade Ukraine in 2022 to stop NATO's expansion. In the run-up to 2022, NATO membership for Ukraine was a distant dream, and everyone in Brussels, Kyiv, Moscow, and Washington knew it. Putin's invasion had other objectives: to unite Ukrainians and Russians into one Slavic nation, overthrow Ukraine's democratic and Western-oriented government, and demilitarize the country. Putin barely raised an

[13] Today, there are approximately 100,000 Armenians living in Ukraine with their own churches and cathedrals.

[14] Among them are John Mearsheimer from the University of Chicago, Jefferey Sachs from Columbia, and Jack Matlock the last U.S. ambassador to the former Soviet Union. A new book by a British-American historian at Princeton makes the same argument. See Jonathan Haslam, *Hubris: The American Origins of Russia's War Against Ukraine* (2025).

eyebrow when Finland and Sweden joined NATO in 2023 and 2024, even though Finland shares an 830-mile border with Russia. His war has driven Ukraine ever closer to NATO, not pulled it away."

Under Article 5, each NATO member commits itself to protect one another so that "an armed attack against one or more of them in Europe or North America shall be considered an attack against them all." If the Baltic states (Latvia, Lithuania, and Estonia), Poland, Hungary, Albania, Bulgaria, the Czech Republic, Romania, and Slovakia had *not* joined NATO, they would be vulnerable today to a Russian invasion. Their best assurance is to still be under the Article 5 NATO umbrella. As for Ukraine, amendments to the Ukrainian Constitution added in 2019 specifically set out Ukraine's intention to become a member of the EU and NATO.[15]

Part I of this text focuses on Ukrainian history, law, and politics with Chapter 1 setting out the history of Ukrainian statehood. Chapter 2 introduces the Ukrainian legal system. Chapter 3 describes specific legislation enacted in response to Russia's aggression.

Part II examines the world's efforts to assist the victims of the war in Ukraine. Chapters 4 and 5 focuses on refugee legislation in the U.S. and Canada, Chapters 6 and 7 on Europe, and Chapter 8 on Latin America.

Part III covers violations of international law, looking at state responsibility (Chapter 9), individual criminal responsibility (Chapter 10), and the international community's sanctions against Russia (Chapter 11).

Part IV reviews the issues arising from the ongoing and future efforts in developing a post-war legal structure in Ukraine, focusing on national security (Chapter 12), rule of law and governance (Chapter 13), economic recovery (Chapter 14), repairing environmental damage (Chapter 15), and restoring cultural heritage (Chapter 16).

Part V focuses on the return of totalitarianism in Russia with chapters on repressive laws before the 2022 invasion of Ukraine (Chapter 17), repressive laws after the 2022 invasion of Ukraine (Chapter 18), judicial repressions (Chapter 19), and the russification of Crimea and other occupied territories (Chapter 20). The conclusion chapter examines the different scenarios of how the Russo-Ukrainian War could end.

As we write these words in December 2024, military aid is again flowing from the United States to Ukraine and Ukraine's European allies are scrambling to supply Ukraine with sufficient military resources. Russia continues to pump its troops with ever greater amounts of hardware and equipment. It has introduced North Korean troops into the war zone in Kursk, with the Russian private militia The Wagner Group out of the conflict after its leader unsuccessfully marched on Moscow and them mysteriously died in a plane crash. President-elect Trump demands the end of hostilities before he takes office. How this war will end is anyone's guess. Churchill's caution against becoming a "slave of unforeseeable and uncontrollable events" is with us as we enter 2025.

[15] The goals of EU and NATO membership are enshrined in the February 7, 2019, amendments. Article 85, Part 1, Clause 5 of the Constitution empowers the Ukraine parliament to prescribe the strategy for Ukraine to attain full membership in both NATO and the EU. July 25, 2024, marks two years since Ukraine was granted candidate status for membership in the EU. As for NATO, membership is only possible when the war ends since Ukraine's entry would oblige NATO to send troops to fight Russia.

Chapter 1

History of Ukrainian Statehood

1.1 Introduction

The story of Ukraine is a story of war interrupted by periods of peace. It is also a story of Ukrainian statehood being mostly an idea in someone's imagination. For much of its history, the territory was either part of another kingdom or empire, ruled directly by others (Mongolia – Poland – Russia – France - Austria and Russia (again) – Germany – Russia (again) – Germany (again) – Russia (again)) or, at best, a vassal state proclaiming fealty to a neighboring foreign power.

Geography can bring prosperity, but also misery. Ukraine's rich soil has earned it the name "Breadbasket of Europe," and the moniker still applies today. Ukraine remains in the 21st century a major exporter of grains and other foodstuffs and delivered as far as Africa, with the world's word supply threatened shortly after Russia's full-scale invasion in 2022. As a result of its location and natural resources, Ukraine was historically, and remains today, either a worthy prize to be conquered by others or allied to others.

The lack of sovereignty, or imminent danger of losing sovereignty, continues to this day. Present danger of losing independent statehood gained in 1991 comes again from Russia (formally the Russian Federation), the successor state to the Russian-dominated Union of Soviet Socialist Republics (USSR or "Soviet Union" for short), to which Ukraine belonged since 1922 as one of the fifteen constituent Soviet republics before dissolution of the USSR in 1991. To maintain independence, Ukraine again must ally itself with others, this time with the United States and its NATO partners. Aligned with the West, Ukraine is much more likely to have agency and sovereignty than being tied to Putin's Russia.

In the immediate aftermath of the 2022 invasion, a chastened Europe and the United States have realized that Russia's conquest of parts of Ukraine in 2014 was a prelude to Russia's further invasions of neighboring states that Russia calls "the near abroad." The earlier response of the West to the 2014 takeover by Russia of Crimea, with Europe continuing and even expanding purchases of Russian oil and gas, began to be viewed in hindsight as akin to Chamberlain's appeasement policy towards Hitler. The return of Donald Trump to the White House in 2025 will test the West's desire to keep Ukraine independent. Trump's stated aim to quickly end the Russo-Ukrainian War has made Ukraine's European allies much less keen to support Ukraine's fight to regain territory lost to Putin's Russia. As we write these words in early 2025, Russia controls 18% of Ukraine, including all of Crimea and over 80% of Ukraine's industrialized East Donbas region made up of Luhansk and Donetsk.

This chapter chronicles the events and highlights specific moments that shaped Ukraine's history. Our aim is to provide an objective perspective as best we can, recognizing that the interplay of history and memory is a contentious subject for many nations. All nations tell lies about their history. All historians, regardless of their claim of objectivity, feed those lies. Our historical narrative is based on the works of, among others, Serhii Plokhy's *The Gates of Europe: A History of Ukraine (*2021) and the *Russo-Ukrainian War: The Return of History* (2023), Andrew Wilson's *The Ukrainians: Unexpected Nation* (first published in 2000; 5th ed., 2022), and Timothy Snyder's video lecture series, *The Making of Modern Ukraine* (2024). A useful series of ten maps showing the geopolitical history of Ukraine has been collected by the National Library of Belgium.

We begin with an excerpt from the Preface of the 1st edition of Andrew Wilson's book noted above and written in 2000 when independent Ukraine was only nine years old. Wilson, a British historian, provides a keen analysis of what it means for a people to call themselves a nation. Reading his words a quarter-century later recalls the French adage *plus ça change, plus c'est la même chose* ("the more things change, the more they stay the same"). In later sections we present readings by Plokhy and Snyder as they explain the history of Ukraine. We also include an excerpt by Putin explaining why Ukrainians and Russians are the same nation and Snyder's rebuttal.

ANDREW WILSON, THE UKRAINIANS: UNEXPECTED NATION (2000)

Why the "unexpected nation"? Most obviously, the emergence of an independent Ukrainian state in 1991 came as a great surprise in the chancelleries, universities and boardrooms of the West — a surprise that many are still adjusting to. There were also very real reasons why Ukraine was then considered to be an unlikely candidate as a new *nation* [italics in original], given its pronounced patterns of ethnic, linguistic, religious and regional diversity. However, an unexpected nation is still a nation - no more and no less than many others….Barring catastrophes, [Ukraine] is here to stay.

The new Ukraine may be a society of diversity, but attempting to build a nation out of diversity is a perfectly normal process. It is often referred to as "nation building", but I have tried to avoid this awkward term and, I hope, also the assumption that the process has a preordained end. Things seem to be proceeding well enough at the moment except for a truly awful economy, but one should never prejudge. Nationalists tend to see their nation as eternal, as a historical entity since the earliest times. Their history is written as the story of the nation's trials and triumphs. In reality nations are formed by circumstance and chance. Ukrainians like to talk about the "national idea." Precisely so. Concepts such as "nation" really belong to the realm of political and cultural imaginations….Nations are cultural constructs and this is how I have tried to present "Ukraine" — as the product of various imaginations, both Ukrainian and other.…

I have also tried to deconstruct, in the sense of debunk, some of the myths about Ukraine and its past - both Ukrainian nationalists' flights of fancy and other rival nationalists' attempts to belittle or deny Ukraine. This should not be taken as an attempt to undermine the "Ukrainian idea", just to build it on more secure foundations. The Ukrainians may now be becoming a nation before our very eyes, but this does not mean that they were always Ukrainians or that they were always deemed to be such. Often the inhabitants of what is now Ukraine would have been better described as rebellious peasants, members of a particular faith, left-wing activists or whatever. Often, they thought in terms of local identity; often they saw themselves as part of other communities, some still existing, some long disappeared. The process whereby they became Ukrainians could have unfolded in different ways….

Significant aspects of the past are often now overlooked and need to be rewritten back into the picture. Above all, this concerns the Ukrainian experience of empire, which has been more or less, an ever-present factor in Ukrainian life since at least the sixteenth century. Many Ukrainians were quite willing citizens of the Polish commonwealth and the Habsburg, Romanov, and Soviet empires, and this should not be wished away by ironically taking too deconstructivist an approach to the history of these lost worlds and disassembling them out of the Ukrainian experience. I have begun my study in the time of the early medieval kingdom of the Keivan Rus, but that history is one that is shared with Russians and Ukrainians. Ukrainian Cossacks created an independent "Hetmanate" in 1648, but, again, it could not create the trappings of a modern state. Various Ukrainian governments emerged in 1917-20 after the collapse of the Romanov and Habsburg dynasties, but they were always precarious, and many Ukrainians supported the rival Soviet project. On the whole, therefore, Ukrainian identity has had to be developed in other peoples' states — until now. The period since 1991 is in many ways

Ukraine's first period of consolidated statehood, but the state is still weak, and a real sense of nationhood less firmly established….

Finally, [I aim]… to challenge stereotypes about Ukraine's place in the wider world. Like the Balkans, Ukraine is neither as incontrovertibly "other" nor as "non-European" (or just "non-visible" as many have seen it as being in the past; nor is it as incontrovertibly "European" as Ukrainian nationalists would have it in the present. Ukraine has always stood at a crossroads of cultural influences - at times a key part of a Europe that has itself been constantly redefined, at others not. Ukraine's current, relatively unambiguous, pro-European foreign policy is as much a product of the pulling power of the EU and NATO as it is of historical tradition. Other options, including the revival of the link with Russia, are still very much alive.

In none of this are the Ukrainians unique. As Ernest Renan famously remarked, history is as much about forgetting as it is about remembering: "getting history wrong is part of being a nation." All nations tell a version of their histories that is shaped by present circumstances. One of Ukraine's best young historians, Yaroslav Hrytsak, has argued that Ukrainian history is just as "normal" as that of any other nation. Indeed so, but part of that normalcy consists in being prepared to be less fetishistic about the past. One warning is necessary, however. A book of this size cannot be a *complete* history of Ukraine, both past and present [italics in original].

We use the same caution with the materials below. A chapter of this size cannot be a complete history of Ukraine. Before starting with the ancient origins of Ukraine, we highlight two 20th century events that most shape current Ukrainian statehood: the end of Czarist Russia in 1917 and its replacement in 1922 by another Russo-centric regime that took over the territory of the Czarist empire and which collapsed in 1991. Today, Putin and his ideologues are trying to put that empire back together again. Here is a brief background.

The Russian Empire of the Czars had been in existence for almost three hundred years. In size, it was the largest nation state in the world. Ukraine was part of that empire, belittled with the moniker "Little Russia." Another separate Slavic-populated territory was called Belorussia (today Belarus) or "White Russia." The Russian kingdom of the Czars in Moscow (earlier called Muscovy) became the imperial Big Russia in 1721 when Russian Czar Peter I (known as Peter the Great) declared himself Emperor of All Russia (*Imperator Vserossiyiski*) and moved the capital to a city named after him, St. Petersburg. The last Czar, Nicholas II, abdicated in February 1917, and a provisional republican government was established. That regime ended eight months later when a group of radical followers of the ideology of 19th century German philosopher Karl Marx overthrew the provisional government. The successful revolutionaries of October 1917 called themselves Bolsheviks, representing the left-wing of Marxist ideologues. They were led by the Russian Vladimir Lenin. As Wilson points out, the Bolsheviks included various other ethnicities that made up the multi-ethnic, multi-religious Russian Empire. Among them was a Georgian who called himself Josef Stalin (originally Dzugashvili); a Jew who called himself Leon Trotsky (originally Bronshteyn) and a Ukrainian named Mikola Skrypnik. All were joined by an idea: to transform authoritarian Czarist Russia into an authoritarian one-party state based on Marxist principles of world revolution. This world revolution was predicted earlier by Marx in his writings, sometimes alone and sometimes co-authored with his German colleague Friedrich Engels. In their 1848 *Communist Manifesto*, the two Germans predicted that a world

revolution would soon take place when workers in the most industrialized nations would eventually unite to overthrow the capitalist class that kept them in chains. That world revolution would likely begin in places like Germany, France, England, or the United States, the most industrialized countries in the world. Czarist Russia was a backward country that only freed its serfs less than four decades earlier. History proved Marx and Engles wrong. Instead of the industrial west, it was the Marxist Bolsheviks that successfully established the first Communist nation-state to rule a territory as successors to the proto-industrial Russian Empire. Lenin and his cohorts tweaked Marxist ideology; Marxism-Leninism now held that a backward state could be the incubator of the world Marxist revolution by turbo-charging its economy to quickly become highly industrialized.

Eighty years later, the Marxist-Leninist experiment of the "dictatorship of the proletariat" proved to be a grand failure. It led to the mass murder of tens of millions in the name of a failed ideology that made the new *homo sovieticus* a *"*double-thinker" (in the words of Soviet dissident Natan Sharansky) who would blindly mouth Marxist ideology and pretend fealty to Lenin and his successors and the Communist Party of the Soviet Union (the now-renamed Bolsheviks) while at the same time hiding his true beliefs for fear of being arrested as a counter-revolutionary. Millions were sent to the Soviet gulags. The USSR did become highly industrialized and a leader in science (including sending the first man in space in 1961) but could not deliver the economic benefits to its people enjoyed by the west. Soviet citizens also demanded basic freedoms that could not be held back. Eventually, the USSR spewed itself out economically in 1991 when the Soviet Union and its Eastern European satellite states ignobly fell apart. The Berlin Wall had fallen. In Ronald Reagan's phraseology, the Evil Empie had ended.

Out of the former USSR (1922-1991) emerged across the vast space of Europe and Asia fifteen independent states, from Ukraine and the Baltic states (Lithuania, Latvia and Estonia) in the West to the five Central Asian-stans (Kazakhstan, Uzbekistan, Tajikistan, Kyrgystan and Turkmenistan) in the East.

In the days of the USSR, Soviet Ukraine was the second of equals to Soviet Russia. Should Ukraine join the European Union and/or NATO, aspirations currently embedded in its constitution (Article 102, amended in 2019, explicitly establishes Ukraine's commitment to European Union and NATO membership; Articles 85 and 116 integrate the goal of EU and NATO membership as part of Ukraine's strategic objectives), it will become one of their most important members based on its strategic location, large territory, and economic potential. As of this writing in early 2025, Ukraine's economy and almost everything else in the country has been severely affected by the 2022 Russian invasion, resulting in loss of territory, destroyed infrastructure, decreased industrial output, and significant population displacement.

Andrew Wilson explained in 2000: "Ukraine has not always been defined by its relationship with Russia, but it certainly is today, particularly given the legacy of the Soviet period, which continues to exert a huge influence on Ukrainian identity, politics, economies and even religion…. Even more so than the Scots and the English, the Slovaks and the Czechs, the Ukrainians and Russians have long been both friends and rivals, and on extremely intimate terms…. [I]t is precisely through such an examination [of their relationship] that the very real differences between the two nations can be demonstrated." He added at the time: "It is no

exaggeration to say that the management of this relationship is the key to the future of the whole of Eastern Europe." In 2025, that statement remains truer than ever. We start below with their common history.

1.2 Rise of Slavic Tribes

The word "Ukraine," coming from Slavic roots, fittingly carries the following possible meanings: "frontier," "edge," "border," or "outlands." Historically, Ukraine has been regarded as a place of borders and mixing. Its lands have encompassed many ethnicities, including Germans, Jews, Poles, Greeks, and people speaking the Iranian language, among others. Located at the Western edge of the Eurasian steppe, Ukraine has been a gateway to Europe for many centuries. – commonly referred to as the "Gates of Europe."

Various ancient tribes, migrating from Eurasia and Eastern Europe toward the center and west of Europe, were the first peoples to pass through these gates. The territory encompassing Ukraine played a vital role during a period of great migrations around the middle of the fifth century. These migrating tribes included the Germanic Goths from the west and the infamous Huns (led by Atilla "the Hun") from the east. Both contributed to the fall of the Western Roman Empire and pushed out of the region the nomadic tribes of the Iranian region, namely the Scythians and Sarmatians, who arrived earlier. While most of these groups came to Ukraine and eventually left, the Slavs, a conglomerate of tribes defined in linguistic and cultural terms and represented in various political formations, emerged as the region's predominant tenant in the early sixth century CE.[16]

The Slavs established settlements along the forests and steppes between the Dnipro and the Vistula rivers, mainly in Volhynia and the Prypiat marshes of today's Ukraine. These early Slavic pre-Christian communities were characterized by seminomadic and agricultural lifestyles. They stayed until the incursion of the Avars, a group of Turkic-speaking tribes from the Northern Caspian steppes. The Avars would eventually succumb to the Bulgars (hence Bulgaria), who would give way to the empire of the Khazars – ending the era of migrations (or "barbarian invasions") and establishing relative peace in the region by the end of the seventh century. Legend has it that the Turkish-speaking Khazars adopted Judaism in the eighth century, but definitive archeological evidence for this claim is lacking.

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[16] The origin of the term "Slav" is the subject of scholarly debate, with competing narratives about how the word originated: ***Slovo (Word)*** A widely accepted theory is that the term *Slav* comes from the proto-Slavic root *slovo*, meaning "word" or "speech." This theory suggests that *Slavs* might have originally referred to "those who speak (our language)" or "those who understand each other." This would imply that the Slavs distinguished themselves from neighboring tribes who spoke different languages, such as the Germanic or Baltic tribes, by emphasizing a shared language and culture. In this view, the term *Sloveni* (meaning "people of the word" or "speakers") was used by Slavic groups to identify themselves, in contrast to *Nemci* (meaning "mutes" or "those who do not speak our language"), which Slavs historically used to refer to Germanic neighbors; **2. *Slava (Glory)*** Another theory suggests a connection to the word *slava*, which means "glory" or "fame" in many Slavic languages. This would imply that the name *Slav* referred to a "glorious" or "famous" people, possibly reflecting an early self-identity based on collective achievements or cultural pride. The earliest recorded references to the Slavs appear in Greek and Latin texts around the sixth century. These terms resemble the modern term *Slav*, but it is unclear if they are transliterations of the Slavs' own ethnonym or adaptations by Greek and Roman writers based on the sound of a native term. Over time, *Slav* came to define a broad ethnolinguistic group, encompassing various tribes and their communities across Eastern and Central Europe who adopted Christianity as religion, usually the Christian faith derived from eastern Byzantium rather than western Catholic Rome.

The Eastern Slavs, regarded as the common predecessors of today's Ukrainians, Russians, and Belarusians, held settlements in the region and paid tribute to the Khazars.

The eighth century brought the Viking Age, when a group of Scandinavians called the name Rus began to engage in the slave trade (to gain silver), from the Baltic Sea in the north to Kyiv in the south.[17] In time, the Scandinavian Rus would assume control of Kyiv, and their rule would fortify the city's position of dominance in Eastern Europe.

1.3 Kievan Rus

The roots of both modern Ukraine, Russia and Belarus can be traced to the early medieval period of the Kievan Rus.[18] With its capital in Kyiv, this East Slavic kingdom achieved dominance in the region from the 9th to the 13th centuries after defeating the Khazar empire. Kyiv became a major urban center because of its strategic location at the crossroads of trade routes. It fostered cultural exchange, facilitating the convergence of Slavic, Norse, Scandinavian, and Christian Byzantine influences.[19]

Kyiv, nestled along the banks of the Dnipro River, originally was the westernmost outpost of the Khazars. Older than Moscow, it was established sometime before the turn of the sixth century. Kyiv emerged as the nucleus of a burgeoning civilization because of its strategic

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[17] The origin of the word "Rus" is also debated among historians and linguists. There are several main theories about its roots: *Scandinavian Origin.* One of the most widely supported theories suggests that "Rus" derives from the Old Norse term *rods*, or *roðr*, which means "rowing" or "rowing men." This theory posits that the "Rus" were originally Scandinavian Vikings, also known as Varangians, who traveled by river and sea, rowing along the waterways of Eastern Europe. These Norse traders and warriors settled and established control over the Slavic and Finnic tribes of the region in the ninth century. According to this theory, the term *Rus* was initially associated with these Norse settlers, who established what later became known as the Kievan Rus'. Another theory posits that the term "Rus" has Slavic origins, possibly derived from local terms for people living along the river systems, specifically around the Ros River in Ukraine. Some scholars argue that "Rus" could be a native Slavic term to describe inhabitants of a particular area rather than foreign settlers; *Finnish Origin* A less common but still significant theory points to a Finnic origin, with the term coming from the Finnic tribes who referred to the Norse traders as "Ruotsi." In Finnish, *Ruotsi* is still the name for Sweden, reflecting early contact between Finnic peoples and Scandinavian groups. Some argue that the Finnic name was borrowed and adapted by the Slavs and others in the region. Regardless of its original linguistic root, the term "Rus" eventually came to describe the people and territories of the early East Slavic state of Kievan Rus, a powerful federation that reached its height between the ninth and eleventh th centuries. Over time, the term expanded to include other Slavic territories, leading to the names "Russia" and "Ruthenia" for later states formed in these regions. Today, the term "Rus" survives in various forms and has a complex legacy, often symbolizing the shared cultural and historical heritage of Ukraine, Belarus and Russia.

[18] The name "Kievan Rus" may erroneously imply that Ukraine and Russia are the same nation. This is not correct. These are two separate nations that happen to share a common heritage, derived from Kievan Rus kingdom, with its ancient capital in present-day Kyiv. As of 2010, the more common spelling of Ukraine's capital is "Kyiv." *(Kuïв)* Despite the widespread misconception that the English-language "Kiev" is solely a Soviet creation, it also has roots in Romance and Germanic languages. In our discussion, we will continue to refer to the medieval state as Kievan Rus, since this is the more commonly used version. We acknowledge, however, that this is not the only version, with "Kiivan Rus" also acceptable. As of 2010, the correct pronunciation of Ukraine's capital is "Kyiv." *(Kuïв)* Despite the widespread misconception that the English version "Kiev" is solely a Soviet creation, it also has roots in Romance and Germanic languages. In our discussion, we will continue to refer to the medieval state as Kievan Rus, as it is the more commonly used version. However, we acknowledge that this is not the only version or the definitive pronunciation.

location at the crossroads of trade routes. It facilitated cultural exchange through the convergence of Slavic, Norse, Scandinavian, and Byzantine influences. After defeating the Khazars, the Rus took charge of the city in the late ninth and early tenth century and assumed the collection of the tribute previously paid to the Khazars by the other local tribes.

The Kievan Rus ruled the area over the next two centuries. Its first monarch was Prince Oleg Vishchyy (Oracular), who ruled from 879 to 912. Oleg undertook an expedition to Constantinople and signed a treaty for the Kievan Rus with the Byzantine Empire, which included trade, security of the ships returning, and mutual assistance in case of shipwrecks on the shores of other countries. The treaty became the foundation for commercial trade and ancient Rus maritime law. Next came Prince Igor of Kyiv, who came from the Rurics dynasty and ruled until his wife Olha (Olga in Russian) took over. Their son Sviatoslav took the throne and became the Grand Prince of Kiev. Sviatoslav brought the Eastern Slavic tribes together after taking territories that included the Volga River, modern Moscow, and modern St. Petersburg. One of his achievements was to defeat the Turkish Khazars, one of the strongest Eastern European states at the time.

After Sviatoslav's death, Volodymyr the Great led the Kievan Rus from 980 to 1015. Volodymyr is known for adopting Eastern Christianity of the Byzantium in 988. Volodymyr's conversion to Christianity marked a pivotal moment in the history of Kievan Rus; however, it fell to his successors to define what that would mean for politics, culture, and international relations of the realm at the turn of the second millennium, beginning with his son, Prince Yaroslav the Wise, as he is known.

The reign of the wise Yaroslav, during the 11th century (1019– 1054), witnessed the pinnacle of Kievan Rus power and influence, positioning it as a preeminent force in medieval Europe. The codification of laws, the establishment of educational institutions, and the patronage of the arts and sciences underscored Kievan Rus's commitment to governance, enlightenment, and civic development. Yaroslav built St. Sophia Cathedral in Kyiv (modeled after Hagia Sophia in Constantinople). He is also known as the "father-in-law of Europe" for organizing numerous dynastic marriages around Europe and reforming the throne inheritance system.

While not a democracy in the modern sense, the medieval Christianized Kievan Rus had elements of collective decision-making through an assembly of citizens that had a say in local governance. One of the earliest legal codes in Eastern Europe was the Ruska Pravda, central to the governance of Kievan Rus. Compiled during the reign of Yaroslav, the Ruska Pravda, a legal code that aimed to establish clear rules for resolving disputes, administering justice, and upholding the rights of citizens. Ruska Pravda laid the foundation for legal institutions and practices that would endure throughout Ukrainian history, making it a key source of law in the Ukrainian territory.

After Yaroslav died in 1054 his five sons undertook a violent struggle for power and succession to the throne, ultimately resulting in Kievan Rus's demise. Its collapse culminated on December 7, 1240 when the Mongols invaded from the Eurasian steppes and conquered Kyiv. The Mongol conquest of Kyiv has repercussions to this very day. As Andrew Wilson points out: "[If] Kiev has not been sacked by the Mongols in 1240, it might have developed into a rival centre of power to the fledging state in the north that eventually became Muscovy and then Russia."

1.4 Ukrainian Territories in the Polish and Lithuanian States

The Mongols were eventually driven out of Europe, but the Kievan Rus was not restored. The defeat of the Mongols was shortly followed by the incorporation of Ukraine into another kingdom, Poland. The neighboring states of the Kingdom of Poland and the Grand Duchy of Lithuania took over most Ukrainian lands and integrated them into their joint Polish-Lithuanian state known as the Polish-Lithuanian Commonwealth. This state would dictate Ukraine's political, social, and cultural life for over two centuries, from 1569 to 1793, except for a period between 1668 and 1669 when Kyiv and Left-bank Ukraine were given to Russia. The Commonwealth was formed in 1569 when the Kingdom of Poland and the Grand Duchy of Lithuania united through the Union of Lublin. As part of this Polish-Lithuanian union, most of Ukraine was taken from Lithuania and given to Poland, which extended its borders as far east as Zaporizhzhia and Poltava. The union also created the Ruthenian Voivodeship of the Polish Crown, which included the principalities of Galicia and Western Volhynia.

The southern European peninsula of Crimea was ruled by another empire, the Muslim Ottomans, until the Christian Czarist Russian Empire in 1774 wrested Crimea from the Ottomans, subdued the local Muslim Tatar population and then annexed Crimea into Czarist Russia in 1782.

The western Galicia region of Ukraine was incorporated into another empire, the Austro-Hungarian Empire from 1772 until 1918.[20] Today, the eastern half of Galicia is part of Ukraine, and the western half is part of Poland.

1.5 The Ukrainian Cossack State

Modern Ukraine celebrates its nationhood by recalling the revolts of the semi-nomadic warrior tribes known as the Cossacks against domination by the Polish-Lithuanian Commonwealth. This conflict catalyzed in 1648 into the Khmelnytsky Uprising, also known as the Great Revolt and sometimes referred also as the Cossack-Polish War. It was led by Cossack “Hetman” (head military commander) Bohdan Khmelnytsky, who challenged the hegemony of the Polish-Lithuanian aristocracy over the local population. The Khmelnytsky Uprising established the Cossack state known as the Hetmanate, regarded as one of the foundations of modern Ukraine.

In 1654, the Ukrainian Cossacks aligned with the Russian Tsardom against the Polish-Lithuanian Commonwealth, with Khmelnytsky swearing allegiance to the Muscovy Czar. It was not a wise move, to say the least. While Ukrainians viewed this as only a temporary submission, the Russians interpreted it as a permanent submission to and integration with Moscow rule. The notion remains one of the present-day justifications for Russia’s invasion of Ukraine. Both Soviet and post-Soviet Russian historians have celebrated this event of 1654 as the “reunification” of Ukraine and Russia. It is also part of the Russian imperial notion of the

"triune," which imagines Russia, Ukraine, and Belorussia (today Belarus) as one nation, with the latter two as sub-nations of an all-Russian nation. [21]

(Top caption reads "Our friendship is our unity!")

[21] In Vladimir Putin's essay, "On the Historical Unity of Russians and Ukrainians", he claims that Russians and Ukrainians as the same people. The essay was posted on the Kremlin website (and also in English) in July 2021. And, so, in hindsight, it appeared to be a prelude for the 2022 invasion. In the essay, Putin provides a detailed articulation of his views on the historical and cultural ties between Russia and Ukraine. Putin argues that Russians, Ukrainians, and Belarusians share a common historical and cultural heritage, tracing back to the medieval state of Kievan Rus. This historical unity, he maintains, has existed over centuries despite periods of political separation. According to Putin, Ukraine as a separate nation is largely an artificial construct, created as a result of geopolitical maneuvers and the influence of foreign powers, particularly during the Soviet era and afterward.

(Top caption reads “300 years of reunification of Ukraine with Russia.” Bottom caption reads: “In Brotherhood is our Strength!”)

The Khmelnytsky Uprising led Russia in a war with Poland. The war ended in 1667, following the Truce of Andrusovo, which divided Ukraine along the Dnipro between Muscovy and Poland. Until the end of the 18th century, much of Ukraine formerly controlled by Poland would remain partitioned between Poland and Russia.

The Cossack Hetmanate that existed under the suzerainty of the Muscovite serves as the building ground for two distinct intellectual views. The first held ties to the name “Ukraine” and a view of the Hetmanate as a distinct Cossack polity and fatherland, which served as the foundation of the development of modern Ukrainian identity. The other was associated with the official Russian name of the Hetmanate, “Little Russia,” from which the founding myth of Russia as a nation conceived and born in Kyiv stemmed. In 1708, Hetman Ivan Mazepa led a revolt against the Russians, now ruled by Czar Peter, known as Peter the Great and the founder of the Russian Czarist Empire. This would be the Cossacks’ last revolt against czarist hegemony. In what is known as the Battle of Poltava, Mazepa sided with the advancing army of Charles XII of Sweden, who had been fighting Muscovy in the Great Northern War (1700-1721). The result was a pivotal victory for the Muscovites. The Battle of Poltava in 1709 was a key event, ending Sweden as a major power in Europe. It also heralded the rise of the Russian Empire and the end point of Ukrainian nationhood.

In 1721, Peter formally changed the name of the Russian Czardom to the Russian Empire and proclaimed himself the first emperor. Peter used the root “Rus” in the name of his empire to claim Muscovy as the successor of the ancient Kievan Rus. This narrative omits the fact that only a small part of Peter’s Russian empire belonged to the Kievan Rus. Moscow did not yet exist, and a majority of its territory at a time was part of the Mongol Empire. A year later, Peter abolished the hetman’s office and placed the Hetmanate under the jurisdiction of a government body called the Little Russian College.

The ramifications of the defeat at Poltava were ruinous. The prospects of Mazepa’s vision of Ukraine as an entity separate from Russia ended. They were further cut down by Peter’s efforts to integrate the Hetmanate into the Russian empire. As a result, as Plokhy explains: “[T]he idea of Ukraine as a separate polity, fatherland, and indeed nation did not disappear entirely but shifted out of the center of Ukrainian discourse for more than a century.”

1.6 Ukrainian Territories in the Russian Empire

The mid-to-late 18thcentury witnessed further incorporation of Ukrainian territories into the Russian Empire, mainly due to the aspirations and reforms of Catherine II, known as Catherine the Great, who followed Peter and ruled the empire for over thirty years (1762-1796). Catherine further centralized the empire by assimilating or “Russifying” special enclaves like the Hetmanate, regarded now as “Little Russia” at the time. Plohky quotes Czarina Catherine as saying: “When the hetmans are gone from Little Russia, every effort should be made to eradicate from memory the period [referring to when the Hetmanate was an autonomous enclave with special status] and the hetmans, let alone promote anyone to that office.”

Catherine abolished the office entirely in 1764. General Petr Rumianstev, an ethnic Russian, assumed the office of governor-general of Little Russia. In his more than twenty-year

rule over the region, Rumianstev introduced serfdom in Ukraine and abolished the Cossack's administrative and military systems so that they could be incorporated into Catherine's consolidated government framework.

The Russian Empire continued to acquire new territory. Crimea and large parts of Southern Ukraine came under Czarist control after Russian victory over the Ottoman Empire in the 1768-1774 Russo-Turkish War. The Ottomans were effectively pushed out from the northern Black Sea region and Crimea. The Crimean Khanate, a kingdom subservient to the Ottomans, was abolished when the Russian Empire formally annexed Crimea in 1783. In 1792, the Ottomans lost further territory to the Russians, consolidating Russia's control over Southern Ukraine.

The once mighty Poland now also ceased to exist, gobbled up by the Austrian and Russian Empires. The three partitions of Poland culminated in Russia's integration of additional Ukrainian territories. By the end of the 18th century, Crimea, the former Polish-Lithuanian state, and the Cossack homeland had effectively disappeared from the map.

1.6.1 Ukrainian Nation Building

Although no longer a state, Ukrainians still held on to the idea of themselves as a nation. In 1847, a secret society was established, *Brotherhood of Saints Cyril and Methodius*, which cherished the Ukrainian Cossack past and aspired to turn the Russian Empire into a Slavic federation with Ukraine at its center. Two of its members were Mykola (Nikolai) Kostomarov, a history professor at Kyiv University later regarded as the founder of modern Ukrainian histography, and Taras Shevchenko, an artist and poet considered the father of the Ukrainian nation. Shevchenko wrote a collection of Ukrainian poems, *Kobzar*, which had an enduring impact on Ukrainian culture. Kostomarov drafted the first political program of the Ukrainian movement, *The Books of Genesis of the Ukrainian People*. Kostomarov, Shevchenko, and their Brotherhood colleagues initiated what is known as the "Ukrainian national project."

1.6.2 Galician Ukrainians

The year1848 brought on a series of revolutionary movements in Europe. Ukrainian nationalism reemerged that year in western region of Ukraine known as Galicia, which was part of the Austrian Habsburg Empire. Ukrainians there created the Supreme Ruthenian (Ruthenia is another name for Galician Ukrainians) Council, their first political organization, in Lviv. They also founded the first Ukrainian-language newspaper, *The Galician Star*.

1.6.3 Prohibition of the Ukrainian Language

While Ukrainian nationalism was able to flourish in Austria under the Habsburg emperors, it was suppressed in Russia under the Romanov czars. The Ukrainian language, culture, and identity were seen as a direct threat to Russian unity. In 1863, Russia banned all Ukrainian-language publications. In 1876, Czar Alexander II signed a decree known as *Ems Ukase*, which prohibited the import of Ukrainian-language books from abroad and banned public performances of Ukrainian songs and theater productions. These prohibitions, for the most part, remained in place for another quarter century. Notwithstanding these repressive measures,

Ukrainian literary figures in Russia tapped into Galicia across the border as a place to freely express and publish their ideas.

1.6.4 The Rise of Southern Ukraine

The late 19th and early 20th centuries brought rapid industrialization and urbanization throughout Europe and transformed eastern and southern Ukraine into an industrial powerhouse. On the other side of the border in Galicia, the oil industry also began to take off. This period marked the birth of modern society and changes in the greater economic, social, and political landscape in both the Russian and Austro-Hungarian provinces of Ukraine.

Railroad construction resulted in mass urbanization and growth of Ukrainian cities, including Kyiv, and those in the south, like Odesa and Yuzivka. These cities also experienced an economic boon when, in 1870, Welsh entrepreneur John James Hughes came to Southern Ukraine to establish metal works and initiated Russian labor migration to Ukraine. The rapid transformation of the Ukrainian south into an urban center with a more ethnically diverse population still under the control of the Russian Empire would usher Ukraine into the tumult and rumblings that would characterize the 20th century.

1.7 Russian Revolution of 1905

The "Bloody Sunday" demonstration and ensuing massacre, outside the Winter Palace royal residence, in St. Petersburg on January 22, 1905 would lead to a short-lived failed revolution against the czar that spread across the empire. It also provided Ukrainians with hope for their own national liberation. By October 1905, workers' strikes had grown to nearly two million workers. Fearing loss of control, Czar Nicholas II issued a manifesto granting basic civil rights including limited freedom of speech and assembly, and universal male suffrage. He also agreed that no new laws would be adopted with the approval of the first Russian parliament, the Duma. The revolution also led to the lifting of bans on the use of Ukrainian language in publications, which resulted in a boon of Ukrainian-language publishing in the following years. It allowed the Ukrainians for the first time to disseminate their ideas to the masses in their own language. One important figure was Mykhailo Rusedski, regarded as one of the top Ukrainian academics who wrote the *History of Ukraine-Rus'*, the first work to demonstrate the Ukrainian historical narrative as distinct from the Russian one.

The Ukrainians could now legally form their own clubs, educational institutions, and political parties, which had already begun with the creation of the first Ukrainian political party in the Russian Empire—the Revolutionary Ukrainian Party. The party proclaimed independence as its ultimate goal, adopting the program initially outlined in a work by Mykola Mikhnovsky (a Kharkiv lawyer) titled *Independent Ukraine*, printed in Galicia. In the interim, Ukrainians solely aspired for autonomy in a "liberated" democratic and federal Russia.

With a return to normalcy, Nicholas II soon started backsliding on his promised reforms. In 1907, he dissolved the Duma, returning Russia to authoritarian rule. In the aftermath, Ukrainian influence diminished as Russian authorities, in hopes of advancing their authoritarian agenda, cracked down on the Ukrainian organizations, and the Ukrainian language was never allowed in schools.

While unsuccessful, the 1905 Revolution was a critical turning point in Russian and Ukrainian history. It further fostered national consciousness and a renewed desire for political and social rights among Ukrainians.

1.8 World War I

The assassination of Archduke Franz Ferdinand of Austria in Sarajevo in August 1914 triggered "The Great War." Ukraine became a significant battleground between the Russian Empire in the east and Austria-Hungary, aligned with the Germans in the west, divided by the Dnipro River. While the war would ultimately end in the defeat of the Central Powers (Austria-Hungary, Germany, and the Ottomans) and collapse their empires, it cost nearly twenty million lives and debilitated Europe. Plohky notes that one of the underlying causes of the war was "the growing conflict between ever more aggressive nationalism and rapidly weakening multi-ethnic empires." Ultimately, these factors helped propel the Ukrainian national movement.

1.9 The Rise and Fall of the First Ukrainian Republic

The Romanov dynasty and the imperial Russian rule collapsed after three centuries in 1917; an event known as the February Revolution. The last czar, Nicholas II (who would eventually be murdered by the Bolsheviks along with his family) abdicated the throne, and a provisional government was instituted. This opened the door for Ukrainians, led by socialists in the Central Rada, Ukraine's revolutionary parliament, to seek autonomy. They created a General Secretariat—a government of an autonomous Ukraine. The success of the Central Rada under the leadership of Mykhailo Hrushevsky resulted in the return of well-known Ukrainians to Kyiv, including Heorhii Narbut, who designed the Ukrainian coat of arms made of two colors—blue and yellow—symbolizing the unity of the Ukrainian lands on both sides of the eastern front in World War I.

In October 1917, a second revolution took place, this time based on the principles of the 19th century German philosopher Karl Marx. The radical wing of the Marxist revolutionaries, known now as the Bolsheviks and led by Vladimir Lenin launched a coup in Petrograd (the now renamed St. Petersburg). Lenin's Bolsheviks took down the sitting provisional government in what would be known in Communist historiography as the Great October Socialist Revolution. As part of the coup, the Bolsheviks took control of the soviets, a new form of pseudo-government structures created by representatives of workers, peasants, and soldiers and various left-wing political parties. Under the slogan of "All Power to the Soviets!" the Bolsheviks soon controlled the levers of government in Petrograd.

In Ukraine, the Bolsheviks created a virtual state, the Ukrainian People's Republic of Soviets, and its Red Army troops converged on Kyiv. In response, on January 22, 1918, the Central Rada proclaimed the independence of Ukraine. The Ukrainian People's Republic formally became an "independent, free, and sovereign state of the Ukrainian people subject to no one." As Plohky presents it: "The genie of independence was now out of the imperial bottle." The new Ukrainian Republic was short-lived. The rival Bolsheviks continued to attack. The Central Rada was forced to abandon Kyiv in February 1918.

With the Great War among the European states still ongoing, the Central Rada sought external military invention and signed a peace treaty with the Central Powers, backing German

and Austrian military intervention in exchange for Ukrainian grain and other agricultural products. It did not take long for their now well-equipped military apparatus to push the Bolsheviks back out of Kyiv.

At the same time, another Ukrainian state emerged on the other side of the front line in Galicia as a result of the fall of the monarchy of Austria-Hungary—the Western Ukrainian People's Republic. The Ukrainians claimed their ethnic territories of Galicia, Bukovyna, and Transcarpathia, but the Poles also claimed part of the land, including Galicia, prompting a Ukrainian-Polish war. The two Ukrainian republics, eastern and western, now joined forces to create a central single state on January 22, 1919, in Kyiv.

Ukrainian unification would be short-lived. In 1918, World War I ended with the defeat of the Central Powers (Austria-Hungary, Germany and Ottoman Turkey). The Bolsheviks soon retook Kyiv under the banner of the formally independent Ukrainian Socialist Soviet Republic. Lenin and his minions then began to establish the same soviet republics in other parts of the Czarist Russia they captured. The civil war between the Bolshevik Reds and the monarchist Whites ended in defeat of the Whites.

On December 30, 1922, the Union of Soviet Socialist Republics (USSR) or Soviet Union for short was proclaimed. The federation of Russian, Ukrainian, Belorussian, and Transcaucasian Soviet Federated Socialist Republics were seemingly independent states, all based on the principles of Marxism (later renamed Marxist-Leninism).

Under the first USSR constitution, ratified in January 1924, the original four and later additional eleven constituent republics that formed the Soviet Union retained the formal right of secession. Their authority, however, ended with domestic affairs, with ultimate say over foreign relations, the military, commerce, and transportation vested in the Communist Party organs controlled in the new capital Moscow. After the defeat of the Bolsheviks opponents, paramount power began to be exercised over all levels of government, as over the military and the secret police, by the Bolsheviks and their Communist Party apparatus in Moscow. This centralized structure would remain until December 1991, when the USSR was dissolved.

1.10 Soviet Ukraine

In the new USSR, Soviet Ukraine was second in population and territory to Soviet Russia. JoseF Stalin, Lenin's ultimate successor as head of the Communist Party of the Soviet Union (CPSU), replaced nationalist identities throughout the Soviet space with by Marxist-Leninist ideology, based on the notion of worldwide revolutions of workers and peasants overthrowing the ruling capitalist classes in each capitalist-based state

Under Stalin's leadership, the CPSU prioritized socialist industrialization and collectivization, which included government-funded and state-run programs to spur economic development. For most of the 1920s, the party also pursued a policy of "Ukrainization," which embraced the Ukrainian language and culture as a means to concurrently promote communism. Ukrainian Bolshevik Mykola (Nikolai in Russian) was appointed by Moscow to advance Bolshevik policies in Ukraine and given the freedom to promotion of Ukrainian identity and culture. Skrypnik believed that Soviet communism and a separate Ukrainian national identity could coexist. This policy resulted in the significant growth of Ukrainian-language newspapers

and school instruction, Stalin's support for Ukrainization did not last, and Skrypnik, now out of favor, committed suicide in 1933.

Ukrainization was never pursued in the Ukrainian-populated regions to the west of Ukraine, notably in Polish-ruled Galicia. While the Conference of Ambassadors created by the Paris Peace Conference in 1923 decided that the Ukrainians would get some form of autonomy in Galicia, the Poles' nationality policy sought to assimilate the Ukrainians culturally and adopted discriminatory policies against them, restricting the use of the Ukrainian language in schools. These policies, in addition to economic stagnation, encouraged mass emigration from the region.

1.10.1 Famine Genocide (Holodomor)

Under Soviet rule, Ukraine experienced severe repression, most notably during the Holodomor, a man-made Soviet famine in 1932-1933 that claimed millions of lives. Ukraine, the second most populous Soviet republic, comprised almost twenty percent of the population of the Soviet Union and played a significant role in the country's agricultural potential. Stalin embarked on a "forced collectivization" policy that drove peasants from their land and property. A wave of peasant revolts and forms of passive resistance, including refusal to grow grain and deliver agricultural produce to the state, ensued. In response, Stalin enacted a policy of impossible grain requisition quotas, making the Ukrainian peasanty responsible for delivery of nearly half of the state's grain. This policy resulted in famine and mass starvation. During 1932 and 1933, close to four million died as a result of Soviet authorities punishing those who failed to meet their quotas by cutting off essential supplies and confiscating grain and anything that could be used as food.

1.10.2 Stalin's Red Terror

Stalin's terror did not stop with the Great Famine. To solidify power, Stalin conducted what is known as the Great Purge, which entailed the arrest, execution, and exile of millions of Ukrainians of all ethnic backgrounds from 1936 to 1940, with its height coming in 1937.

Stalin, sensing a coming war, sought to turn Ukraine into a "socialist fortress," a directive carried out by his lieutenant, Nikita Khrushchev. Rumblings began in formerly Czech-ruled Transcarpathia after Adolf Hitler had taken Czechoslovakia. Hitler gave the autonomous territory to Hungary, but after doing so, the Carpatho-Ukraine government installed there declared its independence. While this independence would be short-lived, as the Hungarians crushed the Ukrainian resistance, the new state carried a blue and yellow national flag and adopted the Ukrainian national anthem, "Ukraine Has Not Yet Perished."

1.11 World War II

Weakened by a string of wars and revolutions and Stalin's terror, Ukraine was once again at the center of another world war that broke out in 1939 – the second in a quarter century. Ukraine, with territory previously regarded as the "breadbasket of Europe" primed for expansion, served as a key battleground between Nazi Germany and the Soviet Union. This period marked one of the most horrific periods of occupation and mass murder the world has ever known.

World War II began with an alliance between Hitler and Stalin, who joined forces to attack Poland in 1939. The Molotov-Ribbentrop Pact provided for the partition of Polish lands, leading to the Soviet occupation of formerly Polish Volhynia and Galicia and formerly Romanian Bukovyna. The Soviets nationalized land and brought back the Ukrainization collectivization campaign before beginning another round of mass arrests and deportation of the local population.

In 1941, Nazi Germany invaded the USSR. Stalin was unprepared and the rest of Poland, and the entire Ukraine, Belorussia, the Baltic republics and parts of Russia soon fell under German control. The German military came close to capturing Moscow before being turned back. The Second World War led to a further catastrophe in the region that historian Timothy Snyder rightly calls "The Bloodlands". Between 5 to 7 million Ukrainians were murdered during the war. This included around 1.5 million Ukrainian Jews. Before the Second World War, Ukraine was home to one of the largest Jewish populations in Europe. The Nazis, often with local collaborators, carried out mass extermination of Ukrainian Jews through mass shootings. The Babi Yar massacre near Kyiv is one of the most notorious events, when over 33,000 Jews were murdered in just two days in September 1941. The destruction of Jewish communities in Ukraine was nearly complete, with many towns and villages of Ukraine forever losing entire Jewish populations that lived in Ukraine for centuries.

Hitler ordered the retreat of his troops in Ukraine in September 1943, and Soviet soldiers recaptured Kyiv only a couple of months later, but the cities of Ukraine had been left in ruins following the German occupation. This time, though, Nikita Khrushchev's Soviet troops returned as saviors. The Red Army spent the next year liberating the rest of the Ukrainian territories, but not without resistance from the Ukrainian nationalist guerillas in the west, who were often referred to as the "Banderites," a name given to anyone who fought in the Ukrainian Insurgent Army controlled by Stepan Bandera's followers. However, the Soviets would hang on, capture Lviv in July 1944, and fully assume control of the Ukrainian territories in May 1945.

In postwar Europe the victorious USSR would draw a new border between Ukraine and Poland, taking the eastern part of pre-war Poland and annexing it to Ukraine. The pre-war eastern Polish city of Lwow would now be Lvov (today Lviv) in western Soviet Ukraine. The Iron Curtain brought Poland, Czechoslovakia, Hungary, Bulgaria as nominally independent people's or socialist republics under Soviet control. The Baltic states of Lithuania, Latvia and Estonia were annexed into the USSR to join Ukraine, Belorussia and Russia as the six soviet republics in the European space of the USSR. The Cold War between the Communist East and the capitalist West began. Wartime allies the United States, Britain and France and postwar West Germany and other Western European states created a new military alliance, the North Atlantic Treaty Organization (NATO) against their former ally the Soviet Union and its East European satellite states, including East Germany, who came together in the Warsaw Pact military alliance. Any moves to wrest themselves from the Soviet yolk could lead to Warsaw Pact countries to send in troops, as was done in Hungary in 1956, Czechoslovakia in 1968 and almost Poland in the 1980 before the Communist military command in Poland themselves put down opposition to Communist rule by declaring martial law.

1.12 Transferring Crimea from Soviet Russia to Soviet Ukraine

After Stalin's death in 1953, Nikita Khrushchev eventually succeeded as head of the CPSU and leader of the USSR. In 1954, Khrushchev orchestrated the transfer of Crimea from the Russian soviet republic to the Ukraine Soviet republic. The grand gesture was meant to symbolize the "eternal friendship" of the two East Slavic peoples on the 300th anniversary of their reunification through the Pereiaslav Agreement of 1654 between the Cossacks and the czar. In economic terms, the transfer was also aimed to facilitate the economic recovery of the Crimean peninsula. The Crimean Tatars had been expelled by orders from Stalin from Crimea during the war for their supposed or anticipated collaboration with the invading Nazi troops. They were finally allowed to return to Crimea after the fall of the Soviet Union in 1991. The transfer allowed the Ukrainian mainland to which Crimea was geographically connected to provide supplies and expertise to revitalize the peninsula.

1.13 Elimination of the Ukrainian Elites

Khrushchev's "secret" speech in 1956 ushered in a new era of de-Stalinization. The Ukrainian Communist Party elite emerged as junior partners to the Russian leadership in Moscow. The "Khrushchev thaw" also denoted the return to the forefront of renowned Ukrainian artists and writers whose works were banned in Stalin's USSR. Khrushchev's relatively unsuccessful economic initiatives eventually led to his ouster in 1964.

The post-Khrushchev Soviet regime, led by Leonid Brezhnev, returned to some of the controls of the Stalin era by ended cultural and ideological concessions of the "thaw," marking a return to political repression. Initially, Brezhnev tapped Petro Shelest to serve as the First Secretary of the Ukrainian Communist Party. Shelest sought to detach from Moscow and instead brought back the idea of national communism, dedicating himself to promoting Ukrainian identity and culture. Shelest would be pushed out in 1972 and replaced with Volodymyr Shcherbytsky. This resulted in a purge of Shelest's loyalists and Ukrainian elites, which included intellectuals, writers, historians, and literary scholars from institutions of the Ukrainian Academy of Sciences, including Mykhailo Braichevsky and those working on the pre-1917 history of Ukraine and the "nationalistic" Cossack era.

The Brezhnev era and those of his immediate two successors were periods characterized by further economic stagnation of the USSR. Diminishing economic growth, the mounting of cost of military spending to maintain parity with the West, and social unrest against the repressive Communist regime based on one-party rule led eventually to the fall of the USSR in 1991.

1.14 Ukrainian Independence

Brezhnev died in 1982 and was succeeded followed by two stalwart Communist Party men. The beginning of the end of the USSR began in 1985 with the selection by the CPSU elite of a younger and more liberal-minded Communist Party leader, Mikhail Gorbachev. Unbeknownst at the time to Gorbachev and the rest of humanity, Gorbachev would serve as the last president of the USSR.

Gorbachev sought to reform the moribund USSR by instituting economic reforms known as *perestroika* (restructuring), with less central planning by Moscow and opening private enterprise. He also eased political repression through *glasnost* (openness), with dissenting voices

allowed in the public space. Soviet-era taboos against outright criticism went by the wayside. The genie was out of the bottle; unlike in the People's Republic of China, the one-party Communist state was ending.

Gorbachev's term began with a major man-made catastrophe in Ukraine: the 1986 Chernobyl nuclear disaster. The explosion of the nuclear power plant located less than seventy miles from Kyiv omitted radiation equivalent to five hundred Hiroshima bombs and endangered tens of millions of Ukrainians and others through winds spreading the radiation all over Europe. It is considered one of the most terrible technological disasters in history. It also "awakened Ukraine" and raised questions about Moscow and the Communist party's ability to govern. This would lead to the formation of the Green Party, an ecological movement that would emerge as the first mass political party in Soviet Ukraine.

More political mobilization followed. The Ukrainian Helsinki Union, another political party created in the wake of Chernobyl, focused on protecting human rights. Civil society groups began to appear. The Society of the Ukrainian language, with over 100,000 members, sought to promote and preserve national culture. Historical narratives considered an expression of nationalism, including the story of the Cossack past, also returned to the forefront.

In 1990, the Ukrainian parliament held its first competitive elections, which led to the formation of a pro-democratic group called the People's Council. By summer, the Ukrainian parliament declared Ukraine a sovereign country, although it did not formerly succeed from the USSR. Communist hard-liners sought to roll back democratic freedoms. This led to demonstrations. In October 1990, a protest later known as the First Maidan ("square" in Ukrainian), provided resistance. The march on parliament in downtown Kyiv (in the future Independence Square) and a student-led hunger strike soon followed.

In August 1991, a failed coup against Gorbachev took place in Moscow. Ukraine would lead the way with its parliament overwhelmingly voting to declare independence less than a week following the coup. Ukraine's fourth attempt to proclaim independence in the 20th century would be different than those of the past. Its fate would be decided on December 1, 1991, in a popular referendum to confirm or reject the parliamentary vote. More than ninety percent of voters supported independence.

Gorbachev briefly returned to power, but was now challenged by Boris Yeltsin, the Communist leader of Russia who became a hero by standing up to the coup plotters. He now overshadowed Gorbachev, who resigned on December 25, 1991. The Soviet Union created by Lenin and Stalin was officially over.

The meeting that symbolically marked the end of the USSR took place on December 8, 1991, in a secluded forest location in Belovezhskaya Pushcha, a nature reserve in what is now Belarus. There, the leaders of Soviet Russia, Soviet Ukraine, and Soviet Belarus—Boris Yeltsin, Leonid Kravchuk, and Stanislav Shushkevich, —met to discuss the future of the USSR, which was in a state of political and economic turmoil. During the meeting, they concluded that the USSR was no longer a viable entity. The still erstwhile Communist of the three Soviet repubics decided to dissolve the union. They signed agreement to do so, known as the Belovezha Accords. Their decision was motivated by a desire to end centralized rule by Moscow. These three soviet republics along with the Baltic soviet republics in Europe -- Lithuania, Latvia and Estonia -- and the Soviet republics of Georgia and Armenia in Asia, increasingly sought more autonomy. The

accords were decided and signed without Mikhail Gorbachev, the head of the CPSU and the USSR President, who was informed only after the fact. By that time, the Baltic republics also bolted from the USSR and declared independence. The remaining Soviet republics in Asia shortly did the same. Suddenly, Gorbachev was president of a country that no longer existed.

The collapse of the USSR in 1991 marked a turning point in world history, what American historian Francis Fukuyama famously dubbed "the end of history." In Ukraine, the Ukrainian Soviet parliament, the Verkhovna Rada, declared independence from the Soviet Union. The Verkhovna Rada's declaration of independence on August 24, 1991. and the referendum on December 1, 1991 became the first steps in a process to create a new constitutional framework that would define sovereign Ukraine's political system. It was not an easy task. The early 1990s became a period of intense political debate, as Ukraine sought to distance itself from its Soviet past and to establish a legal and political order based on principles of a Western liberal parliamentary democracy. As of this writing in early 2025, this herculean task still continues – as Ukraine concurrently wages war for its very existence.

1.14.1 Post-Soviet Ukraine

Following the fall of the USSR in 1991, a new international body called the Commonwealth of Independent States (CIS) was formed to replace the Soviet Union. Relations between the three new Slavic republics were good. Independent Russia under President Boris Yeltsin was busy putting its own house in order, and not focused on restoring Russia's imperial past. This ended when Yeltsin's handpicked successor, Vladimir Putin, became president in 2000 to replace the once vigorous but now frail Yeltsin. Putin was not Yeltsin's first choice as successor, but after more well-known candidates were not to his liking, Yeltsin picked a complete unknown, whose highest post until then was deputy mayor of St. Petersburg. A former KGB intelligence officer stationed in East Berlin during Soviet days, Putin witnessed first-hand the popular uprising that marked the symbolic end of Russian/Soviet hegemony when the Berlin War came down. He soon turned to his former KGB cohorts to amass more power. From the outset of his presidency, Putin systematically eroded institutional checks and balances under the pretense of stabilizing a nation emerging from economic chaos and political fragmentation during the last years of Yeltsin's rule when the Russian treasury became empty and had to be saved by the new communist-turned capitalist oligarchs who now controlled the major source of wealth of Russia, oil, and other natural resources Putin reigned in the oligarchs and allowed them to prosper as ss long as they did not challenge his power. He also methodicaly: centralized power by restructuring federal governance, silencing dissent through legal pretexts, and leveraging constitutional amendments to entrench his authority. These moves, while cloaked in legality, hollowed out the democratic structures that began to blossom under Gorbachev and Yeltsin, leaving behind a regime that operated with authoritarian precision under the guise of the rule of law.

Putin's success in consolidating power lies in the subtle exploitation of existing laws to serve autocratic ends. Legislative changes redefined electoral processes to favor the ruling party, while judicial independence was steadily undermined, transforming courts into tools of political suppression. Meanwhile, the state-controlled media ensured the narrative of a stable, rising

Russia under Putin's leadership dominated public discourse.. Today, Stalin and Putin are often compared. We cover Putin's Russia in Part V.

The liberal Western democracy experiment in Russia has now ended, or at best, remains on a long pause until Putin is no longer president. Neighboring Belarus' foray into liberal democracy was even shorter. In the first post-Soviet free election in 1992, former collective farm manager Alexander Lukashenko was elected president. He has stayed in power ever since. Until Putin's true face showed itself, Lukashenko was dubbed Europe's last dictator.

Ukraine took a different turn. Independent Ukraine's path to liberal democracy continued, with two popular uprisings drove elected leaders from power. In the same referendum that declared Ukraine's independence, voters elected Leonid Kravchuk as the country's first president. Kravchuk served as president from 1991 to 1994. A former Communist Party official, he sought to navigate Ukraine through the early stages of its independence. His presidency was marked by the establishment of foundational state institutions, Ukraine's declaration of neutrality, and its accession to the Non-Proliferation Treaty, which led to the dismantling of the country's nuclear arsenal in exchange for security assurances from Russia, the U.S. and Britan under Budapest Memorandum. Moscow and Kyiv also signed the Russo-Ukrainian Friendship Treaty, recognizing Ukrainian borders and sovereignty over Crimea, and Ukraine in turn leased the Sevastopol naval base to Russia, where its Black Sea fleet was stationed. Efforts to privatize the Ukrainian economy did not go so well. As in Russia, much of the country's natural resources and other wealth were transferred to a new elite through non-competitive and opaque process. This created in both countries a shadowy group of oligarchs who became the new power brokers. Widespread inflation, economic contraction, and social discontent undermined his Kuchma

administration. In 1994, Kravchuk lost a re-election bid to Leonid Kuchma, reflecting the public's frustration with the lack of fair reforms, increasing corruption and economic hardship.

It took almost five years to create a written constitution for the new country. On June 28, 1996, after years of political negotiation and debate, Ukraine adopted its first post-Soviet constitution. The Constitution of Ukraine enshrined the principles of sovereignty, the rule of law, and the protection of human rights. It established Ukraine as a democratic, social, and legal state, with a commitment to uphold fundamental freedoms of its citizens. The 1996 Constitution created a semi-presidential system of government. The president, elected by popular vote, serves as the head of state, while the prime minister, appointed by the president with the consent of the parliament, acts as the head of government. The Verkhovna Rada became Ukraine's unicameral parliament, responsible for enacting laws and overseeing the executive branch.

The second President Leonid fared even worse than the first. The "Kuchmagate" scandal revealed public disclosure of secret tapes of Kuchma taking bribes and trying to suppress opposition media through murder. It exposed official corruption and suppression of political activity, signaled a turning point for Ukrainians who wanted to change.

1.15 Orange Revolution

Viktor Yushchenko, who earlier headed the National Bank of Ukraine (1993 – 1999) and then served as prime minister (1999 – 2001) oversaw the start of the country's economic recovery, now ran for president in 2004 as the leader of the pro-reform "Our Ukraine" party. Yushchenko squared off against another Viktor, Viktor Yanukovych. The latter was the preferred of Russian President Vladimir Putin, who took over as Russian president in 2000 as Yeltsin's hand-picked successor. During the campaign Yushchenko suddenly fell violently ill; poisoned by a strain of poison only produced in Russia. He survived; but the government-controlled election commission declared Yanukovich the winner. Public protest ensued. Yushchenko's supporters marched on the Maidan, Kyiv's Independence Square, to protest the fraudulent and corrupt electoral process in what would become known as the Orange Revolution. On December 3, 2004, the Supreme Court of Ukraine stepped in and cancelled the results. The re-vote round resulted in Yushchenko's victory.

1.16 Revolution of Dignity and Russia's Occupation of Ukraine

Yushchenko failed to fulfill the expectations for change sought by the Orange Revolution protesters and the public. While his foreign policy aspirations included joining the EU, he only got as far as kickstarting negotiations towards an association agreement. The Ukrainian economy initially improved, but corruption still went unchecked. His five-year presidential term (2005–2010) was marked by political infighting, ineffective governance, and a failure to implement the sweeping reforms promised to transform Ukraine into a transparent, democratic, and prosperous state. Yushchenko also struggled to build consensus among the pro-reform factions, particularly with his former ally Yulia Tymoshenko, who became prime minister and whose government he repeatedly clashed with. These internal divisions eroded public trust and undermined the effectiveness of his administration. Most notably, Yushchenko's failure to tackle corruption, one of the core grievances that had fueled the Orange Revolution, left many Ukrainians disillusioned. While he championed cultural and national identity, such as promoting the Ukrainian language

and commemorating historical tragedies like the Holodomor, his focus on symbolic politics failed to address pressing economic and social issues. The global financial crisis of 2008 further exposed the weaknesses of his leadership, as Ukraine's economy suffered severe setbacks. By the end of his presidency in 2010, Yushchenko's approval ratings had plummeted, and his vision for a reformed Ukraine remained largely unfulfilled. As a result, in the next election, his earlier opponent, the other Victor won.

President Victor Yanukovych did not finish his term. Democratic backsliding led to a second popular revolt, the 2013-2014 Euromaidan Revolution, also known as the Revolution of Dignity. This second revolution in post-Soviet Ukraine was triggered by Yanukovych's decision to abandon a European Union association agreement in favor of closer ties with Russia. It became a defining moment in Ukraine's democratic evolution. The protests were met with violent repression and eventually led to Yanukovych's ouster and flight to Russia, where he still lives.

A visible confirmation of mass corruption greeted the protesters who entered the presidential palace, the Mezhyhirya Residence, after their duly elected president fled. The residence itself was a massive estate spanning over 140 hectares, complete with a private zoo, a golf course, a yacht club and artificial lakes, rare antiques, priceless art collections, and a private chapel. It also had a lavish dining area, billiards room, and spa. It included extravagant furnishings, gold-plated items, and custom-made, ultra-luxurious amenities. There was a replica galleon floating on an artificial lake. Items such as a gold loaf of bread (a symbol of Yanukovich's excess) became emblematic of his regime's corruption. The estate itself was allegedly built using state funds funneled through fraudulent schemes. Protesters also recovered thousands of documents that Yanukovych's staff had tried to destroy or dump into the nearby river. These documents revealed extensive details about offshore bank accounts and shell companies used to launder money; bribes and kickbacks in exchange for state contracts; detailed records of exorbitant spending, including millions of dollars spent on landscaping, luxury cars, and imported goods.

The exposure of Yanukovych's lifestyle shocked Ukrainians, as it starkly contrasted with the poverty and economic struggles many citizens faced under his rule. It provided undeniable proof of the corruption that had driven the protests and ultimately led to Yanukovych fleeing Ukraine for Russia. Mezhyhirya became a symbol of the corrupt oligarchic system protesters sought to dismantle. Today, the estate is a public museum, serving as a reminder of the revolution and a cautionary tale about abuse of power.

1.16.1 Russia's Invasion and Takeover of Crimea

In Russia's narrative, the Euromaidan revolt was organized by the West, specifically the United States, to overthrow the democratically elected and Russian-leaning Yanukovich. In 2014, Putin and the Russians looked to capitalize on the instability in Ukraine, launching a hybrid war against it in the Crimean Peninsula and the Donbas region.

On February 26, 2014, Russia seized the Crimean parliament, proceeded to conduct a sham referendum, and by March, annexed Crimea. By May 2014, pro-Russian rebels had also taken control of most of the Donbas region's urban centers in eastern Ukraine. In the oblasts of Donetsk and Luhansk, referendums were held to legitimize the establishment of "people's republics."

Russia's military invasion and takeover of the Crimean Peninsula and parts of eastern Ukraine was a blatant violation of the post-Soviet Russo-Ukraine Friendship Treaty and the multilateral Budapest Memorandum that guaranteed Ukrainian sovereignty. In response to Russia's 2014 invasion of Ukraine, the Unites States and its allies began a sanction regime against Russia. It did not work. In 2022, a full-scale invasion followed.

A new post-Euromaidan election in 2014 was won by newcomer Petro Poroshenko, a Ukrainian businessman and politician known as the "Chocolate King" for his ownership of a confectionery company. His campaign in 2014 was centered around promises to bring stability, strengthen Ukraine's ties with the West, and counter Russian aggression. He won the presidency in the first round of the election with over 54% of the vote, reflecting broad public support for his pro-European Union stance and commitment to reform. Poroshenko's foreign policy was marked by a strong push for closer integration with the European Union and NATO. Under his leadership, Ukraine signed an Association Agreement with the EU. He also worked towards securing visa-free travel to the EU for Ukrainian citizens, which was achieved in 2017, symbolizing a significant step in Ukraine's European integration.

However, other matters did not go well. Poroshenko's presidency was dominated by the conflict in Eastern Ukraine, where Russian-backed separatists declared independence in the Donetsk and Luhansk regions of the Donbas, leading to a protracted and bloody war. Despite various ceasefires and peace talks, the conflict remained unresolved throughout his time in office, contributing to significant military and civilian casualties. Poroshenko sought to strengthen Ukraine's military and pursued international support, securing military aid and sanctions against Russia from Western allies. Domestically, Poroshenko pushed for reforms aimed at reducing corruption, improving governance, and modernizing the economy.

Many Ukrainians again, as with their former presidents, grew frustrated with the slow pace of change and the perceived failure to bring about substantial improvements in living standards. Poroshenko's administration was also criticized for not doing enough to curb the influence of oligarchs in politics and for perceived cronyism.

And so the former election scenarios of post-Soviet Ukraine, repeated themselves The voters turned against him. In 2019, Poroshenko was soundly defeated by Volodymyr Zelensky, a political newcomer and former TV star, who capitalized on public disillusionment with the political establishment. Zelensky, who would become Ukraine's youngest president, promised to end war, poverty, and corruption.

One of the most notable developments during Zelensky's presidency was adoption of constitutional amendments aimed at further democratizing Ukraine's political system. These amendments included measures to decentralize power, strengthen local self-government, and enhance the independence of the judiciary. Additionally, Ukraine has continued to align its legal and political framework with European Union standards, reflecting its aspiration to join the EU.

Whether Zelensky's Churchillian moment following Russia's 2022 invasion will carry him to another term is unknown. Ukraine is now under martial law and the Ukrainian Constitution provides that the presidential election scheduled for 2024 can't be held until martial law is lifted. Donald Trump's return to the White House in 2025 and his reluctance to continue full-throttle military support for Ukraine further complicates Zelensky's goal of waging war until all Russian-occupied Ukrainian territory is liberated.

1.17 Russia's Full -Scale Invasion of Ukraine

Everything changed on February 24, 2022. On that day, Russia began a full-scale invasion of Ukraine, described by Putin as a "special military operation." The invasion is the largest attack on a European country since World War II and has already amassed hundreds of thousands of casualties, creating a refugee crisis for Ukrainians trying to flee their homeland. Putin's propaganda justifying the war includes the "denazification" of Ukraine, reclaiming historically Russian lands, and reunifying people of the same culture and spiritual space, among other distorted reasons. Historians have described Putin's ideas and attempts to rewrite history as imperialism. For more on Putin's revisionist history, see the "Selected Readings and Commentary" section at the end of this chapter.

1.18 History and Memory

Timothy Snyder's characterizations of the region as the "Bloodlands" should not be viewed as one in which the Ukrainian population is always the victim. Two particularly significant instances of Ukrainians as perpetrators are the 17th century Khmelnytsky Uprising and the 20th century Second World War.

As discussed above, the Khmelnytsky Uprising was a rebellion led by Cossack leader Bohdan Khmelnytsky against the rule of the primarily Polish nobles of the Polish-Lithuanian Commonwealth. The Christian (and fellow Slavic) Poles, as the ultimate rulers of Ukraine, faced significant violence during the Cossack Uprising. The rebellion was driven by a desire for Ukrainian autonomy and resistance to Polish control. The Polish nobility and their supporters, including many Polish civilians, were targeted in the violence.

While the Khmelnytsky Uprising was primarily a reaction to Polish domination, it also resulted in widespread violence against Jews. The Jewish population were victims of long-standing Christian antisemitism in the region and so legally prescribed as to where they could live and what professions were open to them. As a result, many worked for the Polish nobility as tax collectors, leaseholders, and estate managers. The Jews were seen as outsiders, both religiously and culturally, in a predominantly Christian society. The violence against Jews during the Khmelnytsky Uprising was brutal and widespread. Tens of thousands of Jews were killed, Jewish women raped, and entire Jewish communities pillaged. Historians estimate that between 20,000 to 30,000 Jews were killed during the Khmelnytsky Uprising, with others suggested much higher numbers, with estimates reaching as high as 100,000 to 125,000 Jews murdered. For European Jewry, the Khmelnytsky Uprising is remembered as one of the most tragic periods in the Jewish history of Diaspora Europe, and a prelude to the even greater tragedy that befell them during German-instigated Holocaust.

The Second World War brought with it a resurgence of Ukrainian nationalism. Groups like the Organization of Ukrainian Nationalists (OUN) and its military wing, the Ukrainian Insurgent Army (UPA) sought to establish an independent Ukrainian state, free from both Soviet and Polish control. In their pursuit of this goal, local Ukrainian police units, as well as ordinary citizens, played a significant role in the massacres of Jews, and Ukrainians served in the Nazi Waffen-SS. There are varied explanations for why Ukrainians engaged in anti-Jewish violence once the Germans came beginning in 1941 and took the territory away from the Soviets. Nazi antisemitic propaganda equating Jews with Bolsheviks definitely definitely had an influence.

One individual has gained prominence as hero and villain: Stepan Bandera, a far-right military and political Ukrainian nationalist. Timothy Snyder describes Bandera as a fascist who "aimed to make of Ukraine a one-party fascist dictatorship without national minorities." For many Ukrainian nationalists today, he is revered as a national hero who fought Soviet domination. Bandera's OUN initially collaborated with the Nazi occupiers as the lesser of two evils, in the hope of gaining support for the establishment of an independent Ukraine. He reversed his position in 1941 when Nazi Germany made it clear it did not support an independent Ukraine. After the war, Bandera continued to oppose Russia's Soviet regime, until his assassination in 1959.

During the war, Ukrainians murdered Poles in the Volhynia and Eastern Galicia regions. The violence reached its peak in 1943-1944, during the so-called Volhynian Massacre, where tens of thousands of Poles were killed in the Ukrainian nationalists' efforts to create a an ethnically homogenous Ukrainian state. The brutality of the violence was also influenced by a previous historical enmity between Poles and Ukrainians, exacerbated by years of conflict and competing nationalisms going back centuries.

Violence perpetrated by Ukrainians against Jews and Poles during the Khmelnytsky Uprising and World War II has left a legacy in the region. The memories of these events continue to shape inter-ethnic relations in Ukraine. In recent years, there has been a growing effort to confront this difficult past, with historians and political leaders in Ukraine, Poland, and Israel working towards a more nuanced understanding of these events.

In Ukraine, the legacy of the Khmelnytsky Uprising is complex. While Khmelnytsky is celebrated as a national hero who fought for Ukrainian independence, there is also a recognition of the tragic consequences of the uprising for the Jewish population. Similarly, the role of Bandera and the UPA remains a contentious issue, with some viewing them as freedom fighters while others condemn their involvement in ethnic cleansing.

Ironically, the Russian invasion of Ukraine has brought Poland and Ukraine closer together, as millions of Ukrainians fled to neighboring Poland (see Chapter 6), and were openly welcomed by civil society and the public. Though today a member of NATO, Poland still fears a repeat of another Russian invasion of its territory, and so the two countries have become stronger allies. As a result, the deep historical wounds between Ukraine and Poland around the Volhynian Massacre are on the road to being healed through joint commemorations and historical research.

Memory of history, with dueling narratives, has played a major role in how Ukraine and Russia view each other today. Putin's original excuse for the 2022 invasion was to remove the supposed neo-fascist Banderite regime in Kyiv, a specious reason not based on facts. Having a Jew as president of Ukraine makes it difficult for Russia to argue this rationale with a straight face. And so the rationale by Russia for invading Ukraine morphed into another reason: The West, particularly the United States, seeks to dominate Russia and is hell-bent on moving NATO to Russia's borders by having Ukraine join the North Atlantic military alliance. Invading Ukraine, therefore, is an act of self-defense against invasion by NATO countries. Never mind that the 2022 invasion was a trigger for Finland to join NATO, and so Putin's fearful prophecy has turned into a reality with next-door Finland now part of the mutual self-defense umbrella of article 5 of the NATO treaty. NATO troops now can be stationed next-door in Finland rather than next-door Ukraine.

For Ukraine, history is everything. Russia, as it has done so many times before in its various permutations (the Czarist Russian Empire, the USSR, and now the Russian Federation) once again seeks to make Ukraine part of Russia – or a vassal state. The current war for Ukraine is a fight to remain fully sovereign and truly independent from Russia. There is a startling contrast between how the three post-Soviet Slavic states have fared since 1991. Ukraine keeps having free elections and replacing its leaders, either through honest results or popular protest. Russia and Belarus, in contrast, started also with free elections and new leaders who promised reforms: Yeltsin and Putin in Russia and Lukashenko in Belarus. Decades later, these no longer once-young reformists keep clinging to power through staged elections, with popular protesters unsuccessful in bringing change. If Ukraine can emerge as a model Slavic democracy after the war ends, it can present to Russians and Belarusians a real-life alternative to their authoritarian regimes.

1.19 Selected Readings and Commentary

In this section, we present selected readings to enrich our historical narrative.

Serhii Plokhy,
EPILOGUE: The Meanings of History
From The Gates of Europe: A History of Ukraine
(2021)

March 18, 2014, was a day of triumph for Vladimir Putin, the sixty-one-year-old president of Russia, who was then serving his third term in that office. In the speech he delivered that day in the tsarist-era St. George's Hall of the Kremlin, a venue for meeting foreign delegations and holding the most solemn ceremonies of state, the Russian president asked the gathered members of the Federal Assembly of the Russian Federation to pass a law annexing the Crimea. The reaction of the audience, which greeted the speech more than once with explosive applause, left no doubt that the law would be passed without delay. Only three days later, the Federal Assembly declared the Crimea part of Russia….

In his speech, Vladimir Putin hailed the annexation of the Crimea -- an act undertaken in violation of the sovereignty of Ukraine, which Russo-Ukrainian treaties guaranteed and the Budapest Memorandum of 1994 ensured -- as a triumph of historical justice. Much of Putin's argument was historical and cultural in nature. He referred to the disintegration of the Soviet Union as an expropriation of Russia, repeatedly called the Crimea a Russian land and Sevastopol a Russian city and attacked the Ukrainian authorities for neglecting the interests of the people of the Crimea and, most recently, seeking to violate their linguistic and cultural rights. He claimed that the Crimea had as much right to secede from Ukraine as Ukraine had to secede from the Soviet Union.

History has been used and abused more than once in the Ukraine Crisis, informing and inspiring its participants but also justifying violations of inter-national law, human rights, and the right to life itself. The Russo-Ukrainian conflict, while arising unexpectedly and taking many of those involved by surprise, has deep historical roots and is replete with historical references and allusions. Leaving aside the propagandistic use of historical arguments, at least three parallel processes rooted in the past are now going on in Ukraine: Russia's attempts to reestablish

political, economic, and military control in the former imperial space acquired by Moscow since the mid-seventeenth century; the formation of modern national identities, which concerns both Russians and Ukrainians (the latter often divided along regional lines); and the struggle over historical and cultural fault lines that allow the participants in the conflict to imagine it as a contest between East and West, Europe and the Russian World.

The Ukraine crisis reminded the world of the Russian annexation of the Crimea in the last decades of the eighteenth century and the creation in southern Ukraine of the short-lived imperial province of New Russia. This memory of Russian imperial expansion into the area was brought to the fore not by outside observers trying to portray current Russian behavior as impe-rial but by ideologues of the Russian hybrid war in Ukraine, who came up with the New Russia project. They sought to develop their historical ideology on the foundations of imperial conquest and Russian dominance in lands originally inhabited by the Crimean and Noghay Tatars and Zaporozhian Cossacks. This pertains especially to the trope of Sevastopol as a city of Rus-sian glory-a historical myth rooted in the 1853-1856 Crimean War (a di-saster for the Russian Empire) that attributes the heroism of the multiethnic imperial army defending the city to Russians alone.

The formation of the Donetsk and Luhansk “people's republics,” along with the attempts to proclaim Odesa and Kharkiv republics -- building blocks of a future New Russia -- also had its roots in historical memory. It went back to Bolshevik attempts to maintain control over Ukraine's east and south soon after the signing of the Treaty of Brest-Litovsk with Germany (March 1918), which assigned those regions to Ukraine. At that time the Bolsheviks were creating puppet states, including the Crimean and Donetsk-Kryvyi Rih Soviet republics, which were allegedly independent of Moscow and not covered by the treaty. The founders of the new Donetsk republic used some symbols of the Donetsk-Kryvyi Rih republic of 1918, as, like the old one, theirs would not have arisen or survived without Moscow's sponsor-ship and support.

While allusions to the Russian imperial and revolutionary past became part of the historical discourse justifying the Russian aggression against Ukraine, its historical motivation is more recent. The rapid and unexpected disintegration of the Soviet Union, recalled by President Vladimir Putin in his speech on the annexation of the Crimea, provides the most immediate historical background to the crisis. The current Russian government keeps claiming that Ukraine is an artificial formation whose eastern territories were allegedly a gift to the country from the Bolsheviks, as was the Crimea after World War II. According to this narrative, the only genuine and thus historically legitimate polity is the empire -- first the Russian Empire and then the Soviet Union. The Russian government actively combats and suppresses any historical traditions and memories that undermine the legitimacy of the empire, such as commemoration of the 1932-1933 Great Ukrainian Famine or the Soviet government's 1944 deportation of the Crimean Tatars; such was the case with the ban on public commemoration of the seventieth anniversary of the Crimean Tatar deportation imposed by the Russian authorities in the Crimea in May 2014.

Russia today seems to be following in the footsteps of some of its imperial predecessors who continued to harbor nostalgia for their empires long after they were lost. The collapse of the Soviet Union left Russian elites bitter about their loss of imperial and superpower status, nourishing illusions that what had happened was an accident brought about by the ill will of the West or by politicians like Mikhail Gorbachev and Boris Yeltsin foolishly bickering for power.

Such a view of the end of the Soviet Union makes it hard to resist the temptation to rewrite history.

The Russo-Ukrainian Conflict also brought to the fore another important issue with historical roots and ramifications: the unfinished process of building the modern Russian and Ukrainian nations. The Russian annexation of the Crimea and the propaganda intended to justify Russian aggression in the Donbas have proceeded under the slogan of defending the rights of ethnic Russians and Russian speakers in general. The equation of the Russian language not only with Russian culture but also with Russian nationality has been an important aspect of the worldview of many Russian volunteers who have come to Donbas. One problem with that interpretation of Russianness is that while ethnic Russians indeed make up a majority of the population in the Crimea and large minorities in parts of the Donbas, most of the population of the projected New Russia consists of ethnic Ukrainians. While Russian and separatist propaganda has had an appeal for many ethnic Ukrainians, most have refused to identify themselves with Russia or with Russian ethnicity even as they continue to use the Russian language. That was one of the main reasons for the failure of the New Russia project, which came as a complete surprise to its authors.

The view of Ukrainians as constituents of the Russian nation goes back to the founding myth of modern Russia as a nation conceived and born in Kyiv, the “mother of Russian [rather than Rus'] cities.” The Synopsis of 1674, the first printed "textbook" of Russian history, compiled by Kyivan monks seeking the protection of the Muscovite tsars, first formulated and widely disseminated this myth in Russia. Throughout most of the imperial period, Ukrainians were regarded as Little Russians -- a vision that allowed for the existence of Ukrainian folk culture and spoken vernacular but not a high culture or a modern literature. Recognition of Ukrainians as a distinct nation in cultural but not political terms in the aftermath of the Revolution of 1917 challenged that vision. The aggression of 2014, backed by the ideology of the “Russian World,” offers Ukrainians today a throwback in comparison with Soviet practices. Nation building as conceived in a future New Russia makes no provision for a separate Ukrainian ethnicity within a broader Russian nation. This is hardly an oversight or excess born of the heat of battle. Less than a year before the annexation of the Crimea, Vladimir Putin himself went on record claiming that Russians and Ukrainians were one and the same people. He repeated that statement in a speech delivered on March 18, 2015, to mark the first anniversary of the annexation of the Crimea.

Since the fall of the USSR, the Russian nation-building project has switched its focus to the idea of forming a single Russian nation not divided into branches and unifying the Eastern Slavs on the basis of the Russian language and culture. Ukraine has become the first testing ground for this model outside the Russian Federation.

The new model of Russian identity, which stresses the indivisibility of the Russian nation, closely associated with the Russian language and culture, poses a fundamental challenge to the Ukrainian nation-building project. From its beginnings in the nineteenth century, that project placed the Ukrainian language and culture at its center, but from the outset it also allowed for the use of other languages and cultures, as attested, for example, by the Russian-language writings of Taras Shevchenko, whom many regard as the spiritual founder of the Ukrainian nation. Bilingualism and multiculturalism have become a norm in post-Soviet Ukraine, extending membership in the Ukrainian nation to people of various ethnic and religious

backgrounds. This has had a direct impact on the course of the Russo-Ukrainian conflict. Contrary to the Kremlin's expectations, Russian aggression failed to mobilize the support of ethnic Russians outside the areas directly controlled by the Russian army -- the Crimea and those parts of the Donbas seized by Russian mercenaries and Russia-backed insurgents.

According to data provided by the respected Kyiv International Institute of Sociology, with Russians constituting 17 percent of the Ukrainian population, only 5 percent of those polled considered themselves exclusively Russian: the rest identified as both Russian and Ukrainian. Even those who considered themselves exclusively Russian often opposed Russian interference in Ukrainian affairs, refusing to associate themselves with Putin's regime. “Ukraine is my Homeland. Russian is my native language. And I would like to be saved by Pushkin. And delivered from sorrow and unrest, also by Pushkin. Pushkin, not Putin,” wrote one of Kyiv’s ethnic Russians in her Facebook account. The ideology of the “Russian World,” which combines Russian nationalism with Russian Orthodoxy and which Moscow and Russian-backed insurgents have promoted as an alternative to the pro-European choice of the Maidan protesters, has helped strengthen the Ukrainian-Jewish pro-European alliance developing in Ukraine since 1991. “I have said for a long time that an alliance between Ukrainians and Jews is a pledge of our common future,” posted a pro-Maidan activist on his Facebook account.

History has left Ukraine united in one state but divided along numerous regional lines that echo the cultural and political boundaries of the past. The line between the parklands of central Ukraine and the southern steppes became a porous border between the predominantly agricultural areas to the north and the urban centers of the mineral-rich steppes to the south. The frontier of Western and Eastern Christianity, after reaching the Dnieper in the seventeenth and eighteenth centuries, retreated to Galicia and now re-calls the border between the Habsburg and Russian empires of the pre-World War I era. Within the former Habsburg possessions, Galicia differs from the largely Hungarian-ruled Transcarpathia and the former Moldavian province of Bukovyna. Within the former Russian Empire, Volhynia, which was under Polish rule during the interwar period, is different from Podolia, which stayed under Soviet rule for most of the twentieth century. There is also a difference between the formerly Polish-ruled lands on the Right Bank of the Dnieper and those of the former Cossack Hetmanate on its Left Bank, as well as between the Cossack lands and those colonized largely through the centralized efforts of the Russian Empire in the eighteenth and nineteenth centuries. The borders of those lands also serve as a line between Ukrainians who are more comfortable speaking Ukrainian and those who prefer Russian in everyday speech.

In reality, Ukrainian regionalism is even more complex than the account of it just presented. There are differences between the old Cossack lands of the former Hetmanate and Sloboda Ukraine, while the southern Ukrainian province of Mykolaiv differs greatly in ethnic composition, language use, and voting behavior from the Crimea, which was attached to Ukraine only in 1954. But despite all these differences, Ukraine's regions stick together because the borders indicated above, which were quite distinct in the past, would be almost impossible to reestablish today. Nowadays one sees a patch-work of linguistic, cultural, economic, and political transition zones that link different regions to one another and keep the country together. In practice, there is no easily identifiable cultural boundary dividing the Crimea from the neighboring regions of southern Ukraine or the Donbas from the other eastern regions. None of

the historical regions has shown a strong desire to leave Ukraine; nor have elites managed to mobilize citizens in support of secession. True, such mobilization has taken place in the Crimea and the Donbas, but only as a consequence of Russian annexation or intervention.

A symbolic farewell to the Soviet past-the demolition of remaining monuments to Lenin, more than five hundred altogether, in a few weeks accompanied the Revolution of Dignity. Among the anti-Kyiv insurgents in the Donbas, there were many defenders of the old Soviet values. But Russian mercenaries and volunteers brought to the region an overarching idea of a different kind. Like the best known of the Russian commanders, Igor Girkin, they came to the Donbas to defend the values of the "Russian World" against the West. In that context, they saw Ukraine as a battleground between corrupt Western values, including democracy, individual freedoms, human rights, and, especially, the rights of sexual minorities on the one hand and traditional Russian values on the other. By that logic, Western propaganda had simply addled the Ukrainians' minds. It was up to the Russians to show them the light.

This interpretation of the conflict has deep roots in the Russian culture and intellectual tradition. While one can hardly imagine modern Russian history without Russian participation in European culture, it is also true that for centuries Russia was cut off from the West or engaged in confrontation with the countries of central and western Europe. Which set of historical ex-periences best defines Russia's love-hate relationship with the West? In the enduring Russian intellectual debate between Westernizers and Slavophiles, which began in the early nineteenth century and pitted the view of Russia as part of Europe against that of Russia as a distinct civilization with a world mission, the descendants of the Slavophiles and anti-Westerners now have the upper hand.

As for Ukraine, its claim to independence has always had a European orientation, which is one consequence of Ukraine's experience as a country lo-cated on the East-West divide between Orthodoxy and Catholicism, central European and Eurasian empires, and the political and social practices they brought with them. This location on the border of several cultural spaces helped make Ukraine a contact zone in which Ukrainians of different persuasions could learn to coexist. It also helped create regional divisions, which participants in the current conflict have exploited. Ukraine has always been known, and lately it has been much praised, for the cultural hybridity of its society, but how much hybridity a nation can bear and still remain united in the face of a "hybrid war" is one of the important questions now being de-cided in the conflict between Russia and Ukraine.

The pro-European revolution in Ukraine, which broke out a quarter century after the end of the Cold War, took a page from the Cold War fascination with the European West shared by the dissidents of Poland, Czechoslovakia, and other countries of the region, in some cases turning that fascination into a new national religion. The Revolution of Dignity and the war brought about a geopolitical reorientation of Ukrainian society. The proportion of those with positive attitudes toward Russia decreased from 80 percent in January 2014 to under 50 percent in September of the same year. In November 2014, 64 percent of those polled supported Ukraine's accession to the European Union (that figure had stood at 39 percent in November 2013). In April 2014, only a third of Ukrainians had wanted their country to join NATO; in November 2014, more than half supported that course. There can be little doubt that the

experience of war not only united most Ukrainians but also turned the country's sympathies westward.

Historically, the shock of war, the humiliation of defeat, and the open wound of lost territories have served as potent instruments for building national solidarity and forging a strong national identity. The partitions of Poland in the second half of the eighteenth century wiped the Polish state off the map of Europe but served as a starting point for the formation of modern Polish nationalism, while the Napoleonic invasion of Germany at the beginning of the nineteenth century gave rise to pan-German ideas and promoted the development of modern German nationalism. Memories of defeat and lost territory have fired the national imaginations of French and Poles, Serbs and Czechs. Invaded, humiliated, and war-torn Ukraine seems to be follow-ing that general pattern.

The Russian annexation of the Crimea, the hybrid war in the Donbas, and attempts to destabilize the rest of the country created a new and danger-ous situation not only in Ukraine but also in Europe as a whole. For the first time since the end of World War II, a major European power made war on a weaker neighbor and annexed part of the territory of a sovereign state. The Russian invasion breached not only the Russo-Ukrainian treaty of 1997 but also the Budapest Memorandum of 1994, which had offered Ukraine security assurances in exchange for giving up its nuclear weapons and acceding to the Nuclear Non-proliferation Treaty as a nonnuclear state. The unprovoked Russian aggression against Ukraine threatened the foundations of international order-a threat to which the European Union and most of the world were not prepared to respond but one that demands appropriate counter-action. Whatever the outcome of the current Ukraine Crisis, on its resolution depends not only the future of Ukraine but also that of relations between Europe's east and west-Russia and the European Union-and thus the future of Europe as a whole.

In the “battle of memory,” there are two sides: the Ukrainians versus the Russians. The Ukrainians believe they became an independent state in 1991 following the collapse of the Soviet Union. The Russians believe that Ukraine is an entirely fictional state and that Russians and Ukrainians are one of the same people with roots going back to the birth of the Russian nation in 1674. Which is right?

First, we must evaluate Vladimir Putin’s attempt to rewrite this history – one without a Ukrainian state or language – which sets the foundation for Russia’s unjustified invasion of Ukraine. Below is an excerpt of Putin’s 2021 history essay entitled “On the Historical Unity of Russians and Ukrainians” (for the full version, click hyperlink). We include the beginning and end of his essay.

Vladimir Putin,

On the Historical Unity of Russians and Ukrainians

(July 12, 2021)

During the recent Direct Line, when I was asked about Russian-Ukrainian relations, I said that Russians and Ukrainians were one people – a single whole. These words were not driven by some short-term considerations or prompted by the current political context. It is what I have said on numerous occasions and what I firmly believe. I therefore feel it necessary to explain my position in detail and share my assessments of today's situation.

First of all, I would like to emphasize that the wall that has emerged in recent years between Russia and Ukraine, between the parts of what is essentially the same historical and spiritual space, to my mind is our great common misfortune and tragedy. These are, first and foremost, the consequences of our own mistakes made at different periods of time. But these are also the result of deliberate efforts by those forces that have always sought to undermine our unity. The formula they apply has been known from time immemorial – divide and rule. There is nothing new here. Hence the attempts to play on the "national question" and sow discord among people, the overarching goal being to divide and then to pit the parts of a single people against one another.

To have a better understanding of the present and look into the future, we need to turn to history. Certainly, it is impossible to cover in this article all the developments that have taken place over more than a thousand years. But I will focus on the key, pivotal moments that are important for us to remember, both in Russia and Ukraine.

Russians, Ukrainians, and Belarusians are all descendants of Ancient Rus, which was the largest state in Europe. Slavic and other tribes across the vast territory – from Ladoga, Novgorod, and Pskov to Kiev and Chernigov – were bound together by one language (which we now refer to as Old Russian), economic ties, the rule of the princes of the Rurik dynasty, and – after the baptism of Rus – the Orthodox faith. The spiritual choice made by St. Vladimir, who was both Prince of Novgorod and Grand Prince of Kiev, still largely determines our affinity today. . .

In the 1920's-1930's, the Bolsheviks actively promoted the "localization policy," which took the form of Ukrainization in the Ukrainian SSR. Symbolically, as part of this policy and with consent of the Soviet authorities, Mikhail Grushevskiy, former chairman of Central Rada, one of the ideologists of Ukrainian nationalism, who at a certain period of time had been supported by Austria-Hungary, was returned to the USSR and was elected member of the Academy of Sciences.

The localization policy undoubtedly played a major role in the development and consolidation of the Ukrainian culture, language and identity. At the same time, under the guise of combating the so-called Russian great-power chauvinism, Ukrainization was often imposed on those who did not see themselves as Ukrainians. This Soviet national policy secured at the state level the provision on three separate Slavic peoples: Russian, Ukrainian and Belorussian, instead of the large Russian nation, a triune people comprising Velikorussians, Malorussians and Belorussians.

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I am confident that true sovereignty of Ukraine is possible only in partnership with Russia. Our spiritual, human and civilizational ties formed for centuries and have their origins in the same sources, they have been hardened by common trials, achievements and victories. Our kinship has been transmitted from generation to generation. It is in the hearts and the memory of people living in modern Russia and Ukraine, in the blood ties that unite millions of our families. Together we have always been and will be many times stronger and more successful. For we are one people.

Today, these words may be perceived by some people with hostility. They can be interpreted in many possible ways. Yet, many people will hear me. And I will say one thing –

Russia has never been and will never be "anti-Ukraine." And what Ukraine will be – it is up to its citizens to decide.

Matthew Lenoe, an associate professor of history at the University of Rochester, who is an expert on Russian and Soviet history, deconstructed Putin's essay to show where Putin is not telling the truth, where is embellishing, and where he is misleading. He acknowledges that while Ukraine's history is intertwined with Russia's, it is "complicated and complex" since it is also connected with that of many other nations, empires, ethnicities, and religions, including but not limited to the Poles, Greek Orthodox Church, Romanians, and the Turkic peoples on the Eurasian Steppe.

In particular, Lenoe points to Putin's claim that Ukraine didn't exist as a separate state or nation and that instead, Ukrainian nationality was always an integral part of a triune nationality: Russian, Belorussian, and Ukrainian. In response, Lenoe says, "When Putin says this is the heritage of these three Slavic peoples—in one sense, he's not wrong. But there's no continuous line to be traced from this loose river confederation to the Russian state. And there's also no continuous line to be traced from this loose confederation to the Ukrainian state." In fact, only a small portion of modern-day Russia was part of the Slavic state, so Putin's statement is considered wrong and manipulative.

On February 8, 2024, U.S.-based political commentator Tucker Carlson conducted a sit-down interview with President Putin. The interview provided Putin a platform to once again disseminate his history of the region, none of which were challenged by Carlson. In response to the interview, Timothy Snyder published the following piece on his blog. The *Kyiv Post* reprinted Snyder's work.

Timothy Snyder,
Putin's Genocidal Myth
Kyiv Post
(February 12, 2024)

In a talk with Tucker Carlson, Putin uttered sentences about the past. I will explain how Putin is wrong about everything, but first I have to make a point about why he is wrong about everything. By how I mean his errors about past events. By why I mean the horror inherent in the kind of story he is telling. It brings war, genocide, and fascism.

Putin has read about various realms in the past. By calling them "Russia," he claims their territories for the Russian Federation he rules today.

Such nonsense brings war. On Putin's logic, leaders anywhere can make endless claims to territory based on various interpretations of the past. That undoes the entire international order, based as it is upon legal borders between sovereign states.

In his conversation with Carlson, Putin focused on the 9th, 10th, and 11th centuries. Moscow did not exist then. So even if we could perform the wishful time travel that Putin wants, and turn the clock back to 988, it could not lead us to a country with a capital in Moscow. Most of Russia's present territory is in Siberia. Europeans did not control those Asian territories back then. On Putin's logic, Russia has no claim today to the territories from which it extracts its natural gas and oil. Other countries would, and Russia's national minorities would.

Putin provides various dates to make various claims. Anyone can do that about any territory. So the first implication of Putin's view is that no borders are legitimate, including the borders of your own country. Everything is up for grabs, since everyone can have a story. Carlson asked Putin why he must invade Ukraine, and the myth of eternal Russia was the answer.

The second problem, after war, is genocide. After you decide a country in the deep past is also somehow your country now, you then insist that the only true history is whatever seems to prove you right. The experiences of people who actually lived in the past and live in the present are "artificial" (to use one of Putin's favorite words).

In the interview, and in other speeches during the war, Putin depends on a false distinction between natural nations and artificial nations. Natural nations have a right to exist, artificial ones do not.

But there are no natural nations. All nations are made. The Russia of tomorrow is made by the actions of Russians today. If Russians fight a lawless war of destruction in Ukraine, that makes them a different people than they might have been. This is more important than anything that happened centuries ago. When a nation is called "artificial," this is justification for genocide. Genocidal language does not refer to the past; it changes the future.

Everyone who does not fit Putin's neat story (Russia is eternal, so Russians can do whatever they want) has to be removed, first from the narrative of the past, and then from those counted as human in present. On Putin's logic, it does not matter what people believe or how people understand their own past. It is he who decides which souls are bound to which other souls. Other views have no place in nature, because they arose from events which (in his story) should never have happened. His view must govern the past, which requires violence in the present: genocide.

If there are people who say that Ukraine is real, they must be destroyed. That has been the logic of Russia's mass murder from the start. Putin expected Ukraine to fall in a few days because he thought he needed to eliminate a few Ukrainians in an artificial elite. The more Ukrainians there turned out to be, the more people had to be killed. The same holds for physical expressions of Ukrainian culture. Russia has destroyed thousands of Ukrainian schools. Everywhere Russian troops reach, they burn Ukrainian books.

The third problem is a fascism expressed as victimhood. Putin is the dictator of the largest country in the world and personally controls tens and more likely hundreds of billions of dollars. And yet in his story he is a longwinded victim, because not everyone agrees with him.

Russia is a victim because Russians can tell a story about how they need to fight a genocidal war, and not everyone agrees. Ukrainians are the aggressors, because they do not agree that they and their country do not exist.

Indeed, says Putin, Ukrainians are "Nazis," a word that in his mouth just means "people who refuse to accept that Russians are pure no matter what we do." This is a victim claim: if the Ukrainians are "Nazis," then Russians – even though they started the war and have killed tens of thousands of people and kidnapped tens of thousands of children and carry out war crimes every single day – must be the righteous sufferers.

This is how myth matters. If all the wrong in the past was done by others, as Putin says, then all the wrong in the present must be done by others. Putin's story divides good and evil perfectly. Russia is always right, others are always wrong. Russians can behave like Nazis while calling others "Nazis" and all is well. Russia is a people with a special purpose, resisted by conspiracies. Putin's war has been fought with fascist slogans and by fascist means, with mass propaganda and mass mobilization.

Just as there are three why problems (war, genocide, fascism) there are three how problems. Putin leaves things out before his narrative begins, gets things wrong during his narrative, and leaves things out as his narrative ends.

I'd almost rather leave it at the why. As soon as I get into the how, and start correcting the factual errors, it's as though I am endorsing the overall logic. So just to make this clear: even were Putin a decent historian, that would not mean that he could (legally, morally) claim territory on the basis of correct things he said about the past. Real historians, as you might have noticed, do not actually have that power. Most of what Putin says about the past is ludicrous; but even had he said some true things, that would not justify destroying the international order, invading neighbors, and committing genocide.

Before even Kyivan Rus existed

Aside from being dangerous and erroneous, what Putin says about the Ukrainian past is boring. He leaves out important things about the history of the lands that are now Ukraine. Thousands of years before Putin begins to get everything wrong, world-historical trends emerge from lands that are now Ukraine. Deep in the Bronze Age, about 6,000 years ago, there were large settlements ("mega-cities") in what is now Ukraine. About 5,000 years ago, the people who built those cities were displaced by pastoralists who had domesticated the horse. Those people brought from the steppe with the beginnings of languages now spoken by about half the people of the world. About 2,500 years ago, Scythians from what is now southern Ukraine encountered Greeks, supplying them with some of their best stories (including those of Amazons, female Scythian warriors). Scythia, or the southern coast of what is now Ukraine, fed Athens during the time of its greatest flowering, and Greeks lived in cities on what is now the southern Ukrainian coast.

One could go on from there to the Sarmatians, the Goths, and the Khazars. The lands of what is now Ukraine may very well have been the first European territories inhabited by humans; however that may be, they have been inhabited, often by hugely influential peoples, for about 37,000 years. If it were truly the case that one could claim territory today on the basis of who was there first, Russia would have a weak claim.

The real Rus, not Putin's fairy tale

All of Putin's utterances about the period he finds interesting, beginning in the ninth century AD, are wrong. He starts up Tucker Carlson with a pleasant tale about how people in Novgorod "invited" a "Varangian prince" to rule them. History is a rougher business than that. This was the Viking age. A Viking slaving company known as "Rus" was finding its way down the Dnipro River to exchange its Slavic slaves for silver. Eventually those Vikings made of Kyiv, at the time a Khazar fort, their main trading post and port and later their capital.

In the interview, Putin invites Carlson to believe that this was a "centralized state" with "one and the same language." This is just ignorance. It was a medieval kingdom, not a state in our sense. It was certainly not centralized. That is a fantasy. Nor did it have a single language. The Viking and post-Viking rulers had three names: their Scandinavian ones, with time their local (Slavic) ones, and after conversion their baptismal ones. There was a Slavic language at the time and place, spoken by much of the population and eventually by the rulers, but it was not modern Russian or Russian of any description. Some of the language of politics was from the Khazars. There were Jews in ancient Kyiv who knew Hebrew and Slavic. There were plenty of other languages spoken as well, from several different linguistic families.

Were Putin serious that the past determines the present, he should say that the territories of that medieval Viking state, Kyivan Rus – much of Ukraine, all of Belarus, some of northeastern Russia by today's boundaries – should belong to Sweden, or Denmark, or Norway, or perhaps Finland. The creation of Kyivan Rus was one of several spectacular examples of Viking state-building around the year 1000. This broad history includes Sicily, Normandy (and so indirectly England) as well as the Scandinavian kingdoms. Sometimes Viking ambition includes several of these states at once, as when Harald Hardrada, who had served the army of Kyivan Rus, took up the kingship in Norway and invaded England. Putin speaks of Yaroslav the Wise; in an Icelandic source that fascinating ruler figures as Jarisleif the Lame. He was widely known in the Europe of the day (but not in Moscow, which did not exist).

Then the Mongols arrive in Kyiv, in 1240. This is an awkward moment for Putin, since it reveals the problem with his reasoning. If the Mongols destroyed Kyivan Rus in about 1240, why not pick then as the date that is forever valid? Why is that any worse than the earlier and later dates Putin chooses? Why does Mongolia not have a claim on Kyiv, and for that matter on Russia? On Putin's logic, it must. Putin skips hastily over this awkwardness to the (false) claim that "northern cities preserved some of their sovereignty." He means that Moscow preserved the sovereignty of Kyivan Rus under Mongol rule. But Moscow did not exist. By the time the Mongols invaded, there was a settlement on the site, but the Mongols burned it down. When Moscow was rebuilt, it was as a site of tribute collection for the Mongol overlords. That is the founding moment of the state centered in Moscow. Why then does today's Moscow not now belong to Mongolia?

In the English transcript of the interview provided by the office of the president of the Russian Federation, which I am using, Putin keeps saying "Russian." This is not the kind of thing one can expect Carlson to notice, but it is an error every time Putin does it, at least for most of the centuries he is talking about. Kyivan Rus was in no way "Russia." It was named after Vikings who became rulers. That name "Rus" came to be associated with the land and its people

and with Christianity. But "Russia" as Putin is using it, when it refers to anything specific, is an empire founded in St. Petersburg (a city that did not exist at the time of Kyivan Rus) in 1721. That Russian Empire was named "Russian" precisely as a claim to lands and to history. But just because Peter the Great made a clever public relations decision half a millennium after the Mongols took Kyiv does not mean that there was a Russia when the Mongols arrived. There was not.

Whereas the Russian Empire…

The Russian Empire that arose from Moscow was a very important state. But even the Russian Empire (1721-1917) was not a Russia in the way Putin wants. Most of its territory was in Asia. There was no Russian national consciousness among its peoples on most of its territories for most of its existence. Most of its population did not speak Russian. Its ruling class was largely German, Polish, and Swedish. Catherine the Great, the empress Putin venerates, was a German princess who came to power after the murder of her husband, who was a German prince. (Much the same can be said, incidentally, for the Soviet elite. It is only with Boris Yeltsin and his chosen successor Putin that we have before us unambiguous Russians durably ruling in a country called Russia. It is perhaps this very novelty and uncertainty that stands behind a view of the past that is at once naive and cynical. Russia's nationhood is postmodern, and it shows.)

In moving from the Middle Ages to the present, Putin then commits a huge error of omission. He refers very briefly to the Grand Duchy of Lithuania and the Polish-Lithuanian Commonwealth, and only to tell Carlson that they oppressed "Russians." The Grand Duchy of Lithuania and the Polish-Lithuanian Commonwealth were the largest countries in Europe. It was Lithuania that inherited most of the lands of old Rus, at around the time its rulers became kings of Poland. Poland-Lithuania included Kyiv for more than 300 years – longer than Kyiv was part of Kyivan Rus, longer than Kyiv was ever part of the Russian Empire. Much of the impressive political culture of Kyiv shifted to Vilnius. Again, by Putin's own logic, the lands that are now Ukraine should therefore be claimed by today's Lithuania or today's Poland.

A great deal happened during those 300 years: the Renaissance, the Reformation, the Counter-reformation. All of these marked Ukraine (as it was now called) and made it different from a Muscovite state largely untouched by those trends. Ukrainian Cossacks rebelled against Polish rule, on the basis of an understanding of a legal duty of rulers to subjects that existed in Poland-Lithuania but not in Muscovy. When Ukrainian Cossacks rebelled against Polish rule, they were led by a man educated by Jesuits who knew Ukrainian, Polish, and Latin but did not know Russian, and who used translators to communicate with Muscovites. The Cossacks did cooperate with Moscow after they lost their Crimean Tatar allies, and this did lead to wars that ruined Poland-Lithuania and allowed Muscovy to expand westward.

But Putin is wrong that the agreement signed between Cossacks and Muscovy in 1654 was some kind of eternal soul-binding of Ukrainians to Russians. Like many things he thinks, this was Soviet propaganda with a specific purpose. Khrushchev's regime made this claim to explain why Ukraine, which everyone accepted was a nation, was nevertheless bound forever to Russia inside the USSR. It was based on political need, not historical fact. There is something pathetic about someone as versed in lying as Putin actually believing the lies he was told when he was young.

Language, famine and the Nazis were right

Putin makes a mistake about the Ukrainian language, over and over, that is typical of imperial deafness. It is true that Ukrainians today can speak Russian (although many also, for understandable reasons, refuse to do so) as well as Ukrainian. When they encountered Russians, until very recently, Ukrainians would switch to Russian. This courtesy gave Russians the impression that Ukrainian was just a dialect of Russian or that Ukrainian did not exist. The simple truth is that Ukrainians know Russian because they learned it. Russians do not know Ukrainian because they do not learn it. Russian soldiers right now, two years into the war, persist in calling the Ukrainian they hear on radio intercepts "Polish" because they are unable to grasp the obvious: that there is a Ukrainian language, and they do not understand it. Putin's notion that there is no Ukrainian language is like his idea that there is no Ukrainian country or Ukrainian people: it is genocidal, because only mass killing can make it true. And of course one thing that is clear from this interview is that Putin takes it for granted that killing any number of people is preferable to admitting a mistake. Ideas matter. It is because he is wrong about everything that he must kill.

Putin perhaps comes closest to realizing his own problem when he talks about the 20th century and the creation of the Soviet Union (and its Ukrainian republic). Putin is sure that there was no Ukraine in history, and therefore he must present Lenin and Stalin as fools, because they acted as if Ukraine were real. Now, Lenin and Stalin were many things, but they were not fools. Putin says that they acted for "inexplicable" or "unknown" reasons in creating a Ukrainian republic and applying (in the 1920s) policies consistent with the existence of Ukrainian language and culture. Lenin and Stalin did this because they knew, from their own personal experience, that there was a Ukrainian national movement. They did not wish for this to be true; they were simply confronted with it at every step. They knew that there had been a Ukrainian national movement in the Russian Empire. They knew that Ukrainians had tried to found states after the Bolshevik Revolution. They knew that they had defeated these attempts after years of extreme violence, and that something else would have to be done over the long run.

Putin calls the Soviet Union "Russia" and tells Carlson that the Soviet Union was just another name for Russia. Here he is simply wrong. Russia was a part of the Soviet Union. About half the population were not Russians. Ukraine and other republics were subject to russification policies, but no Soviet leader claimed (as Putin does) that these republics were an element of Russia. The Soviet Union took the form it did, as a nominal federation of national republics, because Lenin, Stalin, and other Bolsheviks knew, more than 100 years ago, that they had to reckon with Ukraine. They created a Soviet Union with national republics because they knew they had to make some compromise with political reality, above all the reality of Ukraine.

When Soviet policy turned against Ukrainians in the early 1930s, this was because Stalin was afraid of losing Ukraine as a result of his own disastrous policies, not because he thought Ukraine did not exist. He was right to believe that Ukrainian peasants would resist his policy of seizing their land; many of them did, so long as they could. He and other members of the politburo engineered a political famine in Ukraine on the logic that Ukrainians in particular should be punished for the failures of Stalin's own policy. Putin ignores these events completely; but they were a lived and unforgettable reality for the survivors. The generational memory of what Ukrainians call the Holodomor is one way Ukrainians today differ from Russians.

Putin talks about the Second World War as if it were a Russian ethnic struggle, but it was a Soviet struggle. And the Soviet peoples who suffered the most, after the Jews, were the Belarusians and the Ukrainians. More Ukrainian civilians were killed under German occupation than Russian civilians. Ukrainian soldiers were overrepresented in the Red Army that defeated the Germans on the eastern front. These are among the important facts of contemporary history that Putin simply passes over. Or he makes things up: like his claim that he lectured the Ukrainian president, Volodymyr Zelensky, about Zelensky's father, who was in the Red Army. It was Zelensky's grandfather. His great-grandfather and three great-uncles were murdered in the Holocaust. Putin has lost track of the generations and lost sight of what mattered and to whom. What Putin has to say about the Second World War is that Hitler was right. For a decade now, Putin has been justifying the Molotov-Ribbentrop pact, the 1939 alliance between Stalin and Hitler than began the Second World War. His argument at the beginning was that the Soviet choice to join Nazi Germany in the invasion of Poland was just the sort of thing everyone was doing. But it is hard to see how Hitler could have started his war had the Soviets simply held to the non-aggression pact they had earlier signed with Poland.

Now Putin has taken a further step, saying that Poland had (somehow) both collaborated with Germany too much and simultaneously not collaborated enough and thereby brought the war on itself. Putin wants to say that Poland collaborated with Germany to distract from the basic fact that the Soviet Union entered the Second World War as a German ally. Warsaw refused to fight on Berlin's side in 1939; Moscow agreed. Putin blames the war on Poland because his own approach to borders and history in 2024 is like Hitler's in 1939. Putin's "historical" argument about Ukraine is consistent with Nazi propaganda about Poland, right down to the business about "artificial" states and peoples with no historical right to exist. Putin's claim that the Ukrainians are the actual Nazis isn't even framed as history. He just says it. This sort of claim is itself fascist: it rests on a domestic politics of us-and-them, where Russians are told that they are always innocent; and an international propaganda campaign meant to confuse by name-calling.

Ukraine has much less of a problem with the far right than does Russia, or for that matter than the United States, or pretty much any other European country you care to name. Ukrainians elected a Jewish president by more than 70 percent of the ballot, without his Jewishness being much of an issue. That would be a challenge elsewhere. The Ukrainian minister of defense is a Crimean Tatar (and a Muslim). The commander-in-chief of the Ukrainian armed forces was born in Soviet Russia to Russian parents. Ukraine manages a degree of diversity, even in wartime, that reflects its fascinating history, a past that cannot really be described in a text like this, one which has to have to narrow purpose of showing how and why Putin is wrong.

Putin has been making the argument of his interview since 2010; his myth about the past is a major subject of my book The Road to Unfreedom, which charts its origins and defines its consequences at greater length. Putin's kind of story leads to war, genocide, and fascism. It also, though this might seem like a much smaller wound, makes history harder to practice. When stories like his are successful, people in other countries think that they too need an account of eternal innocence to justify the awfulness of the everyday. And historians can be pulled into the vortex, spending their times answering lies rather than doing their research. My own positive version of Ukrainian history is available in the public lecture series available here. I close this essay with bibliography [omitted] to emphasize that history is about researching, considering,

and making interesting and defensible arguments. Ukrainian historians keep doing this, even during the war.

Commentary

1. *Bringing "Home" Russian Land?* In March 2024, Dmitry Medvedev, deputy chairman of Russia's Security Council and an ally of President Vladimir Putin, has called for the historical parts of Russia to "come home". Snyder refers to this proposition disseminated by Putin as the "myth of eternal Russia." However, as soon as one begins to talk of "Russia's historical lands" as a reason why a particular part of Europe, Asia, or even North America (i.e., Alaska was Czarist Russia's historical territory) should be part of today's Russian Federation, the conversation must stop. What is past is past. It is as silly as speaking about Mongolia's "historical lands" to determine what the borders of today's Republic of Mongolia should be.
2. *The Myth of the "Triune."* The claim that the peoples of Ukraine and Belarus are sub-nations of a single community known as the 'triune' or all-Russian nation (*триединый/общерусский народ*) [triyedinnii/obshcherusskii narod] is an ideological construct dating back to imperial times. Under this construct, a pan-Russian nation with roots in the medieval Kievan Rus, the cradle of Orthodox Christianity for Eastern Slavs, developed and flourished from the 14th century onwards around the principality of Muscovy. As discussed above, this founding myth of Russian statehood misrepresents history and is just another mechanism utilized to justify Russia's aggression toward Ukraine.
3. *How Kyiv priests created Russia's imperial "Triune Rus" ideology.* Kyiv orthodox clergymen viewed union with Moscow Orthodoxy as a beneficial choice to compete with Polish-Lithuanian Commonwealth Catholicism and the Ukrainian Uniate Church. In his 1674 Synopsis, Inokentiy Gizel, Archimandrite of Kyiv's principal monastery, Kyiv Pechersk Lavra, wrote that all East-Slavic peoples should be united within one state. This supposition, first born in Kyiv, survived until the 19th century and eventually transformed into pan-Slavism, a political and cultural movement initially emphasizing the cultural ties between the Slavic peoples but later associated with Russian expansionism. Moscow used the idea of an all-Slavic unity as a foundation for its empire.
4. *A Strategic Error of Historic Proportions?* In 1648, the Zaporizhian Cossack Hetman Bohdan Khelmytsky led an uprising in Ukraine, demanding more rights from the Polish-Lithuanian Commonwealth that ruled the territory. Khelmytsky sought support from the Muscovy kingdom in the east against the powerful commonwealth. It resulted in the Pereyaslav Agreement of 1654 between the Cossack Hetmanate and the Duchy of Muscovy, with Khelmytsky swearing allegiance to the tsar. Czar Alexis swiftly used it to invade the commonwealth and proclaim himself the "Sovereign of all Russia, including Great Little, and White Russia." Russian historiography celebrates the Pereyaslav Agreement as Rus' great unification, while for the Ukrainian Cossacks, it sealed their fate of oppression by Muscovy. Ukrainian poet Taras Shevchenko lamented Bohdan Khmelnytskyi's Pereyaslav treaty in his poem "The Excavated Mound" (1843):
   But oh, Bohdan,
   You unwise son of mine!
   Look at your ancient mother now,
   Ukraine, of stock divine,
   Who as she cradled you, would sing

And grieve she was not free;
Who, as she sang, in sorrow wept
And looked for liberty!…
O dear Bohdan, if I had known
That you would bring us doom,
I would have choked you in your crib,
Benumbed you in my womb!

5. *Ukraine's Complex History with Minority Populations.* Since the Kievan Rus, the territory of Ukraine has been a home for various ethnic and religious groups that were given a possibility to build their churches, follow their traditions, and having certain autonomy. There has always been a significant portion of Jews, Poles, Lithuanians, Greeks, Bulgarians, Tatars, Armenians, Czechs, Romanians, and Russians residing within the Ukrainian territories and mainly co-existed peacefully. Inevitably, there had been ethnic clashes and conflicts that in some cases were tolerated by the state power. In the early-to-mid 1940s after World War II, Ukrainian nationalist groups, including those initially led by Stepan Bandera, massacred around 100,000 Poles in Volhynia and Eastern Galicia. At the same time, the Polish guerillas groups were killing Ukrainians on the ethnic Ukrainian territories. This resulted in the Polish operation Vistula on forced resettlement and ethnic cleansing of around 150,000 Ukrainians residing in south-eastern provinces of Poland. According to Timothy Snyder, the ethnic cleansing, which also resulted in the deaths of Armenians, Jews, Russians, Czechs, and Georgians, was done by the Ukrainians to attempt to inhibit the Poles from asserting their sovereignty over Ukrainian-majority territories that had been part of the pre-war Polish state. Overall, Ukrainian society today remains tolerant to other ethnicities and minorities In 2019, when Volodymyr Zelensky was elected as President of Ukraine and Volodymyr Groysman was his prime minister, Ukraine was the only country in the world besides Israel with both president and prime minister being Jewish. In 2024, Rustem Umerov, and ethnic Tatar, was appointed by Zelensky as Minister of Defense. Others include: Arsen Avakov, born in Azerbaijan to an Armenian family, who served as Ukraine's Minister of Internal Affairs from 2014 to 2021; Oleksandr Turchynov, of Russian descent, who held various high-ranking positions, including Acting President of Ukraine in 2014; Mustafa Nayyem, of Afghan descent, a prominent journalist and activist who played a significant role in the 2013 Euromaidan protests and later served as a member of parliament and held government positions related.
6. *Suppression by the Suppressed? Criticism of Ukrainian Laws Targeting Minorities' Rights* The Ukrainian government has been criticized for enacting laws that may have the aim of bolstering Ukraine as a nation during a time of war but are stripping rights away from the country's ethnic minority populations, such as the Bulgarians, Poles, Romanians, and Hungarians. Such laws include its Law on Education and, more recently, the Law on National Minorities. This law, effectively, denies these minorities fundamental rights such as the ability to use their native tongue in daily life or freely use their ethnic-national symbols. The Venice Commission – the constitutional advisory body of Europe's leading human rights organization – examined the law for compliance with international human rights standards. The Venice Commission provided several recommendations to amend the law, including "extend[ing] the right to organize events in

minority languages to all persons." Additional details regarding legislation enacted in response to Russia's aggression towards Ukraine can be found in Chapter 3.

7. *Andrew Wilson's Ukraine as an unexpected nation.* In the first edition of *The Ukrainians: Unexpected Nation*, published in 2000, Andrew Wilson introduces the concept of Ukraine as an "unexpected nation," highlighting surprise many felt at its emergence as an independent state in 1991. He discusses Ukraine's diverse ethnic, linguistic, religious, and regional composition, which contributed to perceptions of its unlikely nationhood. Wilson emphasizes that, despite these complexities, Ukraine is as much a nation as any other, challenging narratives that sought to diminish its legitimacy. By the fifth edition, published in November 2022, the preface reflects the significant developments that have occurred since the book's initial release. Wilson now addresses the ongoing conflict with Russia, particularly the annexation of Crimea in 2014 and the subsequent war in Eastern Ukraine. He notes that these events have, paradoxically, strengthened Ukrainian national identity and unity. The book through its various editions underscores the resilience of the Ukrainian people in the face of external aggression and internal challenges, highlighting their continued journey toward a consolidated national identity. Thus, while the first edition's preface focuses on the unexpected emergence of Ukraine as an independent nation, the fifth edition's preface focuses on the nation's evolution over the past decades, emphasizing its resilience and the solidification of its national identity amidst ongoing challenges.
8. *Putin as the "father of modern Ukraine."* Wilson's evolution can be encapsulated in the ironic notion that Vladimir Putin could be considered "the father of modern Ukraine. Putin's the annexation of Crimea in 2014 and the full-scale invasion of in 2022 have unintentionally fostered a stronger Ukrainian national identity, regardless of ethnicity or religion, even those of ethnic Russians that are Ukrainian citizens. Ukrainians have increasingly rejected Russian language, culture, and historical narratives in favor of promoting their own distinct identity and heritage. Before 2014, Ukraine was often described as divided along linguistic, cultural, and regional lines. However, Russia's wars united Ukrainians across these divides, rallying them around their shared sovereignty and identity. Before Russia's interventions, there were also significant political and cultural differences between Ukraine's east and west. Russian aggression shifted focus from internal divisions to an external threat, helping unify Ukrainians against a common enemy. This has accelerated the nation-building process and strengthened the Ukrainian state. It has led to an outpouring of patriotism and a desire to assert Ukraine's independence and uniqueness, particularly in contrast to Russia. Russian aggression has driven Ukraine further into the orbit of Western institutions, such as NATO and the European Union. Public opinion in Ukraine has shifted dramatically toward favoring integration with the West, a process that may not have accelerated so quickly without Putin's actions. Ironically, while Putin's stated goal has been to undermine Ukraine as a sovereign and independent nation, his actions have had the opposite effect. His invasions have solidified Ukrainian identity, unified the nation, and pushed it closer to the West, fostering a sense of resilience and pride that might not have developed as quickly otherwise. Thus, in a twisted historical irony, Putin's aggression has accelerated the nation-building process in Ukraine, earning him the unintended title of "father of modern Ukraine."

Chapter 2

Introduction to the Ukrainian Legal System

2.1 Introduction

The history of Ukraine outlined in Chapter 1 has determined its legal tradition. The territory of modern Ukraine at different times belonged to: the Kievan Rus; the Mongolians; the Grand Duchy of Lithuania, the Grand Duchy of Litovsky, Zhemoytsky and Rus; the Polish Kingdom, Rzeczpospolita (monarchic confederation of the Grand Duchy of Litovsky, Russian and Zhemoytsky and the Polish Kingdom), the Ukrainian Cossack State, the Russian Empire, the Austro-Hungarian Empire, the Ukrainian National Republic, the Western Ukraine National Republic, and the Union of Soviet Socialistic Republic (USSR). From the Kievan Rus era to the Soviet period and the country's independence in 1991, Ukraine's legal system has undergone significant transformations, blending indigenous legal principles with influences from Roman law, common law, and socialist legal norms.

In 1996, Ukraine adopted a progressive Constitution and enshrining the rule of law principle. The Ukrainian Constitution lies at the core of the Ukrainian legal system and defines the country's legal framework, fundamental rights, separation of powers, and the structure of government institutions. The system operates within the framework of three branches of the government: the executive, legislative, and judicial.

In recent years, Ukraine has embarked on a vast program of legal reforms to modernize its legal system, enhance judicial independence, combat corruption, and align with European legal standards. The country's integration efforts with the European Union and international legal frameworks have also influenced legal developments, promoting transparency, accountability, and respect for human rights. To

date, the legal reforms have had certain success. Still, they need to be properly finalized in line with the international standards reflected in the recommendations issued by the European Commission, Council of Europe, and other organizations. The Ukraine 2023 Report, which the European Commission published on November 8, 2023, says that "…despite Russia's full-scale invasion in February 2022 and its brutal war of aggression, Ukraine has continued to progress on democratic and rule of law reforms. The granting of candidate status for EU accession to Ukraine in June 2022 has further accelerated reform efforts…."

This chapter introduces the legal system of Ukraine. Chapter 13 sets out efforts at reform so far and future plans for reform. The significance of fixing the legal system cannot be overstated. If Ukraine is to survive as a sovereign state, even if it achieves victory on the battlefield in the current war, it must transform itself into a law-based state and align itself with Western Europe to protect itself as its aggressive neighbor to the East seeks to restore a version of the former USSR or the Russian Empire of the Czarist years. To join the European Union (EU), however, Ukraine must conform to the rule of law norms required of all EU members. . The Council of Europe's Commission for Democracy through Law, commonly known as the Venice Commission, is working closely with Ukrainian legal and political stakeholders to implement and put into practice meaningful legal reforms. Other Western liberal democracies have also parachuted their own legal experts with what is known today as ROLI, Rule of Law Initiatives.

Ukraine has confirmed the European identity of the Ukrainian people and declared irreversibility of the European and Euro-Atlantic course of Ukraine in its Constitution, Whether it will follow those former Soviet republics that succeeded in transforming themselves into law-based states, like the Baltic republics of Estonia, Latvia, and Lithuania rather than be mired in post-Soviet legal swampland, like Russia and Belarus, is still unknown. The following excerpt from the 2023 report of the EU bodies coordinating Ukraine's accession provides a snapshot of the current situation. We present it here as a backdrop to the materials that follow, setting out the law on the books on how the legal system of Ukraine is meant to operate.

REPORT TO THE EUROPEAN COMMISSION,

RULE OF LAW AND FUNDAMENTAL RIGHTS (2023)

Chapter 23: Judiciary and fundamental rights

The EU's founding values include the rule of law and respect for human rights. An effective (independent, high-quality, and efficient) judicial system and an effective fight against corruption are of paramount importance, as is the respect for fundamental rights in law and practice. Ukraine has some level of preparation in implementing the EU acquis and European standards in the area of the judiciary, fight against corruption, and fundamental rights. Despite Russia's war of aggression, good progress was made in this area, and the relevant institutions continued operations, delivering vital services to citizens and reform efforts, demonstrating remarkable resilience. The efforts in the judiciary, anti-corruption, and fundamental rights need to continue and be further consolidated.

Functioning of the judiciary

Ukraine has some level of preparation in the functioning of the judiciary. Despite the Russian war of aggression, good progress was made in implementing the 2021 reform of the judicial governance

bodies during the reporting period. The High Council of Justice (HCJ) and the High Qualification Commission of Judges (HQCJ) were re-established following a transparent and meritocratic process with the meaningful involvement of independent experts. It enables the government to fill more than 2,000 judicial vacancies and resume the qualification evaluation (vetting) of sitting judges. Ukraine also adopted the law on a transparent and merit-based preselection of judges of the Constitutional Court, in line with the Venice Commission recommendations, and started implementing it. Legislation was adopted to establish a strong service of disciplinary inspectors and to resume disciplinary proceedings against judges. The new administrative court to handle cases involving the central government bodies and staffed by properly-vetted judges needs to be established following the abolition of the Kyiv District Administrative Court.

In the coming year, Ukraine should, in particular:

- fill the open vacancies in the Constitutional Court of Ukraine in line with the adopted legislation;
- relaunch the selection of ordinary judges based on the improved legal framework, including clear integrity and professionalism criteria and the strong role of the Public Integrity Council;
- resume the evaluation of the qualification of judges (vetting), which was suspended in 2019; introduce a transparent and merit-based selection of management-level prosecutors by amending the legal framework and taking the necessary institutional measures;
- establish the service of disciplinary inspectors following a transparent and meritocratic selection process and resume the handling of disciplinary proceedings against judges prioritising high-profile cases and cases nearing the statute of limitation;
- take effective measures to address corruption risks in the Supreme Court;
- strengthen the disciplinary system for prosecutors by improving the existing legal and institutional framework;
- complete a comprehensive IT audit,.. and start implementing a roadmap to modernise IT in the judiciary…

Russia's military aggression against Ukraine has posed major challenges to Ukraine's judicial system. By the end of April 2023, 12 members of its judicial staff were killed, 114 court buildings (15% of the total) were either destroyed or damaged by the hostilities, and a large number of case files were lost. The material losses suffered by the courts are estimated at EUR 47 million.

The Prosecution Service has also suffered severe damage. Six staff members were killed, 64 buildings of the prosecutor's offices were either fully or partially destroyed, while 173 buildings remain in the temporarily occupied territories of Ukraine. The material damage exceeds EUR 22 million.

The administration of justice has been affected by air strikes, air raid alerts, and frequent power outages. Parties to court proceedings were displaced internally or abroad, which disrupted the handling of cases. More than 80,000 cases related to war crimes, crimes against humanity, and other war-related offences were opened, thereby shifting the work priorities and placing an additional burden on the criminal justice system.

Administering justice in areas of active hostilities and temporarily occupied territories has become impossible. Despite these significant challenges, the Ukrainian judiciary, prosecution, and other justice institutions showed remarkable resilience by continuing to provide justice services to citizens and companies while also implementing reforms. The necessary legislative, organisational and technical

measures were taken to allow courts to swiftly adapt their work to the new martial law realities and protect court users, while providing continuous access to justice. In particular, legislation was adopted that allowed the territorial jurisdiction of courts to be changed and court cases to be relocated to other parts of the country if it became impossible to administer justice in a certain territory, along with the secondment of judges to other courts.

The reform of the two key judicial governance bodies – the HCJ and the HQCJ – was completed. This reform was triggered by insufficient independence of the judiciary from the executive and legislative branches, low public trust in the judiciary, high levels of corruption and the strong influence of vested interests in the work of courts.

The reform started in July 2021 with the adoption of ambitious legislation that introduced robust integrity vetting for the HCJ sitting and candidate members, as well as integrity and professionalism checks of HQCJ candidates. The legislation envisaged a temporary yet decisive role for independent experts nominated by international donors, including the EU, in the respective selection and vetting bodies. The reform was fully aligned with the relevant Venice Commission recommendations, focusing on strengthening integrity and public trust in the judiciary.

By January 2023, 11 new HCJ members – duly vetted by the Ethics Council – were appointed by the relevant appointing bodies. With these appointments, the renewed HCJ reached 15 members and became operational again. By June 2023, two more duly vetted HCJ members were appointed, increasing the HCJ's composition to 17 members. The integrity and professionalism check of 301 HQCJ candidates by the Selection Commission, composed of three national and three international experts, was completed in March 2023. In June 2023, the HCJ appointed 16 new HQCJ members proposed by the Selection Commission, following a transparent interview and individual voting procedure, making the HQCJ fully operational.

The reform of the judicial governance bodies was finalised against the backdrop of a high-level corruption case involving the Head of the Supreme Court. This case became public in mid-May when the National Anti-Corruption Bureau claimed to have uncovered an organised crime group that allegedly received a bribe equivalent to EUR 2,500,000 to influence Supreme Court decisions favouring a particular oligarch. The Head of the Supreme Court was dismissed and put into custody while the investigation was ongoing. This corruption case highlighted, on the one hand, the robustness of the specialised anticorruption institutions established with strong EU support after the 2014 Revolution of Dignity and, on the other, the need to pursue reforms in the justice, law enforcement and wider public sector to address the existing corruption challenges and irreversibly consolidate integrity, efficiency and professionalism, while striking the right balance between independence and accountability. Effective integrity tools should be used to address corruption in the Supreme Court and other courts, including through the verification of integrity and asset declarations of judges, disciplinary framework and improved selection procedures with a strong focus on integrity and professional ethics. These measures should help in building public trust in the judiciary, which remains very low.

According to opinion surveys, public trust has been growing in recent years (in 2021, 15.5% of respondents trusted the judiciary, while in 2023 it was 24.8%). Foreign business associations continue to cite problems with the judiciary and the prevalence of corruption as some of the main obstacles to doing business in Ukraine.

Good progress was achieved with the reform of the Constitutional Court of Ukraine (CCU). In December 2022, Ukraine adopted a law to reform the selection procedure for future CCU judges. It was not fully compliant with the Venice Commission recommendations issued in December 2022. The

internationally nominated members of the CCU pre-selection body – the Advisory Group of Experts – were not provided a temporary yet decisive role in the preselection procedure. This was recommended by the Venice Commission to restore trust in the CCU, whose reputation was damaged by corruption allegations against its judges and several controversial CCU decisions. In July 2023, Ukraine adopted amendments to the CCU Law, which implemented the outstanding Venice Commission recommendations in its Opinions on CCU reform from December 2022 and June 2023. Following the adoption of these amendments, the CCU selection reform has started to be implemented. In September, upon the government's formal request, the Venice Commission and the international donors, including the EU, submitted their nominations of members and substitutes of the Advisory Group of Experts. In October, the Cabinet of Ministers formally appointed them. With five appointed members and five substitutes, the Advisory Group of Experts became operational and could proceed with the pre-selection of candidates for the position of the Constitutional Court.

The reform of the CCU should continue with the adoption of a law on the constitutional procedure, in line with Venice Commission recommendations, to improve transparency and accountability in the work of the CCU and make the constitutional procedure more efficient.

In December 2022, the Parliament adopted a law abolishing the Kyiv district administrative court (KDAC), which handled disputes involving the central government bodies. Some KDAC judges were subject to numerous controversies and corruption investigations. Under the adopted law, KDAC was abolished and obliged to transfer its cases to the Kyiv region administrative court until a new Kyiv city administrative court was established. Delays in the transfer of cases and in the establishment of the new court, along with the limited capacities of the Kyiv region administrative court to assume new obligations, undermined access to justice.

Strategy Documents

The 2021-2023 strategy for the development of the justice system and constitutional judiciary identified the main reform areas in the justice sector, including the reorganisation of local courts, reform of the key judicial governance bodies, consolidation of the Supreme Court key function to guarantee uniformity of jurisprudence, development of alternative dispute resolution, selection of new judges, prosecutorial reform, as well as the reform of the Constitutional Court. Part of the reform measures contained in the strategy were duly implemented, particularly the reform of judicial governance bodies and the selection of CCU judges. No formal assessment of the implementation of the strategy was carried out. A new strategy for reforming the justice system to respond to the challenges of wartime still needs to be developed in a transparent and inclusive manner and adopted.

In May 2023, the President of Ukraine approved a comprehensive strategic plan for the reform of law enforcement bodies for 2023-2027. Among other measures, it provides broad reform guidance for the prosecution service, including strengthening its coordination role over law enforcement agencies and raising legal certainty and uniformity of practice in criminal procedures. An action plan that will define the expected results, tasks, and performance indicators for the strategic plan is being finalised by the inter-agency working group and with the EU experts' involvement. Its speedy adoption and steady and consequent implementation should lead to concluding the reform process in the area.

Commentary

1. The saving grace for legal reform is Ukraine's robust civic society, which has become stronger since the full-scale invasion. The Commission Report summarizes in another part of the report:

> Ukraine's vibrant civil society remains engaged in reform processes and in the response to the impact of Russia's aggression. Volunteer movements and informal civil society groups often act as the backbone of humanitarian action across the country, including in the liberated and temporarily occupied territories of Ukraine. In many respects they are key to the country's resilience. The legal framework continues to guarantee the rights of freedoms of association, expression and peaceful assembly. An ambitious multi-year civil society development strategy is in place, providing for more meaningful engagement with civil society. The government should further expand its public funding programmes for civil society organisations and work on improving the dialogue and consultations with them.

2. Brussels has made fighting corruption a precondition for Kyiv to join the EU. Despite some progress in recent years, Ukraine ranks at 36 on a scale of 0 ("highly corrupt") to 100 ("no corruption") in Transparency International's Corruption Perceptions Index. On the positive side, Transparency International ranks Ukraine at its highest level since 2006: 104th out of 180 countries in 2023. Ukraine has been reforming its court system since 2014 after massive street rallies toppled the government of President Viktor Yanukovych. A key demand of the protesters was that the authorities confront corruption that had become entrenched in the years after the country became independent after the collapse of the Soviet Union in 1991.
3. In May 2023, a major scandal rocked the judiciary when Chief Justice/President Vsevolod Kniaziev, was arrested by anti-corruption authorities on suspicion of receiving a $US3 million bribe. The money apparently came from backers of Ukrainian billionaire Kostyantyn Zhevago, who was arrested in France in December 2023 at Kyiv's request in relation to embezzlement charges Kniazev was appointed to the court in December 2021 following the vetting of judges mechanism discussed in the EU report. A month before his arrest Kniazev met with U.S. Attorney General Merrick Garland during his visit to Kyiv to coordinate prosecution for war crimes arising from the Ukraine War. Just a few weeks before his arrest (May 1, 2023) Kniazev was in the U.S. speaking to the New York City Bar. As of this writing in January 2025, Kniazev is out on bail. On August 6, 2024, the High Council of Justice dismissed Kniaziev from the position of a Supreme Court Justice for committing a substantial disciplinary offence which is incompatible with a status of judge or which has revealed his incompatibility with the office. On March 4, 2024, the prosecutors submitted the indictment in Kniazev's case to the court. On August 28, 2024, the High Anti-Corruption Court of Ukraine started consideration of the case on merits. The case continues.
4. Some have pointed out to a silver lining from Kniaziev's arrest. The Center for European Policy Analysis (CEPA) observes: "Amid the justified anger, the scandal over Judge Kniaziev showed that anti-corruption bodies in Ukraine's system of governance are working, and able to deal with cases involving the most senior officials. The case indicates that Kyiv is willing to work towards an effective anti-corruption environment for its post-war reconstruction, by developing a consistent and investor-friendly legal system."
5. The CEPA analysis points out that the "biggest external problem for the justice system is the influence of oligarchs, who instrumentalized it in the post-Soviet period to protect property and maintain their business empires. It may be symptomatic that Vsevolod Kniaziev is accused of taking a bribe from the billionaire investor Kostyantyn Zhevago." The Report concludes: "Ukraine has an unanswered demand

for mechanisms to enable civil society to influence the judicial system as much as possible, to ensure the fresh air of transparency reaches far into the system, and it needs to respond."

6. Another hopeful sign: "The Council of Europe's Group of States Against Corruption (GRECO) has removed Ukraine from its blacklist, acknowledging it has "successfully implemented or is implementing to a satisfactory degree" 15 of its 31 recommendations, with nine more in the process of meeting requirements. This contrasts with 2019, when GRECO confirmed the implementation of only five of the 31 recommendations. Its most recent report described Ukraine's continuing efforts, undertaken during a war of national survival, as 'remarkable.'"
7. The Venice Commission, the body on constitutional matters, has actively recommended various legislative and constitutional reforms to Ukraine. Ukraine has taken significant steps to incorporate the Venice Commission's feedback, particularly in areas such as judicial independence, electoral laws, and constitutional amendments. For instance, the recent reforms aimed at enhancing judicial accountability and transparency reflect a positive move towards ensuring an impartial judiciary, a core recommendation from the Venice Commission. In interactions with Ukrainian officials, including meetings and discussions on the progress of various reforms, Ukraine has demonstrated a proactive approach to seeking expert advice and making necessary adjustments to its legislative processes.
8. Certain recommendations from the Venice Commission caused a sharp reaction from Ukrainians. For instance, the Commission criticized the draft law banning members of pro-Russian parties from future elections. The Commission highlighted that such measures could conflict with democratic principles and the rule of law, emphasizing the need for Ukraine to balance national security concerns with fundamental democratic rights. A particularly heated discussion ensued based on the Law of National Minorities (Communities) of Ukraine aimed at protecting the rights of national minorities in Ukraine, which was scrutinized for potentially failing to meet European standards as it limited the influence of the Russian language and minority involvement. The Commission underscored the importance of ensuring that the law respects the rights of all minorities while promoting social cohesion and integration. Many Ukrainians saw the Commission's opinion on this matter as a lack of understanding of what the war against Russians is like, creating an inflexible system that does not correspond to the nation's changing needs and putting unrealistic requirements on the country at war. Generally, while challenges remain, particularly in balancing security concerns with democratic freedoms, Ukraine's ongoing reforms and engagement with the Venice Commission are positive steps toward building a more transparent, accountable, and democratic society. The Commission's guidance continues to be a vital resource for Ukraine as it navigates these complex legal and political landscapes.

2.2 Ukrainian Legal Tradition Overview

The Ukrainian legal system is a Roman law-based or continental system based upon European civil law. Unlike the Anglo-American common law system, where court decisions form a major corpus of law, the Ukrainian system's main source of law is laws enacted by the Ukrainian parliament, the Verkhovna Rada (Supreme Council) of Ukraine. Various governmental agencies enact other normative acts at national and municipal levels. In addition to parliamentary legislation and these other normative acts, court decisions are considered an important source of law. These include the European Court of Human Rights (ECtHR) court decisions, which has jurisdiction to consider cases on violation of the European Convention of Human Rights (ECHR) by any Council of Europe member country, including Ukraine, which became a state party to the ECHR after achieving independence. Ukraine has two supreme courts: the Constitutional Court of Ukraine and the Supreme Court of Ukraine. Each of these will be discussed separately below.

Though precedent is not an official doctrine, Ukraine has implemented a continental European model in which decisions of higher courts are binding on lower courts. Some academics consider this an analogue of “soft” precedent.

Ukraine's legal system is based on codified law, encompassing various branches of law summarized in extensive, internally systematized normative acts called codes. Codes in Ukraine enacted by parliament have the same legal prominence as other laws; they regulate specified legal relations, such as the Code of Ukraine on Administrative Offences, the Civil Code of Ukraine, the Code of Labor Laws, the Family Law Code, and others Additionally, Ukraine's legal system distinguishes between private and public law. This means that relationships between individuals or individuals and legal entities have a private legal nature and enjoy broader flexibility, allowing them to govern certain issues through mutually agreed contracts. At the same time, public law regulates the relationship between the state and individuals.

Ukraine has a single unified legal system throughout the country. Unlike federal systems like the United States, there are no parallel federal vs. state (or provincial) courts.

Article 8 of the Constitution of Ukraine states, “The Constitution of Ukraine shall be regarded as superior law. Laws and other regulatory acts shall be adopted on the basis of the Constitution of Ukraine and shall conform to it.” Art. 19 of the “Law on Law-making Acts” established the hierarchy of normative laws in Ukraine:

1) Constitution of Ukraine;

2) international treaties approved by parliament, the Verkhovna Rada (Supreme Council of Ukraine) – Art. 9.

3) laws enacted by the Ukraine Parliament.

4) resolutions of the Ukraine Parliament, decrees of the President of Ukraine;

5) resolutions of the Cabinet of Ministers of Ukraine, regulatory acts of the National Bank of Ukraine;

6) orders of ministries;

7) regulatory and legal acts of other state bodies;

8) resolutions of the Verkhovna Rada of the Autonomous Republic of Crimea, the Council of Ministers of the Autonomous Republic of Crimea;

9) acts of regional state administrations;

10) orders of the ministries of the Autonomous Republic of Crimea;

11) acts of Kyiv and Sevastopol city state administrations;

12) acts of district state administrations;

13) acts of local self-government bodies.

Currently, the Ukrainian government is implementing the so-called “Support for the Implementation of the EU-Ukraine Association Agreement” (A4U II), which aims to conform Ukrainian law to EU standards law for the eventual European integration of Ukraine.

2.2.1. Constitutional framework

Constitution of Ukraine (Excerpts)

(For the full version, see here)

The Verkhovna Rada of Ukraine, on behalf of the Ukrainian people — citizens of Ukraine of all nationalities, expressing the sovereign will of the people, based on the centuries-old history of Ukrainian state-building and on the right to self-determination realised by the Ukrainian nation, all the Ukrainian people, providing for the guarantee of human rights and freedoms and of the worthy conditions of human life, caring for the strengthening of civil harmony on Ukrainian soil and confirming the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course of Ukraine, striving to develop and strengthen a democratic, social, law-based state, aware of our responsibility before God, our own conscience, past, present and future generations, guided by the Act of Declaration of the Independence of Ukraine of 24 August 1991, approved by the national vote of 1 December 1991, adopts this Constitution as the Fundamental Law of Ukraine.

Section I

GENERAL PRINCIPLES

Article 1. Ukraine shall be a sovereign and independent, democratic, social, law-based state.

Article 2. The sovereignty of Ukraine shall extend throughout its entire territory.

Ukraine shall be a unitary state.

The territory of Ukraine within its present border shall be indivisible and inviolable.

Article 3. The human being, his or her life and health, honour and dignity, inviolability and security shall be recognised in Ukraine as the highest social value.

Human rights and freedoms and guarantees thereof shall determine the essence and course of activities of the State. The State shall be answerable to the individual for its activities. Affirming and ensuring human rights and freedoms shall be the main duty of the State.

Article 5. Ukraine shall be a republic.

The people shall be the bearer of sovereignty and the sole source of power in Ukraine. The people shall exercise power directly and through the government authorities and local government.

The right to determine and change the constitutional order in Ukraine shall belong exclusively to the people and shall not be usurped by the State, its bodies, or officials.

No one shall usurp state power.

Article 6. The State power in Ukraine shall be exercised with the consideration of its division into legislative, executive and judicial power.

Legislative, executive and judicial authorities shall exercise their powers within the limits established by this Constitution and in accordance with the laws of Ukraine.

Article 8. The rule of law shall be recognised and effective in Ukraine.

The Constitution of Ukraine shall be regarded as superior law. Laws and other regulatory acts shall be adopted on the basis of the Constitution of Ukraine and shall conform to it.

The norms of the Constitution of Ukraine shall be norms of direct effect. Appeals to the court in defence of the constitutional rights and freedoms of the individual and citizen directly on the grounds of the Constitution of Ukraine shall be guaranteed.

Article 9. International treaties in force ratified by the Verkhovna Rada of Ukraine shall be a part of the national legislation of Ukraine.

Conclusion of international treaties that contravene the Constitution of Ukraine shall be possible only after introducing relevant amendments to the Constitution of Ukraine.

Article 10. The state language of Ukraine shall be the Ukrainian language.

The State shall ensure the comprehensive development and functioning of the Ukrainian language in all spheres of social life throughout the entire territory of Ukraine.

Free development, use, and protection of Russian and other languages of national minorities of Ukraine shall be guaranteed in Ukraine.

The State shall promote the learning of languages of international communication.

The use of languages in Ukraine shall be guaranteed by the Constitution of Ukraine and determined by law.

Article 11. The State shall promote the consolidation and development of the Ukrainian nation, its historical consciousness, traditions, and culture, as well as the development of ethnic, cultural, linguistic, and religious identity of all indigenous peoples and national minorities of Ukraine.

Article 19. The legal order in Ukraine shall be based on the principles according to which no one may be forced to do what is not stipulated by law.

Government authorities and local government and their officials shall be obliged to act only

on the grounds, within the powers, and in the manner envisaged by the Constitution and the laws of Ukraine.

…

Section II

HUMAN AND CITIZENS' RIGHTS, FREEDOMS AND DUTIES

Article 21. All people shall be free and equal in their dignity and rights. Human rights and freedoms shall be inalienable and inviolable.

Article 22. Human and citizens' rights and freedoms affirmed by this Constitution shall not be exhaustive.

The constitutional rights and freedoms shall be guaranteed and shall not be abolished.

The content and scope of the existing rights and freedoms shall not be diminished by adopting new laws or introducing amendments to the effective laws.

Article 24. Citizens shall have equal constitutional rights and freedoms and shall be equal before the law.

There shall be no privileges or restrictions based on race, skin colour, political, religious, and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics.

Equality of the rights of women and men shall be ensured by providing women with opportunities equal to those of men in public, political and cultural activity, in obtaining education and in professional training, in work and remuneration for it; by special measures for the protection of work and health of women; by establishing pension privileges; by creating conditions that allow women to combine work and motherhood; by legal protection, material and moral support of motherhood and childhood, including the provision of paid leaves and other privileges to pregnant women and mothers.

. . .

Article 35. Everyone shall have the right to freedom of personal philosophy and religion. This right shall include the freedom to profess any religion or profess no religion, to freely practice religious rites and ceremonial rituals, alone or collectively, and to pursue religious activities.

The exercise of this right may be restricted by law only to protect the public order, health and morality of the population, or to protect the rights and freedoms of other persons.

The Church and religious organisations in Ukraine shall be separated from the State, and the

school shall be separated from the Church. No religion shall be recognised by the State as mandatory.

No one shall be exempt from his/her duties to the State or refuse to abide by laws on religious grounds. If the performance of military duty contradicts the religious beliefs of a citizen, the performance of this duty shall be replaced by alternative (non-military) service.

Article 39. Citizens shall have the right to assemble peacefully without arms and to hold meetings, rallies, processions, and demonstrations upon notifying the executive authorities or local government in advance.

Restrictions on the exercise of this right may be established by a court in accordance with law and only in the interests of national security and public order to prevent disturbances or crimes, protect the health of the population, or protect the rights and freedoms of other persons.

Article 52. Children shall be equal in their rights regardless of their origin and whether they are born in or out of wedlock.

Any violence against a child or his/her exploitation shall be prosecuted by law.
The subsistence and upbringing of orphans and children deprived of parental care shall be entrusted to the State. The State shall encourage and support charitable activity in regard to children.

Article 55. Human and citizen rights and freedoms shall be protected by the court….

Everyone shall have the right to appeal for the protection of his/her rights to the Ukrainian Parliament Commissioner for Human Rights.

Everyone shall be guaranteed the right to file a constitutional complaint with the Constitutional Court of Ukraine on the grounds established by this Constitution and in the manner prescribed by law. After exhausting all domestic legal instruments, everyone shall have the right to appeal for the protection of

his/her rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organisations of which Ukraine is a member or participant.

Everyone shall have the right to protect his/her rights and freedoms against violations and illegal encroachments by any means not prohibited by law.

Article 58. Laws and other regulatory acts shall have no retroactive force except where they mitigate or nullify the responsibility of a person.
No one shall bear responsibility for acts that, at the time they were committed, were not deemed by law to be an offence.

Article 59. Everyone shall have the right to legal aid. Such assistance shall be rendered free of charge in cases stipulated by law. Everyone shall be free to choose the defender of his/her rights.

Article 62. A person shall be presumed innocent of committing a crime and shall not be subjected to criminal punishment until his/her guilt is proved through a legal procedure and established by a court verdict of guilty.

No one shall be obliged to prove his/her innocence of committing a crime.

An accusation shall not be based on illegally obtained evidence or on assumptions. All doubts in regard to the proof of guilt of a person shall be interpreted in his/her favour.

In the event of revocation of a court verdict as unjust, the State shall compensate the pecuniary and non-pecuniary damages caused by the groundless conviction.

Article 64. Constitutional human and civil rights and freedoms shall not be restricted except in cases stipulated by the Constitution of Ukraine.

Under the conditions of martial law or a state of emergency, specific restrictions on rights and

freedoms may be established with the indication of the period of effect for such restrictions. The rights and freedoms envisaged in Articles 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62 and63 of this Constitution shall not be restricted….

Article 68. Everyone shall be obliged to strictly abide by the Constitution of Ukraine and the laws of Ukraine, and not to encroach upon the rights, freedoms, honour, or dignity of other persons. Ignorance of laws shall not exempt from legal liability.

Section VIII

JUSTICE

Article 124. Justice in Ukraine shall be administered exclusively by the courts.

Delegation of the functions of courts or appropriation of such functions by other bodies or officials shall be prohibited.

The jurisdiction of the courts shall extend to all legal disputes and all criminal charges. In cases prescribed by law, the courts shall also consider other cases.

The law may specify a mandatory pre-trial procedure for settling a dispute.

The people shall directly participate in the administration of justice through jurors.

Ukraine may recognise the jurisdiction of the International Criminal Court subject to the conditions determined by the Rome Statute of the International Criminal Court.

Article 125. The judicial system in Ukraine shall be based on the principles of territoriality and specialisation and shall be determined by law.

The court shall be formed, reorganised, and liquidated by law, the draft of which is submitted to the Verkhovna Rada of Ukraine by the President of Ukraine after consultations with the High Council of Justice.

The Supreme Court shall be the highest court in the judicial system of Ukraine.

High specialised courts may operate under the law.

Administrative courts shall operate in order to protect the rights, freedoms and interests of a person in the field of public relations.

The establishment of extraordinary and special courts shall not be permitted.

Article 126. The independence and immunity of judges shall be guaranteed by the Constitution and the laws of Ukraine.

Any influence on judges shall be prohibited.

A judge may not be detained or kept under the custody or arrested without the consent of the High Council of Justice before a sentence is passed by the court, with the exception of detention of the judge during or immediately after committing a grave or especially grave crime.

A judge may not be held liable for a court decision made by him/her, except for the commission of a crime or a disciplinary misdemeanour.

A judge shall hold office for an unlimited term.

A judge shall be dismissed on the following grounds:

1) inability to exercise his/her powers for health reasons;

2) violation by him/her of incompatibility requirements;

3) committing a significant disciplinary misdemeanour, gross or systematic disregard of his/her duties, which is incompatible with the status of judge or has shown his/her incompatibility with the position held;

4) the submission by a judge of a statement of resignation or of voluntary dismissal from office;

5) failure to give consent to transferring to another court in case of liquidation or reorganisation of the court where the judge holds office;

6) failure to prove the legitimate origin of income.

The authority of the judge shall be terminated in the following cases:

1) attaining the age of sixty-five;

2) termination of the citizenship of Ukraine or acquisition of foreign citizenship;

3) the entry into legal force of a court decision that declares him or her missing or deceased, incapable or partially capable;

4) death of the judge;

5) the entry into legal force of a guilty verdict against him or her for a committed crime.

The State shall ensure the personal security of judges and their families.

Article 127. Justice shall be administered by judges. In cases determined by law, justice shall be administered involving jurors.

A judge may not belong to political parties or trade unions, take part in any political activity, hold a representative mandate, hold any other paid offices, perform other remunerated work except for research, teaching, or creative activities.

A citizen of Ukraine who has attained no less than thirty and no more than sixty-five years of age, has a higher legal education and at least five years of work experience in the legal profession, is competent, virtuous and has command of the state language may be appointed to the office of judge. The law may provide for additional requirements for appointment as a judge.

Additional requirements for judges of specialised courts in terms of education and the length of service may be established by law.

Article 128. The President of Ukraine shall appoint judges upon the submission of the High Council of Justice in the manner prescribed by law.

Judges shall be appointed on a competitive basis except in cases specified by law.

The President of the Supreme Court shall be elected to, and dismissed from, office by the Plenary Assembly of the Supreme Court of Ukraine by secret ballot in the manner established by law.

Article 129. When administering justice, judges shall be independent and abide only by law.

The main principles of judicial proceedings shall be:

1) equality before the law and the court of all participants in a trial;

2) ensuring that the guilt is proved;

3) adversarial procedure and freedom of the parties in presenting their evidence to the court and in proving the cogency of the evidence before the court;

4) prosecution by the prosecutor in court on behalf of the State;

5) ensuring the right of an accused person to a defence;

6) openness of trial and its complete recording by technical means;

7) trial within a reasonable time;

8) ensuring appeal against a court judgment and in cases established by law, cassation appeal against a court judgment;

9) binding nature of court decisions.

The law may establish other principles of judicial proceedings. Judicial proceedings shall be conducted by a single judge, by a panel of judges, or by a court of the jury.

Persons guilty of contempt of court or showing disrespect towards the judge shall be held

legally liable.

Article 129-1. The court shall make judgments in the name of Ukraine. Court judgments shall

be binding.

The State shall ensure the execution of court judgments in the manner prescribed by law.

Control over the execution of court judgments shall be exercised by the court.

Article 130. The State shall ensure funding and proper conditions for the functioning of courts

and the activity of judges. Expenditures for the maintenance of courts shall be allocated separately in the State Budget of Ukraine, taking into account proposals of the High Council of Justice. The amount of remuneration of judges shall be established by the law on judiciary.

Article 130-1. A judicial self-government system shall operate in accordance with the law to

protect the professional interests of judges and resolve issues pertaining to the internal operations of courts.

Article 131. The High Council of Justice shall operate in Ukraine with the following issues

being under its authority:

1) filing submissions for the judicial appointment;

2) adopting decisions on violations of incompatibility requirements by judges or prosecutors;

3) considering complaints against decisions of the relevant body on bringing judges or prosecutors to disciplinary responsibility;

4) adopting decisions on dismissal of judges;

5) giving consent to detain judges or hold them in custody;

6) adopting decisions on suspension of judges from the administration of justice;

7) taking measures on ensuring judicial independence;

8) adopting decisions on transferring judges from one court to another;

9) exercising other powers determined by this Constitution and the laws of Ukraine.

The High Council of Justice shall consist of twenty-one members, including ten members elected by the Congress of Judges of Ukraine from among judges or retired judges, two members appointed by the President of Ukraine, two members elected by the Verkhovna Rada of Ukraine, two members elected by the Congress of Advocates of Ukraine, two members elected by the All-Ukrainian Conference of Prosecutors, and two members elected by the Congress of Representatives of Higher Legal Educational Establishments and Research Institutions.

The procedure for electing (appointing) members of the High Council of Justice shall be determined by law.

The President of the Supreme Court shall be an ex officio member of the High Council of Justice.

The term of office of the elected (appointed) members of the High Council of Justice shall be four years. The same person may not hold the office of the member of the High Council of Justice for two subsequent terms.

Members of the High Council of Justice may not belong to political parties or trade unions, take part in any political activity, hold a representative mandate, hold any other paid offices (except for the President of the Supreme Court), perform other remunerated work except for research, teaching, or creative activities.

Members of the High Council of Justice shall belong to the legal profession and meet the

criterion of political neutrality.

The law may provide for additional requirements for members of the High Council of Justice.
The High Council of Justice shall assume powers subject to the election (appointment) of at least fifteen of its members, the majority of whom are judges.

The law shall establish bodies and institutions in the system of justice to ensure the selection of judges and prosecutors, their professional training, evaluation, review of cases on their disciplinary responsibility, financial and organisational support to the courts.

Article 131-1. The prosecutor's office shall operate in Ukraine to perform:

1) prosecution by the prosecutor in court on behalf of the State;

2) the organisation and procedural management of pre-trial investigation, solving of other issues in the course of criminal proceedings in accordance with the law, control over covert and other investigative and search actions of law enforcement agencies;

3) representation of the interests of the State in court in exceptional cases and in the manner prescribed by law.

The organisation and operational procedure of prosecutor's office shall be determined by law.
The prosecutor's office in Ukraine shall be headed by the Prosecutor General appointed to and dismissed from office by the President of Ukraine with the consent of the Verkhovna Rada of Ukraine.

The term of office of the Prosecutor General shall amount to six years. The same person may not hold the office of the Prosecutor General for two subsequent terms.
Early termination of office of the Prosecutor General shall be performed solely in cases and on the grounds determined by this Constitution and the law.

Article 131-2. The bar shall exist in Ukraine to provide professional legal aid.
The independence of the bar shall be guaranteed.

The principles of the organisation and operation of the bar and the conduct of advocacy in Ukraine shall be determined by law.

Only the advocate shall represent another person in court and defend him/her against criminal charges.

The law may determine exceptions in relation to the representation in court in labour disputes, disputes on the protection of social rights, on elections and referendums, in minor disputes, and also in relation to the representation of minor or juvenile persons and persons recognised by the court as incapable or persons with limited capacity.

Commentary

1. The Constitution of Ukraine was adopted in 1996. It was significantly amended the last time in 2016 to reflect the outcomes of the Revolution of Dignity and address the justice sector reform that had been discussed for more than twenty years. Another two amendments were introduced in the Constitution in 2019 with regards to the immunities of Members of Parliament and officially declaring the Euro-Atlantic integration as Ukraine's long-term strategic and existential choice. Before the amendments in 2016, there was no single chapter devoted to the justice sector: articles on prosecution were included in the chapter devoted to the executive branch, there was a separate chapter on the judicial branch, and the Bar was not mentioned as a separate institution at all.
2. The 2016 amendments brought a philosophical shift toward understanding the role of the justice sector in the state and the function of each of its subsectors. Particularly, the functions of the prosecution were brought in line with the classic continental model. Thus, the prosecution lost its Soviet-inherited function of "general supervision," which allowed it to exercise control over the activities of state agencies and private entities and often resulted in abuse of power. As a result of the 2016 amendments, the prosecutor's office will only perform classic functions, including prosecution of cases in court on behalf of the State, organisation and procedural management of the pre-trial investigation, and in exceptional cases, representation of the interests of the State in court.
3. The judiciary has also been reformed: the minimum age for a judge was raised from 25 to 30 years, and the appointment procedure has been amended to ensure judicial independence, with the President of Ukraine having a ceremonial role in appointing judges while the High Council of Justice taking a decision to appoint a judge, discipline, or dismiss. The amendments stated that the jurisdiction of the courts shall extend to all legal disputes and opened a possibility for the mandatory pre-trial procedure for settling a dispute to be stipulated by the law. Another guarantee for judicial independence was ensured through the procedure of court creation or liquidation: a court shall be formed, reorganised, and liquidated by law, the draft of which is submitted to the Verkhovna Rada of Ukraine by the President of Ukraine after consultations with the High Council of Justice. This provision was aimed at preventing retaliation towards judges who issue decisions against the political establishment by liquidating the courts where they work, a legal tactic used previously by the President of Ukraine.
4. Regarding the structure of the judiciary, the 2016 amendments included a provision that the Supreme Court shall be the highest court in the judicial system. Also, the amendments foresaw a possibility of establishing specialized courts, which were applied in 2017 when the High Anti-Corruption Court of

Ukraine was established. While the Constitution allows the creation of specialized courts, Art. 125 prohibits establishing extraordinary and special courts. In light of the discussions for establishing a special international or hybrid tribunal for the crime of aggression following Russia's full invasion in 2022, this legal challenge shall be studied carefully as it directly affects the model of the tribunal to be established. Unfortunately, there is no clear distinction between a "specialized" court and the forbidden "special" and "extraordinary" courts. It has been suggested that specialized courts may have autonomy and special rules regarding their structure or selection procedure, and this will make the difference from the courts of the same instance, thus they may be considered special.

5. The Constitutional Court of Ukraine addressed this question in a 2001 decision. In the decision, the Constitutional Court of Ukraine identified two features of a special and extraordinary court: a) it must be a domestic court, so the Constitutional limitation does not apply to international courts, b) it replaces ordinary courts that do not comply with procedures prescribed by the law. However, this decision has yet to fully solve the gap in interpretation of what an extraordinary court is. For instance, there is a pending case in the Constitutional Court of Ukraine, where 49 MPs, mainly from the political party "Opposition Block for Life" closely linked to ex-President Yanukovych asked the Court to find the Law of Ukraine on High Anti-Corruption Court claiming that it is an extraordinary court in the meaning of the Article 125 of the Constitution of Ukraine. The MPs claim that the High Anti-Corruption Court has an extraordinary subject jurisdiction over corruption-related cases, a special structure having a first instance and appellate chamber in one court, and a special procedure for appointing judges, making the Court different from others - extraordinary. The Constitutional Court has opened the constitutional proceedings and held an open hearing; however, it has not yet issued a decision.
6. One of the biggest values of democracy enshrined in the Ukrainian Constitution is that the people of Ukraine are the only source of power. This means that the people through their directly elected representatives such as the President of Ukraine, the Verkhovna Rada (Parliament) of Ukraine, local self-governance, and indirectly elected officials like those appointed by one of the bodies mentioned above, shall decide on all matters within the country. One of the means of direct democracy is a referendum aimed at providing the people with an opportunity to make strategic decisions. However, the provisions on the referendum were unclear, particularly, it was unclear whether the referendum could directly adopt laws and, if so, whether such laws need to be further approved by the Parliament of Ukraine. Therefore, the President of Ukraine submitted a request for interpretation to the Constitutional Court of Ukraine, which issued an official interpretation of Article 5 of the Constitution of Ukraine on April 16, 2008, saying that a referendum can adopt certain laws directly prescribed by the Constitution. Such laws shall not follow the regular procedure of approval by the Parliament but shall be considered adopted after the respective decision of the referendum instead.
7. As mentioned in Chapter 1, ethnic Ukrainians have always been the majority in Ukraine, while there were many minorities that always co-existed with Ukrainians. Article 11 of the Constitution outlines Ukraine's obligations with regard to ensuring the equal treatment of minorities and creating conditions for their development. Ukraine passed various laws aimed at implementing the Constitutional provision, particularly, in December 2022, the Law of Ukraine on National Minorities (Communities) was adopted. The Law provides a definition of a national minority and describes how national minorities can exercise their rights, such as the right to self-identification, participation in political, economic, and social life, freedom of expression, and freedom of assembly.
8. With regard to the equality of everyone before the law, the Constitutional Court, in its decision from April 12, 2012, broadly interpreted Article 24 of the Constitution, and concluded that people serving a prison sentence have the right to appear before the court in civil cases.
9. Article 55 of the Constitution ensures that people have the right to address respective state authorities in case of violations of their rights. This included submitting requests to the Ombudsperson (the Verkhovna Rada of Ukraine Commissioner for Human Rights) and to the courts. In addition to referring to the domestic courts, citizens of Ukraine may seek justice in the international courts, for instance, the European Court of Human Rights, but only after exhausting domestic remedies so that the Ukrainian courts shall first address the legal problem as the international courts can not substitute the domestic

justice system. Also, as a result of the constitutional amendments in 2016, people got an opportunity to submit constitutional complaints directly to the Constitutional Court of Ukraine. This is possible if the final decision of a Ukrainian court of general jurisdiction applied the law that contradicts the Constitution. A constitutional complaint may be submitted within three months from the date of the final decision. If the Constitutional Court of Ukraine allows such a complaint, a person who submitted it may ask for reconsideration of his/her case in a court if such a decision has not been enforced yet.

10. Ukraine is not a State Party to the Rome Statute, but it has twice exercised its prerogatives to accept the Court's jurisdiction over alleged crimes under the Rome Statute occurring on its territory, pursuant to Article 12(3) of the Statute by lodging a declaration and accept the exercise of jurisdiction by the Court concerning the crime in question occurred on Ukraine's territory. The first declaration lodged by the Government of Ukraine accepted the ICC's jurisdiction with respect to alleged crimes committed on Ukrainian territory from 21 November 2013 to 22 February 2014. The second declaration extended this time on an open-ended basis to encompass ongoing alleged crimes committed throughout the territory of Ukraine from 20 February 2014 onwards. Such recognition allowed the Office of the Prosecutor of ICC to start investigations of war crimes committed on the territory of Ukraine. It led to the ICC indictments in 2023 of Russian President Putin and the children's rights commissioner Lvova-Belova for war crimes following the forceful transfer of Ukrainian children to Russia.
11. Russia's full-scale invasion also triggered the Art. 157 ("Constitution of Ukraine cannot be changed in the conditions of the military or extraordinary state"); therefore, as of this writing in 2024, it is impossible to make any amendments to the Constitution.

2.2.2. Justice Sector

The Justice Sector in Ukraine consists of the judiciary, the office of the prosecutor, and the private bar. Each will be discussed below.

2.2.2.1. The Judiciary

LAW OF UKRAINE ON THE JUDICIARY AND THE STATUS OF JUDGES (Excerpts)
(For the full version, see here)

Article 1. The Judicial Power

1. In accordance with the constitutional principles of separation of powers, the judicial power in Ukraine shall be exercised by independent and impartial courts created by law.

2. The judicial power shall be exercised by judges and, in cases determined by law, by jurors by means of administration of justice using relevant court procedures.

Article 2. Tasks of a Court

1. While administering justice based on the rule of law fundamentals, a court shall secure everyone's right to fair trial and respect of other rights and liberties guaranteed by the Constitution and laws of Ukraine and international treaties ratified by the Verkhovna Rada of Ukraine.

Article 3. The System of Judiciary of Ukraine

1. Courts of Ukraine shall create a uniform system.

2. Creation of extraordinary and special courts shall be prohibited.

Article 5. Administration of Justice

1. Justice in Ukraine shall be administered exclusively by courts and according to stipulated by law judicial procedures.

2. Any delegation of court functions, as well as usurpation of those functions by other bodies and officials shall not be permitted. Any persons that usurp functions of a court shall be responsible as stipulated by law.

3. The people shall participate in administration of justice through jurors.

Article 7. The Right to Fair Trial

1. Every person shall be guaranteed protection of their rights, freedoms and interests within reasonable time frames by an independent, impartial and fair trial, established by law.

2. Foreigners, stateless persons and foreign legal entities shall be entitled to legal protection in Ukraine on the equal basis with the citizens and legal entities of Ukraine.

3. Accessibility of justice for every person shall be ensured under the Constitution and in the manner envisaged by the laws of Ukraine.

Article 8. Right to a Competent Court

1. No person may be denied the right to consideration of his/her case in court, to which jurisdiction it has been attributed by the law.

2. A judge shall consider the cases received according to the procedure of distribution of cases established by law. The distribution of cases among judges may not by influenced by the wish of the judge or any other persons.

Article 17. The System of the Judiciary

1. The judiciary shall be based on the principles of territoriality, specialization and instance hierarchy.

2. The highest court in the judiciary shall be the Supreme Court.

3. The system of the judiciary shall include:

1) local courts;

2) appellate courts;

3) Supreme Court;

To consider some categories of cases in line with this Law high specialized courts shall operate in the system of the judiciary.

4. The unity of the judiciary shall be provided by:

1) the uniform principles of organization and functioning of the courts;

2) the uniform status of judges;

3) rules of justice, established by law, being mandatory for all courts;

4) unified case law;

5) mandatory enforcement of judgments on the territory of Ukraine;

6) the uniform procedures for organizational support of the court functioning;

7) financing of courts exclusively from the State Budget of Ukraine;

8) decision of matters of internal functioning of courts by bodies of judicial self-government.

Article 18. Specialization of Courts

1. Courts shall specialize in civil, criminal, commercial, administrative cases and cases of administrative offenses.

2. In cases stipulated by law and upon decision of a meeting of judges of a relevant court specialization of judges for consideration of specific categories of cases may be introduced.

3. Local general courts and appellate courts apply specialization of judges for criminal proceedings in regard of juveniles.

4. Judges (judge) authorized to conduct criminal proceedings in regard of juveniles shall be elected by a meeting of judges among judges of that respective court at the proposal of the Chief Judge of the court or upon a proposal by any judge of that court, if the proposal by the Chief Judge was not supported, for a period not exceeding three years and may be reelected again.

5. The number of judges authorized to conduct criminal proceedings in regard of juveniles shall be determined separately for each court by meetings of judges of that court.

6. A judge authorized to conduct criminal proceedings reading juveniles may be elected a judge who has at least ten years' experience as a judge, experience in criminal court proceedings and high moral and professional properties. In the absence of a judge at the court who has the necessary work experience, the judge authorized to conduct criminal proceedings in regard of juveniles shall be elected among the judges who have the longest experience as a judge.

7. Judges authorized to conduct criminal proceedings regarding juveniles shall not be relieved from carrying out duties of a judge of the corresponding instance, but the exercise of such authority shall be taken into account in the assignment of cases and have a priority significance.

Article 19. The Procedure for creation, reorganization, liquidation of the court, determination of the number of judges in the court

1. The court is created, reorganized and liquidated by law.

2. The draft law on the establishment, reorganization or liquidation of a court shall be submitted to the Verkhovna Rada of Ukraine by the President of Ukraine after consultations with the High Council of Justice.

3. The location, territorial jurisdiction and status of a court shall be determined taking into account the principles of territoriality, specialization and instance.

4. The grounds for the establishment, reorganization or liquidation of a court are a change in the judicial system defined by this Law, the need to ensure the accessibility of justice, optimization of state budget expenditures or a change in the administrative-territorial structure.

5. The formation of a court may take place through the creation of a new court or the reorganization (merger, division) of courts.

6. The number of judges in a court (except for the Supreme Court) is determined by the High Council of Justice taking into account the advisory opinion of the State Judicial Administration of Ukraine, court workload and within the expenditures specified in the State Budget of Ukraine for court maintenance and judges’ salaries.

7. The Supreme Court consists of judges; the number of these judges is determined by the High Council of Justice taking into account the advisory opinion of the Plenum of the Supreme Court. The maximum number of judges of the Supreme Court shall not exceed two hundred judges.

8. The court is a legal entity, unless otherwise provided by law.

9. The procedure for taking respective measures related to the establishment, reorganization or liquidation of a court shall be determined by the law on the establishment,

reorganization or liquidation of such a court.

Article 36. The Supreme Court Is the Highest Court in the System of the Judiciary of Ukraine.

1. The Supreme Court shall be the highest court in the system of the judiciary of Ukraine,

which shall ensure the sustainability and uniformity of case law following the procedures and

in the manner specified by the procedural law.

2. The Supreme Court shall:

1) administer justice as a court of cassation instance and in cases stipulated by procedural law – as a court of first or appellate instance within the procedure established by procedural law;

2) analyze judicial statistics and summarize case law;

3) issue opiniona on draft laws concerning the judicial system, legal proceedings, the status of judges, enforcement of judgments and other issues related to the functioning of the system of the judiciary;

4) issue an opinion on presence or absence in actions charged against the President of Ukraine of signs of treason or other crimes; upon request of the Verkhovna Rada of Ukraine, present a written motion on incapability of the President of Ukraine to exercise their powers for health reasons;

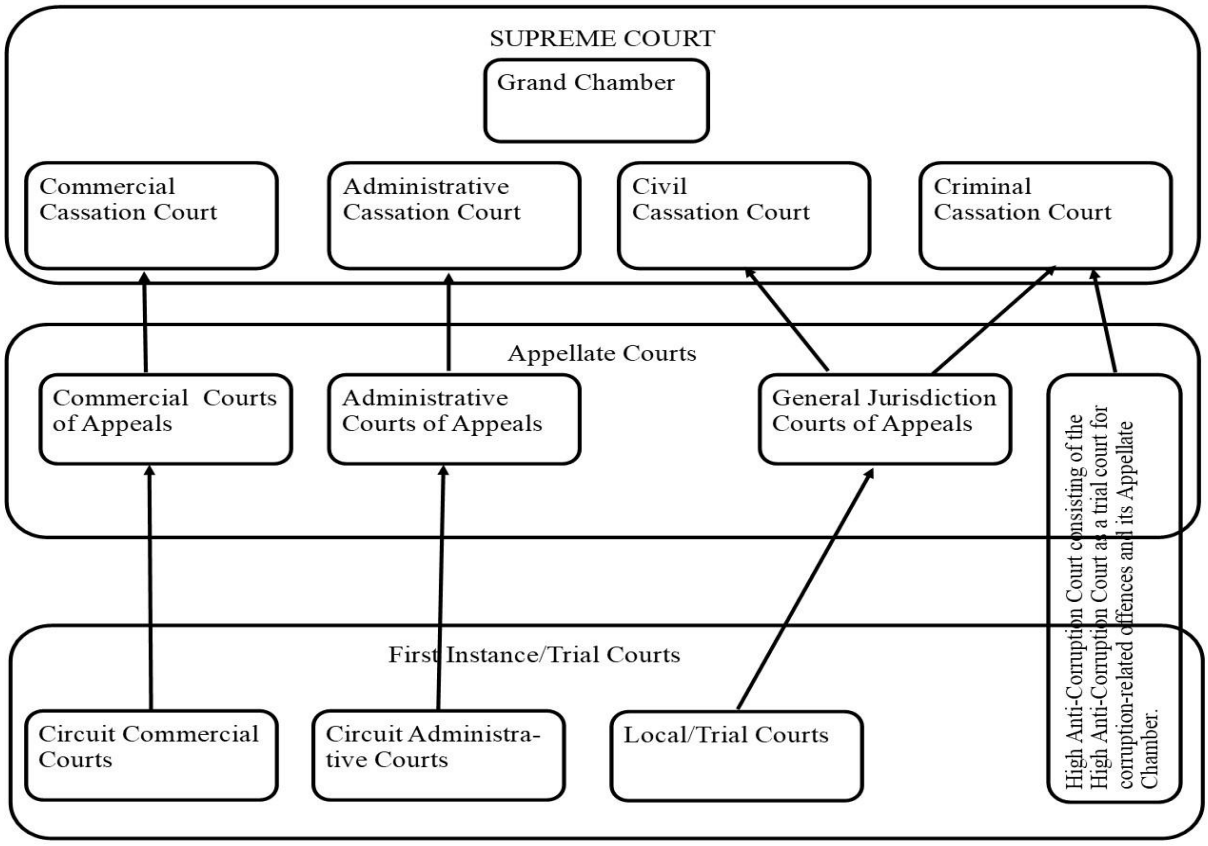
5) address the Constitutional Court of Ukraine regarding constitutionality of laws and other legal acts, as well as regarding the official interpretation of the Constitution of Ukraine;

6) ensure uniform application of the law provisions by courts of different specializations following the procedure and, in the manner, stipulated by the procedural law; and

7) provide methodological information on the matters of application of law to appellate and local courts;

8) exercise other powers envisaged by the law.

The Structure of the Judiciary



Commentary

1. The Ukrainian judiciary consists of the courts of three jurisdictions: general (civil, criminal, labor, family), commercial (disputes between two legal entities), and administrative (disputes between a state institution or agency with administrative power and an individual or a legal entity). Also, there are specialized courts in Ukraine: the High Anti-Corruption Court of Ukraine and the High Intellectual Property Court of Ukraine, which have not yet been officially launched. However, it is mentioned in the law. The Ukrainian judicial system constitutes a single system that prohibits the creation of extraordinary and special courts. This specific provision precludes creating a hybrid court, as suggested by many scholars in the international community. Still, the case law of the European Court of Human Rights is binding as well as any other "relevant international judicial institutions or . . . international organisations of which Ukraine is a member or participant."

   The Ukrainian judiciary is a three-tier system because of the 2016 reform. It consists of first instance courts: trial courts, district administrative courts, and district commercial courts; the courts of appeals: general jurisdiction courts of appeals, administrative courts of appeals, and commercial courts of appeals; and the Supreme Court as the only cassation court.

2. The Supreme Court is the highest court of Ukraine. It has the power to review judicial compliance with laws and other normative legal acts of the Constitution of Ukraine, and interpret the provisions of the Constitution of Ukraine. Although case law is not considered the official source of law in Ukraine, there is a de-facto practice and discussion in the academic community to view resolutions of the plenary session of the Supreme Court and acts of the Constitutional Court of Ukraine as such. The Supreme Court shall consist of not more than two hundred judges. The structure of the Supreme Court is as follows:
    1) Grand Chamber of the Supreme Court;
    2) Administrative Cassation Court;
    3) Commercial Cassation Court;
    4) Criminal Cassation Court;
    5) Civil Cassation Court.

    The Grand Chamber acts as a court of appeals in cases that the Supreme Court decides as a first instance court, for instance, the disputes about the results of All-Ukrainian referendums, cases about challenging acts of the Verkhovna Rada of Ukraine, President of Ukraine, High Council of Justice, etc. In practice, due to the complicated structure, the Supreme Court is not a single court. Its five structural elements – Cassation Courts and Grand Chamber are located in different premises, and each Cassation Court and Grand Chamber has its President and Deputy President, in addition to the Chief-Justice and Deputy Chief-Justice of the whole Supreme Court.

3. There is also a Constitutional Court in Ukraine that is separate from the Supreme Court. The Constitutional Court of Ukraine is the only body of the constitutional jurisdiction that decides whether a law is constitutional or not and can interpret the Constitution. Formally, it does not belong to the judiciary, though it did before 2016, and is not linked to the judiciary administratively or financially and is more of an administrative body. According to Art. 1, "On the Constitutional Court of Ukraine," the Constitutional Court solves constitutional disagreements that appear within the government system and ensures the superiority of the Constitution. “The status of judges of the Constitutional Court of Ukraine, the grounds and procedure for appealing to it, the procedure for considering cases and executing its decisions are determined by the Constitution of Ukraine (of June 28, 1996), by the Law of Ukraine "On the Constitutional Court of Ukraine" (of July 13, 2017), as well as by the Rules of Procedure of the Constitutional Court of Ukraine (of February 22, 2018).”
4. Understanding that cementing the rule of law is key to its efforts to join the EU, Ukraine has sworn in around 250 new judges as of August 2024. These new judges are tasked with reinstating public faith in the Ukrainian court system. According to a March 2024 survey by the Razumkov Centre think tank in Kyiv, “some 70% of Ukrainians distrust the judicial system with their cynicism fueled by years of corruption that authorities are trying to show they are now stamping out.”
5. Some Ukrainian judges have also joined the fight against Russia and volunteered for air-defense duty in a unit aimed at spotting and neutralizing Russian drones.

With the unprovoked and unlawful Russia’s invasion of Ukraine on February 24, 2022, the Ukrainian judiciary faced unprecedented challenges of various natures. Some of the courthouses were directly attacked by Russia and either completely destroyed or damaged. Based on the information provided by the State Judicial Administration of Ukraine, as of January 10, 2024, since the beginning of Russia’s full-scale military aggression on the territory of Ukraine, 124 courthouses were damaged, fully destroyed, or looted, which is 16% of the total number of courts in Ukraine. Some of the courts were fully destroyed.

Photo of Borodianskyi District Court of Ukraine, located 24 kilometres from Bucha, fully destroyed by Russia.

In addition to shelling civilian infrastructure such as courts building, Russia has directed its attacks on individual judges. On September 28, 2024, a Russian drone hit the car of the Supreme Court Justice of Ukraine Leonid Loboyko while he was disseminating humanitarian aid in his native town in Kharkiv Oblast. He was driving his private vehicle, and had no signs of a combatant. He and other three civilians who were in the car were killed.

Ukrainian courts are also critically understaffed as court staffers, just like any other Ukrainians, were evacuating abroad or to western regions of Ukraine in order to save their lives. Also, there are around 2200 judicial vacancies which is approximately 30% of all judicial positions in Ukraine. Every year hundreds of judges retire or quit due to the enormous pressure on the judicial system. However, despite these challenges, in 2023 the Ukrainian judiciary had 4.292 million cases from 4.5 million submitted.

2.2.2.2. Prosecution

In Ukraine, there are several institutions conducting pre-trial investigations depending on the type of crime. In practice, this division and imperfect wording of the Criminal Code of Ukraine creates some institutional lack of coordination as different forms of "violation of the laws and customs of warfare" may be subject to investigation by different investigators. An important step to harmonize the practice was taken in October of 2019 with the establishment of the Department of Oversight over Criminal Proceedings with Respect to Offenses Committed in the Armed Conflict Setting within the Prosecutor General's Office, which has become the key analytical and coordination center.

1. The Prosecutor's General Office.

The Prosecutor's General Office's main role is to oversee the procedure followed in criminal investigations; it also represents the state and supervises the activities of law enforcement agencies.

Under the Prosecutor's General Office also functions Specialized Anti-Corruption Prosecutor's Office (SAPO). SAPO is a specialized agency focused on investigating and prosecuting corruption. Works together with the National Anti-Corruption Bureau of Ukraine (NABU). In 2023, a law was ratified granting greater independence to SAPO.

2. Local Prosecutor's Offices.

Regional offices that handle criminal prosecution on the grassroots level operate under the guidance of the Prosecution General's Office for consistent results and smooth operation of the system.

3. Security Service of Ukraine (SBU).

The investigation and prevention of the most severe criminal offences and threats to Ukraine's national security, including crimes related to terrorism, espionage, and state treason. SBU also investigates

international crimes. The central apparatus of SBU is the Main Investigative Division, and local bodies which have investigative units. Pursuant to Article 216(2) of the Criminal Procedure Code of Ukraine, investigators of the Security Service of Ukraine shall conduct a pre-trial investigation of the following criminal offences: propaganda of war, planning, preparation and waging war of aggression, violation of the laws and customs of warfare, use of weapons of mass destruction, development, production, purchasing, storage, distribution or transportation of weapons of mass destruction, and genocide.

4. National Police of Ukraine.

Pre-trial investigations may also be conducted by investigative bodies of the National Police of Ukraine with respect to the criminal offenses relating to the public order and safety of citizens such as: looting, violence against the population in an operational zone, and ill-treatment of prisoners of war.

5. International Cooperation in the prosecution of crimes.

Since the outbreak of the war, Eurojust has been at the forefront of supporting accountability for Russian crimes, based on its 20 years' experience of working with national prosecutors on cross-border cases. Just six days following the start of the war, Eurojust supported the setting up of a Joint Investigation Team (JIT) that now consists of Ukraine, six EU Member States, the International Criminal Court and Europol.

Recognising the specific evidentiary challenges related to these types of investigations, a Core International Crimes Evidence Database (CICED) was established based on an urgent amendment of Eurojust's mandate following the invasion of Ukraine. So far, hundreds of files from various countries, including Ukraine, have been submitted to CICED for preservation and analysis.

The International Centre for the Prosecution of the Crime of Aggression Against Ukraine (ICPA) is also hosted by Eurojust. It is a unique judicial hub fostering cooperation between national prosecutors and enabling the exchange of evidence and a common prosecution strategy.

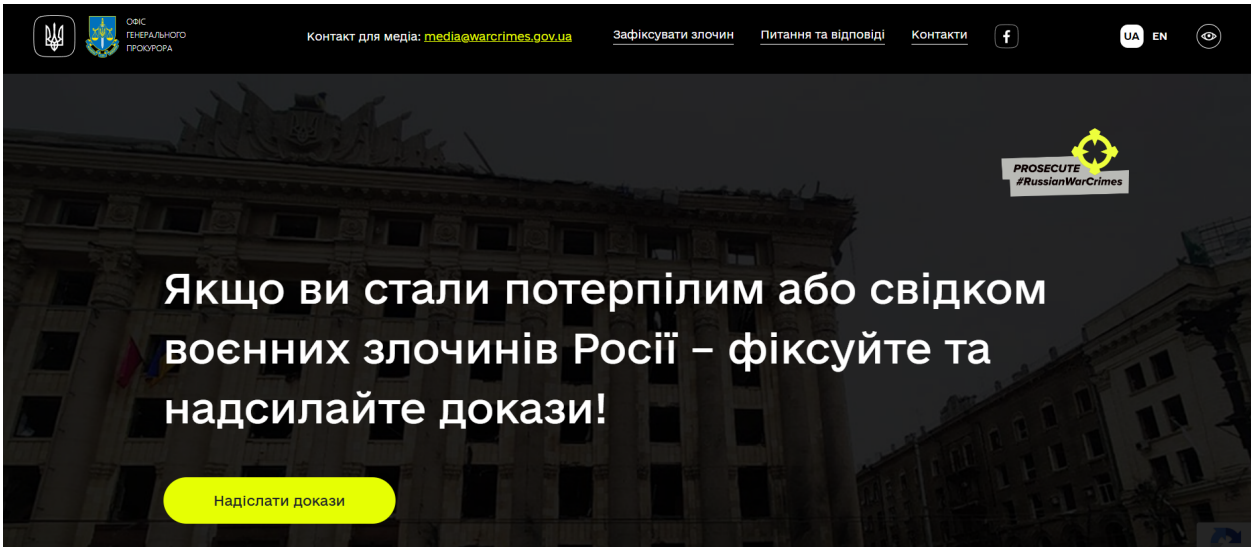
On February 29, 2024, the seven national authorities participating in the joint investigation team (JIT) on alleged core international crimes committed in Ukraine have agreed to prolong the JIT for another two years.

Statistics on the investigation and prosecution of atrocity crimes cases available on the OPG's website:

As of October 27, 2024, there have been 146,668 investigations on war crimes and the crime of aggression open, 19,646 investigations commenced with regards to the crimes against national security. When speaking about victims of these cases, 583 children killed and 1,655 wounded.

Online tool for reporting atrocity crimes for those who are abroad

Online tool for reporting atrocity crimes and attaching evidence



2.2.2.3. The Bar

LAW OF UKRAINE ON THE BAR AND PRACTICE OF LAW (Excerpts)

(For the full version, see here)

Article 2. The Bar of Ukraine

1. The bar of Ukraine is a public, self-governing institution ensuring the provision of legal defense, representation and other types of legal services on a professional basis and independently resolving issues of organization and operation of the bar of Ukraine in accordance with the procedure provided for by this Law.

2. The bar of Ukraine consists of all Ukrainian advocates who have a right to practice law.

3. For the purpose of ensuring proper practice of law, of complying with the guarantees of the practice of law, of protecting advocates' professional rights, of ensuring high level of

professionalism of advocates and of resolving issues associated with disciplinary proceedings

against advocates, in Ukraine there shall operate the advocates' self-government.

Article 4. Principles of and standards for practice of law

1. The practice of law shall be based on the principles of the rule of law, legality, independence, confidentiality and avoidance of conflict of interest.

2. A Ukrainian advocate may practice law in the entire territory of Ukraine and abroad unless otherwise provided for by an international treaty ratified by the Verkhovna Rada of Ukraine, or by the laws of a foreign state.

3. An advocate may practice law as an individual practitioner or in such legal forms of business as law office or law firm (organizational forms of the practice of law).

4. An advocate of a foreign state shall practice law in the entire territory of Ukraine in accordance with this Law unless otherwise provided for by an international treaty ratified by the Verkhovna Rada of Ukraine.

Article 5. The bar and the state

1. The bar of Ukraine shall be independent of the governmental bodies, bodies of local self-government, their officials and officers.

2. The state shall create proper conditions for the operation of the bar of Ukraine and shall ensure compliance with the guarantees of the practice of law.

Article 6. Advocate

1. Any individual who has obtained complete higher legal education, has a command of the official language and at least two-year experience in the field of law, has passed the bar exam, has successfully completed traineeship (except in the cases established by this Law), has taken the oath of advocate of Ukraine, and has obtained the certificate of right to practice law is eligible to be an advocate.

2. No person may be an advocate if he/she:

1) has unspent or unexpunged per the legally established procedure conviction for the grave, particularly grave crimes as well as medium-gravity crimes for which he/she has been sentenced to the punishment of imprisonment;

2) was found by court partially or fully incapable;

3) was disbarred from practicing law – in the subsequent two years as of the date of the decision on disbarment;

4) was dismissed from the position of a judge, prosecutor, investigator, notary, public service officer or local self- government public officer for violation of the oath or for a corruption offence – in the subsequent three years as of the date of such dismissal.

3. For the purposes of this Article:

1) complete higher legal education means complete higher legal education obtained in Ukraine, as well as complete higher legal education obtained in foreign states and recognized in Ukraine per the procedure established by law;

2) working experience in the field of law means a person's working experience in the field of law after his/her obtaining complete higher legal education.

Article 8. Eligibility to take bar exam

1. A person who intends to become an advocate and meets the requirements of part one and part two of Article 6 of this Law shall have a right to submit to the qualification and disciplinary commission of the bar in the place of his/her residence an application for permission to take the bar exam. Procedure for obtaining permission to take the bar exam and the list of documents to be attached to the application shall be approved by the Bar Council of Ukraine.

2. Qualification and disciplinary commission of the bar shall check whether the person meets the eligibility requirements set out in part one and part two of Article 6 of this Law. For the purpose of verifying the completeness and reliability of the information communicated by the person who intends to become an advocate, and upon written consent of that person, the respective qualification and disciplinary commission of the bar, qualification chamber or its designated member may apply with a letter of enquiry to governmental bodies, bodies of local self-government, their officials and officers, enterprises, institutions and organizations regardless of the type of their ownership and subordination, and non-governmental organizations, all of which shall provide the requested information within ten working days of the receipt of the enquiry. Refusal to provide information in response to the inquiry, untimely or partial disclosure of information or provision of false information shall entail liability established by law.

If a person who intends to become an advocate fails to give his/her written consent to verification

of the completeness and reliability of the information communicated by him/her, the person shall not be permitted to take the bar exam.

Article 9. Bar exam

1. Bar exam is attestation of a person who intends to become an advocate.

2. Bar exam is testing theoretical knowledge of a person who intends to become an advocate in the field of law, history of the bar, advocate's professional conduct, as well as testing the level of his/her practical skills of and abilities in application of law. The duty to organize and conduct the bar exam is placed on the qualification and disciplinary commission of the bar. The procedure for taking bar exams, the assessment methods and the program of the bar exams shall be approved by the Bar Council of Ukraine. The Bar Council of Ukraine may establish a fee for taking the bar exam and the procedure for payment thereof. Bar exams shall be conducted at least once in three months.

3. Within ten days of the date at which a person passed the bar exam the qualification and disciplinary commission of the bar shall issue free certificate of completion of the bar exam to the person. The certificate of completion of the bar exam shall be valid for three years from the date of taking the exam. Sample certificate of completion of the bar exam shall be approved by the Bar Council of Ukraine.

4. A person who failed to pass the bar exam may be permitted to take another exam no earlier than six months thereafter. A person who failed to pass a second bar exam may be permitted to take the next bar exam no earlier than one year thereafter.

5. A person who failed to pass the bar exam may, within thirty days from the receipt of the respective decision of the qualification and disciplinary commission of the bar, appeal the decision to the Higher Qualification and Disciplinary Commission of the Bar or to the court, any of which may either affirm the impugned decision or oblige the qualification and disciplinary commission of the bar to hold another bar exam of that person at the nearest time of holding exams.

Article 13. Individual practice of law by advocate

1. An advocate who practices law as an individual practitioner is a self-employed person.

2. An advocate who practices law as an individual practitioner may open bank accounts, have a seal, stamps, letterheads (including warrants) indicating his/her name, surname and patronymic, the reference number and the date of issuance of the certificate of right to practice law.

Article 16. Assistant advocate

1. An advocate may have assistants from among the persons who have obtained complete higher education. The assistant advocate shall be employed on the basis of an employment agreement (contract) concluded with an advocate, law office, law firm in compliance with this Law and labor legislation.

2. The assistant advocate shall perform the advocate's assignments relating to the cases handled by the advocate except for those within the exclusive procedural competence (rights and

obligations) of the advocate.

3. The regulation on assistant advocate shall be approved by the Bar Council of Ukraine.

4. The assistant advocate shall not be allowed to combine his/her work for the advocate with the activities incompatible with the activities of the advocate. The persons set out in part two of Article 6 of this Law may not be assistant advocates.

Article 17. Unified Register of Advocates of Ukraine

1. The Bar Council of Ukraine shall maintain the Unified Register of Advocates of Ukraine for the purpose of collection, storage, recording and provision of reliable information on the number and names of advocates carrying out activities in Ukraine and of the advocates of foreign states who have acquired the right to practice law in Ukraine in accordance with this Law, and on the organizational forms of the practice of law selected by advocates. The respective regional bar councils and the Bar Council of Ukraine shall enter the relevant information into the Unified Register of Advocates of Ukraine.

2. The following data shall be entered into the Unified Register of Advocates of Ukraine:

1) the advocate's surname, name and patronymic;

2) the reference number and the date of issuance of the certificate of right to practice law, the reference number and the date of the decision on the issuance of the certificate of right to practice law (the reference number and the date of the decision on the inclusion of an advocate of a foreign state in the Unified Register of Advocates of Ukraine);

3) the name and the place of practicing law, the organizational form of the practice of law and contact details;

4) the advocate's workplace address and contact details;

5) information on suspension or termination of the right to practice law;

6) other data provided for by this Law.The advocate's work place address is the location of the organizational form of the practice of law selected by the advocate or the address of the actual place of practicing law if it is different from the location of the organizational form of the practice of law selected by the advocate. If there are multiple advocate's work place addresses, only one advocate's work place address shall be entered into the Unified Register of Advocates of Ukraine.

3. Within three days of the date of changes in his/her personal data that have been entered or are to be entered into the Unified Register of Advocates of Ukraine, the advocate shall give written notice of such changes to the regional bar council at the location of his/her work place address, except when those changes are made on the basis of the decision of the qualification and

disciplinary commission of the bar.

4. The information entered into the Unified Register of Advocates of Ukraine shall be available on the official website of the Ukrainian National Bar Association. The Bar Council of Ukraine and the respective regional bar councils shall provide excerpts from the Unified Register of Advocates of Ukraine upon request by an advocate or another person.

5. The information to be entered into the Unified Register of Advocates of Ukraine shall be entered into the Register no later than on the day following the date of receipt by the regional bar council of the relevant information, unless otherwise provided for by this Law.

6. The procedure for maintaining the Unified Register of Advocates of Ukraine shall be approved by the Bar Council of Ukraine.

7. For the purpose of maintaining the Unified Register of Advocates of Ukraine, the processing of the personal data of individuals in accordance with the legislation on personal data protection shall be permitted.

Article 18. Unions of advocates

1. Advocates shall have the right to found local, national and international unions in accordance with the procedure established by law.

2. Advocates and unions of advocates may become members of international organizations of advocates and lawyers.

Article 22. Advocate-client privilege

1. Advocate-client privilege includes any information about a client that an advocate, an assistant advocate, advocate's trainee or a person in employment relationship with an advocate became aware of, as well as the matters on which a client (a person who was denied conclusion of an agreement on the provision of legal services on the grounds established by this Law) applied to an advocate, law office or law firm, as well as the contents of the recommendations, advice, or explanations provided by an advocate, documents drafted by an advocate, information stored on electronic media, and any other documents or information received by an advocate while practicing law.

2. Information or documents may be deprived of the status of advocate-client privilege only upon written request by the client (a person who was denied conclusion of an agreement on the provision of legal services on the grounds stipulated by this Law). Information or documents

received from the third parties and containing data about them may be disclosed in compliance

with the requirements of the legislation on personal data protection.

3. The obligation to maintain advocate-client privilege shall extend to an advocate, an assistant to advocate, advocate's trainee or persons in employment relationships with the advocate, law office, law firm and a person whose right to practice law was suspended or terminated. An advocate, law office, and law firm shall ensure conditions that preclude access of third persons to advocate-client privilege or disclosure thereof.

4. In the case of client's complaint against an advocate in connection with his/her practice of law, the advocate shall be released from the duty to maintain advocate-client privilege to the extent necessary to protect his/her own rights and interests. In that case, a court, a body in charge of disciplinary proceedings against the advocate, other bodies or public officials considering the

client's complaint against the advocate or aware of the said complaint, shall take measures to

preclude access of third persons to advocate-client privilege and disclosure thereof.

5. Persons guilty of providing third parties with an access to advocate-client privilege or disclosure thereof shall bear liability as established by law.

6. Submission by an advocate in the manner and in cases prescribed by the Law of Ukraine "On Preventing and Combating of Legalization (laundering) of Income Obtained in an Unlawful Way, Terrorism Financing and Financing of Proliferation of Weapons of Mass Destruction" of relevant information to the central body of executive power that is responsible for realization of state policy in the field of prevention and combating of legalization (laundering) of income obtained in an unlawful way, terrorism financing and financing of proliferation of weapons of mass destruction is not a violation of advocate-client privilege.

7. Advocate does not bear any disciplinary, administrative, civil and criminal liability for submission of information concerning financial transactions to the central body of executive power that is responsible for realization of state policy in the field of prevention and combating of legalization (laundering) of income obtained in an unlawful way, terrorism financing and financing of proliferation of weapons of mass destruction even if disclosure of such information led to damages to individuals or organizations and for other actions whereas the advocate acted in compliance with the Law of Ukraine "On Preventing and Combating of Legalization (laundering) of Income Obtained in an Unlawful Way, Terrorism Financing and Financing of Proliferation of Weapons of Mass Destruction."

Article 24. Advocate's letter of enquiry

1. Advocate's letter of enquiry is a written application by an advocate submitted to a governmental body, body of local self-government, their officials and officers, enterprises, institutions and organizations irrespective of the form of ownership and subordination, and non-governmental organizations for the provision of information, photocopies of documents necessary for the advocate to provide legal services to a client. An advocate's letter of enquiry shall be accompanied by photocopies of his/her certificate of right to practice law attested by the advocate, warrants or mandates issued by a body (agency) authorized by law to provide free legal aid. It is prohibited to demand of an advocate to submit any other documents together with the advocate's letter of enquiry. An advocate's letter of enquiry shall not ask for the provision of advice and clarification of legislative provisions. Information and photocopies of documents obtained in the course of criminal proceedings shall be provided to the advocate in accordance with the procedure established by the criminal procedure law.

2. A governmental body, a body of local self-government, their officials and officers, managers of enterprises, institutions, organizations and non-governmental organizations that received an advocate's letter of enquiry shall, within five working days thereafter, provide the advocate with the respective information, photocopies of documents, except for classified information and photocopies of the documents containing classified information. If an advocate's letter of enquiry asks for provision of a big volume of information or requires an extensive information search, the period for consideration of the advocate's letter of enquiry may be extended for up to twenty working days, in which case the reasons for such extension must be substantiated and a written notice thereof must be given to the advocate within five working days of the receipt of the advocate's letter of enquiry. If compliance with an advocate's letter of enquiry calls for making photocopies of documents of more than ten pages, the advocate shall reimburse the actual costs of copying and printing. The amount of such costs may not exceed the

maximum costs of copying and printing established by the Cabinet of Ministers of Ukraine in accordance with the Law of Ukraine "On Access to Public Information".

3. Refusal to provide information requested for in an advocate's letter of enquiry, untimely or partial disclosure of information, as well as provision of false information shall entail liability established by law, except for the cases of refusal to provide classified information.

Article 25. Provision of free legal aid by advocate

1. The procedure for and conditions of involving advocates in provision of free legal aid is established by law.

2. Assessment of the quality, completeness and timeliness of provision of free primary legal aid by advocates shall be made upon request by bodies of local self-government, and in the case of free secondary legal aid – upon request by a body (agency) authorized by law to provide free legal aid, and by the commissions formed by regional bar councils for that purpose.

Article 34. Grounds for advocate's disciplinary liability

1. Misconduct by the advocate shall be the ground for disciplinary liability of the advocate.

2. Misconduct of the advocate is:

1) non-compliance with the requirements as regards incompatibility;

2) violation of the oath of advocate of Ukraine;

3) violation of the rules of professional conduct;

4) disclosure of advocate-client privilege or performance of actions that resulted in the disclosure thereof;

5) failure to perform or to properly perform his/her professional duties;

6) failure to comply with the decisions taken by the bodies of advocates' self-government;

7) violation of other advocate's duties provided for by law.

3. A judgment by a court or another body passed against a client of the advocate, or reversal or modification of a judgment by a court or another body passed in a case in which the advocate provided legal defense, representation or other types of legal services shall not be the grounds for disciplinary liability of the advocate provided that no misconduct was involved.

Article 35. Types of disciplinary sanctions, limitation period of imposition of disciplinary sanctions

1. Any of the following disciplinary sanctions may be imposed on the advocate for misconduct:

1) warning;

2) suspension of the right to practice law for a period from one month to one year;

3) for Ukrainian advocates – disbarment with further exclusion from the Unified Register of Advocates of Ukraine, and for advocates of foreign states – exclusion from the Unified Register of Advocates of Ukraine.

2. The advocate may be brought to disciplinary liability within one year from the date of misconduct.

Article 36. Initiation of disciplinary liability of advocate

1. Any person who has become aware of the advocate's misconduct which may serve the ground for disciplinary liability of the advocate shall have the right to submit an application (complaint) regarding such misconduct to the qualification and disciplinary commission of the bar.

2. It shall not be allowed to abuse the right to apply to the qualification and disciplinary commission of the bar, inter alia, to initiate disciplinary liability of the advocate without having sufficient ground therefor, or to use the said right as a means of pressure upon the advocate in connection with his/her practice of law.No disciplinary action may be instituted against the advocate upon application (complaint) that does not contain information about the existence of elements of misconduct in the advocate's actions, as well as upon any anonymous application (complaint).

Article 45. Ukrainian National Bar Association

1. The Ukrainian National Bar Association is a non-governmental non-profit professional organization comprising all Ukrainian advocates and formed for the purpose of ensuring implementation of the objectives of advocates' self-government.

2. The Ukrainian National Bar Association:

1) represents the bar of Ukraine in its relations with governmental bodies, bodies of local self-government, their officials and officers, enterprises, institutions and organizations regardless of the form of ownership and subordination, non-governmental organizations and international organizations, and delegates its representatives to governmental bodies;

2) protects the professional rights of advocates and provides guarantees of practice of law;

3) ensures high level of professionalism of Ukrainian advocates;

4) ensures accessibility and transparency of information about Ukrainian advocates;

5) performs other functions in accordance with this Law.

3. The Ukrainian National Bar Association is a legal entity and operates in the organizational forms of practice of law provided for in this Law.

4. The Ukrainian National Bar Association is formed by the congress of advocates of Ukraine and may not be reorganized. The Ukrainian National Bar Association may be liquidated only on the basis of the law.

5. The statute of the Ukrainian National Bar Association is approved by the congress of advocates of Ukraine and is the statutory document of the Association.

6. As of the moment of state registration of the Ukrainian National Bar Association, all the persons who have obtained the certificate of a right to practice law shall become its members. Other persons shall become members of the Ukrainian National Bar Association as of the moment of taking the oath of advocate of Ukraine.

Article 46. Organizational forms of advocates' self-government

1. Organizational forms of advocates' self-government are as follows: the conference of advocates of the region (in the Autonomous Republic of Crimea, region, the cities of Kyiv and Sevastopol), the regional bar council (in the Autonomous Republic of Crimea, region, the cities of Kyiv and Sevastopol), the Bar Council of Ukraine, and the congress of advocates of Ukraine.

2. Advocates' self-government shall be accomplished through the operation of conferences of advocates of the region (of the Autonomous Republic of Crimea, region, the cities of Kyiv and Sevastopol), of regional bar councils (of the Autonomous Republic of Crimea, region, the cities of Kyiv and Sevastopol), of the qualification and disciplinary commissions of the bar (of the Autonomous Republic of Crimea, region, the cities of Kyiv and Sevastopol), of the Higher Qualification and Disciplinary Commission of the Bar, of regional bar audit commissions (of the Autonomous Republic of Crimea, region, the cities of Kyiv and Sevastopol), of the Higher Audit Commission of the Bar, of the Bar Council of Ukraine, and of the congress of advocates of Ukraine.

Article 54. Congress of advocates of Ukraine

1. The congress of advocates of Ukraine is the supreme body of advocates' self-government of Ukraine.

2. The congress of advocates of Ukraine shall be composed of the delegates elected by the conferences of advocates of the regions by a relative majority of votes of the delegates attending the conference.

3. The representational quota, the procedure for the nomination and election of delegates to the congress of advocates of Ukraine shall be determined by the Bar Council of Ukraine.

4. The congress of advocates of Ukraine shall be convened by the Bar Council of Ukraine no less than once every three years. The congress of advocates of Ukraine shall be convened within sixty days upon the initiative of the Bar Council of Ukraine or upon the demand of no less than one tenth of the total number of the advocates included in the Unified Register of Advocates of Ukraine or of no less than one third of all regional bar councils.

Article 55. The Bar Council of Ukraine

1. The Bar Council of Ukraine shall perform functions of advocates' self-government during the period between the congresses of advocates of Ukraine. The powers of the Bar Council of Ukraine and

the procedure for its work shall be determined by this Law and the regulation on the Bar Council of Ukraine approved by the congress of advocates

of Ukraine. The Bar Council of Ukraine shall be controlled by, and accountable to, the congress of advocates of Ukraine.

Article 59. Obtaining by an advocate of a foreign state the right to practice law in Ukraine.

Specific features of status of advocate of a foreign state

1. The advocate of a foreign state may practice law in Ukraine taking into account specific provisions of this Law.

2. The advocate of a foreign state who intends to practice law in Ukraine shall submit to the qualification and disciplinary commission of the bar at the place of his/her residence or stay in Ukraine an application for his/her inclusion in the Unified Register of Advocates of Ukraine. The application shall be accompanied by the documents confirming the right of the said advocate to practice law in the respective foreign state. The list of the said documents shall be approved by the Bar Council of Ukraine.

Article 60. Liability of advocate of a foreign state

1. In the event of misconduct by the advocate of a foreign state included in the Unified Register of Advocates of Ukraine, he/she shall be brought to disciplinary liability per the procedure provided for by this Law for Ukrainian advocates, taking into account specific provisions established by part two of this Article.

2. The advocate of a foreign state included in the Unified Register of Advocates of Ukraine may be brought to disciplinary liability only by way of warning or exclusion from the Unified Register of Advocates of Ukraine.

3. The qualification and disciplinary commission of the bar shall inform the respective governmental body or a body of advocates' self-government of a foreign state where the advocate obtained the status of the advocate or the right to practice law that the advocate of a foreign state has been brought to disciplinary liability.

Article 61. Relations of advocate of a foreign state with bodies of advocates' self-government

1. The advocate of a foreign state may apply to bodies of advocates' self-government for the protection of his/her professional rights and duties; participate in educational and methodological events conducted by the qualification and disciplinary commissions of the bar, the Higher Qualification and Disciplinary Commission of the Bar, regional bar councils, the Bar Council of Ukraine and the Ukrainian National Bar Association.

Commentary

1. A separate article on the organization of the Bar stipulates *inter alia* that only advocates (meaning lawyers admitted to the Bar) can act as defense attorneys in criminal cases.

2. The issue of training qualified and respectable experts is especially relevant when Ukrainian lawyers are faced with unprecedented tasks, including the need to ensure the development of the rule of law or the protection and restoration of citizens' violated rights caused by Russia's military aggression. The Procedure for the Continuing Legal Education of Advocates of Ukraine provides special requirements for training in the first three years (after obtaining a certificate) of an advocate's practice.
3. According to the general rule (clause 20 of the Procedure), all advocates must improve their qualifications at 10 hours per year. During the first three years of their practice of law, attorneys who have acquired the status of an attorney-at-law were obliged to improve their professional level at the level of 48 hours, of which at least 16 hours were required annually. In case of obtaining a certificate for the right to practice law in the second half of the relevant year, such an advocate was entitled to receive a lower number of points in the first year of obtaining the certificate, provided that the total number of points for 3 years is not less than 48 hours.
4. Adopting the new Criminal Procedure Code of Ukraine, which introduced the requirement for a defendant appearing in criminal proceedings to be represented by an advocate admitted to the Bar, required changes to the legislation governing the activities of the Bar. Thus, the Law on the Bar and Bar Activities was adopted in July 2012 and outlined the new self-governance system for the Ukrainian Bar. It also clarified the provisions regarding the admission to the Bar. The Unified Register of Lawyers of Ukraine was created and began functioning on January 16, 2013, and the Procedure for Maintaining the Unified Register of Lawyers of Ukraine, approved by the decision of the Bar Council of Ukraine dated August 22, 2022, No. 74 (with amendments). See here for the Unified Register of Lawyers of Ukraine.
5. Ukraine is bound by the European Convention of Human Rights and its Constitution, which ensures the right to a fair trial, which includes the right to defense, to everyone. Therefore, a state-ensured free legal aid system should exist for those who cannot afford a private lawyer. An important step was adopting the Law of Ukraine on Free Legal Aid in 2011 and establishing the free legal aid system in Ukraine consisting of the Coordination Centre for Legal Aid Provision, regional centers, and bureaus. This Law foresees the following types of secondary free legal aid: defence, representation in courts and other state institutions, and preparing procedural documents. To qualify for free legal aid one should belong to one of the following categories:

    - adults who have a monthly income lower than double the minimum subsistence level, which is UAH (hryvnia) 6056 (approximately USD 156),
    - children, meaning under 18 years old,
    - detained based on the ruling of the court,
    - Internally Displaced Persons,
    - foreigners who were apprehended for identification purpose facing deportation,
    - people to who administrative arrest or administrative apprehension have been applied,
    - domestic and sexual violence victims,
    - Ukrainians located on the occupied territories.

Foreigners and people without citizenship legally residing in Ukraine enjoy the right to free legal aid, just like Ukrainian citizens do.

6. The full-scale invasion by the Russian Federation of Ukraine gave rise to a large number of legal issues that required urgent solutions, from the status of internally displaced persons to the need for prompt responses to the requests of people affected by the war or by perpetrators facing trials and needing a defence counsel. Provided that the vast majority of the convicted for international crimes

Russians were represented by lawyers from the free legal aid system, it faced significant challenges in terms of the number of requests for free legal aid to process. However, according to the recent UNDP report, the free legal aid system has demonstrated a high level of stability in the context of the war, and the bodies and organizations that provide legal services to the population quickly adapted to the new conditions and were able to ensure the proper quality of such services and client orientation. Thus, about 70 percent of respondents believe that since the beginning of the war, their opportunities to receive legal assistance have not reduced or have even increased.

2.3. Criminal Legislation

2.3.1. Criminal Code of Ukraine

CRIMINAL CODE OF UKRAINE (Excerpts)

(For the full version, see here)

Article 3. Legislation of Ukraine on criminal liability

1. The legislation of Ukraine on criminal liability constitutes the Criminal code of Ukraine which is based on the Constitution of Ukraine and the conventional principles and rules of international law.

2. The laws of Ukraine on criminal liability adopted after entry into force of this Code join in it since their introduction in force.

3. Criminal illegality of act, and also its punishability and other criminal consequence in law are determined only by this Code.

4. Application of the law on criminal liability by analogy is forbidden.

5. The laws of Ukraine on criminal liability shall correspond to the provisions containing in the existing international treaties which consent to be bound is this the Verkhovna Rada of Ukraine.

6. Changes can be made to the legislation of Ukraine on criminal liability only by the laws on introduction of amendments to this Code and/or the penal procedural legislation of Ukraine and/or the legislation of Ukraine on administrative offenses.

Article 4. Operation of the law on criminal liability in time

1. The law on criminal liability becomes effective in ten days from the date of its official promulgation if other is not provided by the law, but not earlier than day of its publication.

2. Criminal illegality and punishability, and also other criminal consequence in law of act are determined by the law on criminal liability existing for the period of making of this act.

3. Time of making of criminal offense time of committing by person of the action provided by the law on criminal liability or failure to act is recognized.

Article 5. Retroactive effect of the law on criminal liability in time

1. The law on criminal liability which cancels criminal illegality of act mitigates criminal liability or otherwise improves provision of person, has retroactive effect in time, i.e. extends to persons who made the corresponding acts to the introduction of such law in force including to persons who serve sentence or served sentence, but have criminal record.

2. The law on criminal liability which establishes criminal illegality of act strengthens criminal liability or otherwise worsens situation of person, has no retroactive effect in time.

3. The law on criminal liability which partially mitigates criminal liability or otherwise improves provision of person, and partially strengthens criminal liability or otherwise worsens situation of person, has retroactive effect in time only in that part which mitigates criminal liability or otherwise improves provision of person.

4. If after committing by person of the act provided by this Code, the law on criminal liability changed several times, retroactive effect in time has that law which cancels criminal illegality of act, mitigates criminal liability or otherwise improves provision of person.

Article 6. Operation of the law on criminal liability concerning the criminal offense made in the territory of Ukraine

1. Persons who made criminal offenses in the territory of Ukraine are subject to criminal liability under this Code.

2. The criminal offense is recognized made in the territory of Ukraine if it was begun, continued, finished or stopped in the territory of Ukraine.

3. The criminal offense is recognized made in the territory of Ukraine if his contractor or at least one of accomplices acted on the territory of Ukraine.

4. The question of criminal liability of diplomatic representatives of foreign states and other citizens who under the laws of Ukraine and international treaties which consent to be bound is this the Verkhovna Rada of Ukraine are not jurisdictional on criminal cases to courts of Ukraine in case of making of criminal offense by them in the territory of Ukraine is allowed in the diplomatic way.

Article 7. Operation of the law on criminal liability concerning the criminal offenses made by citizens of Ukraine and stateless persons outside Ukraine

1. The citizens of Ukraine and persons without citizenship who are constantly living in Ukraine, made criminal offenses beyond its limits are subject to criminal liability under this Code if other is not provided by international treaties of Ukraine which consent to be bound is this the Verkhovna Rada of Ukraine.

2. If persons specified in part one of this Article for committed criminal offenses were subjected to criminal penalty outside Ukraine, they cannot be brought in Ukraine to trial for these criminal offenses.

Article 8. Operation of the law on criminal liability concerning the criminal offenses made by foreigners and stateless persons outside Ukraine

1. The foreigners or persons without citizenship who are not living constantly in Ukraine, made criminal offenses out of its limits are subject in Ukraine to responsibility under this Code in the cases provided by international treaties or if they made the heavy or especially heavy criminal offenses provided by this Code against the rights and freedoms of citizens of Ukraine or interests of Ukraine.

2. The foreigners or persons without citizenship who are not living constantly in Ukraine are also subject in Ukraine to responsibility under this Code if they outside Ukraine made in partnership with officials who are citizens of Ukraine, any criminal offense provided by Articles 368, 368.3, 368.4, 369 and 369.2 of this Code or if they offered, promised, provided illegal benefit to such officials, or accepted the offer, the promise of illegal benefit or received from them such benefit.

Article 9. Consequence in law of condemnation of person outside Ukraine

1. The court verdict of foreign state can be considered if the citizen of Ukraine, the foreigner or the stateless person were condemned for the criminal offense made outside Ukraine and again made criminal offense in the territory of Ukraine.

2. According to part one of this Article the recurrence of criminal offenses, unexpired punishment or other consequence in law of the court verdict of foreign state are considered in case of qualification new criminal offenses, assignment of punishment, release from criminal liability or punishment.

SPECIAL PART

Chapter I. CRIMES AGAINST NATIONAL SECURITY OF UKRAINE

Article 109. Actions aimed at forceful change or overthrow of the constitutional order or take-over of government

1. Actions aimed at forceful change or overthrow of the constitutional order or take-over of government, and also a conspiracy to commit any such actions, -

shall be punishable by imprisonment for a term of five to ten years.

2. Public appeals to violent change or overthrow of the constitutional order of take-over of government, and also dissemination of materials with any appeals to commit any such actions,-

shall be punishable by restraint of liberty for a term up to three years, or imprisonment for the same term.

3. Any such actions, as provided for by paragraph 2 of this Article, if committed by a member of public authorities or repeated by any person, or committed by an organized group, or by means of mass media, -

shall be punishable by restraint of liberty for a term up to five years, or imprisonment for the same term.

Article 110. Trespass against territorial integrity and inviolability of Ukraine

1. Willful actions committed to change the territorial boundaries or national borders of Ukraine in violation of the order provided for in the Constitution of Ukraine, and also public appeals or distribution of materials with appeals to commit any such actions, -

shall be punishable by restraint of liberty for a term up to three years, or imprisonment for the same term.

2. Any such actions, as provided for by paragraph 1 of this Article, if committed by a member of public authorities or repeated by any person, or committed by an organized group, or combined with inflaming national or religious enmity, -

shall be punishable by restraint of liberty for a term of three to five years, or imprisonment for the same term.

3. Any such actions, as provided for by paragraphs 1 and 2 of this Article, if they caused the killing of people or any other grave consequences, -

shall be punishable by imprisonment for a term of seven to twelve years.

Article 111. State Treason

1. State treason, that is an act willfully committed by a citizen of Ukraine in the detriment of sovereignty, territorial integrity and inviolability, defense capability, and state, economic or information security of Ukraine: joining the enemy at the time of martial law or armed conflict, espionage, assistance in subversive activities against Ukraine provided to a foreign state, a foreign organization or their representatives,-

shall be punishable by imprisonment for a term of ten to fifteen years.

2. The same actions committed during the martial law, -

shall be punishable by imprisonment for a term of up to fifteen years or lifetime imprisonment with confiscation of property.

3. A citizen of Ukraine shall be discharged from criminal liability where, he has not committed any acts requested by a foreign state, a foreign organization or their representatives and voluntarily reported his ties with them and the task given to government authorities.

Chapter XX. CRIMINAL OFFENSES AGAINST PEACE, SECURITY OF MANKIND AND INTERNATIONAL LEGAL ORDER

Article 436. Propaganda of war

Public calls to an aggressive war or an armed conflict, and also making of materials with calls to any such actions for distribution purposes or distribution of such materials, -

shall be punishable by correctional labor for a term up to two years, or arrest for a term up to six months, or imprisonment for a term up to three years.

Article 436[1]. Production, dissemination of communist, Nazi symbols and propaganda of communist and National Socialist (Nazi) totalitarian regimes

1. Production, distribution, and public use of symbols of communist, National Socialist (Nazi) totalitarian regimes, including souvenirs, public performance of anthems of the USSR, Ukrainian SSR (USSR), other union and autonomous Soviet republics or their fragments on throughout the territory of Ukraine, except for the cases provided for in parts two and three of Article 4 of the Law of Ukraine "On

Condemnation of Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of Propaganda of Their Symbols," -

shall be punishable by restriction of liberty for a term up to five years or imprisonment for the same term, with or without confiscation of property.

2. The same acts committed by a person who is a representative of the authorities, or committed repeatedly, or by an organized group, or with the use of the media, -

shall be punishable by imprisonment for a term of five to ten years with or without confiscation of property.

Article 436[2]. Justification, recognition as lawful, denial of the armed aggression of the Russian Federation against Ukraine, glorification of its participants

1. Justification, recognition of lawfulness, denial of armed aggression of the Russian Federation against Ukraine started in 2014, including by presenting armed aggression of the Russian Federation against Ukraine as an internal civil conflict, justification, recognition of lawfulness, denial of temporary occupation of Ukraine, and glorification of persons who carried out the armed aggression of the Russian Federation against Ukraine, started in 2014, representatives of armed formations of the Russian Federation, irregular illegal armed formations, armed gangs and groups of mercenaries created, subordinated, managed and financed by the Russian Federation, and representatives of the Federation, which consists of its state bodies and structures functionally responsible for the management of the temporarily occupied territories of Ukraine, and representatives of the self-proclaimed bodies controlled by the Russian Federation, who usurped the function of power bodies in the temporarily occupied territories of Ukraine -

shall be punishable by correctional labor for a term of up to two years or by arrest for a term of up to six months, or by imprisonment for a term of up to three years.

2. Production, dissemination of materials containing justification, recognition of lawfulness, denial of armed aggression of the Russian Federation against Ukraine, started in 2014, including by presenting armed aggression of the Russian Federation against Ukraine as an internal civil conflict, justification, recognition of lawfulness, denial of temporary occupation parts of Ukraine, as well as glorification of persons who carried out the armed aggression of the Russian Federation against Ukraine, started in 2014, representatives of armed groups of the Russian Federation, irregular illegal armed groups, armed gangs and groups of mercenaries created, subordinated, managed and financed by the Russian Federation, as well as representatives of the occupation administration of the Russian Federation, which consists of its state bodies and structures functionally responsible for the management of the temporarily occupied territories of Ukraine, and representatives of the self-proclaimed Russian-controlled bodies that have usurped the performance of official functions in the temporarily occupied territories of Ukraine, -

shall be punishable by restriction of liberty for up to five years or imprisonment for the same term, with or without confiscation of property.

3. Actions provided for in part one or two of this Article, committed by an official, or committed repeatedly, or by an organized group, or with the use of mass media,-

shall be punishable by imprisonment for a term of five to eight years with or without confiscation of property.

Article 437. Planning, preparation, and waging of an aggressive war

1. Planning, preparation or waging of an aggressive war or armed conflict, or conspiring for any such purposes, -

shall be punishable by imprisonment for a term of seven to twelve years

2. Conducting an aggressive war or aggressive military operations, -

shall be punishable by imprisonment for a term of ten to fifteen years.

Article 438. Violation of rules of the warfare

1. Cruel treatment of prisoners of war or civilians, deportation of civilian population for forced labor, pillage of national treasures on occupied territories, use of methods of the warfare prohibited by international instruments, or any other violations of rules of the warfare recognized by international instruments consented to by binding by the Verkhovna Rada (Parliament) of Ukraine, and also giving an order to commit any such actions, -

shall be punishable by imprisonment for a term of eight to twelve years.

2. The same acts accompanied with a murder, -

shall be punishable by imprisonment for a term of ten to fifteen years, or life imprisonment.

Article 439. Use of weapons of mass destruction

1. The use of weapons of mass destruction prohibited by international instruments consented to be binding by the Verkhovna Rada of Ukraine, -

shall be punishable by imprisonment for a term of eight to twelve years.

2. The same act that caused death of people or any other grave consequences, -

shall be punishable by imprisonment for a term of eight to fifteen years, or life imprisonment.

Article 440. Development, production, purchasing, storage, distribution or transportation of weapons of mass destruction

Development, production, purchasing, storage, distribution or transportation of weapons of mass destruction prohibited by international instruments consented to be binding by the Verkhovna Rada of Ukraine, -

shall be punishable by imprisonment for a term of three to ten years.

Article 441. Ecocide

Mass destruction of flora and fauna, poisoning of air or water resources, and also any other actions that may cause an environmental disaster, -

shall be punishable by imprisonment for a term of eight to fifteen years.

Article 442. Genocide

1. Genocide, that is a willfully committed act for the purpose of total or partial destruction of any national, ethnic, racial, or religious group by extermination of members of any such group or inflicting grave bodily injuries on them, creation of life conditions calculated for total or partial physical destruction of the group, decrease or prevention of childbearing in the group, or forceful transferring of children from one group to another, -

shall be punishable by imprisonment for a term of ten to fifteen years, or life imprisonment.

2. Public calls to genocide, and also making any materials with calls to genocide for the purpose of distribution, or distribution of such materials, -

shall be punishable by arrest for a term up to six months, or imprisonment for a term up to five years.

Article 443. Trespass against life of a foreign state representative

Trespass against life of a foreign state representative or any other person who enjoys international protection for the purpose of influencing the nature of their activity or activity of their states or organizations, or for the purpose of provoking a war or international complications, -

shall be punishable by imprisonment for a term of eight to fifteen years, or life imprisonment.

Article 444. Criminal offenses against internationally protected persons and institutions

1. Attacks on official premises or private accommodations of internationally protected persons, and also kidnapping or confinement of such persons for the purpose of influencing the nature of their activity or the activity of their states or organizations, or for the purpose of provoking a war or international complications, -

shall be punishable by imprisonment for a term of three to eight years.

2. A threat to commit any such actions as provided for by paragraph 1 of this Article, -

shall be punishable by correctional labor for a term up to two years, or arrest for a term up to three months, or restraint of liberty for a term up to three years, or imprisonment for a term up to two years.

Article 445. Illegal use of symbols of Red Cross and Red Crescent

Illegal use of symbols of Red Cross and Red Crescent, other than in cases provided for by this Code, shall be punishable by a fine up to 50 tax-free minimum incomes, or arrest for a term of up to six month.

Article 446. Piracy

1. Piracy, that is the use of a vessel, whether armed or not, for capturing any other sea or river vessel, and violence, robbery or any other hostile actions against the crew or passengers of such vessel, for the purpose of pecuniary compensation or any other personal benefits, -

shall be punishable by imprisonment for a term of five to twelve years with the forfeiture of property.

2. The same acts, if repeated, or where they caused death of people or any other grave consequences, shall be punishable by imprisonment for a term of eight to fifteen years with the forfeiture of property.

Article 447. Mercenaries

1. Recruiting, financing, supplying, and training of mercenaries for the purpose of using them in armed conflicts of other states or violent actions aimed at overthrowing of government or violation of territorial integrity, and also the use of mercenaries in war conflicts or operations, -

shall be punishable by imprisonment for a term of three to eight years.

2. Participation in armed conflicts of other states for the purpose of pecuniary compensation without authorization obtained from appropriate government authorities, -

shall be punishable by imprisonment for a term of five to ten years.

…

Article 426. Omissions of military authorities

1. Willful failure to prevent a crime committed by a subordinate, or failure of a military inquiry authorities to institute a criminal case against a subordinate offender, and also willful failure of a military official to act in accordance with his/her official duties, if it caused any significant damage, shall be punishable by a fine of 50 to 200 tax-free minimum incomes, or service restrictions for a term up to two years, or imprisonment for a term up to three years.

2. The same acts that caused any grave consequences, - is punishable by the imprisonment for a term of three to seven years.

3. Any such acts as provided by paragraph 1 or 2 of this Article, if committed in state of martial law or in a battle, shall be punishable by imprisonment for a term of seven to ten years.

Commentary

1. Out of four crimes that fall under the ICC jurisdiction under Article 5 of the Rome Statute – (a) crime of genocide; (b) crimes against humanity; (c) war crimes; and (d) crime of aggression – the CCU as of October 27, 2024, before the amendments connected to the ratification of the Rome Statute have come into force, contains a textual reference to only one, the crime of genocide, another one – the crime of aggression – is defined through *sui generis* terms, "aggressive war" and "aggressive military operations." More to the point, widely accepted terms of Article 5 of the Rome Statute, such as "crimes against humanity" and "war crimes," are not used in the CCU.
2. According to the CCU Article 442, genocide is "a willful act committed for the purpose of total or partial destruction of any national, ethnic, racial, or religious group by extermination of members of

any such group or inflicting grave bodily injuries on them, creation of life conditions calculated for total or partial physical destruction of the group, decrease or prevention of childbearing in the group, or forceful transferring of children from one group to another." Genocide in Ukraine is punishable with imprisonment for a term of eight to fifteen years. The CCU Article 442 Part 2 envisages that "public calls to genocide, and also making any materials with calls to genocide for the purpose of distribution, or distribution of such materials shall be punishable with arrest for a term up to six months, or imprisonment for a term up to five years."

3. CCU Article 437 envisages liability for five various forms of wrongdoing associated with aggressive war. According to Part 1 of Article 437, the following four wrongdoings are punishable with imprisonment for a term of seven to twelve years: "(1) planning, (2) preparing or (3) waging of an aggressive war or armed conflict as well as (4) conspiring for any such purposes." Another – more grievous form – "waging the aggressive war or aggressive combat operations" is punishable with imprisonment for 10 to 15 years pursuant to Article 437 Part 2. These concepts can be clarified domestically by reference to the definitions of the Crime of Aggression in the Rome Statute. A separate article – CCU Article 436 – creates criminal liability for "propaganda of war," i.e., public calls for an aggressive war or creating a military conflict, as well as to produce materials calling for such actions for dissemination purposes or dissemination thereof. Such wrongdoings are punishable with "correctional works for up to two years or arrest for up to six months or imprisonment for up to three years."
4. The crime of aggression, as it is defined in the Rome Statute, is known for being a "leadership" crime, meaning that "…a person in a position effectively to exercise control over or to direct the political or military action of a State." At the same time, the CCU did not specify who can be subject to criminal liability (perpetrator) under Article 437, which created ambiguity and certain legal gaps. Russian foot soldiers should not be brought to criminal liability under this article as they enjoy combatant immunity. Therefore, this article needed further clarification. On February 28, 2024, the Grand Chamber of the Supreme Court issued a Resolution that interpreted Article 437 and clarified who can be a perpetrator for the crime of aggression. Thus, the Grand Chamber mentioned in the Resolution that "persons who, by virtue of their official powers or a de facto social position, can exercise effective control over or direct political or military actions and/or significantly influence political, military, economic, financial, informational and other processes in one's own state or abroad, and/or direct specific courses of political or military actions." In the same Resolution, the Grand Chamber of the Supreme Court provided an example of what positions could be covered by Article 437, and they include: "Heads of State and Government; Members of Parliament; leaders of political parties; Diplomats; heads of special services; commanders of the armed forces subordinate to the state, as well as illegal paramilitary or armed groups; other persons acting as de facto military commanders; heads of executive bodies that carry out the functions of developing and implementing state policy and legal regulation in the field of activities of armed formations and arms trafficking; leaders whose legal status is not covered by the concept of military commander and who exercise power or control over persons participating in a war of aggression or aggressive hostilities; other persons who, although they do not hold formal positions, are able to really influence the military-political processes related to the planning, preparation, unleashing of an aggressive war or military conflict and the conduct of an aggressive war or aggressive military actions." Though the Supreme Court in its interpretation went beyond the "leadership" criteria stipulated in the Rome Statute, this clarification will help the Ukrainian criminal justice system to identify proper perpetrators under Article 437.
5. The phrase "crimes against humanity" does not appear in the current CCU. The concept of crimes against humanity is included by virtue of an indirect feature of Article 438. Crimes against humanity and war crimes remain undefined as precise juridical terms in the CCU. Despite the vast differences in

their meaning and modern application, they are included within the same provision (Article 438). This combination of crimes into one provision is inefficient and creates complexity where none is necessary. The ambiguity and wording of Article 438 make their just application subject to error in post-invasion jurisprudence in Ukraine. Ukrainian judges charged with adjudicating war crimes and crimes against humanity cases will be challenged to consistently comply with the fair trial standards found in the Geneva Conventions and relevant human rights instruments.

6. Some crimes, properly described as war crimes or crimes against humanity pursuant to the Rome Statute, are categorized in CCU as military crimes rather than crimes against peace, security of humankind, and international legal order. This distinction is important because military crimes are limited to the characterization of offenses as national rather than deriving from international norms. Second, subjects of the law include only service members of the Armed Forces and other military formations of Ukraine rather than foreign nationals operating in Ukraine. Third, they are committed in the process of serving in the military and are concerned with offenses against the procedure of service and not some other values.

2.3.2 International Instruments Consented to by Ukraine in the Understanding of the Article 438 of the Criminal Code of Ukraine

1. Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, dated June 17, 1925.
2. Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, dated August 12, 1949. (Geneva Convention I).
3. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, dated August 12, 1949. (Geneva Convention II).
4. Geneva Convention Relative to the Treatment of Prisoners of War, dated August 12, 1949. (Geneva Convention III).
5. Geneva Convention relative to the Protection of Civilian Persons in Time of War, dated August 12, 1949. (Geneva Convention IV).
6. Protocol additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts, dated June 8, 1977. (Protocol I additional to the Geneva Conventions).
7. Protocol additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts, dated June 8, 1977. (Protocol II additional to the Geneva Conventions).
8. Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the Adoption of an Additional Distinctive Emblem, dated December 8, 2005. (Protocol III additional to the Geneva Conventions).
9. Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict dated May 14, 1954.
10. First Protocol to the Hague Convention of 1954 on the Protection of Cultural Property in the Event of Armed Conflict.
11. Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, dated November 26,1968.
12. Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, dated April 10, 1972.
13. Convention on The Prohibition of Military or Any Hostile Use Of Environmental Modification

Techniques, dated December 10, 1976.
14. Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, dated October 10, 1980, amended on December 21, 2001.
15. Protocol on Non-Detectable Fragments dated October 10, 1980. (Protocol I to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects).
16. Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, dated October 10, 1980, amended on May 3, 1996. (Protocol II to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects).
17. Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons dated October 10, 1980. (Protocol III to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects).
18. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment dated December 10, 1984.
19. Convention on the Rights of the Child dated November 20, 1989.
20. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, January 13, 1993.
21. Convention on the Safety of United Nations and Associated Personnel dated December 9, 1994.
22. Protocol on Blinding Laser Weapons dated October 13, 1995. (Protocol IV to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects).
23. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, dated September 18, 1997. (Ottawa Convention).
24. Rome Statute of the International Criminal Court dated July 17, 1998.
25. Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, dated March 26, 1999.
26. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, dated May 25, 2000.
27. Protocol on Explosive Remnants of War dated November 28, 2003. (Protocol V to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects).
28. Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel, dated December 8, 2005.
29. Convention on Cluster Munitions dated May 30, 2008.

2.3.3. Criminal Procedure Code of Ukraine

CRIMINAL PROCEDURE CODE OF UKRAINE (Excerpts)

(For the full version, see here)

Article 7. General principles of criminal proceedings

1. The matter and manner of criminal proceedings must conform to the general principles of criminal proceedings such as, but not limited to:

1) the rule of law;
2) legitimacy;
3) equality before law and court;
4) respect for human dignity;
5) ensuring the right to liberty and security of person;
6) inviolability of home or any other possession of a person;
7) confidentiality of communication;
8) non-interference in private life;
9) security of the ownership right;
10) presumption of innocence and conclusive proof of guilt;
11) freedom from self-incrimination and the right to not testify against one's close relatives and family members;
12) prohibition of double jeopardy
13) ensuring the right to defense;
14) access to justice and the binding nature of court rulings;
15) adversarial nature of parties, freedom to present their evidence to the court and prove the preponderance of this evidence before the court;
16) directness of examination of testimonies, objects and documents;
17) ensuring the right to challenge procedural decision, actions or inactivity;
18) publicity of criminal proceedings;
19) optionality of criminal proceedings
20) publicity and openness of judicial proceedings and their full recording using technical means;
21) reasonable time for criminal proceedings;
22) language of the criminal proceedings.

2. The contents and form of criminal proceedings in the absence of a suspect or accused (in absentia) must comply with the general principles of criminal proceedings specified in paragraph one of this article, taking into account the peculiarities prescribed by law.

The prosecution is obliged to use all possibilities provided by law to respect the rights of the suspect or accused (including rights to defense, access to justice, confidentiality of communication, non-interference in private life) in criminal proceedings in the absence of the suspect or accused (in absentia).

3. The contents and form of criminal proceedings during martial law must comply with the general principles of criminal proceedings specified in paragraph one of this article, taking into account the specifics of criminal proceedings, defined by section IX-1 of this Code.

Article 8. Rule of law

1. Criminal proceedings shall be conducted in accordance with the principle of the rule of law, under which a human being, his rights and freedoms are the highest values which define content and areas of State activities.

2. The principle of the rule of law in criminal proceedings shall be applied with due consideration of the practices of the European Court of Human Rights.

Article 9. Legality

1. During criminal proceedings, a court, investigating judge, public prosecutor, chief of pre-trial investigation agency, investigator, other officials of state authorities shall be required to steadfastly comply with the requirements of the Constitution of Ukraine, this Code, and international treaties the Verkhovna Rada of Ukraine has given its consent to be bound by, and requirements of other laws.

2. Prosecutor, chief of pre-trial investigation agency, investigator shall be required to examine comprehensively, fully and impartially the circumstances of criminal proceedings; find circumstances both of incriminating and exculpatory nature in respect of the suspect, the accused, as well as the circumstances mitigating and aggravating their punishment; make adequate legal evaluation thereof and ensure the adoption of lawful and impartial procedural decisions.

3. Laws and other legal regulatory acts of Ukraine, in so far as they relate to criminal proceedings, must be in line with this Code. No law contradicting this Code may be applied in the conduct of criminal proceedings.

4. Wherever provisions of this Code contradict an international treaty the Verkhovna Rada of Ukraine has given its consent to be bound by, provisions of the relevant international treaty of Ukraine shall apply.

5. The criminal procedural legislation of Ukraine shall be applied in the light of the case law of the European Court for Human Rights.

6. Whenever provisions of the present Code do not regulate the matters of criminal proceedings or regulate such vaguely, the general principles of criminal proceedings as specified in paragraph one of Article 7 of this Code shall apply.

Article 22. Adversariality of parties and their freedom to present their evidence to the court and to convincingly prove this evidence

1. Criminal proceedings shall be conducted on the basis of adversarial approach envisaging independent assertion by the side of accusation and the side of legal protection of their legal positions, rights, freedoms and legitimate interests by means set forth the present Code.

2. Parties to criminal proceedings shall have equal rights with regard to collecting and producing items, documents, other evidence, motions, complaints, as well as to enjoy other procedural rights provided by the present Code.

3. In the course of criminal proceedings, functions of public prosecution, defense, and trial may not be imposed on the one and the same agency or official.

4. Public prosecutor shall notify an individual of a suspicion of his/ her having committed a criminal offence, shall submit an indictment, and prosecute on behalf of the state in court. In cases specified in the present Code, notification of an individual of a suspicion of his having committed a criminal offence may be made by an investigator upon the approval of the public prosecutor, and the accusation may be supported by the victim or by a representative acting on his behalf.

5. The suspect or defendant, their defense counsel or legal representative shall be in charge of defense.

6. The court while maintaining the objectivity and impartiality shall ensure the necessary conditions for the realization by the parties of their procedural rights and the performance of their procedural duties.

Article 23. Direct examination of testimonies, objects and documents

1. The court shall examine evidence directly. The court takes testimonies of the participants in criminal proceedings orally.

2. Except as otherwise provided in this Code, information contained in testimonies, objects and documents that have not been directly examined by court may not be admitted as evidence. The court may admit in evidence testimonies which are not given directly in court only where it is provided for by this Code.

3. The prosecution shall be required to ensure the presence of witnesses for the prosecution during trial so that the defense can enjoy their right to examine them before independent and impartial court.

Article 28. Reasonable time

1. In the course of criminal proceedings, each procedural action or procedural decision must be performed or adopted within reasonable time. Considered reasonable shall be such time that is objectively necessary for the performance of procedural actions and the adoption of procedural decisions. Reasonable time may not exceed the times prescribed by the present Code for individual procedural actions or for adoption of individual procedural decisions.

2. Conducting pre-trial investigation within a reasonable time is ensured by public prosecutor and investigating judge (as regards the times for examining matters assigned to their competence), while trial within a reasonable time is ensured by court.

3. The following shall be the criteria for determining the reasonable time for criminal proceedings:

1) complicated nature of criminal proceedings, which is determined taking into account the number of suspects, accused and criminal offences subject to this proceeding, the scope and specifics of the procedural actions required for pre-trial investigation to be completed, etc.;

2) attitude of participants to criminal proceedings;

3) the way in which investigator, public prosecutor, and court exercise their powers.

4. Criminal proceedings in respect of the individual kept in custody as well as in respect of an underage shall be conducted without any delay and considered in court as a matter of priority.

5. Everyone shall have the right for a charge to be subject of a trial within the shortest possible time or criminal proceedings concerned closed.

6. A suspect, accused, victim, other persons whose rights or interests are restricted during a pre-trial investigation, have the right to address a prosecutor, investigating judge or court with a petition setting out the circumstances that necessitate criminal proceedings (or certain procedural actions) in a shorter period than those provided for by this Code.

Article 32. Territorial jurisdiction

1. Criminal proceedings shall be carried out by a court within the territorial jurisdiction of which a criminal offence was committed. If several criminal offences were committed, criminal proceedings shall be instituted by a court within the territorial jurisdiction of which the more serious offence was committed, and if they were of the same gravity, by a court within the territorial jurisdiction of which the most recent criminal offence was committed. If the place of commission of a criminal offence cannot be established, criminal proceedings shall be conducted by a court within the territorial jurisdiction of which a pre-trial investigation has been completed. This paragraph does not apply to criminal proceedings that fall within the substantive jurisdiction of the High Anti-Corruption Court in accordance with the rules of Article 33^1 of this Code.

Criminal proceedings over crimes committed on the territory of Ukraine and are subject to the substantive jurisdiction of the High Anti-Corruption Court shall be carried out by the High Anti-Corruption Court.

2. Criminal proceedings on criminal charges against a judge may not be conducted by the court where the accused is holding or held the office of a judge. Where the rule of the first paragraph above required that criminal proceedings against a judge should be conducted by the court where the accused is holding or held the office of a judge, such criminal proceedings shall be conducted by the court of another political unit (Autonomous Republic of Crimea, oblast, the city of Kyiv or Sevastopol) which is territorially the closest to the court where the accused is holding or held the office of a judge.

3. If a criminal offence, a pre-trial investigation of which was conducted by the territorial office of the National Anti-Corruption Bureau of Ukraine (except for crimes referred by this Code to the jurisdiction of the High Anti-Corruption Court), is committed within the territorial jurisdiction of the local court where the territorial office of the National Anti-Corruption Bureau of Ukraine is located, then criminal proceedings shall be carried out by the court closest to the court at the location of the relevant territorial office of the National Anti-Corruption Bureau of Ukraine, another administrative territorial unit (the Autonomous Republic of Crimea, a region, the city of Kyiv or Sevastopol).

Article 297-1. General provisions related to special pre-trial investigation

1. Special pre-trial investigation (in absentia) shall be conducted in respect of one or more suspects according to general rules of a pre-trial investigation, which are specified by this Code, taking into account provisions of this Chapter.

2. Special pre-trial investigation shall be conducted pursuant to a decision of an investigating judge within criminal proceedings over crimes specified by Articles c109, 110, 110-2, 111, 111-1, 111-2, 112, 113, 114, 114-1, 114-2, 115, 116, 118, paragraph two of Article 121, paragraph two of Article 127, paragraphs 2 and 3 of Article 146, Articles 146-1, 147, paragraphs two to five of Article 191 (in case of abuse of power by an official), Articles 209, 255-258, 258-1, 258-2, 258-3, 258-4, 258-5, 348, 364, 364-1, 365, 365-2, 368, 368-2, 368-3, 368-4, 369, 369-2, 370, 379, 400, 408, 436, 436-1, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447 of the Criminal Code of Ukraine in respect of the suspect (except for a minor), who hides from investigation and justice for the purpose of avoiding criminal liability in the temporarily occupied territory of Ukraine or in the territory of the state recognized by the Verkhovna Rada of Ukraine as the aggressor state or who has been put on the interstate or international wanted list.

Section IX
SPECIFICS OF COOPERATION WITH THE INTERNATIONAL CRIMINAL COURT

[Note. This Section applies exclusively to the cooperation with the International Criminal Court to extend its jurisdiction to persons (citizens of Ukraine, foreign citizens and stateless persons) who, at the time when the crime within the jurisdiction of the International Criminal Court was committed, were under the authority and/or acted to carry out armed aggression against Ukraine, and/or based on decisions (orders, instructions, etc.) of the officials, military command, or authorities of the Russian Federation or another country that carried out aggression, or facilitated aggression against Ukraine.]

Article 617. The scope and procedure of cooperation with the International Criminal Court

1. The cooperation with the International Criminal Court to facilitate the prosecution and punishment of the persons who have committed crimes within its jurisdiction shall be carried out by taking required measures following a request of the International Criminal Court for cooperation, including a request for assistance, provisional arrest, arrest and surrender of a person, and other requests that may be submitted according to the Rome Statute of the International Criminal Court.

In the instances provided for by this Code and the Rome Statute of the International Criminal Court, an authorized body, through a central government authority of Ukraine, may apply to the International Criminal Court with a request (solicitation) for assistance.

2. The cooperation between Ukraine and the International Criminal Court shall be carried out within the procedure stipulated by this Code and the Rome Statute of the International Criminal Court, taking into account the specifics provided for by this Section.

3. The provisions of this Section shall also apply to executing requests of the International Criminal Court to investigate the crimes against the administration of justice by the International Criminal Court.

4. The terms used in this Section, unless defined in this Code, shall be used in the meanings set out in the Rome Statute of the International Criminal Court.

Article 619. Consultations with the International Criminal Court

1. The central government authority of Ukraine shall consult with the International Criminal Court provided that the execution of a request for cooperation of the International Criminal Court:

1) may disturb public order or harm the national security of Ukraine;

2) may impede criminal proceedings on the territory of Ukraine not related to the request; and

3) may result in breaching a pre-existing treaty obligation undertaken with respect to another state.

2. Consultations may take place in other instances provided for by this Section or the Rome Statute of the International Criminal Court following a request of the central government authority of Ukraine or International Criminal Court.

3. In the instances provided for by part one or two of this Article, the central government authority of Ukraine shall address the issue of the postponement of execution of such request until the end of consultations.

Article 620. Transfer of criminal proceedings under cooperation with the International Criminal Court

1. In case of a transfer of criminal proceedings to the International Criminal Court, the central government authority of Ukraine shall receive from the investigator, prosecutor or court materials of criminal proceedings and submit them to the International Criminal Court. The consequences of the transfer of criminal proceedings shall be regulated by Article 601 of this Code.

2. Following a request of the International Criminal Court, the central government authority of Ukraine may take on criminal proceedings regarding the crimes against the administration of justice by the International Criminal Court.

3. The central government authority of Ukraine shall consult with the International Criminal Court on the possibility to take on criminal proceedings regarding a citizen of Ukraine.

Article 621. The execution of a request of the International Criminal Court for assistance

1. A request of the International Criminal Court for assistance in connection with procedural actions shall be executed within the procedure and timelines provided for by Article 558 of this Code, taking into consideration the specifics stipulated by Article 562 of this Code and the Rome Statute of the International Criminal Court.

2. If the execution of a request of the International Criminal Court for assistance requires additional information, the central government authority of Ukraine shall apply to the International Criminal Court with regard to holding relevant consultations.

3. The central government authority of Ukraine may postpone the execution of a request of the International Criminal Court for assistance:

1) for a term agreed upon with the International Criminal Court, provided that the immediate execution of the request would interfere with an ongoing pre-trial investigation or prosecution of a case in Ukraine different from that to which the request relates. The term for which the execution of a request is postponed cannot exceed the term required to complete relevant criminal proceedings in Ukraine; and

2) for a term pending a determination by the International Criminal Court regarding the jurisdiction or admissibility of a case, unless the International Criminal Court has specifically ordered that the Prosecutor of the International Criminal Court may pursue the collection of such evidence.

In case of the postponement of the execution of a request of the International Criminal Court on the grounds provided for by part three of this Article, the central government authority of Ukraine, following a request of the Prosecutor of the International Criminal Court, shall take actions to preserve evidence within the procedure stipulated by this Code.

4. If a request of the International Criminal Court for assistance cannot be executed under the conditions provided for by the request, the central government authority of Ukraine shall consult with the International Criminal Court on the possibility to execute the request under other conditions.

5. If a request of the International Criminal Court for assistance specifies the need for the immediate execution thereof, the documents or evidence drafted or received by authorized bodies of Ukraine as a result of execution of such request shall be sent to the central government authority of Ukraine to be submitted to the International Criminal Court no later than on the day following the date of execution.

6. If a request of the International Criminal Court for assistance provides for procedural actions regarding a person, facility or property that have diplomatic immunity on the territory of Ukraine under Ukraine's international treaty, consented to be binding by the Verkhovna Rada (Parliament) of Ukraine, the central government authority of Ukraine shall notify the International Criminal Court of this and postpone the execution of the request for a term pending the receipt of information on the agreement between the International Criminal Court and a relevant foreign state (international organization) regarding the waiver of diplomatic immunity.

7. The summons for a person, with regard to whom the International Criminal Court has reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court, to appear in the International Criminal Court shall be served directly on the person.

8. The central government authority of Ukraine, pursuant to a request of the International Criminal Court for assistance, shall take measures to ensure security of victims, witnesses and their family members according to the legislation of Ukraine.

9. The central government authority of Ukraine, following consultations with the International Criminal Court, may deny a request of the International Criminal Court for assistance, in whole or in part, if the request concerns the disclosure of information which relates to the national security of Ukraine.

10. The central government authority of Ukraine shall promptly inform the International Criminal Court about decisions adopted as a result of consideration of a request of the International Criminal Court for assistance. If the request for assistance is denied, the central government authority of Ukraine shall provide the reasons for such denial.

Article 622. Confidentiality and protection of data which relate to the national security of Ukraine during the cooperation with the International Criminal Court

1. A request of the International Criminal Court for assistance and any documents supporting the request shall not be disclosed. The fact of making a request for assistance and information contained in the request may be disclosed only in case and to the extent that the disclosure is necessary for execution of the request of the International Criminal Court for assistance.

2. Information obtained as a result of execution of a request of the International Criminal Court for assistance in Ukraine and defined by law as restricted information may be submitted to the International Criminal Court only provided that this will not harm national security of Ukraine and if it was agreed upon with the International Criminal Court that such information will be used in compliance with the restrictions for its dissemination and access established by law, as well as, in some instances, with the Prosecutor of the International Criminal Court that the provided information will be used exclusively to obtain new evidence.

3. The central government authority of Ukraine shall notify the International Criminal Court of removing restrictions for the dissemination of information defined by law as restricted, following a request of the Prosecutor of the International Criminal Court, or at any other time when it becomes possible according to the law.

4. If a request of the International Criminal Court for assistance is related to the transmission of information obtained by Ukraine under conditions of confidentiality from another state or international organization, the central government authority of Ukraine shall obtain consent of such state or international organization for the transmission of such information in advance.

If a State not party to the Rome Statute of the International Criminal Court or international organization refuses to give its consent to disclose information referred to in a request of the International Criminal Court, the central government authority of Ukraine shall notify the International Criminal Court of the impossibility to execute the request.

5. If during execution of a request of the International Criminal Court for cooperation an authorized body of Ukraine finds that execution of the request may result in disclosure of information which relates to national security of Ukraine, the authorized body of Ukraine shall cease execution of the request and immediately notify the central government authority of Ukraine of this. The central government authority of Ukraine shall consult with the International Criminal Court to determine the conditions of further execution of the request and avoiding disclosure of information which relates to national security of Ukraine.

If as a result of consultations it is found that it is impossible to provide relevant information pursuant to a request of the International Criminal Court for cooperation without harm to national security of Ukraine, the central government authority of Ukraine shall notify the International Criminal Court of this, indicating specific motives of its decision, unless the description of such motives may harm national security of Ukraine.

Article 623. Ensuring preservation of evidence

1. The central government authority of Ukraine shall take measures to ensure the preservation of evidence on the territory of Ukraine pursuant to a request of the International Criminal Court within the procedure stipulated by this Code, under conditions and within timelines determined by the International Criminal Court.

2. If execution of a request of the International Criminal Court affects the rights of bona fide third parties, or there are circumstances that may impede preservation of evidence, the central government authority of Ukraine shall consult with the International Criminal Court on the change of conditions and timelines for ensuring the preservation of evidence.

Article 624. The fulfillment of functions of the International Criminal Court on the territory of Ukraine

1. Procedural actions on the territory of Ukraine based on and pursuant to a request of the International Criminal Court may be carried out by the Prosecutor of the International Criminal Court, except for procedural actions that require to be agreed upon with the prosecutor or permission of the investigating judge or court.

2. Following a request of the International Criminal Court, the central government authority of Ukraine shall take measures to facilitate the fulfillment of functions of the International Criminal Court, in particular, conducting hearings on the territory of Ukraine.

Article 625. Temporary transfer of a person to the International Criminal Court to conduct procedural actions

1. A person in custody or serving sentence in a form of imprisonment on the territory of Ukraine may be temporarily transferred following a request of the International Criminal Court to give testimony or participate in other procedural actions during the consideration of a case by the International Criminal Court.

2. Temporary transfer of a person to the International Criminal Court based on this Article is only possible upon the availability of a written consent of the person.

3. The central government authority of Ukraine, pending the decision on temporary transfer of a person, shall agree with the International Criminal Court upon the term and other conditions of the transfer. In agreeing upon the conditions of temporary transfer, the term of custody or sentence in a form of imprisonment, as well as requirements of Chapter 18 of this Code shall be taken into consideration.

If a person transferred to the International Criminal Court is subject to release from custody pending the end of the period of temporary transfer, the central government authority of Ukraine shall notify the International Criminal Court of this and concurrently file a request to apply to the person the guarantees provided for witnesses who appeared in response to a summons to the International Criminal Court.

4. The time of custody outside Ukraine in connection with temporary transfer to the International Criminal Court shall be included in the total term of sentence imposed on a person by a judgment of a court of Ukraine.

Article 626. Requests (solicitations) to the International Criminal Court

1. The central government authority of Ukraine may send requests (solicitations) for assistance to the International Criminal Court drafted by an investigator upon agreement with a prosecutor, prosecutor, or court, related to criminal proceedings regarding crimes within the jurisdiction of the International Criminal Court, or other crimes of grave or especially grave severity.

2. Requests (solicitations) for assistance according to this Article shall be drawn in a written form following the rules stipulated in Articles 551 and 552 of this Code, and sent together with the translation thereof into one of the working languages of the International Criminal Court.

3. The central government authority of Ukraine and competent authorities of Ukraine shall ensure the use of information obtained pursuant to the execution of requests (solicitations) for assistance under this Article in compliance with conditions stipulated by the International Criminal Court or a state that has provided the information to the International Criminal Court.

Article 627. The rights of a person with regard to whom a request of the International Criminal Court for cooperation was received

1. A person with regard to whom a request of the International Criminal Court for questioning of that person as witness, victim, expert, suspect or accused was received shall have all rights provided for by this Code for relevant litigants of criminal proceedings.

2. Prior to executing a request, a person with regard to whom the request of the International Criminal Court was received shall be notified that:

1) the person shall have a right not to incriminate himself or herself or to confess guilt; and

2) if questioned in a language other than a language the person fully understands and speaks, shall have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to execute a request of the International Criminal Court in the language that person is fluent in.

3. Where there are grounds to believe that a person has committed a crime within the jurisdiction of the International Criminal Court and that person is about to be questioned pursuant to a request of the International Criminal Court, that person shall also have the following rights, of which he or she shall be informed prior to being questioned:

1) to be informed that there are grounds to believe that he or she has committed a crime within the jurisdiction of the International Criminal Court;

2) to remain silent, without such silence being a consideration in the determination of guilt or innocence;

3) to have legal assistance of the person's choosing, or have legal assistance assigned to him or her, and without payment by the person if the person does not have sufficient means to pay for it; and

4) to be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel.

4. A person with regard to whom a request of the International Criminal Court for provisional arrest or for arrest and surrender was received, shall have a right:

1) to be informed promptly and in detail of the nature, cause and content of the criminal offences he or she is suspected to have committed, in a language which the person fully understands and speaks;

2) to get familiarized with a request of the International Criminal Court for arrest and surrender or obtain a copy thereof;

3) to participate in the consideration of issues related to a request of the International Criminal Court for his or her provisional arrest or for arrest and surrender;

4) to express his or her opinion on the request of the International Criminal Court for his or her provisional arrest or for arrest and surrender during trial;

5) to apply for interim release from custody pending surrender to the International Criminal Court;

6) to conduct the defense in person or through legal assistance, to be informed, if the person does not have legal assistance, of this right and to have legal assistance assigned by the Court without payment if the person lacks sufficient means to pay for it;

7) to apply with a request for surrender to the International Criminal Court within a simplified procedure;

8) to communicate, freely and without time limits, with a counsel under conditions ensuring the confidentiality of the communication; and

9) to have, free of any cost, the assistance of an interpreter and obtain documents or such translations in native language or another language the person is fluent in.

5. A preventive measure in a form of custody may be imposed on a person with regard to whom a request of the International Criminal Court for provisional arrest, or arrest and surrender was received exclusively upon the court decision within the procedure stipulated by Articles 629-631of this Code.

Article 628. Specifics of detaining persons wanted by the International Criminal Court or with regard to whom a request of the International Criminal Court for provisional arrest or arrest and surrender was received

1. The detention on the territory of Ukraine of persons wanted by the International Criminal Court or with regard to whom a request of the International Criminal Court for provisional arrest or arrest and surrender was received, as well as consideration of complaints on detention thereof shall be carried out taking into account the specifics stipulated by Article 582 of this Code and this Section.

Article 629. The imposition of a preventive measure in a form of custody upon a request of the International Criminal Court for provisional arrest (provisional arrest)

1. Upon a request of the International Criminal Court for provisional arrest, a preventive measure in a form of custody for up to 60 days (provisional arrest) shall be imposed on a person.

2. The central government authority of Ukraine may postpone execution of a request for provisional arrest pending a decision of the International Criminal Court with respect to jurisdiction or admissibility.

3. A public prosecutor shall apply to an investigating judge on whose territorial jurisdiction the detention has been made with a motion to impose on a person a preventive measure in a form of custody following a request of the International Criminal Court for provisional arrest.

4. The consideration of the motion to impose on a person a preventive measure in a form of custody following a request of the International Criminal Court for provisional arrest shall be carried out according to the rules of this Code and taking into account the provisions of this Article.

5. The motion to impose on a person a preventive measure in a form of custody following a request of the International Criminal Court for provisional arrest submitted by the prosecutor for the consideration of the investigating judge shall contain:

1) a report of apprehension of a person with a note clarifying the right of the person to consent to surrender to the International Criminal Court within a simplified procedure;

2) copy of a request of the International Criminal Court for provisional arrest and documents attached thereto certified by the central government authority of Ukraine; and

3) documents that confirm the identity of the detained person.

6. When considering the motion to impose on a person a preventive measure in a form of custody following a request of the International Criminal Court for provisional arrest, the investigating judge shall establish whether the submitted evidence prove that:

1) the detained person is the person with regard to whom a request of the International Criminal Court for provisional arrest was received;

2) during apprehension of the person the requirements of procedural law were met; and

3) the rights of a detained person provided for by this Code were observed.

When considering the motion, the investigating judge shall not examine the issue of the guilt of the person and shall not check the lawfulness of a request of the International Criminal Court for provisional arrest of the person.

7. The motion shall be considered by the investigating judge with the participation of the prosecutor, detained person and his or her counsel within the shortest possible time, but no later than within seventy-two hours after the detention of the person.

8. When considering the motion, the investigating judge shall establish the identity of the detained person; explain the person his or her right to apply the simplified procedure of surrender and find out whether the person seeks to exercise this right; and listen to the opinion of a public prosecutor and other participants.

In case the detained person provided consent to transfer to the International Criminal Court within the simplified procedure, the investigating judge shall address the issue of approving the person's consent to the transfer and imposition of a preventive measure in a form of custody pending actual surrender of the person to the International Criminal Court.

9. Based on the results of consideration of the motion, the investigating judge shall adopt a ruling:

1) to impose on a person a preventive measure in a form of custody;

2) to impose on a person a preventive measure in a form of custody or preventive measure not related to custody if the person provides information that the issue of his or her guilt for committing an act to which a request of the International Criminal Court is related has been already resolved by another court, or that the person was acquitted for such act by another court. In this case, the investigating judge shall notify the central government authority of Ukraine of this within a one-day period to hold consultations with the International Criminal Court;

3) to deny the imposition of a preventive measure in a form of custody on a person if the detained person is not the person wanted by the International Criminal Court, or mentioned in a request of the International Criminal Court for provisional arrest;

4) to approve a person's consent to surrender to the International Criminal Court within a simplified procedure and impose a preventive measure in a form of custody pending actual surrender of a person to the International Criminal Court.

A copy of the ruling of the investigating judge adopted based on the results of consideration of the motion shall be promptly sent to the central government authority of Ukraine through a relevant Oblast (region) prosecutor's office to provide further information to the International Criminal Court.

10. If the term of a preventive measure in a form of custody requested by the International Criminal Court has terminated, and a request of the International Criminal Court for arrest and surrender has not been received, a person shall be subject to immediate release from custody.

11. Release of a person from custody in connection with the untimely receipt of a request of the International Criminal Court for arrest and surrender by the central government authority of Ukraine shall not prevent imposing a preventive measure in a form of custody on the person as per request of the International Criminal Court for arrest and surrender in case such request is received later.

12. If a request of the International Criminal Court for arrest and surrender is received before the end of term of a preventive measure in a form of custody as per request of the International Criminal Court for arrest and surrender, the ruling of the investigating judge to impose this preventive measure shall be null and void from the moment the investigating judge adopts the ruling according to part six of Article 631 of the Code.

13. The ruling of the investigating judge adopted according to points 1-3 of part nine of this Article may be appealed by a person on whom a preventive measure in a form of custody was imposed as per request of the International Criminal Court for provisional arrest, his or her counsel or legal representative, prosecutor.

Article 630. Surrender of a person to the International Criminal Court within simplified procedure

1. A person on whom a preventive measure in a form of custody was imposed as per request of the International Criminal Court for provisional arrest, at any time pending the receipt of the request of the International Criminal Court for arrest and surrender, shall have a right to file a written application regarding his or her consent to surrender to the International Criminal Court within simplified procedure to the investigating judge.

2. The head of a pre-trial detention facility, having received a written application of a person regarding his or her consent to surrender to the International Criminal Court within simplified procedure, shall promptly send the application for consideration of the court on which territorial jurisdiction the detention has been made, and notify the chair of a relevant Oblast (region) prosecutor's office of this.

3. Based on the results of consideration of the application, the investigating judge shall adopt a ruling to approve the consent of a person to surrender to the International Criminal Court within simplified procedure and impose a preventive measure in a form of custody pending actual surrender of the person to the International Criminal Court.

The ruling of the investigating judge to approve the consent of a person to surrender to the International Criminal Court within simplified procedure shall not be subject to appeal.

If the investigating judge finds the lack of voluntary consent of a person to surrender to the International Criminal Court, he or she shall deny the approval of consent.

4. A relevant Oblast (region) prosecutor's office shall promptly send the central government authority of Ukraine a copy of a ruling of the investigating judge to approve the consent of a person to surrender to the International Criminal Court within simplified procedure together with a copy of a written application of the person on his or her consent to surrender.

5. The central government authority of Ukraine shall organize the surrender of a person to the International Criminal Court within simplified procedure within five working days since the ruling of the investigating judge approving the consent of the person to surrender was received, or within other timelines agreed upon with the International Criminal Court.

Article 631. Execution of a request of the International Criminal Court for arrest and surrender

1. After a request of the International Criminal Court for arrest and surrender of a person is received, upon the assignment of the central government authority of Ukraine, the prosecutor shall apply to the investigating judge at the place of detention of the person or place of stay of the person with a motion to impose on the person a preventive measure in a form of custody pending his or her actual surrender and to surrender to the International Criminal Court as per the warrant of arrest or sentence in a form of imprisonment issued by the International Criminal Court.

2. Together with the motion, the prosecutor shall submit for consideration of the investigating judge a copy of a request of the International Criminal Court for arrest and surrender of a person and any documents supporting the request, certified by the central government authority of Ukraine.

3. The warrant of arrest of a person or a copy of a judgment of conviction (sentence) issued by the International Criminal Court shall constitute grounds for the investigating judge to address the issue of imposing a preventive measure in a form of custody on a person pending his or her actual surrender and of surrender of the person to the International Criminal Court.

4. The motion shall be considered by the investigating judge with the participation of the prosecutor, detained person and his or her counsel.

5. When considering the motion of the prosecutor, the investigating judge shall establish whether the provided evidence prove that:

1) the detained person is the person mentioned in a warrant of arrest or sentence of the International Criminal Court;

2) during apprehension of the person the requirements of procedural law were met; and

3) the rights of a detained person provided for by this Code were observed.

6. Based on the results of consideration of the motion, the investigating judge shall adopt a ruling:

1) to impose on a person a preventive measure in a form of custody pending his or her actual surrender to the International Criminal Court pursuant to a request of the International Criminal Court for arrest and surrender; or

2) refuse to impose on a person a preventive measure in a form of custody and to surrender the person if the detained person is not the person mentioned in a warrant of arrest of the International Criminal Court or sentence of the International Criminal Court.

A copy of the ruling of the investigating judge shall be promptly sent to the central government authority of Ukraine.

7. After the announcement of the ruling referred to in point 1 of part six of this Article, the investigating judge shall explain the person:

1) his or her right to appeal against the warrant of arrest issued by the International Criminal Court at the Pre-Trial Chamber of the International Criminal Court; and

2) his or her right to apply for interim release pending his or her surrender to the International Criminal Court according to Article 632 of this Code.

8. The ruling of the investigating judge adopted according to part six of this Article may be appealed by a person with regard to whom a request of the International Criminal Court for arrest and surrender was received, his or her counsel or legal representative, prosecutor.

9. If the term of a preventive measure in a form of custody pending actual surrender of a person to the International Criminal Court is terminating, and the surrender of the person to the International Criminal Court has not taken place, the term of custody may be extended by the investigating judge upon a motion of the prosecutor. The motion to extend the term shall be submitted by the prosecutor no later than five days before the end of the term of custody pending actual surrender of a person to the International Criminal Court.

Article 633. Organizing surrender of a person to the International Criminal Court

1. The central government authority of Ukraine shall organize the surrender of a person to the International Criminal Court pursuant to a request of the International Criminal Court for arrest and surrender after the court ruling adopted according to point 1 of part six of Article 631 of the Code comes into force.

2. The actual surrender of a person to the International Criminal Court shall be carried out in a way and within the timelines agreed upon with the central government authority of Ukraine and International Criminal Court.

3. If the person sought is being proceeded against or is serving a sentence on the territory of Ukraine for a crime different from that for which a request of the International Criminal Court for arrest and surrender is made, the central government authority of Ukraine may postpone the actual surrender of the person for a term agreed upon with the International Criminal Court.

Article 634. Transit of a person surrendered to the International Criminal Court

1. The central government authority of Ukraine, upon a request of the International Criminal Court, shall give consent to transit of a person surrendered by another state to the International Criminal Court through the territory of Ukraine.

2. A person transported through the territory of Ukraine shall be detained in custody based on a relevant decision of the International Criminal Court.

3. No authorization is required if the person is transported by air and no landing is scheduled on the territory of Ukraine.

4. If an unscheduled landing occurs on the territory of Ukraine, a transported person shall be detained in custody according to part two of this Article. If there are grounds to believe that the person may stay on the territory of Ukraine for more than twenty-four hours, the central government authority of Ukraine shall promptly require a request for transit from the International Criminal Court. If the request of the International Criminal Court for transit of a person has not been received within 96 hours from the unscheduled landing, such person shall be subject to release form custody.

Article 635. Costs associated with execution of requests of the International Criminal Court for cooperation

1. The ordinary costs for execution of requests of the International Criminal Court for cooperation in the territory of Ukraine shall be considered as procedural costs according to the Code.

2. The central government authority of Ukraine shall apply to the International Criminal Court for the compensation of:

1) costs associated with the travel and security of witnesses and experts or the provisional transfer of persons in custody to the International Criminal Court;

2) costs of translation, interpretation and transcription;

3) costs associated with expert examination;

4) costs associated with the transport of a person being surrendered to the International Criminal Court; and

5) following consultations, any extraordinary costs that may result from the execution of a request.

3. The costs associated with execution of a request of the International Criminal Court for provisional arrest, for arrest and surrender of a person, as well as costs associated with the provision of legal aid to such person shall be borne by the State Budget of Ukraine.

Article 636. Enforcement of decisions of the International Criminal Court

1. Decisions of the International Criminal Court shall be enforced in Ukraine according to the Code and other laws of Ukraine, and based on the Rome Statute of the International Criminal Court.

2. The sentence of imprisonment or life imprisonment imposed on a person by the International Criminal Court shall be enforced in Ukraine according to the rules of the Code, based on the Rome Statute of the International Criminal Court, and under conditions set out by a relevant international treaty concluded between Ukraine and International Criminal Court consented to be binding by the Verkhovna Rada (Parliament) of Ukraine.

3. Decisions of the International Criminal Court on fine and/or forfeiture shall be sent by the central government authority of Ukraine to the court at the place of residence of a person, place of serving a sentence, or place of the property to be enforced within thirty days under the procedure determined by Article 535 of the Code.

4. Decisions of the International Criminal Court on fines and/or forfeitures shall be enforced without prejudice to the rights of bona fide third parties.

5. Property, or the proceeds of the sale of real property or, where appropriate, the sale of other property, which is obtained as a result of its enforcement of a decision referred to in part four of this Article shall be transferred to the International Criminal Court.

Commentary

1. The CPC was adopted in 2012, replacing the previous procedural code developed in 1960 during the Soviet period, and was in effect until November 2012. Since Ukraine became an independent democratic state, joined the Council of Europe, and ratified the European Convention on Human Rights as well as other international instruments on human rights that would affect criminal proceedings, the procedural code adopted in 1960 has been amended many times. However, it was clear that the soviet code built on the inquisitory model of criminal proceedings cannot be adjusted to Ukraine's legal system as its core principles contradicted human rights and the rule of law. Therefore, there was a big

need to develop a new code that would foresee a democratic adversarial criminal procedure. Thus, in April 2012, the Verkhovna Rada of Ukraine (Parliament) adopted the CPC, which came into force on November 19, 2012. The CPC was a big step towards fair justice and adherence to the human rights standards in criminal justice and set forth several progressive provisions, including the following:

- clearly stated the principles of criminal proceedings emphasizing the respect for human dignity, human rights, legality, presumption of innocence, and the rule of law;
- introduced an adversarial system in which a defence counsel and prosecutor have equal procedural rights. In the previous procedural code defence counsel had limited rights when it came to collecting evidence and had to get approval for conducting expertise from the prosecutor being a party in criminal proceedings. Also, defense counsel could challenge the acts of investigators if they violated the procedural code or human rights to the prosecutor while both representing the prosecution side;
- introduced a new procedural figure – an investigative judge who shall the violation of human rights during the pre-trial investigation;
- introduced jury trials in the criminal justice system of Ukraine;
- the procedure for commencing a pre-trial investigation became clearer and less dependent on the will of an investigator. Instead, the new provision stipulated that the information about an alleged offence shall be uploaded to the Unified Registry of Pre-Trial Investigations within 24 hours of receiving an application;
- allows only attorneys admitted to the Bar to act as defenders, while previously defendant's relatives could represent them;
- introduced the direct examination of evidence by the court so that investigators would not be able to torture defendants or witnesses during the pre-trial investigation to get statements that would be added to the case.

With regard to investigating international crimes, the CPC contains no special rules for the investigation of the crime of genocide, crimes against humanity, war crimes, or the crime of aggression. These crimes are accordingly subject to pre-trial investigation and judicial consideration following the same general procedures that are stipulated for other crimes of the same severity or have the same circumstances of investigation or judicial consideration. Pre-trial investigation of the most severe criminal offences, including the ones above, is the task of the Security Service of Ukraine, the central apparatus of which is the Main Investigative Division, and local bodies which have investigative units. In particular, pursuant to Article 216(2) of the CPC, investigators of security agencies shall conduct a pre-trial investigation of criminal offences provided for by Articles 436 (propaganda of war), 437 (planning, preparation, and waging of an aggressive war), 438 (violation of the laws and customs of warfare), 439 (use of weapons of mass destruction), 440 (development, production, purchasing, storage, distribution or transportation of weapons of mass destruction) and 442 (genocide) of the CCU.

At the same time, pre-trial investigations may also be conducted by investigative bodies of the National Police of Ukraine (Article 216(1) of the CPC) with respect to criminal offenses set out by Articles 432 (marauding), 433 (violence against the population in an operational zone), 434 (ill-treatment of prisoners of war). This creates some institutional lack of coordination as different forms of "violation of the laws and customs of warfare" will be subject to investigation by different investigators. Investigators of the National Police of Ukraine will investigate the ones covered by the "privileged" articles. In contrast, others covered by Article 438 of the CCU will be investigated by investigators of the Security Service of Ukraine.

Ivan Horodyskyy: Decisions Without Enforcement: Ukrainian Judiciary and Compensation for War Damages

Just Security **(Feb. 21, 2024)**

The problem of compensation for war damages inflicted by the Russian aggression against Ukraine is a subject of active discussion domestically and internationally, and remains a priority for both the Ukrainian government and the Presidential Office.

These discussions as well as formal efforts mostly focus on two primary aspects: establishing an international compensation mechanism and confiscation of the frozen assets of the Russian Central Bank. Meanwhile, in Ukraine, individuals and businesses directly harmed by the aggression seek practical solutions for reparations and justice, often through national mechanisms, including judicial ones.

The rise in domestic claims for war damages creates challenges for the Ukrainian judiciary, not just due to the number or complexity of the cases, but also because of the ambiguity regarding the judicial system's role in this process.

It seems that the role of courts and judges in the compensation process has been ignored by the decision-makers in Ukraine– but not by the hopes of victims.

Courts and Compensation

The Ukrainian judicial system has been engaged in various, albeit patchwork, ways in the war damages compensation processes. For instance, since May 2022, the High Anti-Corruption Court has been authorized, upon request by the Ministry of Justice, to seize assets owned by sanctioned Russian citizens, primarily oligarchs. As of early February 2024, over 30 confiscation rulings have been issued. Not all requests from the Ministry of Justice have been granted, reflecting the adversarial nature of the process and the due process standards that require prosecutors to meet their burden of proof.

Most importantly, in April and May 2022, the Civil Cassation Court Within the Supreme Court issued two decisions ruling that sovereign immunities do not protect the assets of the Russian Federation. This position was supported by several key arguments, including:

- The Russian Federation is engaged in aggression against Ukraine, severely breaching its state sovereignty with the intention of committing genocide, in direct opposition to the principles and objectives of the U.N. Charter.
- Damage to the plaintiffs' property by the armed forces of the Russian Federation constitutes an exception to the state's judicial immunity, in line with customary international law, which, according to the Court, is confirmed in Draft Articles on Responsibility of States for Internationally Wrongful Acts and in practice of the International Court of Justice (North Sea Continental Shelf (Federal Republic of Germany/Netherlands) Case) and practice of the European Court of Human Rights (Cudak v. Lithuania (№ 15869/02).
- Denying the plaintiffs' claims would infringe upon their right of access to the court, as guaranteed by Article 6(1) of the European Convention on Human Rights. In the court's opinion, Russia has violated the basic principles of international law by carrying out military aggression against Ukraine. These actions, which are "international crimes," have made it impossible to maintain "courtesy and good relations" between countries and deprives the

legitimate purpose of applying the judicial immunity of the Russian Federation, which limits the plaintiff's right to a fair trial.

- Acknowledging Russia's judicial immunity would conflict with Ukraine's commitments to counter terrorism, notably in relation to the Council of Europe Convention on the Prevention of Terrorism, the International Convention for the Suppression of the Financing of Terrorism, among others.

These resolutions and the arguments they present are obviously emotional, reflecting the context of the ongoing hostilities in spring 2022. Legally, they represent a complex mosaic of arguments and references to various norms of international law. Additionally, these decisions have not been affirmed by the Grand Chamber of the Supreme Court, the rulings of which carry greater authority.

Despite this, the primary concern is that these decisions might not be recognized or enforced in other jurisdictions to facilitate the confiscation of the Russian Federation's assets. It is very doubtful that courts in other jurisdictions would accept the sovereign immunity exception that Ukraine's courts identified. Together with non-systematic and thinly-reasoned argumentation, other jurisdictions might rightly fear that the application of new and broader sovereign immunity exemptions could create a dangerous legal precedent for the world, where WWII reparation claims still are discussed.

Nevertheless, these decisions have set a certain precedent, which is being widely followed by general courts at lower levels. And there are two main reasons for this. The first one is thousands of claims from Ukrainians who, in situation of uncertainty regarding the procedure, terms and amounts of compensation, turn to the courts. And the second one is a lack of understanding of the role which judicial branch of power should play in the compensation process.

Problems of Practice

Since 2014, Ukrainian courts have been considering cases seeking compensation for damages resulting from Russian aggression, in lawsuits filed against the Russian Federation. Although there have been some favorable rulings, the vast majority of cases have been dismissed. The primary reasons for these dismissals were the lack of specific legislation on compensating victims of military actions and the principle of sovereign immunities, which is also recognized in Ukrainian law.

After Feb. 24, 2022, in the absence of clear administrative procedures and guidelines for damage compensation, tens of thousands of individuals and thousands of Ukrainian businesses affected by Russian aggression have started to bring their cases to court. Currently, hundreds of such cases are under consideration, and the favorable rulings that have been issued are beginning to establish trends in judicial practice. The Supreme Court's resolutions have paved the way for justifying deviations from the principle of sovereign immunities.

The argumentation of most of such decisions consists in copying the motivational section from the aforementioned Supreme Court rulings. However, the general courts' application and interpretation of the international law norms they refer to, raises numerous questions. For example, some courts refer to the UN Declaration on the Right to Peace of Dec. 19, 2016: "Article 1 of the Declaration on the Right to Peace certifies that everyone has the right to live in the world under conditions of protection and protection of all human rights and full realization of development."

Besides the fact that it's not an exact quote, the Declaration belongs to the "soft" international law, which lacks the binding power of treaty norms, and the customary status of the Declaration has not been established. Nevertheless, the political context here is even more significant: the Declaration was not

endorsed by any G-7 member, and Ukraine abstained from the vote. Instead, it obtained support from Russia, Belarus, Iran, North Korea, among others. Since court decisions are issued in the name of Ukraine, this raises questions about the consistency of the stance on this matter

Misunderstanding and disregard of international legal practice is a red thread running through the entire judicial practice of Ukrainian courts on this matter. For instance, in lawsuits from business, compensation for "lost profits" is often awarded.

However, practice of the ICJ in the *DR Congo v. Uganda* case shows, these damages are not compensated: "…international law imposes no responsibility to compensate for the "generalized economic and social consequences of war", and that past tribunals have not "found generalized conditions of war-related economic disruption and decline to constitute compensable elements of damage, even in the case of some types of injury bearing a relatively close connection to illegal conduct".

A similar issue arises regarding compensation for moral damages. Ukrainian courts often award substantial sums for both material and non-material damages, which is morally justifiable from the perspective of a victim-oriented approach. For instance, a Ukrainian court valued the forced relocation from Kharkiv to Kyiv at approximately $45,000. Nonetheless, these decisions are currently made on an ad hoc basis, without a clear, understandable, and consistent calculation methodology.

In seeking to apply a victim-oriented approach, the lack of consistent methodology may also have an unintended effect: victims who have suffered the loss relatives, mutilation, tortures, etc., should be entitled to even higher compensation amounts than courts are awarding. And requiring victims to return at some later date once a more coherent calculations scheme is in effect also poses problems, since the potential future review and reduction of these compensation amounts could further traumatize the victims and those affected by Russian aggression.

Conclusions

The decisions of Ukrainian courts regarding compensation to victims of Russian aggression reflect a positive intention by Ukrainian judiciary to protect the rights of those harmed by Russian aggression. However, issuing decisions in the absence of a clearer framework may negatively impact the compensation process in the future, not solely due to the judiciary's shortcomings.

A primary concern is the ambiguity surrounding the execution of Ukrainian court decisions and the overall role of Ukraine's courts in the compensation process for damages caused by aggression. The judiciary is – for various reasons, possibly political – sidelined from the development of relevant compensation mechanisms either at national or international levels. Notably, the Working Group on the Development and Implementation of International Legal Mechanisms for Compensation for Damages Caused to Ukraine as a Result of Armed Aggression by the Russian Federation, established by the Decree of the President of Ukraine of May 18, 2022, does not include a single judge.

The lack of transparency and openness in developing compensation mechanisms represents a systemic issue within the entire process. Political authorities might attribute not involving of judges to corruption scandals and a low level of public trust in the judiciary. Nonetheless, the fact that Ukrainians are turning to the courts as a single and clear mechanism for the protection of their rights in this context indicates their view of the judiciary as a vital means of safeguarding their rights and freedoms.

However, the existence of court rulings does not assure victims of any concrete outcomes, as it remains uncertain how and when the decisions will be enforced, and the actual payments made. Given that the only apparent source for enforcing these decisions is the sovereign assets of the Russian Federation located within Ukraine, their future use for compensation, even after potential confiscation, is yet to be clarified. Ukraine is currently at all the levels promoting the establishment of an international compensation mechanism, which would potentially include a Compensation Fund where all confiscated assets would ideally be allocated.

When considering a future international compensation mechanism or any other suggested model, it is necessary to decide what status the decisions of Ukrainian courts should have when paying compensation. This will guarantee the rights of victims who have applied for protection to the national judiciary and support the authority of Ukraine’s justice system.

Thus, it is crucial to ensure that the judiciary finds its role within this framework. Without such integration, there may be long-term disillusionment and additional emotional distress for victims of Russian aggression who have received favorable court decisions. This situation could also escalate social tensions surrounding this issue, potentially creating divisions between those who do and do not have court orders, those who find their orders enforced and those who do not, and thereby undermining the very purpose of a reparations scheme: to begin repairing the harms suffered under the destruction of war.

2.4 Conclusion

Ukraine's legal system is ever evolving, seeking to embody the country's rich historical legacy, established constitutional principles, ongoing legal reforms, and changing judicial system. The legal system's evolution from Soviet-era structures to a modern, democratic framework underscores Ukraine's transition towards transparency, accountability, and adherence to European legal standards. Such reforms as enhancing judicial independence, combating corruption, and promoting the rule of law are pivotal in strengthening public trust in institutions and fostering a fair and equitable society.

During the Soviet era, when Ukraine was part of the USSR, the whole criminal justice system had been built around the positivistic and punitive approaches with the rights to life, liberty, and fair trial constantly ignored. Thus, it takes a lot of effort to purify the modern Ukrainian legal system from the residues of the Soviet system. This has been a challenging task as the mentality of lawyers and legal professionals has to change as well.

In recent years, the Ukrainian legal system has progressed more towards integration with international legal frameworks, particularly in areas of human rights protection, legal cooperation, and rule-based governance. Through partnerships with European institutions like the European Union and the Council of Europe, Ukraine has been able to standardize laws and implement industry-leading practices in many fields. International instruments ratified by Ukraine are becoming more important in legal practice and Ukrainian justice sector more often applies directly the international norms, which clearly demonstrates Ukraine’s commitment towards democratic and civilized state. Ukrainian efforts in maintaining the rule of law, protecting the rights of individuals, and fostering national stability and prosperity cannot be overstated, especially in a situation when Russia for years has been supporting political and social movements that are against any democratic reforms, against combatting corruption, and European and Euro-Atlantic integration. However, much is left to be done. We pick up this theme in Chapter 13.

Chapter 3

Legislation Enacted in Ukraine as a Response to Russia's Aggression

3.1 Introduction

During the period of war, the Ukrainian parliament and judiciary remained in operation. The declaration of martial law resulted in limitations on the Verkhovna Rada, including the inability to make amendments to the constitution. Numerous laws were enacted to address both war-related issues and routine administrative matters. The war has impacted all aspects of life in Ukraine, from environmental and agriculture laws to tax laws and information warfare protections. Some of the significant changes have affected (1) national security, military, and mobilization laws; (2) judicial reforms; (3) welfare, social, and financial laws; and (4) cybersecurity, media, and informational warfare laws.

3.2. National security and military

3.2.1. Martial law

Generally, martial law grants special powers to the military and the government at the time of the emergency while limiting civil rights. As a result of martial law enforcement (Decree of the President of Ukraine of 24 February 2022 No. 64/2022 on imposition of martial law in Ukraine and the Law of

Ukraine of 24 February 2022 No. 2102 on approval of the Decree of the President of Ukraine on imposition of martial law in Ukraine), many usual rights and freedoms of citizens were limited in the name of national security. Those rights and freedoms include:

- Article 30 - inviolability of residence;
- Article 31 - confidentiality of correspondence, telephone conversations, and other means;
- Article 32 - non-interference in private and family life;
- Article 33 - freedom of movement, free choice of place of residence, the right to freely leave the territory of Ukraine;
- Article 34 - right to freedom of thought and speech, to free expression of views and convictions, as well as the right to freely collect, store, use, and disseminate information;
- Article 38 - right to participate in the administration of public affairs, in referendums, to freely elect and to be elected to state authorities and bodies of local self-government;
- Article 39 - right to meet peacefully and to hold meetings, rallies, processions, and demonstrations;
- Article 41 - right to own, use, and dispose of one's property;
- Article 42 - right to entrepreneurial activity;
- Article 43 - right to work;
- Article 44 - right to strike;
- Article 53 - right to education.

In April 2024, Ukraine reiterated its temporary restrictions on the abovementioned freedoms and rights and published reservations and declarations to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) due to prolonged martial law enactment. The document outlines specific measures and actions that can be implemented during martial law, even if they contravene the European Convention. These measures include imposing a curfew, conducting additional inspections of personal belongings such as luggage, vehicles, and houses, imposing military fees, and placing restrictions on the choice of residence. These restrictions may also involve the state using property for its needs, imposing limitations on changing or staying at a place of residence without permission, and placing general constraints on choosing a place of residence.

However, it's important to note that certain rights remain inviolable under any circumstances. These include the following articles of the Constitution, which cover a wide range of individual freedoms and protections:

- Article 24 — all citizens have equal constitutional rights;
- Article 25 — Ukrainian citizens cannot be deprived of citizenship, expelled, or extradited;
- Article 27 — right to life, and the state must protect human life;
- Article 28 — right to respect human dignity and must not be subjected to torture or degrading treatment;
- Article 29 — right to liberty and security; arrests or detentions require a court order, with temporary preventive detention up to 72 hours;
- Article 47 — right to housing;
- Article 51 — right to free consensual marriage (between a man and a woman);
- Article 52 — all children have equal rights regardless of origin or legitimacy;
- Article 55 — the courts protect human and civil rights and freedoms;
- Article 56 — right to compensation for damages caused by unlawful actions of state or local officials;
- Article 57 — right to know their rights and obligations;

- Article 58 — laws have no retroactive force except to mitigate or annul liability;
- Article 59 — right to legal assistance;
- Article 60 — no one must follow manifestly criminal orders or rulings;
- Article 61 — no double jeopardy for the same offense;
- Article 62 — a person is presumed innocent until proven guilty by a court;
- Article 63 — a person cannot be liable for refusing to testify against themselves or relatives.

The martial law allows the government to temporarily take control of private property or assets in Ukraine for military or defense purposes. Article 41 of the Constitution of Ukraine states that property rights cannot be unlawfully deprived. The Law of Ukraine "On the Transfer, Forced Alienation or Seizure of Property under Legal Regime of Martial Law or State of Emergency," expressly allows for the compulsory alienation of property, with full reimbursement of its value when the martial law is in force (the amendments to the law were introduced on September 2022). Authorities must have a process of assessing whether the property will be beneficial for military operations, notify the owners where possible, compensate, and revert it to the rightful owner when the emergency is resolved.

3.2.2. Mobilization laws

The new mobilization law (April 2024) brought changes to the procedure of military discharge and payment plans for military families and reduced the military age from 27 to 25. Earlier in the year (February 2024), the law was signed to extend the general mobilization period. Moreover, the government will not renew passports for men abroad 18-60 years of age, and dual Ukrainian citizens are stuck in Ukraine as the exception not to draft them expired in June 2024. These laws remain quite controversial.

Unfortunately, the methods that the territorial recruitment centers have been using often violate the legislation in force on human rights.

“Recruiters in Odesa distributed summonses straight out of an ambulance they drove around the city. In Cherkasy, three recruitment-center staffers beat a civilian; one of them kicked him in the face. In Ternopil, a group of women prevented recruiters from roughly detaining a man in the street. In Kyiv, a group of illegal nighttime street racers received notices as a form of punishment -- a practice that became widespread for petty-crime or misdemeanor suspects despite criticism from civil society and the military.”

Representatives of the territorial recruitment centre forcefully put a man inside their car in Odesa

There have been cases when, during a mobilization, men are kidnapped, deprived of cell phones and unable to contact their family members or an attorney. Only after a few days of their absence, when their relatives report it to the police, do they find out that those men were mobilized. There are thousands of cases in the Ukrainian courts challenging unlawful acts of territorial recruitment centers.

Ukraine is also engaged in industry mobilization, a multifaceted process aimed at strengthening the country's industrial sector amidst challenging circumstances and laying the groundwork for future growth and stability. It involves converting civilian industries to support war efforts, such as manufacturing military equipment, ammunition, and other defense-related products.

3.2.3. Territorial defense and national resistance

Territorial defense law (2022): Territorial Defense Forces (TDF) have existed unofficially since 2014 but were officially implemented in 2022. These laws were implemented as a part of a larger umbrella of an increasing number of laws on the National Armed Forces under laws "On the Fundamentals of National Resistance" and “On Amendments to the Law "On the Number of the Armed Forces of Ukraine" signed by President Zelenskyy in 2021. The law “On the Fundamentals of National Resistance” №5557 established territorial defense forces, enhanced training for reservists and civilians, and ensured integration of civilian resistance efforts. The law also outlined the logistics, financial support, and social protections for national resistance participants. This law was paired with law №5558 “On Amendments to the Law “On the Number of the Armed Forces of Ukraine,” which increased the number of the armed forces and territorial defense.

3.2.4. National Security Measures

The Law of Ukraine № 2469-19 on National Security (2018) established the framework for defense planning, military development, and security sector reform and increased cooperation with NATO forces. Generally, the law was a positive development. However, civil society stakeholders commented on need for improvement, namely, the vagueness of terms and lack of civil society oversight.

A major piece of legislation was the 2021 Law on the Approval of the Resolution of the President of Ukraine on Admission of Units of the Armed Forces of Other States to the Territory of Ukraine in 2022 for Participation in Multinational Exercises (Foreign Armed Forces' Exercises Law). This law prescribes joint training and participation in drills on land, at sea, and in the air on a multinational level that strengthens national defense capabilities.

Budget spending for defense has significantly increased over the years and keeps growing. According to the Stockholm International Peace Research Institute (SIPRI), Ukraine remains in 2023 among the top ten military-spending countries, with "[t]he largest increase was in Ukraine, where military spending as a share of GDP rose by 11 percentage points to reach 37 per cent." "Among the top 10, military spending as a share of government expenditure was highest in Ukraine (58 per cent)" while Russia is at 16 percent. It also states that "[t]he most notable increases in 2023 were in Ukraine (+19 percentage points) and Russia (+3.2 percentage points)."

The Law of Ukraine "On the Condemnation of the Communist and National Socialist (Nazi) regimes, and Prohibition of Propaganda of their Symbols" limits free speech.The law "establishes punishment for public denial of the criminal nature of those regimes, dissemination of information aimed at justifying their criminal nature, and the production or dissemination and public use of products containing their symbols," according to the 2023 U.S. Department of State report on International Religious Freedom in Ukraine.

The Law of Ukraine "On Supporting the Functioning of the Ukrainian Language as the State Language" - Law of Ukraine on April 25, 2019 № 2704-VIII – has impacted the country, since a large portion of the population speak Russian as their first language. Ukraine is a multi-ethnic country. According to the latest Ukrainian population census of 2001, ethnic Ukrainians comprise 77.8% of the population. Other larger ethnic groups are Russians (17.3%), Belarusians (0.6%), Moldovans (0.5%), Crimean Tatars (0.5%), Bulgarians (0.4%), Hungarians (0.3%), Romanians (0.3%), Poles (0.3%), Jews (0.2%), Armenians (0.2%), and Greeks (0.2%). Ukraine also has smaller populations of Karaites (>0.1%), Krymchaks (>0.1%), and Gagauzes (0.1%). Although the Ukrainian language is the only state language of Ukraine, many ethnic Ukrainians and persons belonging to non-Russian minorities have a command of the Russian language and even consider it their "native language." According to the 2001 census, 67,5% of the population of Ukraine declared Ukrainian to be their "native language," while 29,6% declared Russian their "native language." As explained above, this is the outcome of the historical policy of eliminating the Ukrainian language, which has lasted for centuries. Not just in Ukraine, but also in other former soviet republics, language became one of the main tools of Russia's hybrid war strategy and, thus, a matter of national security. The same pattern was used in South Ossetia, Transnistria, and Donbas: first, Russia promotes increasing the use of the Russian language, often appealing to post-Soviet sentiments, then it embarks upon illegal occupation of some territory, justifying it with the need to defend Russian-speaking people.

The Law No. № 2704-VIII introduced certain measures aimed at strengthening the position of the Ukrainian language as the only official language in Ukraine in the areas of public service, education,

science, healthcare services, political activities, media, economic activities, and elections. This law also created the post of Commissioner for the Protection of State Language, and this office is mandated to ensure adherence to the respective legislation on the functioning of a state language by monitoring the activities using the state language and taking measures to react to violations in this area, including imposing fines.

Certain ethnic minorities in Ukraine protested against the law as, from their point of view, it violated their right to education by requiring that secondary education be in Ukrainian. In contrast, members of the national minorities and indigenous people may study their native language as a subject. This caused diplomatic tensions between Ukraine and Hungary, calling for a review of the provisions discriminating against the Hungarian community in Ukraine. However, Ukraine, being a unitary republic with only one official state language, still must ensure its citizens a right to access state-provided services by providing the necessary education in Ukrainian, as it is impossible to have all services available in more than 20 languages of national minorities. The Venice Commission, in its Opinion, has stated that:

> 134. In view of the particular place of the Russian language in Ukraine (which is the most used language of all of Ukraine's regional or minority languages and the main language of communication for many persons belonging to non-Russian minorities) as well as the oppression of the Ukrainian language in the past, the Venice Commission fully understands the need for the Ukrainian legislator to adopt measures to promote the use of Ukrainian as the State language. The Venice Commission itself urged in its previous opinions the Ukrainian legislator to take necessary measures with a view to strengthening the role of Ukrainian in society, a recommendation that the Law does not only implement to a certain extent but refers to expressly in its preamble."

Also, the Venice Commission issued recommendations on improving the Draft Law by reviewing the provisions of the Law providing for a differential treatment between the languages of indigenous peoples, the languages of national minorities, which are official languages of the EU, and the languages of national minorities which are not official languages of the EU.

The Law No. № 2704-VIII was immediately challenged before the Constitutional Court of Ukraine by 51 Members of Parliament representing pro-Russian political parties claiming that it violates the Constitution of Ukraine by not protecting Russian on the legislative level and being selective in terms of identifying the minority languages and languages of indigenous people. They also claimed that the law discriminates against "Russian-speaking citizens."

In its decision, the Constitutional Court of Ukraine held that Law № 2704-VIII is constitutional. Particularly, with regard to the arguments about the discrimination of so-called "Russian-speaking citizens," the Court stated:

> With regard to the circle of persons (group of persons) in respect of whom the subject of the right to constitutional petition sees discriminatory provisions in the above articles of the Law - "Russian-speaking citizens" - the Constitutional Court of Ukraine notes that a significant part of those citizens of Ukraine who mainly or in certain communication situations use Russian, at the same time speak Ukrainian and use it when appropriate. In everyday communication, and often in business communication, there is a switching of language codes of personality - a transition from Ukrainian to Russian or vice versa. The proportion of active use of each of these languages in different areas of their application, in different communicative situations, is a

variable. It is impossible to single out “Russian-speaking citizens” of Ukraine as a socio-demographic group. In fact, most Ukrainian citizens still speak Russian, and at the time of Ukraine's independence on August 24, 1991, almost all Ukrainian citizens spoke it, given the functioning of Russian as an official language in the Union of Soviet Socialist Republics (hereinafter - the USSR). It should be borne in mind that the artificial creation of “Russian-speaking citizens” in Ukraine is the result of a long-standing policy of Russification of not only ethnic Ukrainians, but also representatives of various national minorities. The change in the legal status of Ukraine in 1991 (from being a part of the USSR, which had its own strategy of state language policy and where Russian was the language of interethnic communication of all peoples inhabiting the USSR, their artificial integration into a “new community, the Soviet people,” to being an independent state, which, by definition, could not preserve the older linguistic model of society) led to a radical change in the status of the Ukrainian language, which has since taken a central place in the linguistic structure of society. The provisions of the Constitution of Ukraine, primarily Articles 10 and 11, have defined a model of linguistic existence of society that is designed to ensure the transition from Russian-Ukrainian bilingualism (with a clear predominance of the Russian language over the Ukrainian language in most of the key areas of language use) to the establishment of the Ukrainian language in all areas of public life throughout Ukraine. This transition has not yet been completed, and its logical consequence is a change in the space of the functional field of the Russian language in Ukraine, in particular its narrowing, which is objectively caused by a change in the functional status of this language, as defined by the Constitution of Ukraine. Today, all formerly “Russian-speaking citizens” of Ukraine are increasingly becoming actively or passively Ukrainian-speaking (and in many communicative situations, exclusively Ukrainian-speaking), and some of them are also Crimean Tatar-speaking, Polish-speaking, Belarusian-speaking, Hungarian-speaking, Romanian-speaking, Bulgarian-speaking, etc. In the context of the issue raised in the constitutional petition, it is essential that “Russian-speaking citizens” of Ukraine do not constitute a single social unit - one that, as a group of persons (circle of persons), is entitled to legal protection as an ethnic or linguistic unit (group), but is a political construct, not a legal category that can be subject to the legal protection regime guaranteed by the relevant provisions of the Constitution of Ukraine and international law. The phrase “Russian-speaking citizens” is an expression from the sphere of political rhetoric that has passed into everyday use, but it lacks not only legal but also semantic certainty.”

The Constitutional Court of Ukraine, referring to the European Charter for Regional or Minority Languages, stated that this Charter provides State-parties with *“wide measures of discretion,”* which Ukraine exercised by introducing certain preferences to English and other European Union official languages as this step supports Ukraine’s European and Euro-Atlantic integration being one of the Constitutional provisions.

Another important law complimenting Ukraine’s efforts to ensure the rights of minorities was the Law of Ukraine on National Minorities (Communities). This law aimed to clarify certain terms that the Law “On Supporting the Functioning of the Ukrainian Language as the State Language” built on. One of the essential definitions incorporated in Law № 2827-IX is “national minority (community)” and the specific rights they are entitled to. Particularly, this law foresees that national minorities may use their language in various spheres subject to adherence to domestic legislation. As an example of such use, in areas traditionally inhabited by persons belonging to national minorities (communities) or where such persons constitute a significant part of the population, the inscriptions of official names on the signs of local self-government bodies and municipal enterprises in the state language may be duplicated in the languages of

national minorities (communities) by decision of the relevant village, town or city councils and shall be placed on the right side or at the bottom.

The Venice Commission, in its Opinion, assessed positive developments as well as weak points of the Law and concluded:

78. The Venice Commission welcomes the adoption of a long-expected new Law on National Minorities, which provides a number of guarantees in conformity with international standards. However, to ensure full conformity with such standards, a number of provisions of that Law should be reconsidered.

79. The Venice Commission therefore makes the following key recommendations on the Law on national minorities (communities):

A. To extend the right to organise events in minority languages to all persons (Article 10(3));

B. To remove the obligation in Article 10(3) to provide for interpretation into Ukrainian of information on public events at the request of visitors (spectators), or at least to reconsider it in the light of the principle of proportionality;

C. To reconsider the obligations related to publishing books and to bookshops (Article 10(5)), in the light of the principle of proportionality;

D. To ensure more legal certainty regarding the possibility to have official inscriptions (Article 10(7)) and general information (Article 10(8)) translated in a minority language;

E. To revise Article 10(10) by providing in the Law itself criteria for the adoption of the methodology, in order to ensure the use of minority languages in contact with administrative authorities in conformity with Article 10 FCNM and with the undertakings ratified by Ukraine under Article 10(2) and 10(4) ECRM;

80. Furthermore, the Venice Commission makes the following recommendations on other laws it already assessed, and which are referred to explicitly or implicitly by the Law on national minorities (communities):

F. To reconsider the provisions in other laws containing limitations of the freedom to use the minority language and differential treatments of the minority languages, in the light of the previous Opinions of the Venice Commission; (see however also para. 41, last sentence, deeming it justified to have a transitional period until the end of martial law, to amend the specific provisions containing a differential treatment of the EU- and the non-EU-minority languages);

G. To ensure the right to access to mass media in minority languages (Article 10(4)) by removing quotas provided for in point 7(24)(c) of the final and transitional provisions of the Law on the State language and in Article 40 of the Law of Ukraine on the Media of December 13, 2022;

H. To further postpone the gradual transformation of the minority language school-system and to reconsider it in the light of the 2017 Opinion of the Venice Commission."

The tension over the use of the Russian language will continue. For many Ukrainians, Russian has become the language of the enemy, and so disfavored. Since the 2022 full-scale invasion, there has been cultural shift to avoid using Russian, even in daily conversation. Nevertheless, Russian is heavily imbedded among the population and remains the lingua franca among the territories of the former Soviet Union. A good example is Zelensky's *Servant of the People* TV show, filmed in Russian for distribution throughout the former USSR. Today, however, anti-Russian sentiment is so strong that it would impossible to produce a fictional show taking place in Ukraine with the characters speaking Russian.

On March 3, 2022, the Verkhovna Rada (parliament) of Ukraine, in response to Russia's invasion of Ukraine, adopted two new laws criminalizing any type of cooperation with an aggressor state. The new laws are Law No. 2108-IX on Amendments to Certain Legislative Acts regarding the Establishment of Criminal Liability for Collaboration Activities (Criminal Liability for Collaboration Law) and Law No. 2107-IX on Amendments to Certain Legislative Acts on Ensuring the Responsibility of Individuals Who Carry Out Collaboration Activities (Individual Responsibility for Collaboration Law).

Currently, there is no law criminalizing forced passportization of the Ukrainian population in occupied territories, even as Russia jails people without a Russian passport, effective July 1, 2024.

3.2.5. Government Cleansing (Lustration)

The Revolution of Dignity of 2013-14 demonstrated that many top-level officials working in various sectors crucial for the independence and security of the state, including the Parliament, executive branch, justice sector, municipalities, state agencies and enterprises, and defense sector, did not accept Ukraine's sovereignty and independence. Some of them were educated and trained in the Soviet Union, were members of the Communist Party, and still perceived Ukraine as part of Russia. Others used civil service as a means of personal enrichment and cooperated with openly anti-Ukrainian political regimes like that of former president Victor Yanukovych. It is impossible to build a strong, independent, democratic, and rule-of-law-abiding society when, on each level of institutions, there are people working to block Ukraine's development, reforms, and Euro-Atlantic integration and deny Ukraine's existence as an independent state. One example of a civil servant of this type was the Minister of Education during Yanukovych's regime, Dmytro Tabachnyk. He openly denied the existence of Ukrainians as an ethnic group, stated that the Ukrainian language was artificially created by foreigners, claimed that the famine-genocide (Holodomor) was invented by foreigners, and insisted that these events did not constitute a genocide. Interestingly, after the Revolution of Dignity, when law enforcement agencies started opening criminal investigations against these people, they fled to Russia alongside Yanukovych.

During the Revolution of Dignity, some judges who had been presiding over cases against protesters committed gross violations of the material and procedural laws that resulted in human rights abuses. These judges prohibited peaceful assembly and exposed people to administrative punishment for participating in a protest, for carrying car tires, for staying around governmental buildings, and almost always applied the most severe sanction of depriving of driving license for six months which was utterly disproportionate to the alleged wrongdoing. Moreover, such decisions were issued based on incomplete or falsified case files as the reports that police included in case files often did not contain any evidence, sometimes not even signed by police officers, or mentioned the same witnesses in cases that had taken place at the same time but in different locations. Judges failed to assess the quality of presented evidence, including the obviously falsified ones. Also, in certain cases, judges ignored the fact that protesters who

appeared in the court were bleeding and had signs of violence committed against them, though they had an obligation to assess these facts under procedural law.

Later on, these violations led to more than 40 applications to the European Court of Human Rights. Here is a summary of the cases considered by the ECtHR so far:

1. *Shmorgunov and Others v. Ukraine*: between 30 November 2013 and 18 February 2014, Ukrainian police used physical force, plastic bullets and tear gas against protesters in Kyiv. Some of the protesters were detained because of their participation in the Revolution and beaten for hours. Although a domestic investigation into those violations had been launched, it resulted in only one conviction. Internal inquiries of Ukrainian law enforcement established that the use of force was excessive, but failed to identify those responsible. In many other cases, the investigation is still ongoing.
2. *Lutsenko and Verbytskyy v. Ukraine*: activists Ihor Lutsenko and Yuriy Verbytskyy were abducted from a hospital, ill-treated, and left in a freezing cold forest. Ihor Lutsenko managed to reach a highway, find help and survive, while Yuriy Verbytsky's body was later found in a strip of forest. All these acts were allegedly committed by titushky. The suspects have been identified, some evidence has been collected, and an investigation has been launched, but it is still ongoing.
3. *Kadura and Smaliy v. Ukraine*: Volodymyr Kadura was an activist of the Automaidan, the automobile "cavalry" of the Euromaidan revolution. He was beaten by people dressed in civilian clothes. Kadura was then detained because of his participation in protests and suffered physical abuse in the police station as well. The domestic courts that upheld Kadura's detention dismissed the allegations of ill-treatment. Viktor Smaliy was arrested and beaten, and the investigation is still ongoing.
4. *Dubovtsev and Others v. Ukraine:* fourteen applicants were detained in Dnipro after clashes with police and titushky. Although some of them were compensated for illegal detention, the criminal proceedings instituted against judges, prosecutors and police have been closed or are still ongoing.
5. *Vorontsov and Others v. Ukraine*: the applicants took part in the Euromaidan protests in Kharkiv. They were detained for disobeying the police and found guilty of administrative offenses, in particular, for using offensive language against the police.

There was an urgent need to give a legal assessment to those actions and one of the first steps in this regard was the vetting of judges based on the newly adopted Law on Restoration of Trust to the Judiciary in Ukraine. This law foresaw establishing an Interim Special Commission for Vetting of Judges (Vetting Commission). The Vetting Commission had a mandate within one year of its establishment to vet judges who issued unlawful decisions with regard to protesters during the Revolution of Dignity based on submissions to be received from legal entities and individuals. After its investigation, the Vetting Commission could submit a request to bring a judge to disciplinary liability that might have resulted in dismissal as well shall the Commission finding the judge guilty of violating the laws. The Vetting Commission received 2192 submissions related to judicial misconduct and ultimately recommended disciplinary measures against 58 judges. These measures could have had a greater impact since only 27 out of 3,000 judges who failed the vetting process were dismissed from the bench.

The vetting of judges was an interim measure that was limited in time. There was still a need for a more comprehensive vetting process covering all public officials. Thus, the Parliament of Ukraine adopted The Law "On Government Cleansing (Lustration Law) of Ukraine." Lustration means "cleansing," and it enables to "exclude persons who lack integrity (even judges) from public institutions." Lustration is one of the tools of transitional justice used to protect newly democratic states from threats

posed by those closely associated with the previous totalitarian regimes and to prevent a return of such a regime.

Three main arguments have been put forward to explain the specific role lustration can play in the post-totalitarian setting. The prophylactic argument suggests that lustration is needed to safeguard the newly democratic regime by compelling holders of and candidates for public offices to disclose their past. The blackmail argument suggests that lustration protects a newly democratic state from those who were closely related to the power structures or secret services of the previous regime and could thus be easily subject to blackmail. The public empowerment argument emphasizes the need to make public institutions more transparent and restore public trust in the independence and moral credit of those occupying or seeking to occupy important positions within these institutions.

"C. The personal scope of application of the law

1. The positions subject to lustration

50. Article 2 of the Lustration law provides for an extensive list of positions which need to be "protected" and whose holders will thus be subject to lustration. Individuals who currently occupy these positions will be screened in the nearest months according to the schedule approved by the Cabinet of Ministers of Ukraine.

51. The Guidelines provide guidance in respect of the personal scope of application of lustration measures.

52. The Lustration law is in compliance with the requirement that "lustration shall not apply to elective offices", these offices being specifically excluded in its Article 1.1.

53. As regards the requirement that "lustration shall not apply to positions in private or semiprivate organisations", Article 2.9 mentions "heads of national enterprises including state-owned companies in defence industries and public companies managed by the administrative service entities".

54. A further requirement is that "lustration should be limited to positions in which there is good reason to believe that the subject would pose a significant danger to human rights or democracy". The list of lustrated positions encompasses practically all positions - with the exception of the elective ones - in central and local governments as well as in other public organs. There are political positions, notably the Prime Minister and the ministers; the Prosecutor General and the members of High Council of Justice; but also administrative positions like the Chief of staff of the presidential administration, the Chairman of the State Property Found, the Chairman of the State Committee for Television and Radio Broadcasting, the Chairman and the members of the National Commission responsible for the government regulation of natural monopolies, communications and IT; as well as a very wide category of other officials and officers of central and local governments. It is not clear why all of these positions may be reasonably prognosticated by the legislator to constitute a significant danger and to be genuinely "appointed state offices involving significant responsibility for making or executing governmental policies and practices relating to internal security, or appointed state offices where human rights abuses may be ordered and/or perpetrated, such as law enforcement, security and intelligence services, the judiciary and the prosecutor's office", as required by paragraph (d) of the Guidelines. The Venice Commission has already expressed

doubts as regards to the justification of the presumption of danger for some of these positions. The list of lustrated positions should be restricted.

55. The inclusion in Article 2 of "persons intending to occupy the positions specified in clauses 1 to 10" (Article 2.11) is clearly mistaken. This clause should appear in Article 3.

2. The criteria for lustration

56. Article 3 of the Lustration Law lists the criteria for lustration, imposing a ban from public office (i.e. from the positions listed in Article 2) of either five or ten years, depending on the position previously occupied, from among a long list, during the periods of the past to be screened.

57. The first category entails a ban of ten years (Article 1.3) and includes:

a) Individuals who occupied high positions in the state apparatus for at least a year between 25 February 2010 and 22 February 2014 (Article 3.1);

b) Individuals who occupied certain positions, mostly within the military, police, judicial or media sectors, between 21 November 2013 and 22 February 2014 (Article 3.2);

c) Individuals who occupied high positions in the Communist Party or Komsomol during the Soviet period or worked as employees or covert agents of the KGB in that period (Article 3.4);

d) Individuals who enriched themselves in violation of the Law on the Principles of Preventing and Combating Corruption (Article 3.8);

e) Law enforcement officers, public prosecutors and judges who took certain action in respect of persons falling under the Amnesty laws.

58. The second category entails a ban of five years (Article 1.4) and includes:

a) Judges, prosecutors, police officers and other law enforcement agents who were actively involved in the prosecution of anti-Yanukovych activities and of Maidan demonstrators (Article 3.3);

b) Officials and officers of central and local government authorities who occupied high positions in the state apparatus between 25 February 2010 and 22 February 2014, are not included in the category 1a) above and who contributed to power usurpation by Mr. Yanukovych and seeking to undermine fundamentals of the national security, defense or territorial integrity of Ukraine which caused violation of human rights and freedoms (Article 3.5).

c) Officials and officers of central and local government authorities, whose decisions, actions or inaction sought to prevent the exercise of the constitutional right to peaceful assemblies, and hold rallies, demonstrations, marches or to harm human life, health or property between 21 November 2013 and 22 February 2014 (Article 3.6).

d) Officials and officers of central and local government authorities if a court judgment against them, which has taken effect, established that they had cooperated as secret informers with special services of other countries to provide regular information; taken decisions, actions, failed to take actions and/or facilitated such actions, decisions or inaction to undermine the national security, defense or territorial integrity of Ukraine; called publicly for the breach of Ukraine's

territorial integrity and sovereignty; incited ethnic hostility; taken unlawful decisions, actions or inaction that violated human rights and fundamental freedoms where violations were proven by judgments of the European Court of Human Rights (Article 3.7)."

Shall a person fall within the scope of the Law on Government Cleansing and their guilt has been proven according to the process established by this law, such person may be banned from their public position from 5 to 10 years.

The Law was reviewed by the Venice Commission in 2015. The Commission concluded that Ukrainian lustration laws are broader in scope compared to those of most Eastern European countries combating corruption. The Venice Commission emphasized that while it is a step in the right direction, the law still has shortcomings, and the Ukrainian government must balance efforts for democracy and individual rights.

3.2.6. Sanctions

Ukraine has been introducing sanctions against Russia since 2014 after the invasion of Crimea, based on the newly adopted Law on Sanctions. The sanctions regime extend to properties owned by Russians, including oligarchs, private entities, businesses, and also covering Russian products.

In 2022, immediately after Russia's full-scale illegal invasion, , Parliament adopted another legislative act on sanctions - the Law of Ukraine on the Basic Principles of the Forcible Seizure of Objects of Property Rights of the Russian Federation and its Residents in Ukraine No. 2116-IX, dated March 3, 2022.

Under the Law [2116-IX], "objects of property rights" mean movable and immovable property, funds, bank deposits, securities, corporate rights, other property (assets) located (registered) in Ukraine and owned directly or through affiliates by the Russian Federation.

The government is empowered to suggest to the National Security and Defense Council of Ukraine which objects of property rights that are owned directly or indirectly (through intermediaries) by the Russian Federation to confiscate.

This forcible seizure of property rights objects owned directly or indirectly (through intermediaries) by the Russian Federation (the "seized property") follows the following process:

- A decision on seizure is submitted by the Cabinet of Ministers of Ukraine.
- The decision is then adopted by the National Security and Defense Council of Ukraine.
- The decision is enter into force by a decree of the President of Ukraine, and
- Such decree is approved by the Parliament (not later than six months after the cancelation or termination of martial law).

- According to the Law, the seized property will be transferred, on a temporary or permanent basis, to the economic control of a specialized state entity, which will be created by the Cabinet of Ministers of Ukraine.

Registration of the property rights is carried out at the request of the Cabinet of Ministers of Ukraine exclusively on the basis of the decree of the President of Ukraine.

If state registration of the property rights to a specific seized object is not required by law, the state becomes the owner of that asset from the effective date of the decree of the President of Ukraine on the forcible seizure of the given object of property rights.

The forced seizure will be made without further compensation and will be based on the principles of legality, transparency, objectivity, strategic importance and effectiveness."

Parliament also adopted on May 12, 2022, the Law "On Amendments to Certain Legislative Acts of Ukraine Concerning Improvement of Effectiveness of Sanctions Related to Assets of Individuals." This Law has supplemented the list of types of sanctions mentioned in the Law on Sanctions with the following:

- freezing of assets - temporary deprivation of the right to use and dispose of assets belonging to an individual or legal entity, as well as assets in respect of which such a person may directly or indirectly (through other individuals or legal entities) perform actions identical in content to the exercise of the right to dispose of them; and
- forfeiture of assets belonging to an individual or legal entity, as well as assets in respect of which such a person may directly or indirectly (through other individuals or legal entities) perform actions identical in content to the exercise of the right to dispose of them.

The relevant state authorities enforce the sanction through asset freezes, local self-government bodies, and other entities within the scope of their powers. The National Agency for the Prevention of Corruption (NAPC) takes measures to identify and trace the assets of individuals and legal entities specified in the relevant decisions of the National Security and Defense Council of Ukraine.

If unblocked assets are identified, the NAPC requests the relevant authorities and/or officials to take actions aimed at temporarily depriving the appropriate persons of the right to use and dispose of these assets. Such a request of the NACP is mandatory and subject to immediate execution.

A request for the application of a sanction for the forfeiture of assets belonging to an individual or legal entity, as well as assets in respect of which such person may directly or indirectly (through other individuals or legal entities) perform actions identical in content to the exercise of the right to dispose of them, shall be submitted by the NACP to the court.

The sanction (forfeiture of assets belonging to an individual or legal entity, as well as assets in respect of which such person may directly or indirectly (through other individuals or legal entities) perform actions identical in content to the exercise of the right to dispose of them) is exclusive and may be applied only to individuals and legal entities that have created a significant threat to national security sovereignty or territorial integrity of Ukraine (including through armed aggression or terrorist activities) or significantly contributed (including through financing) to the commission of such actions by other persons, including residents within the meaning of the Law "On the Basic Principles of Compulsory Seizure of Property of the Russian Federation and its Residents in Ukraine." This sanction may be applied only during the period of martial law and provided that the relevant individual or legal entity has already been subject to an asset freeze following the procedure established by this Law.

The seizure of assets, the imposition of a moratorium, or any other encumbrances (prohibitions on their disposal or use), as well as the pledge of such assets, does not prevent the forfeiture of these assets for the benefit of the state.

If the grounds and conditions are met, the NAPC applies to the High Anti-Corruption Court (HACC) with a request to impose a sanction on the relevant individual or legal entity in the form of asset forfeiture.

A HACC judge considers the application within ten days of receiving it. The final court decision to impose a sanction in the form of a forfeiture is sent to the Cabinet of Ministers of Ukraine on the day it becomes effective to determine the subject, procedure, and method of its execution. The Ministry of Justice of Ukraine enforces this decision in terms of forfeiture of assets located or registered outside Ukraine.

3.2.7. "Deoligarchisation"

The war has paved the way for deoligarchisation in Ukraine – much more so than the controversial 2021 anti-oligarch law, which left the designation of an oligarch and consequent action up to the NSDC. Leading oligarchs have lost almost half of their wealth, and several oligarchs' assets are disproportionately concentrated in eastern and southern Ukraine, or have been targeted by Russian attacks, meaning they have fared particularly badly in terms of maintaining their asset base. Ukraine's richest man, Renat Akhmetov, has seen his wealth shrink from $13.7 billion to $4.4 billion, with his Azovstal and Ilich iron and steel works in Mariupol having been almost completely destroyed. Another big loser has been Ihor Kolomoisky, to whom Zelensky was often said to be too close at the time of his election. Many of his key assets were nominally under state control. Now the state is in full control, including of Privatbank, television channel 1+1, and the Ukrnafta oil company. Kolomoisky is now effectively an oligarch without property, and in September 2023 he was detained as the state froze $82m of assets in 307 of his remaining companies and laid new charges of theft against Privatban.

Oligarchs have lost the pocket banks they once controlled. Several have fled abroad, mocked as the "Monaco Battalion" or "Vienna Battalion." In November 2022, five of the large companies were nationalised because of their importance to the war effort (or because their owners were deemed

problematic) included AvtoKrAz (Konstyantyn Zhevaho), Motor Sich (Vyacheslav Bohuslaev), and Ukrnafta and Ukrtatnafta (Kolomoisky). Sense Bank, formerly Alfa, was nationalised in July 2023.

As well as losing assets, oligarchs have lost their main means of political influence. Their television companies have been included in Ukraine's national news collective – oligarchs can no longer use them to promote favored or artificially created parties and politicians. The state is stronger than it was before the war, including at a local level where oligarchs often controlled key cities or regions. Of course, declining actors will seek to protect their power: oligarchs can still use networks in the judiciary or SBU to protect themselves. The arrest in 2023 of President of the Supreme Court Vsevolod Kniaziev, arrested on suspicion of receiving a $US3 million bribe from Ukrainian oligarch Kostyantyn Zhevago, is an example.

The particular issue of oligarchic influence does not feature among the EU's requested reforms. To go further in this area, the state could deploy other instruments against oligarchy, such as anti-monopoly policy as part of a broader approach that aims to maintain and transform Ukrainian economics, policy, and society.

3.3. Justice During Wartime

In Ukraine, delivering justice during wartime involves a mix of national and international laws. Ukraine has acknowledged the jurisdiction of the International Criminal Court to investigate war crimes. Despite these frameworks, challenges like ongoing war, impunity, and access to justice for victims complicate enforcement.

During the very first days of the full-scale aggression, the judiciary did its best to remain operational. Judges and court staff members risked their lives to save archives and case files and transfer them to the territory controlled by Ukraine hoping that there would be an opportunity to continue hearing those cases. On February 24, 2022, the Council of Judges of Ukraine (COJ) held an online meeting during the heavy shelling and bombarding of Kyiv and issued a decision on Taking Immediate Measures On Ensuring Continuity of Operations of the Judiciary in Ukraine. The COJ decided:

> 1. To draw the attention of all courts of Ukraine to the fact that even in the conditions of martial law or a state of emergency, the work of courts cannot be suspended, i.e. the constitutional right to judicial protection cannot be restricted.
>
> 2.Taking into account the provisions of Article 3 of the Constitution of Ukraine that a person, his or her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value, to recommend to the assembly of judges, presidents of courts, judges of Ukrainian courts to promptly make decisions on the temporary suspension of court proceedings by a particular court until the circumstances that led to the suspension of the proceedings are eliminated.
>
> 3.To address the Supreme Court, the Supreme Court of Ukraine, the High Anti-Corruption Court, the High Council of Justice, the High Qualifications Commission of Judges of Ukraine, the State Judicial Administration of Ukraine, the Judicial Protection Service, the National School of Judges of Ukraine with a proposal to immediately develop plans in case of complication of the situation, which, in particular, should provide for:

-preservation of work record books, personal files and other materials containing personal data of court employees, judges, employees of territorial departments of the of the State Judicial Administration, the Judicial Protection Service, and other employees of the justice system;

-to preserve seals and stamps of the court;

-determine the lists of court cases and documents to be preserved and evacuated;

-determine the lists of court cases and documents to be destroyed;

-determine the places to which the relevant cases and documents should be moved, develop appropriate transportation routes, and identify persons responsible for this;

-make and save backup copies of the court's ACDS databases, other databases of local electronic resources (accounting, etc.) available in the courts, or prepare server or computer equipment (hard drives, etc.) that store the relevant resources for possible evacuation.

…

6. In order to ensure sustainable functioning of the judiciary in Ukraine, to address the subjects of legislative initiative with a proposal to urgently introduce a draft law and adopt a law providing that if the High Council of Justice is incompetent due to the lack of a sufficient number of its members as defined in Article 131 of the Constitution of Ukraine, its powers defined by this and other laws, except for the powers provided for by the Constitution of Ukraine, shall be temporarily exercised by the Council of Judges of Ukraine."

One of the urgent actions needed at that time was updating the legislation and adjusting it to the state of war by simplifying certain court procedures that could no longer be performed. A week after the full-scale aggression, Parliament simplified the procedure for changing territorial jurisdiction for courts. This was caused by the fact that the battlefield line had been changing every day meaning that in a few days, a court might have been found on the territory temporarily occupied by Russia. Thus there was a need to transfer its territorial jurisdiction to the closest court that was operational so that people could solve their urgent legal needs. The amendments stipulated that the Chief Justice may change territorial jurisdiction if the High Council of Justice is not operational, which had been the case.

Other legislative amendments were aimed at addressing the procedural gaps, for instance, related to changing or extending preventive measures.

Even during the time of war, the justice sector remained functional. Despite the fact that more than 100 court houses were destroyed or damaged as described in Chapter 2 and the shortage of court staff, the Ukrainian judiciary kept on delivering justice to comply with the Geneva Conventions.

As of September 2023, disciplinary proceedings resumed against judges. During wartime, the Ethics Council nominated new members to the High Council of Justice (HCJ), which resumed in January 2023 after a year off as part of ongoing judicial reform. The High Qualification Commission (HQC) is responsible for vetting judges, but the process has faced setbacks. The reform has gained a controversial reputation due to allegations of corruption and the appointment of questionable individuals.

3.3.1. Draft Laws on the Application of the International Criminal Law

As described in the previous chapter, the Ukrainian domestic legal framework has certain gaps preventing the efficient prosecution of international crime cases.

The latest draft law on amending the Criminal Code of Ukraine with regard to international crimes was registered in the Verkhovna Rada of Ukraine on August 15, 2024, as the Draft Law No. 11484. It has been adopted as the Law No. 4012-IX on October 9, 2024, and later signed by the President of Ukraine and will come into force the day after its publication. This Law, just like the two draft laws registered before, introduces in the Ukrainian criminal law command responsibility and crimes against humanity. Unlike the other two draft laws, the Law No. 4012-IX does not include any amendments to the Art. 438 of the Criminal Code governing war crimes other than changing the name of the article from "Violation of Laws and Rules of Warfare" to "War Crimes". With regards to the crime of genocide, it added psychiatric disorder in addition to bodily harm to the list of prohibited acts with regards to any national, ethnic, racial, or religious group. The substantive part of the Art. 437 governing the crime of aggression remained without changes, however, the sanction was increased to ten to fifteen years of imprisonment compared to seven to twelve in the current text for planning a war of aggression, and a lifetime imprisonment added to the sanction for conducting an aggressive war. These are the excerpts of the Law No. 4012-IX:

Article 31-1. Criminal Liability of Military Commanders, Other Persons Actually Acting as Military Commanders and Other Superiors

1. A military commander or other person who is actually acting as a military commander shall be criminally liable for any crime envisaged in Articles 437-439, 442, 442-1 of this Code committed by a subordinate who at the time of the crime was under his actual command and control or, depending on the circumstances, under his actual power and control, as a result of the failure of such military commander or other person or other person actually acting as a military commander, exercising proper control over such a subordinate, if he or she knew or ignored information that clearly indicated that the said subordinate was committing or intended to commit such a crime, but failed to take actions that he or she should have and could have taken within his or her authority to prevent or stop the commission of the crime or to report such a crime to the pre-trial investigation body.

2. A superior whose legal status is not provided for in part one of this Article shall be criminally liable for any crime under Articles 437-439, 442, 442-1 of this Code, if such crime concerned activities that fell under his/her actual responsibility and control and was committed by a subordinate who was under his/her actual power and control at the time of the crime, 2 as a result of such a superior's failure to exercise proper control over such a subordinate, if he or she knew or deliberately ignored information that clearly indicated that the subordinate was committing or intended to commit such a crime, but failed to take measures that he or she should have and could have taken within his or her authority to prevent or stop the commission of the crime or to report such a crime to the pre-trial investigation body.

3. A military commander or other person who actually acts as a military commander or other superior in cases stipulated by parts one and two of this Article shall be criminally liable in accordance with the relevant part of this Article and the article (part of the article) of the Special Part of this Code that provides for liability for a crime committed by a subordinate.

Notes.

1. In this article, a military commander is a person who is legally authorized to exercise command and control over one or more subordinates who participate in hostilities and belong to the armed forces of the state.

2. In this article, another person who actually acts as a military commander should be understood as a person under whose authority and control one or more subordinates participating in hostilities and not belonging to the armed forces of the state are under the command and control in connection with the conduct of hostilities.

3. In this Article, a superior shall be understood as a person not specified in paragraphs 1 and 2 of the note to this Article, who holds a position or is in a position that gives authority (power) and control over one or more subordinates.

Article 442-1. Crimes against humanity

1. Intentional commission as part of a deliberate large-scale or systematic attack against the civilian population:

1) persecution of any identifiable group or community, i.e. restriction of fundamental human rights on political, racial, national, ethnic, cultural, religious, sexual or other grounds (signs) of discrimination defined by international law as unacceptable;

2) deportation of the population, i.e., the forced and unlawful transfer (eviction) of one or more persons from the territory of which they were legally residing to the territory of another state;

3) forced displacement of the population, i.e., the forced and unlawful transfer (eviction) of one or more persons from the territory of which they were legally residing to another area within the same state;

4) rape, sexual exploitation, forced prostitution, forced pregnancy, forced sterilization or any other form of sexual violence;

5) slavery or human trafficking;

6) enforced disappearance;

7) unlawful deprivation of liberty;

8) torture;

9) other intentional inhuman acts of a similar nature, accompanied by severe suffering or serious bodily harm or serious damage to mental or physical health –

shall be punishable by imprisonment for a term of seven to fifteen years.

2. Intentional commission as part of a deliberate large-scale or systematic attack on the civilian population, apartheid, extermination, murder -

shall be punishable by imprisonment for a term of ten to fifteen years or life imprisonment.

Notes.

1. In this article, an attack on civilians shall be understood as the repeated commission of any of the acts specified in this article against the civilian population in pursuance of or in support of the policy of a state or organization aimed at committing such an attack.

2. For the purposes of this article, enforced disappearance shall be understood as the arrest, detention, abduction or deprivation of liberty of a person in any other form, followed by a refusal to acknowledge the fact of such arrest, detention, abduction or deprivation of liberty in any other form or concealment of information about the fate or whereabouts of such person, as well as refusal to acknowledge the fact of arrest, detention, abduction or deprivation of liberty of a person in any other form or concealment of information about the fate or whereabouts of such person.

3. The term “apartheid” is used in this Code in the meaning given in the International Convention on the Suppression and Punishment of the Crime of Apartheid of November 30, 1973.

4. Extermination in this article shall be understood as the deprivation of life of one or more persons by deliberately creating living conditions aimed at the destruction of a part of the population, including by depriving them of access to food or medicine.

5. Torture in this Article shall be understood as the intentional infliction of severe physical pain or physical or mental suffering on a person.

3.3.2. Ratification of the Rome Statute

Ukraine signed the Rome Statute in 2000; however, it was never ratified. There had been several attempts to put the ratification on the agenda, but political will was always lacking. The President of Ukraine, Leonid Kuchma, made a constitutional submission regarding the constitutionality of the Rome Statute as the Ukrainian Constitution prohibits special and extraordinary courts, provides that justice shall be delivered only by judges and that the system of general jurisdiction courts of Ukraine is clearly defined. The ICC is not part of it. In its decision, the Constitutional Court of Ukraine, though, concluded that an international court could not fall under the definition of special and extraordinary court, so the respective constitutional prohibition does not apply to ICC or any other international court but found it unconstitutional on the following grounds:

> ...Find the Rome Statute of the International Criminal Court, signed on behalf of Ukraine on January 20, 2000, which is being submitted to the Verkhovna Rada of Ukraine for its consent to be bound, as inconsistent with the Constitution of Ukraine in the part concerning the provisions of the tenth paragraph of the preamble and Article 1 of the Statute, according to which “the International Criminal Court ... complements national criminal justice authorities.

After the occupation of Crimea and Donbas in 2014, the issue of ratification of the Rome Statute was back on the political agenda. However, this time, the central concern politicians had was that it could be used against members of the Ukrainian armed forces and paramilitary groups.

Finally, after years of public calls for Ukraine to ratify the Rome Statute, the Parliament did so on August 21, 2024.

Law of Ukraine

On the Ratification of the Rome Statute of the International Criminal Court and its Amendments

(Abstracts)

…

The Verkhovna Rada of Ukraine decides:

1. To ratify:

1) the Rome Statute of the International Criminal Court (Rome Statute), done on July 17, 1998, in Rome (attached), which shall enter into force for Ukraine on the first day of the month following the 60th day after the date of deposit of the instrument of ratification with the Secretary-General of the United Nations, with the following declarations:

…

"Ukraine declares that, for a period of seven years after the entry into force of the Rome Statute for Ukraine, it does not recognize the jurisdiction of the International Criminal Court over the crimes set forth in Article 8 (as amended) when the crime is alleged to have been committed by its nationals."

…

2. In accordance with Article 12, paragraph 3, of the Rome Statute, to confirm Ukraine's recognition of the jurisdiction of the International Criminal Court over the crimes under Articles 6, 7, 8 of the Rome Statute, effective November 21, 2013, and to recognize the jurisdiction of the International Criminal Court over the crime under Article 8bis of the Rome Statute, effective July 17, 2018.

3. This Law shall enter into force simultaneously with the entry into force of the Law of Ukraine "On Amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine in connection with the ratification of the Rome Statute of the International Criminal Court and amendments thereto."

This Law will come into force alongside the respective amendments to the Criminal Code of Ukraine and Criminal Procedure Code of Ukraine. On October 25, 2024, Iryna Mudra, Deputy Head of the Ukrainian President's Office, together with the Permanent Representative of Ukraine to the UN Serhii Kyslytsia, deposited the certificate of ratification for storage in the depository of the Rome Statute, so Ukraine has finalized the ratification of the Rome Statute.

Iryna Mudra, Deputy Head of the Ukrainian President's Office while depositing the certificate of ratification for storage in the depository of the Rome Statute. Photo: Iryna Mudra's Facebook page

Once the official procedure for becoming a member of the Rome Statute will take place, it will undoubtedly be a positive development. Becoming a Member-State of the Rome Statute will allow Ukraine to participate in the Assembly of States Parties to the ICC and contribute to shaping the ICC's policies, nominate its candidate for the position of a judge, approve the allocation of the ICC budget to ensure proper investigation of Russian crimes in Ukraine, participate in the election of judges and other elected officials (including the ICC Prosecutor), influence the development of amendments to the Rome Statute, and facilitate access for Ukrainians to the special ICC Trust Fund for Victims and increase the chances of obtaining compensation for victims of Russian crimes.

Ukraine has an obligation to ratify the Rome Statute under the Association Agreement with the EU. Several security agreements Ukraine has already signed with countries also contain provisions on ratifying the Rome Statute, particularly with the Netherlands and Germany. Under the terms of security agreements, Ukraine receives military, financial, and diplomatic support from its partners, and in return, Ukraine carries out reforms and harmonizes its legislation. Therefore, ratification will be a powerful signal of Ukraine's commitment to perform its obligations.

3.3.3. Combating Corruption

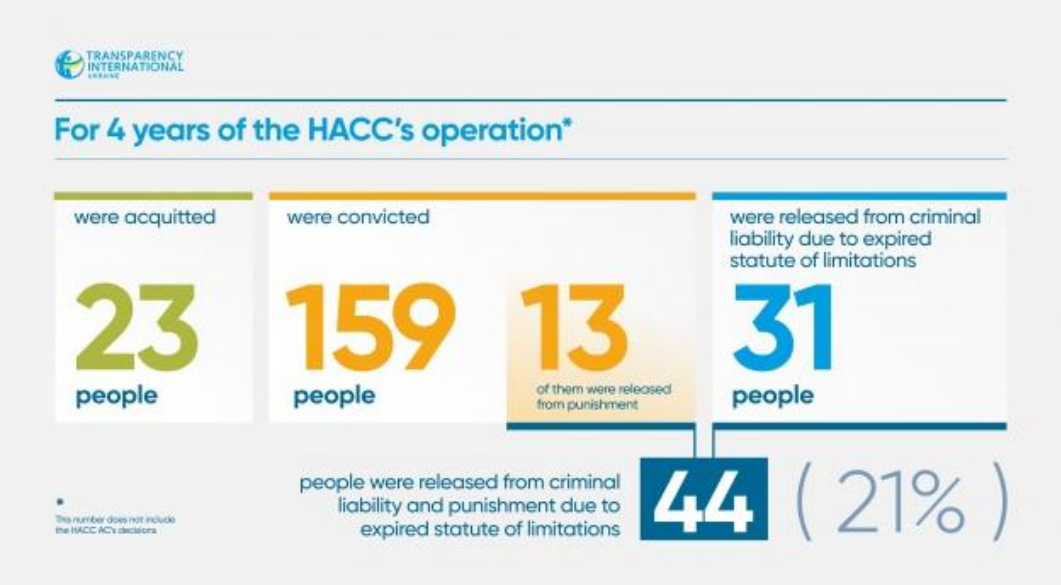
Since Ukraine regained its independence in 1991, it has been plagued by pervasive corruption. Following the 2014 Maidan Revolution, Ukraine launched a comprehensive institutional reform project that included the creation of four new anti-corruption bodies: (a) the National Anti-Corruption Bureau (NABU), which investigates high-level corruption cases; (b) the Specialized Anti-Corruption Prosecutor's Office (SAPO), an independent unit within the Prosecutor General's Office that oversees

NABU's investigations and prosecutes its cases; (c) the National Agency for Prevention of Corruption (NAPC), which administers the asset declaration system and participates in anti-corruption policy making; and (d) the Asset Recovery and Management Agency (ARMA), which focuses on recovery of stolen assets. These new prosecutorial and investigative units have not been as successful as many hoped.

The reform of the investigation and prosecution of corruption-related cases has met with some success, but adjudicating such cases raised many concerns. To move forward with anti-corruption reform, Ukraine created a special court to adjudicate cases investigated by NABU and prosecuted by SAPO. The establishment of the HACC was one of the conditions in the memorandum with the International Monetary Fund and was supported by the EU and World Bank. The Parliament of Ukraine adopted the respective Law on June 7, 2018. A detailed analysis of the material legislation governing corruption-related offences is provided in Chapter 13.

Shortly after this law was adopted, the selection process began, which was closely monitored by civil society, legal professionals, and international donors. The success of the HACC judges' selection was largely due to an innovative process. It allowed the Public Council of International Experts, made up of renowned international experts, to reject candidates whose integrity was questionable, regardless of their political support. This led to the appointment of judges for the HACC who were politically neutral, qualified, and free from integrity concerns.

With the establishment of the HACC, the system of anti-corruption has been completed and looks as follows:



As a result of the HACC operations over four years, the court issued 139 verdicts, the HACC Appellate Chamber issued 55 decisions, and HACC decisions confiscated UAH (hryvnia) 137.5 mln within the procedure of special confiscation.

3.4. Welfare and social support

Ukraine's welfare and social support laws during the war have been characterized by an urgent need to address the immediate and pressing needs of its population while navigating the complexities of an ongoing conflict. Some of the major topics in this sphere include social benefits, temporary housing and shelter arrangements, medical support, legal aid, and employment programs/small business support.

Protection of civilians during wartime can take a variety of forms, such as construction of shelters, development of evacuation procedures, and assistance to internally displaced persons (IDPs). The government, along with international organizations, has set up temporary shelters and accommodation for those who have lost their homes or are unable to return to their areas of residence. There are also reconstruction programs that establish and manage funds for the reconstruction of infrastructure and homes damaged or destroyed by the war.

Financial assistance is provided to the families of military personnel, including healthcare, living arrangements, and tax relief. Emergency financial aid to affected populations includes cash transfers and allowances to help cover basic needs like food, shelter, and medical care. The government also ensures that pensions and social benefits continue to be paid, even in conflict zones. Special provisions have been made for pensioners and vulnerable populations to guarantee they receive their entitlements. Many programs have been put in place to assist businesses affected by the war. These programs consist of financial aid, tax relief, and assistance in accessing markets and resources. Additionally, there are initiatives to generate job opportunities and offer vocational training to individuals impacted by the war, enabling them to acquire skills and find employment.

The war brought many changes to the world of business and trade. Martial law imposed UAH (hryvnia) on transactions made in UAH currency abroad, dividend distribution, cross-border loans, mortgage enforcement, and many others.

The healthcare system required revision due to an increased need for mental health support. The ongoing war, marked by constant bombings, air sirens, and relentless news coverage, led to greater efforts to offer mental health support and counseling services to those impacted by the war. There was also a focus on providing free or subsidized healthcare where possible, especially to people with war-related injuries.

Legal aid efforts focus on offering free legal services to individuals impacted by war dealing with property disputes, displacement, and other legal issues stemming from the conflict. This also involves providing guidance on citizens' rights and taking steps to prevent the exploitation and abuse of vulnerable populations.

3.5. Cybersecurity, freedom of speech, and media

Laws have been passed to protect the population from the real danger of cyberattacks on information systems, as well as the more subtle but long-lasting dangers of false or misleading information on social media. The government enacted media regulation laws to prevent the spread of enemy propaganda and ensure accurate information dissemination. Although these limitations on citizens' freedoms may be justified due to national security concerns, some international organizations have criticized the Ukrainian government for imposing greater-than- necessary restrictions.

Strengthening cybersecurity measures is considered essential due to the hybrid nature of the conflict, which involves both cyber and physical warfare. For example, according to the Center for Strategic and International Studies, in 2022, there were 47 Russian cyber-attacks on Ukraine, with 58% focused on general disruption, 21% on disruption, and 21% on espionage. In 2020, Parliament passed the Law "On Electronic Communications," which aligns with the European Code and replaced the outdated legal framework governing electronic communications. However, according to Freedom House, internet freedom in Ukraine has been in decline in recent years, with scores dropping from 62 in 2021 to 59 in both 2022 and 2023. One reason is that several social media platforms, websites, and networks originating in Russia have been restricted or inaccessible.

The laws against disinformation and propaganda impose penalties for spreading false information, monitor media for propaganda, and promote factual reporting. In response to severe national security threats such as potential attacks and bombings, it is essential to control these threats in order to protect the population from terror. However, these controls also impose limitations on freedom of speech and media. According to the European Commission: Ukraine 2023 Report, "[i]n March 2022, in the context of martial law, the President signed a decree on a unified information policy by merging the programming of all national TV channels into a single information platform. This decision led to an expansion of government control over broadcasting and some restrictions. Some media outlets consider these restrictions disproportionate." Many argue that with the passage of time, the unified media policy is more harmful to the independent media, investigatory journalism, and pluralism of opinions. While it is important to balance national security concerns with freedom of information and speech, some journalists feel "pressured" by the government to "speak the truth" and operate independently.

It is important to note that many statistical points or troop locations are not available to the general public due to government secrecy regarding national security matters. Like in Ukraine, Russian war casualty information is also censored, and with no access to independent media - most information about Russian losses is coming from the Ukrainian side. There is contradictory data as to the numbers on both sides. However, there is a reasonable expectation that Ukraine will declassify the well-kept information after the war, which cannot be said about the Russian statistics. For example, *Newsweek* reported that "Alexey Raksha, a demographer who previously worked at the Federal State Statistics Service of Russia (Rosstat) statistics agency, found on Tuesday that Rosstat deleted two columns of data containing details on the number of deaths and mortality from external causes."

3.6 Conclusion

Ukraine's public institutions including the Verkhovna Rada of Ukraine and the judiciary, faced unprecedented challenges caused by the war. All remained operational and sought to address the challenges caused by the war while adhering to their obligations under national and international law. This was a difficult task, considering that the government of Ukraine had to face military reality. Ukraine is fighting with all its strength to survive while trying to respect human rights and other values that the state is built on. Balancing between these two competing interests has not always been successful. One of the biggest concerns for Ukrainians has been recurrent gross violations of rules dealing with mobilization of military-age men. However, from a military point of view, this was necessary, otherwise, the battlefield line could have been much closer to Kyiv.

Ukraine's situation is unique. Never before in postwar Europe was a state attacked by another state, whose territory is now occupied, and which has to prosecute more than 150,000 international crimes while defending its territory from unlawful aggression and supporting the functioning of the state and ensuring human rights. A multitude of think tanks constantly discuss, report on, and study the Ukrainian model of adaptation. The defeat of Nazi Germany led to the birth of a new international legal order. Russia's brazen invasions of Ukraine has exposed the deep cracks in that order. This war's unfortunate reality may lead to creation of new norms in international law from lessons learned. The same can be hoped for the Ukrainian legal system. It may well be that postwar Ukraine will emerge with a stronger law-based order than it had before Russian aggression.

Chapter 4

The Americas: United States

4.1 Introduction

Following the full-scale invasion of Ukraine by Russia in February 2022, an estimated 5.1 million Ukrainians were driven from their homes. More than 6.2 million people fled the country, causing the largest humanitarian crisis in Europe since the end of the Second World War. Among the millions fleeing, were those seeking to find refuge in the United States. Since adult males under the age of 60 were forbidden under Ukrainian martial law to leave the country so they could be drafted to fight the Russian invaders, most of those seeking shelter were mothers, children, and the elderly. Some of these Ukrainians sought to find ways to come to the United States. There was just one problem: Ukrainian passport holders can only enter the U.S. if they hold an entry visa. A small number were fortunate enough because they already held a multiple-entry U.S. tourist visa, permitting them to enter (but not to work) for a maximum of six months as tourists.[22] The hope was that within six months the violence would end and those who had been in the United States on tourist visas could safely return home. This was not the case.

Many others soon realized that another route was available, and in the age of social media, this alternative soon became widely known among the fleeing refugees. The U.S.'s next-door neighbor, Mexico, had a visa-free regime with Ukraine (likely in place to promote Mexican tourism) so Ukrainians with a valid Ukrainian passport could simply take a flight anywhere from Europe into Mexico, and then make their way through the Mexican interior to appear at the Mexico - U.S. Border, seeking some form of legal or illegal entry into the United States.

Thousands of Ukrainians fleeing their war-ridden homeland began flooding the beach resorts of Cancun, Acapulco, or the capital Mexico City. Among the lines of palm trees and blue waters, there stood, rested, or slept endless lines of mothers, children, and the elderly, often with a suitcase and potentially young child in hand.

Source: El Paso Times

[22] Different visas include B-1 for business, B-2 for tourism, and B-1/B-2 for a combination of both purposes.

In April 2022, it was reported that 20,994 Ukrainians arrived at the U.S. border seeking safety only to be turned away as "inadmissiblies".[23] However, under the Control and Border Protection regime enacted by the U.S. Department of Homeland Security (DHS), these Ukrainians could enter on an emergency temporary stay basis to seek humanitarian protection. Due to the unprecedented situation in Ukraine, the U.S. Control and Border Protection (CBP) of DHS allowed entry to Ukrainians, while at the same time continuing to deny entry to many other nationalities, most often those from Central or South America. As a result, ninety-five percent of these otherwise inadmissible Ukrainians were paroled and granted permission to enter and temporarily remain in the United States.

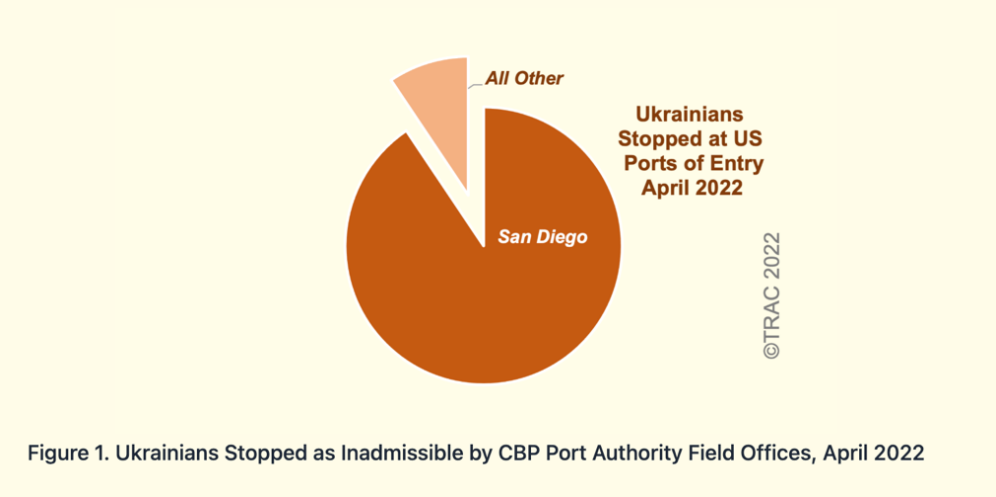


Figure 1. Ukrainians Stopped as Inadmissible by CBP Port Authority Field Offices, April 2022

Source: https://trac.syr.edu/immigration/reports/683/

[23] "Inadmissibles" are defined by Customs and Border Protection as "individuals encountered at ports of entry who are seeking lawful admission into the United States but are determined to be inadmissible, individuals presenting themselves to seek humanitarian protection under our laws, and individuals who withdraw an application for admission and return to their countries of origin within a short timeframe." https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics

Table 1. Ukrainians Stopped as Inadmissible by CBP Authority Field Offices, April 2022

Port of Entry Field Office	Total Inadmissibles	Number		Percent	
		Ukraine	All Other	Ukraine	All Other
Atlanta	891	74	817	0.4%	2.5%
Baltimore	1,106	41	1,065	0.2%	3.2%
Boston	1,638	14	1,624	0.1%	4.9%
Buffalo	3,478	176	3,302	0.8%	9.9%
Chicago	486	15	471	0.1%	1.4%
Detroit	637	14	623	0.1%	1.9%
El Paso	1,285	256	1,029	1.2%	3.1%
Houston	5,671	333	5,338	1.6%	16.1%
Laredo	5,925	748	5,177	3.6%	15.6%
Los Angeles	1,467	10	1,457	0.0%	4.4%
Miami	1,370	31	1,339	0.1%	4.0%
New Orleans	1,150	62	1,088	0.3%	3.3%
New York	794	23	771	0.1%	2.3%
Portland	112	2	110	0.0%	0.3%
San Diego	22,409	19,016	3,393	90.6%	10.2%
San Francisco	964	20	944	0.1%	2.8%
San Juan	628	9	619	0.0%	1.9%
Seattle	2,292	102	2,190	0.5%	6.6%
Tampa	431	9	422	0.0%	1.3%
Tucson	703	39	664	0.2%	2.0%
Preclearance	775	–	775	0.0%	2.3%
Total	54,212	20,994	33,218	100.0%	100.0%

Source: https://trac.syr.edu/immigration/reports/683/

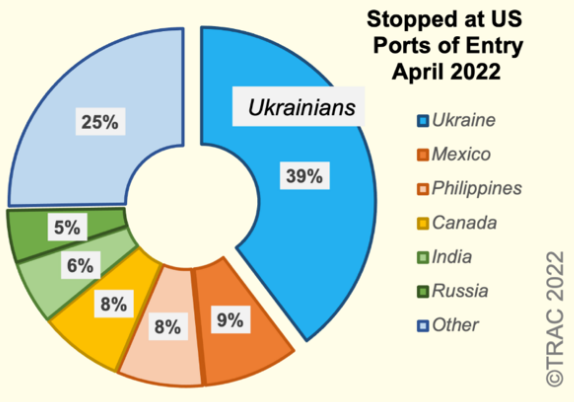


Figure 2. Inadmissible When Seeking To Enter U.S. at Official Ports of Entry, April 2022

Source: https://trac.syr.edu/immigration/reports/683/

Table 2. Stopped as Inadmissible by CBP Port Officials by Citizenship, April 2022

Citizenship	Number
Ukraine	20,994
Mexico	4,698
Philippines	4,315
Canada	4,167
India	3,149
Russia	2,613
China (Mainland)	1,858
Honduras	1,619
Haiti	1,341
El Salvador	647
Guatemala	548
Colombia	470
Brazil	466
Myanmar (Burma)	417
Chile	339
South Korea	327
Indonesia	319
France	317
Turkey	314
United Kingdom	242
Peru	233
Dominican Republic	230
Armenia	222
Jamaica	206
Vietnam	195
Spain	184
Iran	175
Italy	168
Venezuela	163
Nigeria	146
Belarus	144
Sri Lanka	135
Romania	104
Cuba	103
All Other	2,644
Total Inadmissibles	54,212

Source: https://trac.syr.edu/immigration/reports/683/

Table 3. Comparison of the Disposition of Ukrainians vs. Non-Ukrainians Stopped as Inadmissible by CBP Port Officials, April 2022

Top Customs and Border Protection Disposition	All Inadmissibles		Ukraine		All Other	
	Number	Percent	Number	Percent	Number	Percent
Allowed to withdraw	8,647	16.0%	92	0.4%	8,555	25.8%
Expedited removal	2,236	4.1%	7	0.0%	2,229	6.7%
With credible fear (turned over to ICE until status determined)	(192)		(7)		(185)	
Allowed to enter U.S. (paroled)	23,779	43.9%	20,044	95.5%	3,735	11.2%
Visa Waiver Program – refused	956	1.8%	–		956	2.9%
Notice to Appear (NTA) in Immigration Court issued	7,653	14.1%	285	1.4%	7,368	22.2%
Seeking asylum with credible fear	(7,140)		(246)		(6,894)	
Crew members refused landing rights or detained on board	10,811	19.9%	566	2.7%	10,245	30.8%
Other	130	0.2%	–		130	0.4%
Total Inadmissibles	54,212	100.0%	20,994	100.0%	33,218	100.0%

Source: https://trac.syr.edu/immigration/reports/683/

4.2 History of Executive Action and the Lautenberg Program

On April 21, 2022, President Biden announced the Uniting for Ukraine (U4U) program to assist in the process of Ukrainians fleeing Russia. This supports President Biden's commitment to welcome up to 100,000 Ukrainians and others who are fleeing due to Russia's ongoing aggression. To be eligible for U4U, Ukrainians must have been residents in Ukraine as of February 11, 2022, have a sponsor in the United States, have vaccinations, and other public health requirements, and pass rigorous biometric and biographic screening and vetting security checks. Beginning on April 25, 2022, United States individuals and entities could apply to DHS to sponsor Ukrainian citizens through U4U. A sponsor may be any United States citizen or individual, including representatives of non-government organizations. To be a sponsor it is required to declare financial support and pass security background checks. With U4U formally launched, Ukrainians who arrive at United States land ports without a valid visa or pre-authorization to travel to the United States through U4U will be denied entry and referred to apply through the U4U program. President Biden and Homeland Security warned that Ukrainians should not be traveling to Mexico to seek entry into the United States. Stemming from U4U, the Department of State will also be working with U.S. Refugee Admissions Program operations in Europe to assist with greater access to refugee resettlement processing as well as those in need of permanent resettlement through the Lautenberg program.

4.2.1 Executive Action

Leading up to the launching of the U4U program the Obama, Trump, and Biden Administrations issued numerous Executive Orders regarding a state of emergency in respect to Ukraine. The Executive Actions of 2014 were in reaction to Russia's invasion of Crimea, which would be the foreshadowing of the full-scale invasion in 2022 by Russia. On March 18, 2014, Vladimir Putin addressed State Duma deputies, Federal Council members, heads of Russian regions, and civil society representatives in the Kremlin. Regarding the invasion of Crimea, Vladimir Putin remarks:

> "A referendum was held in Crimea on March 16 in full compliance with democratic procedures and international norms. More than 82 percent of the electorate took part in the vote. Over 96 percent of them spoke out in favour of reuniting with Russia…Incidentally, the total population of the Crimean Peninsula today is 2.2 million people, of whom almost 1.5 million are Russians, 350,000 are Ukrainians who predominately consider Russian their native language, and about 290,000 – 300,000 are Crimean Tatars who, as the referendum has shown, also lean towards Russia…True, there was a time when Crimean Tatars were treated unfairly, just as a number of other people in the USSR. There is only one thing I can say here: millions of people of various ethnicities suffered during those repressions, and primarily Russians."

In response to Russia's invasion of Crimea, President Obama issued Executive Orders discussed below in an attempt to de-escalate the situation and assist Ukraine in protecting its sovereignty. During a statement by the President on March 20, 2014, after the Executive Orders were made, he encapsulated the situation in his statement to the public:

> "We've seen an illegal referendum in Crimea; an illegitimate move by the Russians to annex Crimea; and dangerous risks of escalation, including threats to Ukrainian personnel in Crimea and threats to southern and eastern Ukraine as well. These are all choices that the Russian government has made – choices that have been rejected by the international community, as well as the government of Ukraine. And because of these choices, the United States is today moving, as we said we would to impose additional costs on Russia."

On March 6, 2014, Executive Order 13660 was issued. President Obama declared a national emergency under the International Emergency Economic Powers Act. (50 U.S.C. 1701-1706). This order addressed how to cope with the unusual and severe threat to national security and foreign policy of the United States "constituted by the actions and policies of persons that undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets." This Executive Order was the beginning of the United States stepping in through Executive action as the tension between Russia and Ukraine was rising.

Section 1. (a) "All property and interest in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person (including any foreign branch) of the following persons are blocked and may not be transferred, paid, exported withdrawn, or otherwise dealt in: any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) to be responsible for or complicit in, or to have engaged in, directly or indirectly, any of the following:

(A) actions or policies that undermine democratic processes or institutions in Ukraine;

(B) actions or policies that threaten the peace, security, stability, sovereignty, or territorial integrity of Ukraine; or

(C) misappropriation of state assets of Ukraine or an economically significant entity in Ukraine;

(ii) to have asserted governmental authority over any part or region of Ukraine without the authorization of the Government of Ukraine;

(iii) to be a leader of an entity that has, or whose members have, engaged in any activity described in subsection (a)(i) or (a)(ii) of this section or of an entity whose property and interests in property are blocked pursuant to this order;

(iv) to have materially assisted, sponsored, or provided financial material, or technological support for, or goods or services to or in support of, any activity described in subsection (a)(i) or (a)(ii) of this section or any person whose property and interests in property are blocked pursuant to this order; or

(v) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order."

Shortly after this, on March 16, 2014, Executive Order 13661 was issued addressing the blocking property of additional persons contributing to the situation in Ukraine. President Obama issued this to expand the scope of the national emergency declared just a little over a week prior in Executive Order 13660. This order expanded on Executive Order 13660 by expanding *Section 1* of the Order.

Section 1. (a) "All property and interest in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person (including any foreign branch) of the following persons are blocked any not be transferred, paid, exported withdrawn, or otherwise dealt in:

(i) the persons listed in the Annex to this order; and

(ii) persons determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(A) to be an official of the Government of the Russian Federation;

(B) to operate in the arms or related material sector in the Russian Federation;

(C) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly;

(1) a senior official of the Government of the Russian Federation; or

(2) a person whose property and interest in property are blocked pursuant to this order; or

(D) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of:

(1) a senior official of the Government of the Russian Federation; or

(2) a person whose property and interest in property are blocked pursuant to this order."

Only four days later, on March 20, 2014, Executive Order 13662 was issued. President Obama expanded the scope further from Executive Orders 13660 and 13661.

Section 1 was expanded to state:

Section 1. (a) "All property and interest in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person (including any foreign branch) of the following persons are blocked any not be transferred, paid, exported withdrawn, or otherwise dealt in: any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) to operate in such sectors of the Russian Federation economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, such as financial services, energy, metals and mining, engineering, and defense and related materiel [sic].

(ii) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property and interest in property are blocked pursuant to this order; or

(iii) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked to this order."

Further explaining this Executive Action of March 20, 2014, President Obama explained in his statement to the public:

"I signed a new executive order today that gives us the authority to impose sanctions not just on individuals but on key sectors of the Russian economy. This is not our preferred outcome. These sanctions would not only have a significant impact on the Russian economy but could also be disruptive to the global economy. However, Russia must know that further escalation will only isolate it further from the international community."

On December 19, 2014, Executive Order 13685 was issued by President Obama to take further steps to address the Russian occupation of Crimea. The Executive Order focused on blocking the property of certain persons and prohibiting certain transactions with respect to the Crimean region of Ukraine.

On September 20, 2018, Executive Order 13849 was issued by President Trump to take additional steps impending certain statutory sanctions with respect to the Russian Federation. This order focused on the prohibition of financial transactions, loans, transfers of credit or payments between financial institutions, and the continued blocking of property and interest in property.

Four years after Executive Order 13849, on February 21, 2022, President Biden issued Executive Order 14065. This further expanded the scope of the national emergency declared through previous Executive Orders and found that "the Russian Federation's purported recognition of the so-called Donetsk People's Republic or Luhansk People's Republic regions of Ukraine contradicts Russia's commitments under the Minsk agreements and further threatens the peace, stability, sovereignty, and territorial integrity of Ukraine, and thereby constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States."

While these Executive Orders did not directly give Ukrainians the right to come to the United States they set the background to how individuals could come under humanitarian parole in the future. The Biden Administration is proud of the U4U program and with great speed, it was able to become active to assist those in need. Refugee activists have similarly commented that the speed at which this was implemented was historically unprecedented.

This has become not only the largest displacement in Europe since World War II, but it is the largest and fastest displacement in the world since World War II. There are nearly 5.1 million internally displaced people in Ukraine (as of May 2023), more than 6.2 million refugees from Ukraine have been recorded globally (as of July 2023), and approximately 17.6 million people require humanitarian assistance in 2023.

To date as of this writing, more than 187,000 Ukrainians have entered the United States through the *Uniting for Ukraine* program.

4.2.2 Lautenberg Program

The Lautenberg program functions to assist families in reunification by allowing individuals legally residing in the United States to move their family members into the United States. In 1990, the Lautenberg Amendment was enacted to assist in the resettlement of Jews from the former Soviet Union and later expanded to include persecuted religious minorities in other countries. While this is a critical program for refugee resettlement, each year the amendment expires and must be reauthorized. To date, the Lautenberg program was reauthorized for the 2023 fiscal year. Over the last three decades, prior to U4U, the resettlement of people from Ukraine to the United States has been through the Lautenberg program. Since the 2018 fiscal year, more than 14,000 Ukrainian nationals have been resettled in the United States through the Lautenberg program. In choosing to enter the United States through the Lautenberg program or U4U, Ukrainians must consider their desire to return to Ukraine post-war. The Lautenberg program is a permanent resettlement to the United States, thus those seeking to return to Ukraine should consider U4U due to the temporary status.

4.3 *Uniting for Ukraine* (U4U)

4.3.1 Development of U4U

On April 21, 2022, President Biden announced U4U which created a streamlined process for Ukrainian citizens fleeing due to Russia's unprovoked aggression. The announcement of U4U

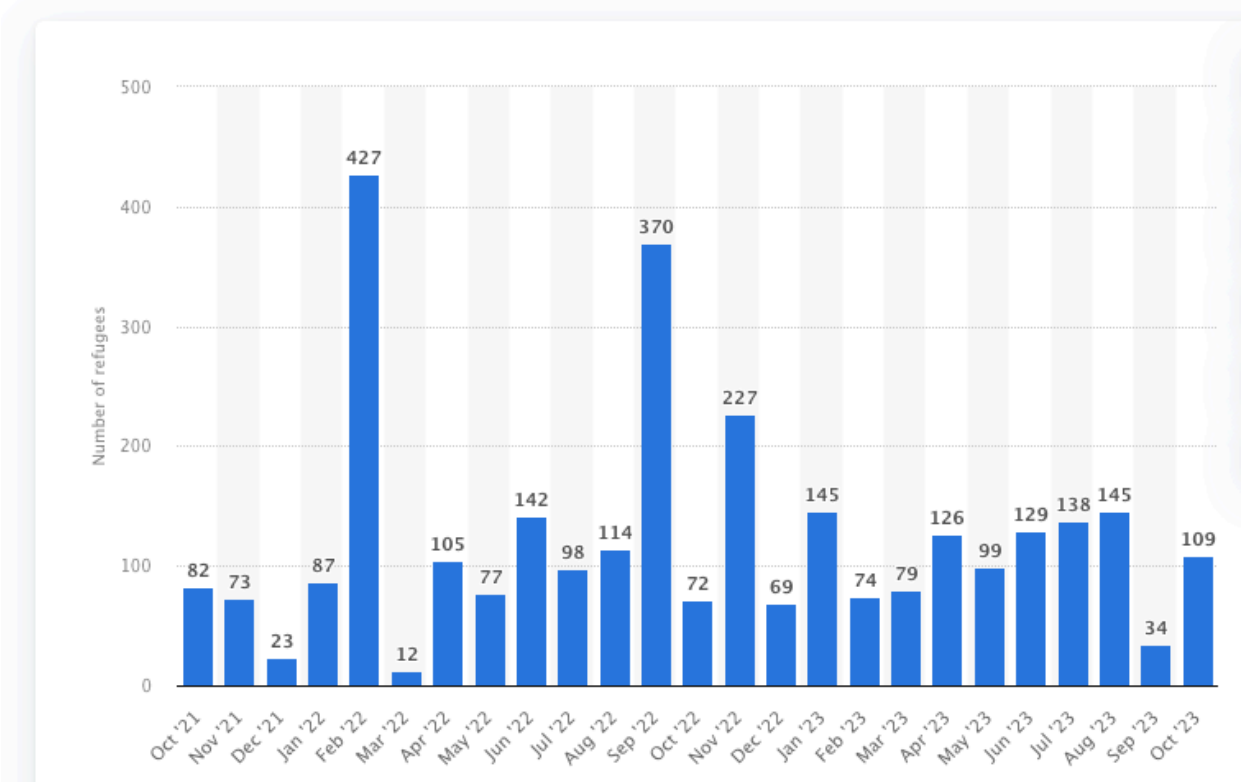
followed President Biden's commitment to welcome up to 100,000 Ukrainians and others fleeing in response to the Russia-Ukraine crisis. Secretary of Homeland Security, Alejandro N. Mayorkas remarked:

> "[w]e are proud to deliver on President Biden's commitment to welcome 100,000 Ukrainians and others fleeing Russian aggression to the United States. The Ukrainian people continue to suffer immense tragedy and loss as a result of Putin's unprovoked and unjustified attack on their country…DHS will continue to provide relief to the Ukrainian people, while supporting our European allies who have shouldered so much as the result of Russia's brutal invasion of Ukraine".

In further support of the new program, Secretary of State Antony J. Blinken stated: "[w]e will help deliver on the President's commitment to welcome 100,000 Ukrainian citizens and others forced to flee their homes in Ukraine, and our partnership with the Department of Homeland Security will help us fulfill that commitment."

When the U4U program began, Ukrainians who were granted humanitarian parole could remain in the United States for up to two years. This is a program that has permitted an expedited process for refugees into the United States with criteria set forth as to how to apply for U4U and the benefits to receive once you have arrived. While it provided a speedy process the program did not launch without issues of timing for those who had already made it to the United States without U4U. Further, there are looming questions as to what occurs when the temporary status of U4U expires. Despite the level of uncertainty for the future and a program that has received praise and criticism, it has permitted many people to reach safety.

Monthly intake of refugees from Ukraine to the United States from October 2021 to October 2023:



Source: https://www.statista.com/statistics/1310881/refugees-ukraine-united-states-2022/

4.3.2 Humanitarian Parole and Temporary Protective Status (TPS)

DHS has discretion under the Immigration and Nationality Act (INA) to temporarily permit certain non-U.S. citizens to enter and remain in the United States despite the lack of any lawful immigration status or legal basis for admission. The individuals who enter under these conditions are granted "parole". Within this discretion, there are limitations and explicit criteria to meet humanitarian parole. "DHS may only grant parole to someone if they are 'urgent humanitarian' or 'significant public benefit reasons' for doing so". The terms "urgent humanitarian" or "significant public benefit reasons" are not defined in the INA thus permitting the Executive Branch discretion of interpretation. The U.S. Citizenship and Immigration Services (USCIS) has provided guidance stating an example of "urgent humanitarian" may be protection against "targeted or individualized harm".

Similar to humanitarian parole, TPS is also not a pathway to permanent citizenship. For those who arrived in the United States before the full-scale invasion, TPS is a protection against deportation.

"TPS is typically designated to a country for an 18-month term. However, each individual from Ukraine must apply separately, and application processing could take 6-8 months. Individuals who are granted TPS are protected from being removed from the United States through the end of the 18 months (as defined by the official start and end date published in the Federal Register, not the date of the individual TPS grant). They are permitted to work if they receive employment authorization through TPS, and they may apply for travel authorization through TPS to leave the United States."

4.3.3 Process of Applying for *Uniting for Ukraine* (U4U)

To apply for U4U there are various stages to access the program, each with its hurdles. Taken in turn below will be a review of eligibility to apply, the application process, and sponsorship.

4.3.3.1 Who is Eligible to Apply for U4U

To begin the process an individual must be eligible to apply for U4U and it should be confirmed that these requirements are met before proceeding further. To be considered for humanitarian parole under U4U, an individual must meet all the following criteria:

1. Resided in Ukraine immediately before the Russian invasion (until February 11, 2022) and was displaced by the invasion,
2. Are a Ukrainian citizen and possess a valid Ukrainian passport (or are a child included on a parent's passport), or are the immediate family member of a Ukrainian citizen who is applying through *Uniting for Ukraine*,
3. Have a supporter in the United States who has filed a Declaration of Financial Support (Form I-134) on behalf of the applicant that has been confirmed as sufficient by USCIS,
4. Have completed vaccinations and other public health requirements including vaccinations for measles, polio, and COVID-19, and,
5. Have passed all biometric and biographic screening and security background checks.

Additional Requirement for Minors:

To be eligible for this process, children under the age of 18 must be traveling to the United States in the care and custody of their parent or legal guardian. Under the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), any child under the age of 18 who is not accompanied by their parent or legal guardian generally must be turned over to the Department of Health and Human Services (HHS) and vetted to protect against exploitation and abuse. Sponsors must be vetted before that child can be released and reunified.

Thus, children traveling alone, or with a non-parent or non-legal guardian adult, are not currently eligible for U4U. While it is an ongoing process, other mechanisms are being established to permit travel of vulnerable children and caregivers with appropriate safeguards.

4.3.3.2 How To Apply for U4U

After the person has been deemed eligible to apply, there are multiple steps to be taken under the application process:

Step 1: Financial Support

The applicant must have financial support from someone in the United States. This "supporter" must file a Declaration of Financial Support online on behalf of the applicant for the applicant to be considered for the program. This can be submitted through the online myUSCIS web portal to initiate the process.

At this point, the supporter will be vetted by the U.S. government to protect the individual from exploitation and abuse and ensure they can financially support the person to whom they are agreeing to support. Financial supporters must be verified and found eligible by the U.S. government before the Ukrainian beneficiary moves forward in the process.

1. Who Can Be a Supporter for an Applicant of U4U

A supporter of an individual applying for humanitarian parole under U4U must be lawfully present in the United States. “This includes:

1. U.S. citizens
2. Lawful permanent residents, lawful temporary residents, and conditional permanent residents.
3. Nonimmigrants in lawful status (this is, who maintain a nonimmigrant status and have not violated any of the terms or conditions of the nonimmigrant status)
4. Asylees, refugees, and parolees
5. Recipients of Temporary Protected Status (TPS)
6. Beneficiaries of deferred action (including Deferred Action for Childhood Arrivals [DACA] and Deferred Enforced Departure [DED]."

There are various sponsor programs for those seeking to come to the United States and in need of sponsorship. Some of these include Welcome.US, Welcome Corps, and Community Sponsorship Hub.

The role of a financial supporter is critical to Ukrainian citizens arriving in the United States. Every Ukrainian seeking authorization to travel to the United States for parole must be supported by a U.S.- based individual, including representatives of non-governmental organizations. Each supporter must pass a security and background vetting to demonstrate sufficient financial resources to "receive, maintain, and support" the Ukrainians they commit to supporting.

Individual Support

A supporter may support more than one person. The supporter must file a separate Form I-134 for each beneficiary (including each member of the family). Multiple supporters may join together to demonstrate the financial ability to support one or more Ukrainian beneficiaries. If this is the case, a primary supporter should file a Form I-134 and include in the filing supplementary evidence demonstrating the identity of, and resources to be provided by, the additional supporters and attach a statement explaining the intent to share responsibility. These supporters' ability to support Ukrainian beneficiaries will be assessed collectively.

Organization Support

U.S.-based organizations may provide financial or in-kind support for Ukrainian beneficiaries but Form I-134 still requires an individual to sign. Organizations may not serve as the named supporter on Form I-134. However, if an organization or other entity is providing financial or other services to the named individual to facilitate support, this information should be provided as part of the evidence submitted with Form I-134 and will be taken into account in determining the supporter's ability to support the named beneficiary.

Step 2: Submit Biographical Information in myUSCIS

Once USCIS approves the Declaration of Financial Support, the applicant will receive an email from USCIS on how to create an account with myUSCIS and further instructions on the next steps. At this point, the applicant will provide all required biographical information in myUSCIS and attest to completing all eligibility requirements. If a person has not met the vaccination requirements at this stage, they must obtain the first dose of the necessary vaccine before travel.

Language Barriers

In this process of navigating the websites and portals of the U.S., it may quickly become overwhelming when one is faced with sources not in the individual's native language. To combat this, USCIS provides a language access plan. This plan was developed to comply with Executive Order 13166 and the Department of Homeland Security's Language Access Plan. Executive Order 13166 "requires Federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system, to provide those services so LEP persons can have meaningful access to them."

While the Executive Order addresses individuals with LEP, query as to what occurs for individuals who do not speak any English. As Ukrainians are fleeing, it may require finding a person who can assist in understanding sources not available in a language spoken by the person or someone who is not LEP. USCIS states it regularly interacts with applicants in languages other than English through translated material, multilingual public engagements, the USCIS Contact Center's toll-free line, and in-person appointments while also routinely producing education and outreach material in various languages.

While on its face, this appears to provide the access needed for those with language barriers, in practice it begs the question as to if language barrier issues still arise.

Vaccinations

Ukrainians are informed that certain vaccinations, such as measles, polio, and the first dose of COVID-19 must be met before departure to the U.S. If a person has not received these before the invasion, it is unclear how this barrier is affecting those seeking to be beneficiaries of U4U. While the TB test may be completed within 90 days of arrival, without other required vaccinations an individual will not be eligible. The accessibility to these vaccinations amid the conflict is unknown. This is a variable that should be considered as to how Ukrainians may be able to easily obtain these vaccinations to come to the U.S. Although it may be argued that many, if not most, people have been vaccinated for measles or polio due to a requirement to do so, such as for education, exceptions may apply. In Ukraine, a person is typically vaccinated for poliomyelitis IPV month two, IPV month 4, and OPV month 6. A person is typically vaccinated for measles (MMR) at month 12. Thus, some individuals may be faced with a vaccine barrier to access safety in the U.S.

Step 3: Approval to Travel to the United States

After the requirements have been completed, the applicant will receive a notice to their myUSCIS account confirming whether they are authorized to travel to the United States. If the applicant has been approved, the individual has 90 days to arrange their air travel to the United States. In addition, Ukrainian citizens will need to meet other CDC travel requirements, including pre-departure testing for COVID-19.

Travel Barriers

As stated above, Ukrainians are responsible for arranging their air travel to the U.S. which under normal circumstances the majority of people can manage. But, as missiles are striking, buildings exploding, and people fleeing in cars or by foot to reach safety the question arises as to how accessible the ability is to arrange air travel. This requires access to one's documentation to travel, money, and the ability to book a flight. In response to this crisis, Wizz Air attempted to alleviate the hurdles. The airline provided 100,000 free tickets on all continental European and UK flights between September 15 and December 8, 2022. It is unclear if Wizz Air is continuing this system, but moreover, this did not grant free flights to the United States.

The best resource may be the company, momondo.com. Momondo gathers information for various airline fights and agents to assist those in finding the best flight to the United States. Flights may be as low as $545. This may be the most helpful resource for those trying to flee the conflict and come to the United States as it is updated regularly.

Step 4: Seeking Parole at the Port of Entry

Once the applicant has arrived at a port of entry, each Ukrainian citizen will be inspected by U.S. Border Protection (CBP) and considered for humanitarian parole for up to two years and may have conditions placed on their parole. All individuals two years of age or older will need to complete a medical screening for tuberculosis, including an IGRA test, within 90 days of arrival into the United States.

As part of the U4U program, Ukrainians will undergo additional screening and vetting, including biometric testing. Anyone determined to pose a national security or public safety threat will be referred to U.S. Immigration and Customs Enforcement (ICE). Individuals will be checked against a range of interagency intelligence, law enforcement, and counterterrorism holdings.

Ukrainians who present at U.S. land ports of entry without a valid visa or without pre-authorization to travel to the United States through U4U may be denied entry and referred to apply to the program.

Step 5: Approved for Parole

If the applicant is granted parole, the individual will generally be paroled into the United States for a period of up to two years and be eligible to apply for employment authorization. Individuals may request authorization to work by completing Form I-765, Application for Employment Authorization with USCIS.

At its inception, Ukrainians who filed for status under U4U were also eligible to file for a form I-765, a work permit, costing $410. A fee waiver was also available for those who qualified. These work permits were not only expensive but took weeks if not months to process through a backlogged system. A further challenge arose when Ukrainians had to prove they qualified for a fee waiver because there was simply no documentation of their financial or work status here in the United States that was considered acceptable. Even Ukrainians who were able to successfully pay for the work permit were forced to wait extended periods before being able to work and support themselves and their families.

On November 21, 2022, USCIS made significant changes to their policies, stating that Ukrainian parolees, and their qualifying family members "with certain classes of admission are considered employment authorized incident to parole, which means that they do not need to wait for USCIS to approve their Form I-765, Application for Employment Authorization, before they can work in the United States." USCIS further waived the filing fee for I-765 for those Ukrainians filing by mail, and, on December 5, 2022, USCIS stated that they would be able to process fee exemptions for online filing.

This shift in policy is of huge benefit to the Ukrainians in this country that are of age to work, and who, by all accounts want to work. These newly arrived individuals want to contribute to their communities and be able to support their families. A significant barrier is eliminated by no longer needing to wait weeks for a form to process.

4.4 You're Here, Now What?

4.4.1 Introduction to Benefits and Services

Not only are Ukrainian refugees fleeing their homeland leaving their lives, belongings, and often loved ones behind, but upon arriving in the United States there is the immediate need to have access to basic benefits and services. While U4U assists with entry into the United States for humanitarian parole, once arriving Ukrainian individuals need to seek out these benefits. Many have the assistance of sponsors or other programs to assist them as it is not an easy topic to navigate. Unlike other countries that lay out the benefits that individuals receive, the United States has a complex system of federal, state, county, and city-level benefits.

On May 21, 2022, President Biden signed the "Additional Ukraine Supplemental Appropriations Act, 2022." This Act provides more than 40 billion dollars in emergency funding to support Ukrainian individuals and Ukrainian efforts to protect its democracy from Russia. This 40 billion is divided between the Department of Justice, Defense, Energy and Water Development, and Related Agencies, State, Foreign Operations, and Related Programs, U.S. Agency for International Development, Oversight, Multilateral Assistance, Increased Authority,

Bill Emerson Humanitarian Trust, and Department of Treasury. The allocation of the 40 billion dollars towards benefits for refugees is as follows:

> "Title IV: Labor, Health and Human Services, Education, and Related Agencies
>
> Administration for Children and Families – $900 million to provide refugee support services, such as housing, English language classes, trauma and support services, community support (including school impact grants), and case management, for arrivals and refugees from Ukraine.
>
> Center for Disease Control and Prevention – $54 million to provide medical support, screening, and related public health activities for arrivals and refugees from Ukraine.
>
> In addition, the legislation allows for certain benefits to be offered to arrivals and refugees from Ukraine after undergoing background checks."

In reality, little of this 40 billion allocation will be seen by those individuals attempting to restart their lives in the United States and access basic needs. Further, the language of the Act is broad enough to leave ambiguity about how the money that is allocated for these services is used such as "case management", and "trauma and support services". Ukrainians must know how and where to access these benefits offered with the additional barrier of not being in their native tongue upon arriving in the United States.

4.4.2 Federal Benefits and Services

The first step is to apply for benefits and services upon arrival or once the individual has received humanitarian parole. To apply the individual can visit the state government benefits office or the ORR state program directory.

The Office of the Refugee Resettlement (ORR) is one of the first places Ukrainian individuals should consider understanding what is available on a federal level. "ORR provides funding to state governments, resettlement agencies, and other nonprofit community-based organizations to provide benefits and services to eligible individuals."

Ukrainian humanitarian parolees are eligible to apply for federal mainstream benefits such as cash assistance through Temporary Assistance for Needy Families (TANF) or Supplemental Security Income (SSI), health insurance through Medicaid, and food assistance through Supplemental Nutritional Assistance Program (SNAP).

If the individual is not eligible to receive these mainstream benefits, the person can be screened for eligibility at a state government benefits office or the closest resettlement agency in the person's state for the following ORR benefits and services.

4.4.2.1 Initial ORR Benefits

The initial ORR benefits are up to 12 months from the date of eligibility.

Refugee Cash Assistance (RCA)

"From their date of eligibility (May 21, 2022, or the date they received humanitarian parole, whichever is later), Ukrainian humanitarian parolees may receive up to 12 months of RCA to help meet their most basic needs, such as food, shelter, and transportation. RCA is linked to programming that provides family self-sufficiency planning and employment services to help clients assess their needs, plan how to meet these needs, and immediately find and maintain employment."

ORR Matching Grant (MG) Program

"Some may participate in the MG Program, an early self-sufficiency initiative. Enrollment slots are limited in number and by location. The MG Program provides cash assistance, intensive case management, and employment services to help clients immediately find and maintain employment. The goal of the program is to assist clients to become economically self-sufficient within 240 days."

Refugee Medical Assistance (RMA)

"From their date of eligibility (May 21, 2022, or the date they received humanitarian parole, whichever is later), Ukrainian humanitarian parolees may receive up to 12 months of RMA to cover their medical needs. RMA provides the same health insurance coverage as Medicaid."

Domestic Medical Screening

"From their date of eligibility (May 21, 2022, or the date they received humanitarian parole, whichever is later), Ukrainian humanitarian parolees may be eligible for a domestic medical screening examination, also known as Refugee Medical Screening, funded by ORR. The screening supports client resettlement by identifying health conditions that threaten their well-being, providing vaccinations required for school and work, and referring them to primary care providers or specialists for ongoing health care. ORR recommends that medical screenings are completed soon after arrival in the U.S."

4.4.2.2 Services

Services are up to the end of the individual's parole term or until five years from the date of their humanitarian parole, whichever is sooner.

Employment Assistance: Refugee Support Services (RSS)

"Ukrainian humanitarian parolees may be eligible to access RSS, which provides a wide range of services in support of employment and self-sufficiency: employability services; job training and preparation; assistance with job search, placement, and retention; English language training; childcare; transportation; translation and interpreter services; and case management."

Specialized Programs

"Some clients may be eligible for specialized programs such as health services, technical assistance for small business start-ups, financial savings, youth mentoring, or other targeted support programs."

4.4.2.3 Benefits through Temporary Protected Status (TPS)

Under TPS, Ukrainians can obtain an Employment Authorization Document (EAD). Ukrainians may apply for EAD to legally work within the United States. U.S. employers must ensure all employees, regardless of citizenship or national origin, are authorized to work within the United States. An EAD grants a person the legal status to work within the United States but offers fewer privileges than a green card.

Ukrainians will likely be eligible if:

(1) Recently paroled into the United States and that parole remains valid; or
(2) Applied for asylum and that application has been pending for at least 150 days.

To begin the EAD application process, begin Here. The applicant must then file Form I-765. At this, point USCIS will mail the work permit to the address provided in the application if approved.

4.4.2.4 Benefits through Humanitarian Parole (HP) and *Uniting for Ukraine* (U4U)

Ukrainian parolees are eligible for the same benefits extended to refugees. This includes Matching Grant, Refugee Cash and Medical Assistance, Preferred Communities, and Refugee Support Services. Further, there is access to federal assistance programs like TANF, SNAP, and SSI (if appropriate). These individuals will not be eligible for the Reception and Placement Program through the State Department.

4.4.2.5 Benefits through the Lautenberg Program

Lautenberg visa holders are eligible for the same benefits as refugees including the Reception and Replacement Program, Matching Grant, Preferred Communities, Refugee Cash and Medical Assistance, and Refugee Support Services. Further, benefits extend to mainstream benefits such as TANF, SNAP, and SSI (if appropriate).

The benefit of the Reception and Replacement Program is only applicable to the Lautenberg Program. This is in response to the fact it is a permanent resettlement. This benefit thus assists in allowing the refugee to be set up to be successful in the U.S. but as mentioned prior, the Lautenberg Program is not for Ukrainians who are seeking to return.

4.4.3 State Benefits and Services

Outside the scope of ORR benefits and services, what is available will be state-specific. Each Ukrainian refugee will need to research what is available within the state they are residing which may further involve the county and city. For comparison, New York and California will be examined as to how a Ukrainian refugee must navigate the system.

New York state is the home to the largest Ukrainian population in the United States. New York has outlined the support it will provide ranging from support services, emotional support, and resources and information for sponsors. Governor Kathy Hochul stated:

> "On behalf of 20 million New Yorkers, I am here to say with resolve in my heart, that we stand against this tyrant, and condemn Putin's unjust and inhumane violation of the sovereignty of Ukraine. And we will stand with Ukraine and its people now, and forever more. New York is with you. We will always be with you. The United States of America will be with you."

New York has worked to outline various avenues to assist the Ukrainian refugees beginning with support services from the state level. The Office for New Americans (ONA) provides various free support services to all immigrants and refugees in New York State regardless of status. Such services include free legal support, English language classes, mental health support through its Golden Door Program, workforce preparation, and access to developmental disability services.

Resources in New York are not limited to refugees arriving and the immediate assistance needed but expand into sponsor resources, emotional support, and healthcare assistance through NYC Care. What appears to make New York successful is the state support ranges from the day-to-day needs to be successful such as English language classes and legal support to emotional, medical, and sponsor support. All of these aspects are key to assisting in the transition to the U.S. as a refugee.

While these resources are comprehensible and clearly outlined on the New York State website, California is much more convoluted. In California, the eligibility of benefits for refugees, asylees, UHPs, and others is broken down by each benefit. This includes ORR Services, CalWorks, SSI/SSP, Cash Assistance Program for Immigrants (CAPI), CalFresh, and California Food Assistance Program (CFAP).

Benefits Eligibility for Refugees, Asylees, UHPs, NUHPs, and others

Categories[1]	ORR Services (Refugee Cash Assistance)	CalWORKs	SSI/SSP[2]	Cash Assistance Program for Immigrants (CAPI)	CalFresh	California Food Assistance Program (CFAP)
Refugee	Yes	Yes	Yes[3]	No[3]	Yes	No
Asylee	Yes	Yes	Yes[4]	No[4]	Yes	No
UHP and NUHP[5] paroled under INA section 212(d)(5) between 02/24/22 and 09/30/23 (Both less and more than 1 year)	Yes	Yes	Yes	No	Yes	No
Spouse or child of principal[6] UHP and NUHP or a parent, legal guardian or primary caregiver of an unaccompanied refugee minor UHP/NUHP paroled under INA section 212(d)(5) after 09/30/23 (both less and more than 1 year)	Yes	Yes	Yes	No	Yes	No
UHP and NUHP under 212 (d)(5) Entered prior to 02/24/22 or after	No	Yes, State-funded	No	Maybe (possible PRUCOL)	No	No

[1] List is not comprehensive of all non-citizen categories.
[2] SSI/SSP is a federally administered program and all final eligibility determinations are made by the Social Security Administration.
[3] Refugees are generally only eligible for SSI/SSP for a maximum of 7 years, after which they may be eligible for CAPI. (POMS SI 00502.106).
[4] Asylees are generally only eligible for SSI/SSP for a maximum of 7 years, after which they may be eligible for CAPI. (POMS SI 00502.106).
[5] NUHP are non-Ukrainian habitual residents of Ukraine displaced from Ukraine and paroled into the U.S.
[6] Principal UHP and NUHP are those who are paroled into the U.S. between February 24, 2022 and September 30, 2023.

Source: https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACWDL/2022/CL_07-22-22.pdf?ver=2022-07-22-111740-700

As a newly arriving Ukrainian refugee, this document would be challenging to understand. It may take more research to find what is available to an individual arriving in California. It appears this may not be from the California state government but rather from Nova Ukraine. Nova Ukraine outlines welfare benefits, how to apply, health insurance, local resources, and where to learn the English language. When applicable, the resource is further broken down by county.

Overall, New York State and California both have numerous benefits on the state level for refugees and provide thorough information on how to access what is available. The difference is accessibility to finding the information. If a newly arrived refugee to New York were to try and research benefits, the state website would outline what is discussed above. In contrast, California takes more research to find a source such as Nova Ukraine that makes the information, which is in English, digestible for a newly arrived refugee. For easier access, having the information that is accessible on Nova Ukraine on a California government website may be more accessible for new refugees to find

4.5 Analysis

4.5.1 Successes of U4U

4.5.1.1 Rising Above Politics

Overall, there has been general support and a feeling of success in the launching of U4U. It has been suggested that "the latest figures from the Biden Administration show that 207,103 supporters have filed to serve as a U4U sponsor. This number is especially impressive given that the program was launched less than a year ago. When averages across the lifespan of the program, this amounts to a rate of approximately 316 supporter filings per day."

The support for U4U is widespread in the United States. According to Niskanen, "zip code data collected from U4U sponsor filings has shown that the program has a well-distributed geographic base of support. More than 35 metro areas have 1,000 sponsors and 55 have over 500. The average state contains 3,931 people who have filed as supporters."

Further, Niskanen remarks on the success of U4U by considering the political and geographical distribution among the states. "The 10 states with the most sponsors per capita include Democratic strongholds in the Pacific Northwest (Washington and Oregon), solidly red states on either end of the country (Alaska and Florida), and battleground states in the Mid-Atlantic and Midwest (Pennsylvania and Ohio)."

This data suggests that U4U has been able to rise above political stances and reach a level of success based on the desire for United States citizens to assist in this humanitarian crisis.

Within this, data has been compiled to analyze who are the United States citizens willing to be a sponsor through U4U. According to Niskanen, as of September 30, 2022, the major takeaways from U4U zip code sponsors include:

"1. Compared to the national average, the top 25 sponsoring Congressional districts have a 2019 percent higher share of residents of Ukrainian ancestry.

2. Forty-five percent of sponsors live outside the top 10 metro areas.

3. Sixty-eight percent of sponsors are represented by House Democrats and 30 percent by House Republicans.

4. Three of the top 25 most welcoming Congressional districts are represented by Republicans, including Brian Fitzpatrick in PA-01, Nicole Malliotakis in NY-11, and Jaime Herrera Beutler in WA-03.

5. Since the start of the program five months ago, an average of 875 applications have been received every day.

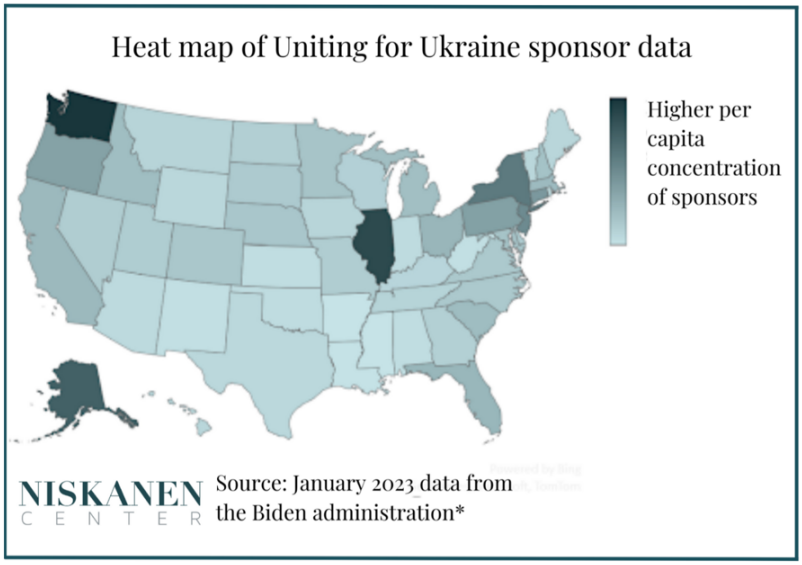
6. Of the top 25 requesting districts for Ukrainians, about two-thirds are suburban and the remaining one-third are urban.

7. Nearly 3,000 zip codes in the U.S. are home to at least ten supporters.

8. Congressman Hakeem Jeffries represents the top requesting district in the country, NY-08.

9. The top 10 metropolitan areas requesting Ukrainians are the greater areas surrounding New York City, Chicago, Seattle, Philadelphia, Los Angeles, Sacramento, Miami, Portland, Detroit, and Cleveland.

10. The program will likely welcome more than 100,000 Ukrainians by the end of 2022."

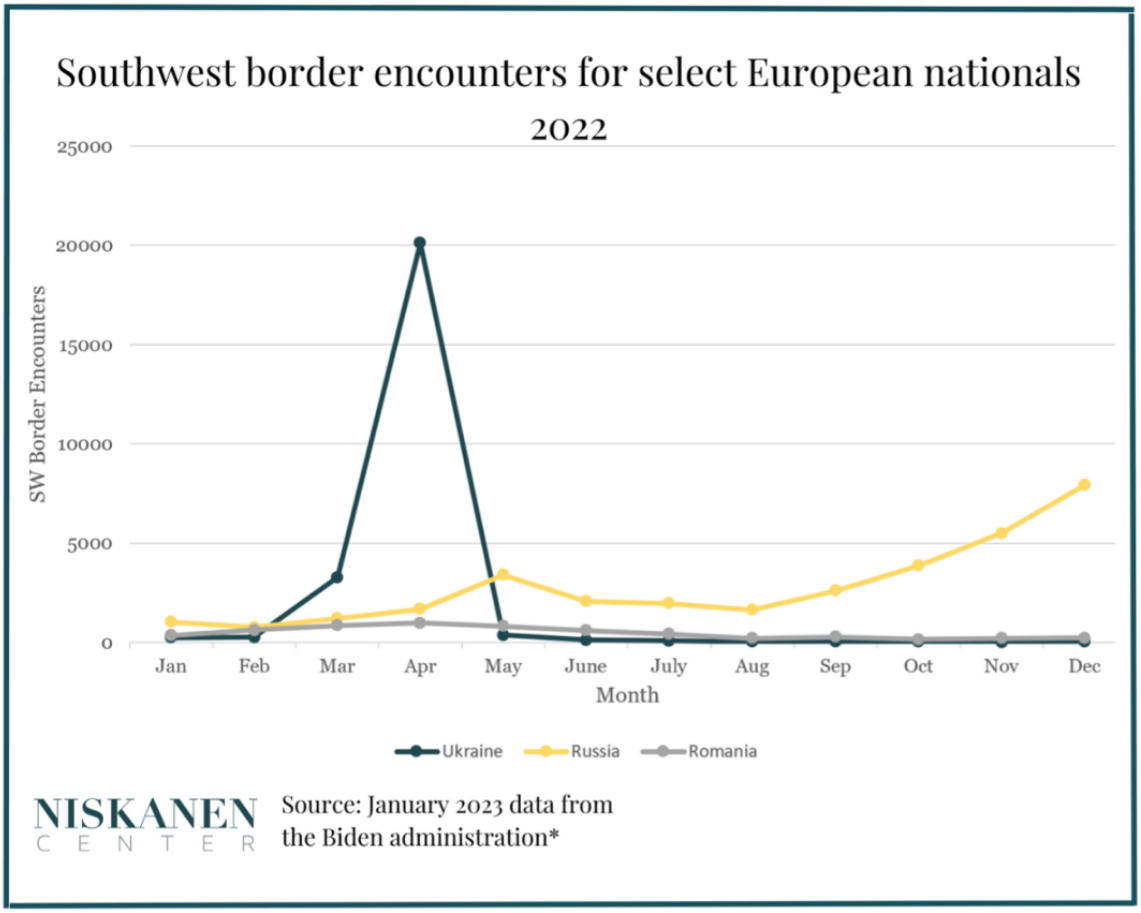


Source: https://www.niskanencenter.org/uniting-for-ukraine-has-been-a-resounding-success-heres-what-weve-learned/

4.5.1.2 Relief for Southern Border Countries of Ukraine

Before the invasion, encounters with Ukrainian nationals at the Southwest border were lower than other Eastern European nationalities but following the invasion, the numbers reached as high as 20,118 in April of 2022. Once U4U was initiated, encounters dropped to 374 in May 2022. This is a 98% decrease within one month largely due to the initiation of U4U. Between

May and December of 2022, Ukrainian encounters averaged 92 per month. Within this time, Russians accounted for 3,624 and Romanians for 368.



Source: https://www.niskanencenter.org/uniting-for-ukraine-has-been-a-resounding-success-heres-what-weve-learned/

8.5.2 Shortcomings and Criticisms of U4U

In general, refugee advocates support the U4U program that offers this assistance to displaced Ukrainians, but this has not been a blanket support.

8.5.2.1 Timeline of Permitted Stay

One of the most prominent concerns is the two-year limit on humanitarian parole. For many, this has been viewed as an arbitrary time decided by the program when there is no evidence to know how long the war will continue or how long it will take Ukraine to rebuild after the war.

There is grave concern for the long-term welfare of those fleeing Ukraine and entering the U.S. through U4U as Ukrainian parolees' options are greatly restricted with the two-year

permitted stay. Naomi Steinberg, vice president for U.S. policy and advocate for HIAS commented:

> "We have had significant concerns about the efficacy of bringing people in with humanitarian parole with no plan in place to allow them to adjust their status and stay if they cannot go home."

A statement by Secretary Alejandro N. Mayorkas on August 18, 2023, attempts to ease the anxiety of the two-year timeline closing in as the conflict continues. In this statement, DHS announced an extension of TPS for Ukraine for 18 months, from October 20, 2023, through April 19, 2025. Further, DHS announced a redesignation of TPS for Ukraine in response to the conflict and the inability to return to Ukraine safely. Secretary Mayorkas remarked:

> "Russia's ongoing military invasion of Ukraine and the resulting humanitarian crisis requires that the United States continue to offer safety and protection to Ukrainians who may not be able to return to their country. We will continue to offer our support to Ukrainian nationals through this temporary form of humanitarian relief."

1. Timing of Parole

One of the most significant timing issues during the launching of U4U was for those Ukrainians paroled in the United States before U4U. Through a case-by-case basis for approximately eight weeks Ukrainian nationals and immediate family members were paroled into the United States in response to Russia's invasion. All individuals who were paroled during these eight weeks were not paroled through U4U but for urgent humanitarian reasons. The downfall for these individuals is the timing of the parole. Those coming through U4U were paroled for two years while this unique set of parolees received only one year.

As the conflict continued to escalate entering its second year, DHS recognized the need for those who came before U4U to be granted on a case-by-case basis, an extension to the parole period. This time frame applies to those who entered the United States between February 24, 2022, and April 25, 2022.

While those affected by parole during this eight-week gap can receive a case-by-case review to receive the same time parole as those under U4U, the question remains that if one is denied through this process, it then becomes a question of terminating current parole, leaving the United States, and attempting to re-enter through U4U. There is always the risk in leaving that the parolee will not be able to return to the U.S. through U4U.

Although it was unforeseen during this time that those who sought refuge in the United States before U4U would face this dilemma of unequal access to parole, the remedy seems uncertain to guarantee these individuals will receive a two-year parole like U4U.

4.5.2.2 Resources

A second criticism is how resources are being allocated. The argument rests on whether the resources spent on U4U would be better spent on strengthening and expanding the refugee

program in the United States which would assist all people fleeing armed conflicts around the world, not limiting it to Ukrainians. *See supra*, American Immigration Council, note 21 at 13.

4.5.2.3 Disparate Protection

There has also been criticism surrounding the decision to offer this protection to Ukrainians while not providing similar protection of parole programs for other nationalities that suffer conflict and displacement. An example used by refugee advocates includes Afghans fleeing Taliban rule after the United States withdrew from Afghanistan. While the need of these Afghans is similar, there is no formal special program to streamline their entrance into the United States to seek safety and many have been denied. *See supra*, American Immigration Council, note 21 at 13.

4.5.2.4 Resettlement

In terms of resettlement, U4U is well suited to provide immediate assistance. Those working within the program have seen the positives including that it offers a two-year refuge in the United States, there is a near-immediate humanitarian solution, immediate work authorization (EAD), sponsor circle options, ORR benefits, resettlement agency assistance, and adjust to TPS for extension. With these positives of the program, shortcomings that have been discussed include that this is a temporary solution, not a pathway to permanent residency, and if not on humanitarian parole no ORR benefits are received, and there have been gaps with lack of fluidity in availability of services.

On April 24, 2024 President Biden signed H.R.8035 - the Ukraine Security Supplemental Appropriations Act, 2024 into law.

The **Ukraine Security Supplemental Appropriations Act** (USSAA) makes "emergency supplemental appropriations to respond to the situation in Ukraine and for related expenses for the fiscal year ending September 30, 2024, and for other purposes."

In addition to sending critical aid to help Ukraine win the war, **this package also provides humanitarian aid for… Ukrainian refugees living in the United States.**

1. The USSAA includes $481 million in supplemental funding to the Office of Refugee Resettlement (ORR) for Refugee and Entrant Assistance through September 2025.

2. It also reauthorizes resettlement assistance for eligible Ukrainian humanitarian parolees who arrived in the United States between September 30, 2023 and September 30, 2024.

4.6 You're Here, Now Can You Stay: Long-Term Immigration Pathways

As the time permitted to stay in the United States will end under U4U, and for Ukrainians under humanitarian parole or TPS for many the query is what to do when this occurs. For some, once it is safe, there is a strong desire to return to their country. For others, due to the impact of

trauma, destruction of homes and property, loss of loved ones, or establishing a life in the United States, there may be the desire to seek a way to stay. This section will set forth current potential pathways to remain in the United States.

1. Family Sponsored Immigration

"This requires a close relative who is a U.S. Citizen or Lawful Permanent Resident (green card holder) to sponsor the Ukrainian national. There are two types of family based pathways: *Immediate Relative* (U.S. Citizen) and *Family Preference* (U.S. Citizen/LPR).

Immediate Relative. Immediate Relative immigrant visas have no limit to the number of visas that can be issued annually. Processing time is faster than for Family Preference, but the eligible categories are narrow. Ukrainians may qualify if they have a:
U.S. citizen spouse
U.S. citizen parent (only if the Ukrainian is under 21 years old and unmarried)

U.S. citizen child who is 21 years or older

Family Preference. Family Preference immigrant visas are issued in limited numbers each year. Processing takes much longer than for U.S. Citizen immediate relatives — it could take years. Family Preference categories are:

First preference (F1) – Ukrainian unmarried sons and daughters (21 years of age and older) of U.S. citizens;

Second preference (F2A) – Ukrainian spouses and children (unmarried and under 21 years of age) of U.S. lawful permanent residents;

Second preference (F2B) – Ukrainian unmarried sons and daughters (21 years of age and older) of U.S. lawful permanent residents;

Third preference (F3) – Ukrainian married sons and daughters of U.S. citizens;

Fourth preference (F4) – Ukrainian brothers and sisters of U.S. citizens (if the U.S. citizen is 21 years of age and older)."

It is currently unknown how many Ukrainians have taken advantage of the family sponsored immigration option.

2. Employer Sponsored Immigration

"This requires a company, organization, or educational institution to sponsor the Ukrainian national (with a couple of exceptions). *Note that humanitarian parolees are not eligible to apply directly for most employment-based immigrant visas while they are on humanitarian parole in the United States.* This is because humanitarian parole is not a sufficient immigration status for purposes of employment-based immigrant visas.

Thus, humanitarian parolees who leave the United States may be eligible to apply for employment-based visas to a U.S. consulate abroad. Alternatively, humanitarian parolees who leave the U.S. then are later re-admitted on a different immigration status (ex. TPS, visitor visa, student visa, temporary worker) could potentially become eligible to apply for an adjustment of status to an employment-based immigrant visa. This is a highly complex and emerging area of the law, so it will be best to consult an experienced immigration attorney who is up to date on Ukrainian immigration matters."

It is currently unknown how many Ukrainians have taken advantage of the employer sponsored immigration option.

3. Diversity Visas

"To obtain a Diversity Visa, an applicant must win one of a handful of immigrant visas issued each year by the Department of State through the Diversity Immigrant Visa Program lottery. The application for Adjustment of Status must be made by an applicant who is legally residing in the U.S. after winning the diversity lottery.

Note that *Adjustment of Status* is not the same thing as *Change of Status*. *Adjustment of Status* is for immigrant visas that lead to permanent residence. *Change of Status* is for non-immigrant visas (ex. student, tourist, temporary worker) that allow individuals to stay for a temporary period. Unfortunately, humanitarian parolees cannot apply for a *Change of Status* to a non-immigrant visa without leaving the U.S. and going through the consular application process abroad."

It is currently unknown how many Ukrainians have been granted diversity visas.

4. Asylum

"This protection requires the applicant to meet precise legal criteria and win the case in immigration court to be granted asylum before applying for permanent residence. Individuals must apply for asylum within 1 year of their most recent entry into the United States.

Ukrainian parolees may be eligible to apply for asylum if they can demonstrate to an immigration court that they cannot return to their home country because they have been persecuted there in the past or have a well-founded fear of being persecuted in the future because of their race, religion, nationality, membership in a particular social group, or political opinion. Applicants for asylum must prove that the persecution/harm is from their country's government, or from a person or group that the government cannot protect them from. To be eligible for asylum, the persecution must also be significant, such as unlawful or political detention, torture, violation of human rights, physical violence, or some type of severe non-physical harm.

However, fleeing war or violence is not, by itself, a sufficient qualification for asylum unless the applicant meets the other eligibility requirements. Each asylum application is considered individually based on the applicant's unique facts and circumstances. If an asylum application is approved, then the person with asylum can apply for a green card. If asylum is not approved, then the applicant will need to obtain a different lawful status in order to remain in the United States.

It is important to know that asylum applications can take 4-7 years to adjudicate due to the record-number of asylum applications already in the pipeline. There is also a major risk of being rejected — not only for Ukrainians but for applicants from other countries — so it could be beneficial to pursue multiple routes if an applicant seeks permanent residence in the U.S."

It is currently unknown how many Ukrainians have been granted.

4.7 Conclusion

The full-scale invasion by Russia into Ukraine required the United States to step up and act quickly to assist in this ongoing humanitarian crisis. In launching U4U the United States has been able to not only accept thousands of Ukrainians fleeing their homeland but offer an expedited process to safety. The program has not gone without glitches but overall, the response by the United States has benefited many Ukrainians which will be recognized for years to come. Further, U4U may now be a model for future programs in both the successes and learning from the shortcomings. No program or country will ever execute the perfect answer in a situation such as this but in continuing to try and make the difference, every person helped is one person closer to helping all to safety.

4.8 Commentary

Additional Resources

This source outlines crucial information on the feelings of U.S. citizens about the conflict, Vladimir Putin, President Biden, the amount of financial aid provided by the U.S. as well as various other topics. In discussing the U4U process, the influx of Ukrainians into the U.S., and the future of these individuals' status, one should examine where the country stands on each of the issues and ask what may be impacting what these polls reflect.
https://d3nkl3psvxxpe9.cloudfront.net/documents/crosstabs_Russia_and_Ukraine_Conflict.pdf

This source outlines in a chart form the comparison of benefits under TPS, U4U, and the Lautenberg Program. While the benefits vary between the statuses it is important to fully understand what may and may not be available. https://refugees.org/wp-content/uploads/2022/06/Documentation-and-Benefit-Eligibility-for-Ukrainians-6.7.2022.pdf

Chapter 5

The Americas: Canada

5.1 Introduction

The United States and Canada share the longest international border in the world at 3,999 miles with little history of conflict. In 2003, Russia and Ukraine entered into an agreement defining their 1,240-mile international border. Unfortunately, this did not bring peace. In 2014, Russia invaded Ukraine and began occupying Crimea as well as other parts of Ukraine, turning into the full-scale invasion of February 2022. The territory of what is now Ukraine has been the site of some of the bloodiest wars in European history.[24] The Russian-Ukrainian border is approximately one-third the size of that shared by the United States and Canada, yet this only 1,240-mile border has not been peaceful. Both the United States and Canada have taken in Ukrainians fleeing the war and each nation created government programs and enacted new laws specifically to aid fleeing Ukrainians: *Uniting for Ukraine* (U4U) in the United States and the Canada-Ukrainian Authorization for Emergency Travel (CUAET) in Canada.

[24] According to Yale Historian, Timothy Snyder, "[t]he Bloodlands were not a real or imagined political territory, they were simply the setting where Europe's most brutal regimes did their most murderous work". Timothy Snyder. *Bloodlands*. xviii (2010).

Source:
https://sovereignlimits.com/boundaries/russia-ukraine-land
Source:
https://sovereignlimits.com/boundaries/canada-united-states-land

Relations between Ukraine and Canada run deep, and Ukrainian President Volodymyr Zelensky has appealed to this long history. During an address to the House of Commons in Ottawa on September 22, 2023, Zelensky specially referenced the construction in Edmonton, Canada of the first monument in the world to the Holodomor[25] installed in 1983.

> It was built to remember the genocide against Ukrainian people, the genocide ordered and perpetrated by Moscow, the first ever Holodomor monument in the world…[a]t that time, Ukraine didn't yet have memorials commemorating the victims of genocide of Ukrainians because Ukraine was under Moscow's control back then. This fall will mark the 40th anniversary since that first, and very important, commemoration of the victims of Holodomor.

[25] Holodomor is derived from Ukrainian words for hunger (*holod*) and extermination (*mor*). It refers to the time when millions of Ukrainians starved to death in 1932-1933 due to the Soviet Union's man-made famine imposed upon Ukrainians.

Today over 1.4 million Canadians claim Ukrainian ancestry and so the Russian invasion predictably led to Canada's serious humanitarian assistance. Ukrainians are one of Canada's largest ethnic communities. The Canadian-Ukrainian population is the third largest in the world, only behind Poland and Ukraine itself. This chapter will examine the history of the creation of the CUAET program, the transition from the CUAET to permanent residency options, and a comparison of how the United States and Canada have handled the Ukrainian humanitarian crisis brought on by the 2022 invasion.

5.2 Canada's Response

Established in 1940, the Ukrainian Canadian Congress (UCC) operates as the voice of Canada's Ukrainian community. The UCC combines the national, provincial, and local Ukrainian-Canadian organizations and seeks to speak in a united voice on behalf of all Ukrainian-Canadians.

The largest influx of Ukrainians to Canada began in 1940, after the Second World War. Since 1940 the UCC has operated as a way for the large population of Ukrainian-Canadians to have a voice within the Government of Canada and to seek support for Ukrainians in Canada. Canada's most popular province of Ontario led the UCC efforts.

On March 9, 2014, the Office of the Premier of Ontario, released a statement:

> Ontario is assisting the people of Ukraine by providing $100,000 in humanitarian aid and other supports as necessary during this challenging and difficult time. Over the past few weeks and months, Ontario has closely observed the ongoing political unrest and escalation of violence in Ukraine. The province is saddened

> by the loss of life there and concerned about those who have been injured. Ontario is hopeful that Ukraine can achieve a peaceful and democratic resolution to the conflict. The monetary support will be donated to the Ontario Chapter of the Canadian Red Cross Society. It will help emergency response teams in Ukraine that are providing first aid to the wounded from both sides of the conflict. Ontario is home to one of the world's largest Ukrainian communities outside of Ukraine, with almost 350,000 people.

On February 24, 2022, the day of the full-scale invasion, the Office of the Premier announced that Ontario will be providing $300,000 in humanitarian aid during this difficult and challenging time. Premier Doug Ford stated:

> "Last night we witnessed a violent attack on a sovereign nation as Vladimir Putin launched a war of aggression against Ukraine. The bonds between Canada and Ukraine run deep, and generations of Ukrainian-Canadians have helped build the Canada we love and know."

5.3 Canada-Ukraine Authorization for Emergency Travel (CUAET)

On March 17, 2022, in response to Russia's invasion of Ukraine, the Government of Canada introduced the Canada-Ukraine Authorization for Emergency Travel (CUAET) to help Ukrainian nationals and their family members find safety in Canada. Over 200,000 Ukrainians fled to Canada after the full-scale invasion of February 2022. Between March 17, 2022, and November 28, 2023, under the CUAET, 210,178 people arrived in Canada. Approximately 80-90% of such Ukrainians landed in Ontario. A significant portion went to the Province of Alberta due to a lower cost of living there and the perception that the Alberta offers better chances at securing a provincial nomination. This chapter will focus on how the CUAET operated. Since the Ukraine War continues as of this writing in April 2024, this chapter will focus on how Canada may continue to provide aid considering the end of the CUAET.

In his September 22, 2023, address before the House of Commons President Zelensky acknowledged: "I thank you, Canada, for being a real example of leadership and honesty for so many around the world".[26]

[26] At Zelensky's speech not only were Ukrainians present but unfortunately some Nazi collaborators. This embarrassing moment for Canada led to the Canadian house speaker resigning. *See,* World Socialist Web, *Government-backed Ukrainian Canadian Congress chides: Don't "besmirch" the reputation of Nazi Waffen-SS veteran Hunka*. (2023) https://www.wsws.org/en/articles/2023/10/06/orln-o06.html

5.3.1 Development of the CUAET

The CUAET was introduced by the federal government of Canada to offer Ukrainians and their family members free, extended temporary status. This status permits them to work, study, and remain in Canada until it is safe for them to return home. It is not a refugee immigration system. Unlike applications for permanent resettlement as a refugee, there is no cap on the number of visas, work, and study applications that can be accepted under the CUAET.

Most of those fleeing came shortly after the full-scale invasion, and so the Government of Canada ended the program on July 15, 2023. Since that date, fleeing Ukrainians still waiting for status cannot enter under this humanitarian crisis policy, but must seek some other status (refugee, student visa, work visa, or tourist visa). This contrasts with the United States where the U4U humanitarian parole system still operates as of this writing in 2024.

5.3.2 Process of Applying for the CUAET

5.3.2.1 Who Was Eligible to Apply for the CUAET?

To be considered to the CUAET a person must be:
1. Ukrainian Nationals
2. Family members of Ukrainian nationals (can be any nationality)
There must be a separate application submitted for each family member.

Family members are defined as:
(1) The spouse or common-law partner of a Ukrainian national
(2) Their dependent child

(3) The dependent child of their spouse/common-law partner; or
(4) A dependent child of their dependent child

5.3.2.2 Application Process for the CUAET

The application for the CUAET was completed online and free of charge. Once the application has been completed there were various steps to complete and additional instructions for when the application has been approved.

For minors, there must be a submission of:

(1) a copy of each child's birth certificate with their application (if possible)
(2) a letter of authorization from the parent who is not traveling with the child, or evidence that you have full custody of the child (when applicable)

Once the application has been completed, the Ukrainian individual may be asked to provide biometrics (fingerprints and photo). If this is requested, the individual will receive a biometric instruction letter by email and the email will include how to book the appointment. If an instruction letter is not received, no biometrics are required.

This is less restrictive than minors attempting to come the United States through U4U. As discussed in the previous chapter, minors traveling alone or with a non-parent or non-legal guardian adult are not eligible for U4U. Under the CUAET, a minor is eligible upon the conditions stated above. Thus, Canada gives a safe haven to minors that cannot have a guardian present which was a shortcoming in the United States program. However, as will be discussed below, U4U is more generous since anyone with a sponsor can enter the United States. In Canada, the sponsor must be a family member.

Application Approved

The decision letter provides instructions for next steps including:

1. How to submit your passport to the closest visa application center, so that the physical visa counterfoil can be added to the passport.
2. How to travel to Canada. If a letter is received stating, you qualify for a foil-less visa, you are not required to submit your passport.
3. What to do if you do not have a valid passport.

5.3.2.3 Who Can Be a Sponsor for an Applicant of the CUAET

Canadian citizens and permanent residents can apply to sponsor eligible family members to come to Canada. The Immigration, Refugee and Citizenship Canada (IRCC) will prioritize applications if:

1. The person applying to sponsor is a Canadian citizen, permanent resident or person registered under the Indian Act.

2. The family member being sponsored can be:
    a. Spouse
    b. Common-law or conjugal partner
    c. Dependent child (including adopted children)

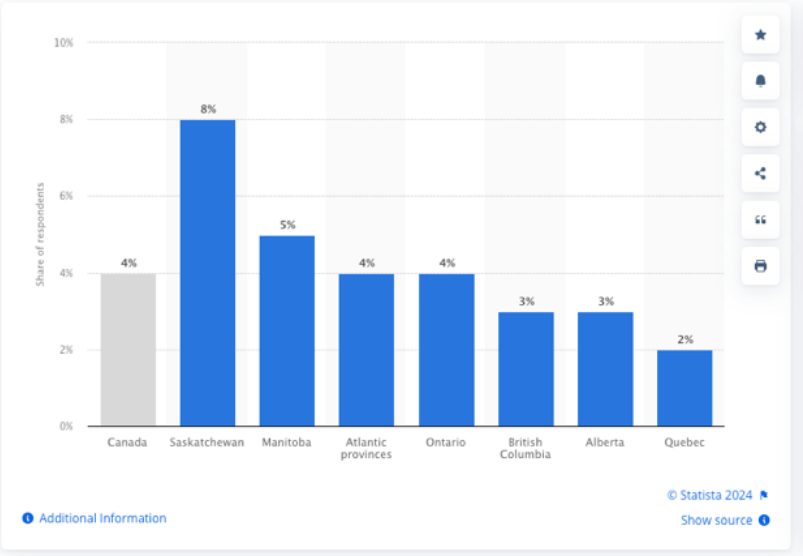
There are two main restrictions under the CUAET in comparison to U4U in the United States. First, in order to be a sponsor under the CUAET you must be 18 years old and:

1. Canadian citizen
2. Person registered in Canada as an Indian under the Canadian *Indian Act*, or
3. Permanent resident of Canada.

Second, the only people who are eligible to be sponsored are as listed above, highly restrictive to spouse, common law or conjugal partner or dependent child.

While the IRCC stated that the application with these characteristics will be prioritized, there was no explanation as to the difference of "prioritize" versus even eligible to apply for the CUAET or be a sponsor outside the realm of these restrictions categorized as "prioritize applications." (The link no longer works). According to Toronto immigration lawyer Lev Abramovich, "priority" occurred when there was a Ukrainian spouse and non-Ukrainian spouse application. The Ukrainian spouse received priority while the decision to a non-Ukrainian spouse took much longer to process.

Proportion of people having sponsored or assisted a refugee or a refugee family from Ukraine in Canada in 2023, by province.



Source: https://www.statista.com/statistics/1378383/canadians-sponsored-assisted-ukrainian-refugees-province/

5.4 You're Here, Now What?

5.4.1 Introduction to Benefits and Services

Through the CUEAT, the Government of Canada provided an increase of $900,000 over three years to the Canadian Ukrainian Immigrant Aid Society to deliver the services necessary. This funding was used for housing, access to services such as mental health supports, education for children, language instruction for adults, and employment and training supports.

On April 6, 2022, addressing access to jobs, health care, and free education in Ontario, Premier Doug Ford stated:

> Our government will always embrace newcomers to the province, particularly at a time when we need more people to help fill in-demand jobs and especially the brave people fleeing the unjust war in Ukraine…. As families arrive from Ukraine, we're making sure the resources and supports are in place to help them find meaningful employment while also keeping them safe and healthy.

Canada focused on implementing these resources so that upon Ukrainians arrival there would be access to good paying jobs and economic opportunities. The Government of Canada strived to attract, support, and protect newcomers to the nation. Since the beginning of the full-scale invasion hundreds of Ontario businesses have offered Ukrainian arrivals employment and assistance.

The types of supports available to Ukrainian newcomers arriving under the new federal travel authorization also includes:

1. Access to Ontario Health Insurance Plan (OHIP) coverage which includes health care supports and services they may need, including mental health services.

2. Access to drug benefits for Ukrainians through OHIP eligibility or receiving emergency income assistance.

3. Access to emergency housing through settlement service agencies and Ukrainian community organizations, including host homes and other temporary settings that Ukrainians may need until long-term arrangements are made.

4. Ensuring Ukrainian elementary and secondary school students can attend publicly funded schools for free.

5. Trauma-informed counseling and culturally responsive supports to students and families as well as the promotion of intercultural understanding and awareness of Ukrainian stories and

history, through a $499,000 provincial investment to Ukrainian-Canadian community organizations.

6. Support for persons who have been admitted to Canada on an emergency basis for humanitarian reasons studying at Ontario's publicly assisted colleges and universities through a new provincial $1.9 million Ontario-Ukraine Solidarity Scholarship.

7. Financial support of up to $28,000 through the province's Second Career Program, for those who apply and are eligible, for basic living allowance, tuition, transportation, and other critical needs.

5.4.2 Health

> "Our government stands in solidarity with the Ukrainian community as we come together to help Ukrainians who have fled their homeland. That's why we have taken action to ensure those coming to Ontario can access publicly funded health care. Ontario is working with health care partners, including hospitals and community providers, to ensure that Ukrainians arriving in our province are able to receive the health care they may need when they need it."
>
> - Christine Elliott, Ontario Deputy Premier and Minister of Health.

If a person arrived in Ontario through the CUEAT the individual is eligible for Ontario Health Insurance Plan (OHIP) which will grant access to drug benefits and mental health services.

5.4.3 Mental Health

Ontario emphasized the importance of access to mental health treatment for those fleeing war and arriving in Canada. While mental health resources and the importance of seeking help exists on many of the websites Ukrainians must sift through, the caveat becomes who is eligible. Ontario states to be eligible for crisis counseling you must be:

> 1. Permanent residents of Canada who have not become citizens
> 2. Protected persons as defined in section 95 of the Immigration and Refugee Protection Act (IRPA)
> 3. Individuals who have been selected to become permanent residents and have been informed by a letter from the IRCC
> 4. Convention Refugees
> 5. Temporary foreign workers who hold or receive approval of a work permit under section 112 or receive initial approval for permanent residence under section 113 of the immigration and refugee protection regulations.

If you came to Canada as a refugee, there are additional services that are available if an individual does not meet the criteria above. This includes:

The Canadian Centre for Victims of Torture (CCVT)

CCVT is a non-profit organization that assists in integration of torture victims to Canadian society. The non-profit has doctors, lawyers and social workers who provide legal, medical, and social services. CCVT also has English-as-a-Second Language (ESL) classes, music and art therapy and support groups.

IG Vital Health Services

This program offers psychotherapy services that are performed by registered and licensed psychotherapists and psychologists. Services may be covered by different insurance providers, government programs, including, the Interim Federal Health Program (IFHP) for those that are eligible. It is based in the Greater Toronto Area.

ReNu Counseling and Psychotherapy

This program offers counseling and psychotherapy services that are performed by a Registered Psychotherapist and Clinical Counselor. Their services may be covered by different insurance providers, government programs, including IFHP for those that are eligible. This program only serves those currently living in Ontario.

5.4.4 Family Needs

On February 1, 2024, the Ontario government began helping more families and children by implementing the Hague Convention on International Recovery of Child Support and Other Forms of Family Maintenance, ratified by Canada in October 2023.

> "Family responsibilities do not stop at our border, which is why we are pleased to be able to expand our partnerships around the world to ensure people receive court-ordered supports…[m]ore families will be getting the support they depend on to pay for living and child expenses."
>
> - Michael Parsa, Minister of Children, Community and Social Services

This treaty supplements the thirty-eight jurisdictions for Ontario to work with to be able to enforce and collect spousal and child support when parents or spouses are living abroad. This permits the enforcement to more than fifty-five countries. The treaty permits other countries to enforce spousal support and childcare orders and collect payments through wage garnishments, asset seizures, license suspensions and other legal means in the jurisdiction in which the payor lives.

5.4.4.1 School Enrollment/Education

> "This unprovoked war has inflicted catastrophic destruction and the tragic loss of innocent children and families. To ensure our province is a place of refuge for children and families fleeing this bloodshed, we have acted to ensure Ukrainian children can

attend Ontario schools, along with new mental health supports for Ukrainian-Canadian children to help these kids heal from the trauma of war. We will not waver in our defence of innocent children and will uphold the value of freedom and democracy."

- Stephen Lecce, Minister of Education

"I want to express my deepest sympathies to the Ukrainian people who have been forced to flee their homes and assure them that our government is working tirelessly to provide the supports they need at this challenging time, including access to postsecondary education in Ontario. By creating a new scholarship that will support persons admitted to Canada on an emergency basis for humanitarian reasons, we can help learners – like those from Ukraine – to access the postsecondary education and training they need to succeed.

- Jill Dunlop, Minister of Colleges and Universities

The Ontario province has committed itself to making enrollment for school accessible for Ukrainians fleeing the humanitarian crisis in Ukraine. Children arriving under the CUAET can attend publicly funded schools for free. There is further assistance for managing enrollment through the provided settlement worker or the school's settlement worker.

To begin, when enrolling the Ukrainian child in publicly funded schools in Ontario a few documents are required. These documents include:

1. Proof of child's age – can be satisfied with birth certificate, passport, or other travel or identity documents.
2. Proof of address – if do not have Ontario Photo ID or Ontario Driver's License it may be satisfied by a bank statement, utility bill, or lease that shows name and address.
3. Proof of guardianship – only need if you are not the child's parent.
4. Immunization records

Immunization Records

All children between the ages of 4 and 17 must receive certain vaccinations to attend school in Ontario unless they have a valid exemption.

5.4.4.2 Childcare

In Ontario, there are three basic types of childcare: (1) license home (2) childcare centers and (3) unlicensed childcare. Childcare services in Ontario are in high demand and have long waitlists. Licensed Home Care is childcare provided in a caregiver's home, which is supervised by a license agency. Licensed childcare centers (daycare) are facilities where children from different families are cared for together by qualified staff. Unlicensed childcare is childcare provided by a caregiver in their home or in the parents' home. The caregiver is selected and supervised by the parent.

5.4.4.3 Senior Support

Many seniors in Canada get support and services through both federal and provincial government programs. Most programs have a minimum age limit, usually between 55 and 65. These services are available for seniors coming under the CUAET to Canada.

5.4.5 Employment

Employers seeking to support Ukrainians through offers of employment can register available jobs using Job Bank's Jobs for Ukraine. This is a free, bilingual website that provides employers with access to thousands of potential employees and offers a free and secure space for job postings. Ontario Council of Agencies Serving Immigrants (OCASI) states that there are many community agencies to provide services aiding in finding employment for newcomers. The right to work as a foreign national is protected under the Employment Standards Act, 2000 and Employment Standards Act 2009.

5.4.6 Learning English

Canada assists in learning English by offering English Second Language (ESL) instruction for Newcomers to Canada (LINC) programs. These programs are available to newcomers to Canada, including Ukrainians arriving after fleeing the war. There are various options for classes and programs to choose between ESL and LINC.

5.4.7 Settlement Services

There are various settlement services available for newcomers to Canada, whether applying for permanent residency at the termination of the CUEAT or if the individual arrived under the CUAET. Specifically in Ontario some agencies are dedicated to providing services for Ukrainians including the Canadian Ukrainian Immigrant Aid Society (CUIAS) and Jewish Immigrant Aid Services (JIAS). These agencies are located in Toronto and offer settlement services, employment assistance, and English language training. These programs strive to be able to assist all who are arriving by offering the services in English, French, Ukrainian, and Russian.

In recognizing the transition to Canada, information is provided to help support all aspects of the adjustment including housing, employment, finance, education, health care, and other necessary topics. To assist in a broad overview of these topics a resource was developed called "Orientation to Ontario". This resource includes various documents for newly arriving Ukrainians to utilize.

5.4.8 Housing

Through the CUAET, Ukrainians are eligible for settlement services including assistance with finding housing. Upon arrival, if housing has not been established there was temporary emergency accommodation. This permitted the CUAET holder with no other housing arriving in Canada by March 31, 2024, to be eligible for up to 14 nights of temporary emergency housing in select cities across Canada.

The CUAET welcome package disclosed that the cost of living is substantially higher in larger cities than smaller towns. The CUAET holders arriving in Canada by March 31, 2024, are

eligible to apply for transition financial assistance until June 30, 2024, to meet basic needs. This assistance is a one-time, non-taxable benefit.

Once temporary housing has expired, there are services that assist with longer-term housing such as the Canada Mortgage and Housing Corporation (CMHC). According to the Government of Canada, almost one third of families rent their homes and most rentals are posted online.

5.5 Can You Stay?

5.5.1 Extension of the CUAET

When the CUAET was initially launched March 17, 2022, it provided Ukrainians and their immediate family members of any nationality the opportunity to stay in Canada as temporary residents for up to three years. But, like U4U, it begs the question as to what happens at the end of the three years. Ukrainians and family members had until July 15, 2023, to apply overseas for a CUAET visa free of charge. The CUAET was terminated on July 15, 2023, but an announced extension permitted those approved for the CUAET visa to arrive in Canada until March 31, 2024.

This extension to arrive by March 31, 2024, permitted many additional Ukrainians to arrive. As of March 16, 2023, 943,730 Ukrainians have applied for the CUAET and 616,429 were approved. But, out of those 616,429 approved, only 190,970 have arrived in Canada. On July 15, 2023, the Government of Canada announced that there would be ongoing support for Ukrainians who want to come to Canada, and those who want to reside permanently with their family. The Government of Canada announced that beginning October 23, 2023, a new pathway will provide permanent residency to those who have fled Russia's unprovoked invasion and want to stay in Canada. The eligibly included Ukrainian spouses, common-law partners, parents, grandparents, siblings and children or grandchild of a Canadian citizen or permanent resident. This announcement for the permanent resident program to begin October 2023 marked the end of the ability to flee Ukraine with Canada as a safe haven. (See also, CIC News.)

To qualify, Ukrainian nationals must be already in Canada with temporary resident status and have one or more family members in Canada. This pathway to permanent residency will close on October 22, 2024. The criteria include:

(1) Be a Ukrainian national
(2) Be a family member of a Canadian citizen or permanent resident, including their:
    a. Spouse or common-law partner
    b. Child (regardless of age)
    c. Grandchild
    d. Parent
    e. Grandparent, or
    f. Sibling (or half-sibling)

(3) Be in Canada when:
    a. Submit application
    b. Granted permanent residence

5.5.2 End of the CUAET

The announcement of the new permanent residency program of October 23, 2023, appeared to be one of hope for those seeking to flee Ukraine, but this is false hope. The CUAET formally ended in July 2023, and while it permitted those approved to arrive until March 2024, this marks the end of the Canadian safe haven. The announcement of further support for still fleeing Ukrainians to arrive for permanent residence is extremely restrictive, and so will be available to the very few.

As of October 23, 2023, the Government of Canada announced that Ukrainian nationals with family members in Canada may apply for permanent residency so long as the person is a Ukrainian national who is: (1) in Canada, and (2) the family member of a Canadian citizen or permanent resident.

This unique temporary public policy permits certain Ukrainian foreign nationals in Canada and their family members to apply for permanent residence. Family members can live in or outside Canada and permanent resident visas will be issued to family members living outside of Canada.

To be eligible for permanent residency a family member includes Ukrainian spouses, common-law partners, parents, grandparents, siblings and children or grandchildren of a Canadian citizen or permanent resident.

In reality, the extension was not a true extension, and the new program was one of false hope. Upon the launching of the CUAET it operated as similar emergency immigration programs, aiding those fleeing Ukraine, with a temporary visa of three years. The "extension" simply functioned to allow Ukrainians who had been approved for the CUAET to arrive to Canada, after the termination of the CUAET and to make a streamlined process for those who are applying for student or work visas as these will be a separate way to stay in Canada outside of the CUAET. These visas are issued outside of an immigration crisis.

Thus, the extension and announcement of a new program for permanent residency in many ways softened the blow to the end of the CUAET, but it did not offer additional resources other than the ability to arrive by March 2024 if not already in Canada and approved.

In March 2024, Immigration Minister Mark Miller announced that the CUAET would not be extended, and all applicants must arrive to Canada by the end of the month. While clearly no extension would be granted to enter Canada past the end of the month, Minster Miller did emphasize flexibility in consideration to the immigration issues arising from the Ukraine War. In this vein of flexibility, Minister Miller stated that "we're not sending anyone back in the face of a nuclear aggressor like Russia, as long as the war is ongoing."

The issue is that these statements are contradictory. As the CUAET ends and permanent residency is limited in its accessibility, while the desire for flexibility may be genuine, under the current law there is no alternative for Ukrainians to stay once their stay through the CUAET ends and the war may not be over. The hope will be, in the face of ongoing conflict Canada would reconsider extending the CUAET. According to Toronto immigration lawyer Lev Abramovich writing to the authors on November 29, 204: "The Canadian government has now addressed this concern by allowing CUAET-related permit holders to extend their status for an additional three years, up to March 31, 2025. However, the longer individuals remain in Canada, the greater the hardship they face if forced to return. Even if a peace agreement is reached, Ukraine's economy will likely remain devastated, the political situation unstable, and certain regions will require extensive de-mining and reconstruction. These challenges highlight the need for Canada to

consider long-term solutions for those displaced by the conflict." We note here that the same statement applies to Ukrainian refugees displaced by the war and allowed to stay in the United States under U4U and TPS. A long-term solution needs to be found after President Trump takes office in 2025.

Our proposed solution is to allow all or most those who arrived to gain a pathway to permanent residency or citizenship in Canada and the United States. As productive residents or citizens in North America, this new crop of Ukrainian Canadians and Ukrainian Americans can help rebuild post-war Ukraine, much as previous diaspora generations have done.

The Canadian Immigration Lawyer Association actively addressed the looming question of what happens at the end of the CUAET visa. The Association began calling for action to address the extensive backlog in work permit and permanent residency applications. Immigration lawyer Lev Abramovich commented on the issue, "[w]e're going to have about 200,000 Ukrainians in Canada based on this program, probably close to 250,000. So, what is going to happen when their work permits are ultimately running down, and they want to stay.... I don't think we're going to be deporting people back to Ukraine. So, I think a little bit more needs to go into the permanent residency part of the piece." Abramovich believes approximately 5-10% will qualify for the permanent residency under the current policy. He adds in the same email to the authors: "While some may transition through regular economic streams, many Ukrainians are increasingly turning to Humanitarian and Compassionate (H&C) applications under s.25 of the Immigration and Refugee Protection Act. I estimate that approximately 40,000 such applications could be filed by CUAET visa holders in 2024. Combined with a general rise in H&C applications due to broader immigration restrictions, this influx risks overwhelming the program and contributing to significant backlogs. Addressing this issue requires proactive measures to ensure the system remains responsive and sustainable."

Important dates for the post-CUAET measures

Date	Temporary measure or support available
March 31, 2024	• Last day to apply under the post-CUAET measures ◦ Once you're in Canada, under the post-CUAET measures, you and your family members can apply for an open work permit, for a study permit or to extend your stay for up to 3 years.
March 31, 2025	• Last day when Ukrainians and their family members who are in Canada temporarily can benefit from settlement services ◦ Settlement services that are normally reserved for permanent residents of Canada will continue to be available to all Ukrainians and their family members until March 31, 2025.

Source: https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/ukraine-measures/end-dates.html

5.5.3 Comparison to the United States

Facing the end of the U4U period and the issues of "what now" in the United States, Canada was forced to address the same questions with the end of the CUAET. The U.S. announced various pathways to permanent residency including Family-Sponsored Immigration,

Employer Sponsored Immigration, Diversity Visas, and Asylum. The Government of Canada's announcement for permanent residency appears to resemble the Family-Sponsored Immigration option most closely in the United States, yet is much more limited. The U.S. breaks the Family Sponsored Immigration option further into "Immediate Relative" and "Family Preference" (*See Chapter 8, Section 8.6*). The immediate relative option in the U.S. almost mirrors Canada's policy. Under the U.S. announcement, a Ukrainian may qualify if they have a U.S. citizen spouse, U.S. citizen parent (only if the Ukrainian is under 21 years old and unmarried, or U.S. citizen child who is 21 years or older. (*See Chapter 8, Section 8.6*). Under the family preference for the U.S. as discussed in Chapter 8, this is limited by a number per year and may takes years to acquire. Regardless, the requirements are broken into four preferences, all family. (*See Chapter 8, Section 8.6*).

Under the Ukrainian announcement for permanent residency, it is the same requirement that one be a Ukrainian national and that it be a family member residing in Canada. Canada appears to expand "family" slightly more than the U.S. by including common-law partner, grandchild, grandparent, and half-sibling to which the U.S. policy does not include. While this appears to give more opportunity to stay in Canada, it is more limited by the fact this is the only pathway to permanent residency.

Canada expands the meaning of "family" but offers fewer options than the U.S. such as Employment Sponsored Immigration, Diversity Visa, and Asylum. These limitations reflect that in the end Canada is more restrictive in the pathway to permanent residency.

As stated above, our proposed solution is to allow all or most those who arrived to gain a pathway to permanent residency or citizenship in Canada and the United States. Diaspora Canadians in North America for centuries have been the bulwark of Ukraine in times of crisis, much as Armenians have been for Armenia, Jews for Israel and Filipinos working abroad that keep the economy of the Philippines afloat.

5.6 Analysis

5.6.1 Success of the CUAET

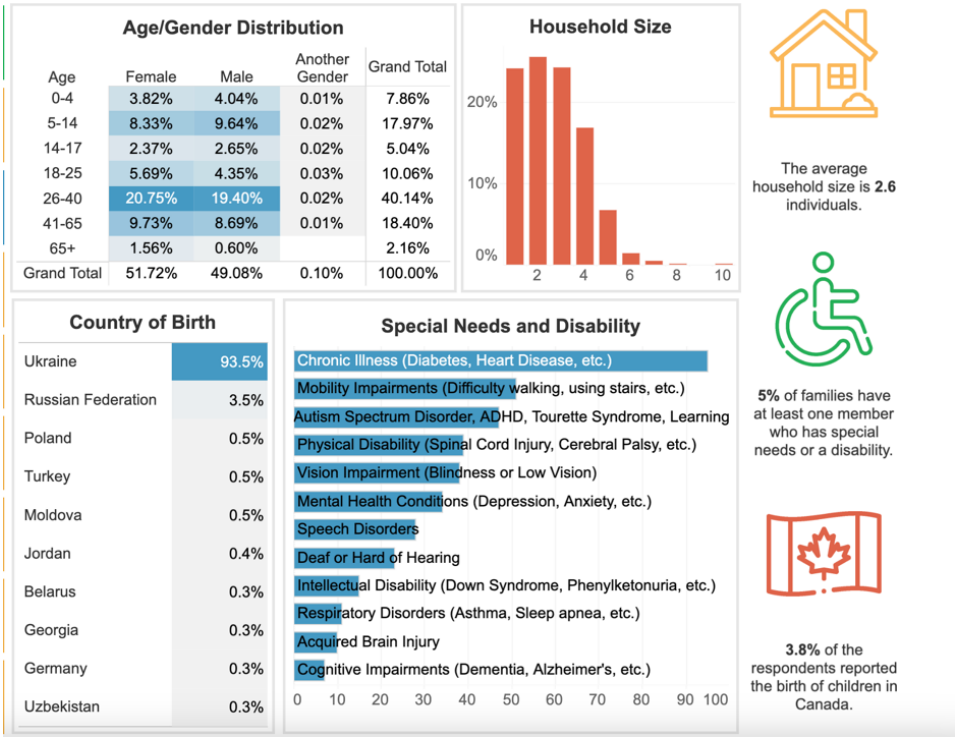
There have been close to one million applications received by IRCC under the CUAET since its initiation. This reflects the high desire of Ukrainians to come to Canada, a country with the third highest Ukrainian population in the world. As referenced earlier, the ties to Canada run deep and this is shown by the massive number of Ukrainians desiring to come to Canada when their home country became unsafe. Overall, there was much success, undeniable by the number of Ukrainians who came to Canada, but also shortcomings.

5.6.2 Shortcomings and Criticisms of the CUAET

According to Lev Abramovich, "it is important to remember there would be no criticisms if Canada had not stepped up to make the CUAET program." Overall, the CUAET offered a pathway for over 200,000 Ukrainians to enter Canada while attempting to flee the unprovoked aggression of Russia. In October 2023, together the IRCC, UCC, and Operation Ukrainian Safe Haven (OUSH-OHPU) developed a survey of the CUAET visa holders. The primary objectives of the survey were to reveal the demographic structure of the CUAET visa holders, insight into the intentions of those who have not arrived in Canada, and estimating their anticipated arrival patterns. Further, the survey sought to gain insight of displaced Ukrainians in Canada, assessing

their immediate needs, settlement trends, and effectiveness of the settlement services provided. This survey was distributed through IRCC to approximately 500,000 CUAET visa holder individuals at random, regardless as to whether the individual has arrived in Canada. The survey is Operation Ukrainian Safe Haven – Opération havre de paix pour les Ukrainiens (OUSH-OHPU), "Canada-Ukraine Authorization for Emergency Travel (CUAET) Survey" (**November 2023**). The charts below set out the results of the survey.

Demographics



Source: https://ukrainesafehaven.ca/data/cuaet-survey/post-arrival-in-canada/

Those who participated in the survey commented:

> "In my opinion, many Ukrainians now need psychological help in connection with the war in Ukraine, where many relatives remain, as well as in connection with the fact that moving to another country with a completely different mentality is very difficult for the human psyche."

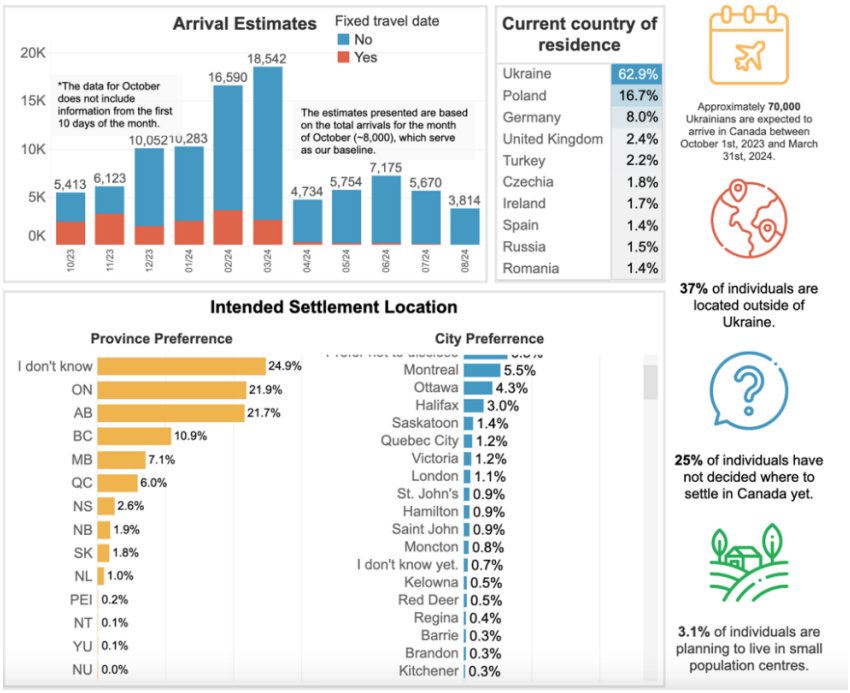
> "We really need information about help (psychological, education) for a child with an autism spectrum disorder."
>
> "…. Personally, given my daughter's diagnosis, I needed an individual approach from a therapist…"

According to the survey portion of demographics after arriving in Canada, one of the main issues was access to mental health. There appears to be a high need for mental health care and a lack of access. While the graph states that 5% of families have at least one member who has special needs or a disability, this 5% may be an unreported statistic in the broad scope of mental health support. Many of the comments by survey participants regarding demographics focused on this aspect of psychological needs. Three of the excerpts above reflect this. Whether this be the need for specified assistance or in a more general sense the trauma of fleeing their home country due to Russia's unprovoked aggression is unknown. Canada emphasized the importance of mental health in the CUAET program, yet many participants in the survey reported this area in demographics to be underserved.

If one is to research U4U, discussed in the previous chapter, there is no discussion of the mental health aspect of Ukrainian refugees. In researching U4U this is not a topic Ukrainians will find readily available in the U.S., but upon searching about the CUAET the importance of mental health and the access for help is readily available. This is not to say that those arriving in the U.S. through U4U could not receive mental health support, but it was not a focus of the program. However, the CUAET and Ontario advertised access but fell short of being able to provide it. Discussed above in section 9.4.3., various options were available for Ukrainian refugees but despite what appeared available to Ukrainians researching the topic, the services seemed to be inadequate.

This is important because those fleeing to Canada, or any individual facing the trauma of war, realizes that war trauma can have a lifelong impact and unfortunately may further impact future generations. The disparity between the services posted for Ukrainians and what access was available is an unfortunate shortcoming to the CUAET.

Arrival Estimates



Source: https://ukrainesafehaven.ca/data/cuaet-survey/pre-arrival-in-canada/

Those who participated in the survey commented:

> "It would be great to be able to get (non-financial) assistance with the search for long-term rental housing, for example, in the form of a resource where owners/companies willing to rent housing to newcomers under the CUAET program would be presented."

> "The period of providing temporary housing is too short. It is difficult to find housing in 2 weeks."

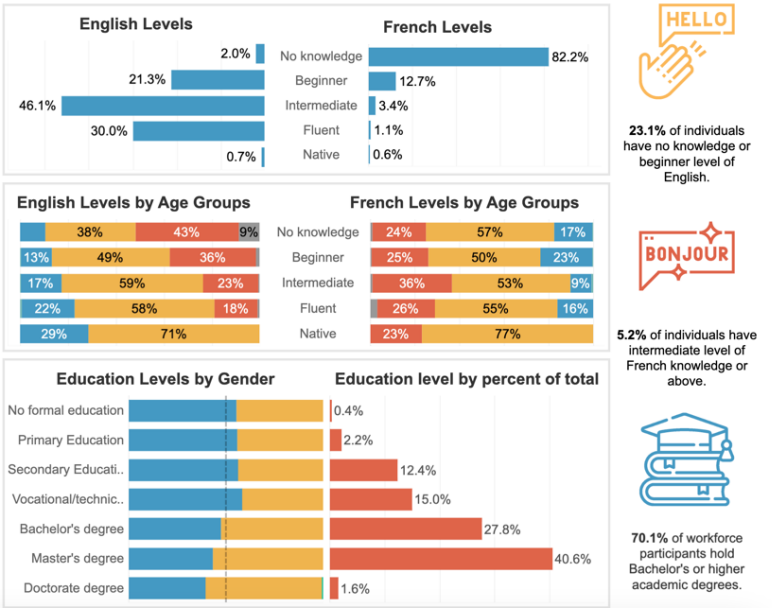
At the time of the survey, it was reported that approximately 70,000 Ukrainians are expected to arrive in Canada between October 1, 2023, and March 31, 2024. Based on the extension, those who did not arrive by March 31, 2024, were not able to enter Canada under the CUAET program. There are many more than these 70,000 that have not arrived as discussed above and it will now be an issue of being able to arrive by the cutoff date of the CUAET visa or being eligible for permanent residency. Even if eligible for the permanent residency, the Ukrainian refugee must be in Canada when the application is filed and approved, thus, providing an additional barrier. Many Ukrainians may not be able to make it into Canada with these restrictions of arrival. While the survey estimates 70,000 to arrive, in reality it may be significantly less.

For those responding to the CUAET survey on arrival estimates, there was a focus on the challenge for housing. The housing options for those coming to Canada through the CUAET appear to fall short of what was necessary for Ukrainians to be able to get settled enough to have basic needs fulfilled. It must be remembered the Ukrainians arriving and seeking housing are operating under war conditions. The ability to search for housing, submit numerous applications,

show a history of banking records is not as available as it would be to a Canadian wanting to move or another person moving to Canada outside of a refugee status. Based on the comments of those in the survey, the CUAET did not provide long enough temporary housing, nor did it provide enough assistance through long term rentals or sponsors. As discussed above, the housing was temporary and after the short period, finding housing fell on the Ukrainian family. While the Government of Canada posted various options of where to find housing, the same obstacles remain such as inability to show history of banking, the expense of living, and the risk renters are taking without having a financial background. Further, with the financial assistance, it is a one-time assistance which may not be enough to find housing.

Under U4U, the sponsorship program was supported by various organizations which appears to have given more support and assistance in finding housing and options for longer term temporary housing with a sponsor than what occurred under the CUAET. This is not to say those coming through U4U did not face challenges. Similarities between the programs are the challenges of the inability to show renting history, banking information, credit history, and other basic considerations renters are required to show.

Language and Education



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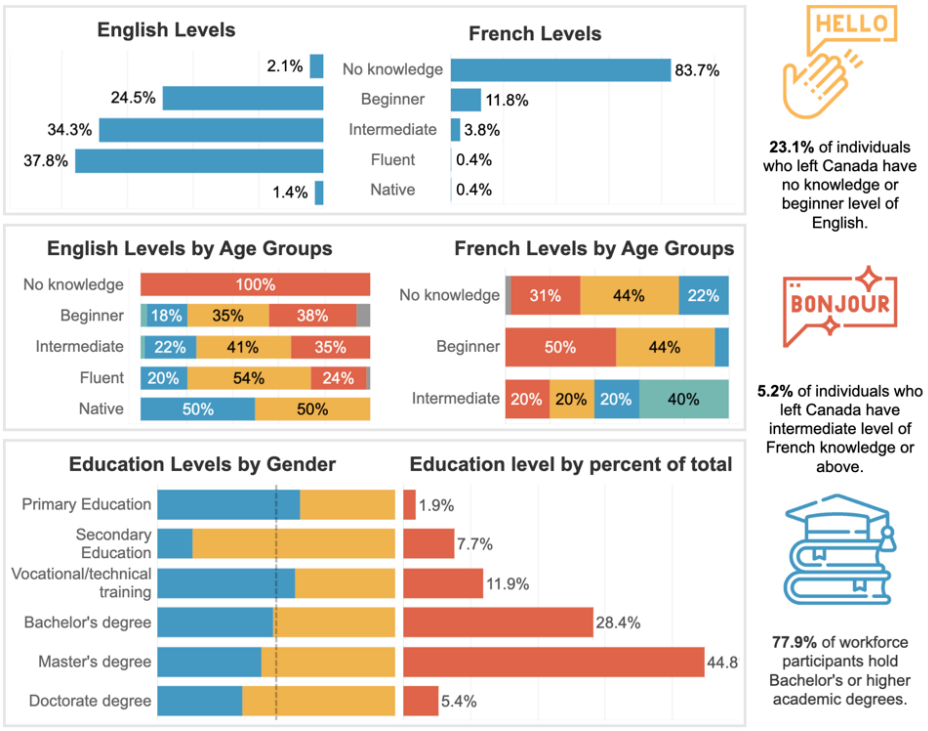


Source: https://ukrainesafehaven.ca/data/cuaet-survey/after-leaving-canada-3/

Those who participated in the survey commented:

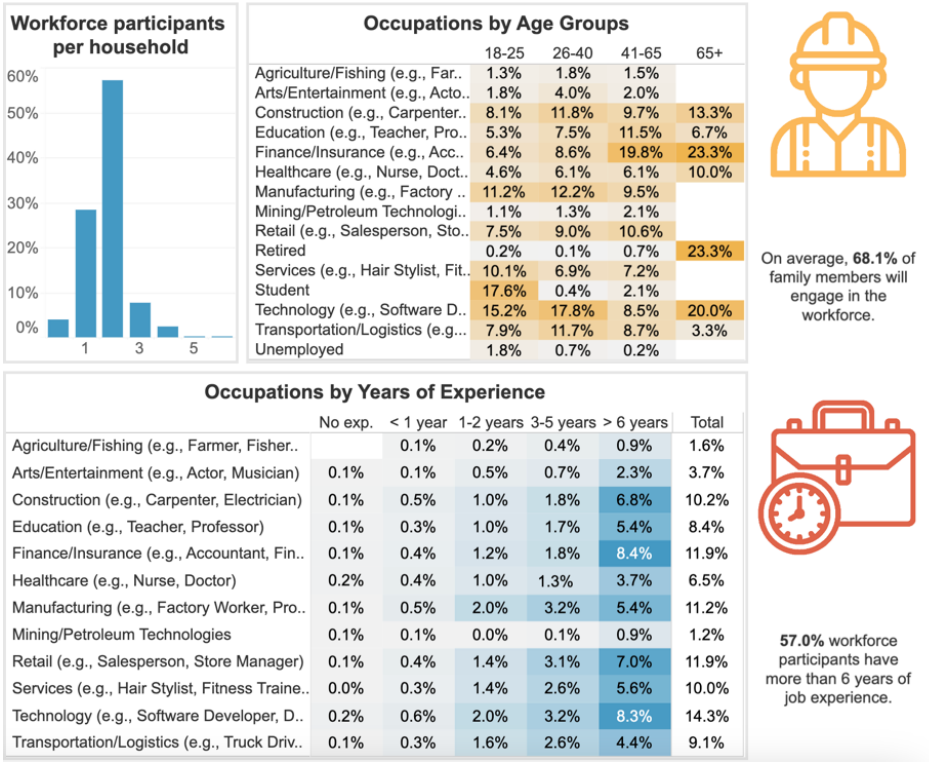
> "Mostly all Ukrainian newcomers come to Canada with the desire to work. A lot of them have Master's Degree and they are educated and hardworking people. Also, many of them speak English well. Unfortunately, the majority can't work in their field of expertise because it is almost impossible to get a license or a permission. I have been struggling to get a teaching certificate for example. To make procedures easier for newcomers would be a great help."
>
> "Today, a big problem is the queues for English language classes; people don't start training for 7-9 months."
>
> "More help is needed in learning English, especially in smaller towns".

The survey of the CUAET regarding language demonstrates what a barrier this became for employment and education. According to the post-arrival survey, 23.1% of individuals had no knowledge or even beginner level of English. As for French, 5.2% of individuals have an intermediate level French or above and those upon leaving Canada have the same. While French is beneficial in the Quebec province, the reality is that the highest number of Ukrainians coming through the CUAET settled in Ontario, where English is necessary. This was a great disadvantage to Ukrainians arriving in Canada who did not speak English. Although Canada advertises many options for English classes, based on the survey it seems that, like mental health, this was not readily available.

The lack of English directly impacted the ability of those Ukrainians to utilize their higher levels of education. As remarked by a survey participant above, the desire to work is present but the inability to use education due to the language barrier was a significant obstacle. Arriving in Canada, 70.1% of workforce participants held a bachelor's or higher degree and upon leaving Canada it was 77.9%. This statistic suggests that while many Ukrainians were frustrated in the ability to have their degrees recognized in Canada, there was a certain speed of recognition.

While this survey reflects the frustration of credentials not being recognized, this is not an issue specific to the CUAET program. Those coming to the U.S. through U4U faced a similar issue as many professional degrees such as lawyers, accountants, teachers, and similar professions do not cross over international borders. Although a recognized frustration it is not a reflection of the CUAET program. The takeaway from this portion of the survey must be the promotion of ESL classes and other programs with the inability to access the resources.

Employment



Source: https://ukrainesafehaven.ca/data/cuaet-survey/post-arrival-in-canada/

Those who participated in the survey commented:

"The strongest need is the possibility of employment without Canadian experience."

> "I can open a factory for the production of industrial fans and mine or quarry equipment. I have 15 years of experience."
>
> "One problem is the lack of Canadian experience. For example, I have a bachelor's degree in electronics and a little experience as an engineer and project manner, but without Canadian experience it is very difficult to get a job even as an administrator, although I am actively working on it."
>
> "I am a doctor and I do not know how to confirm my diploma, no one could help or explain. Everyone considers it impossible, only learning from scratch, for which there is no time and money. Therefore, there is no prospects."

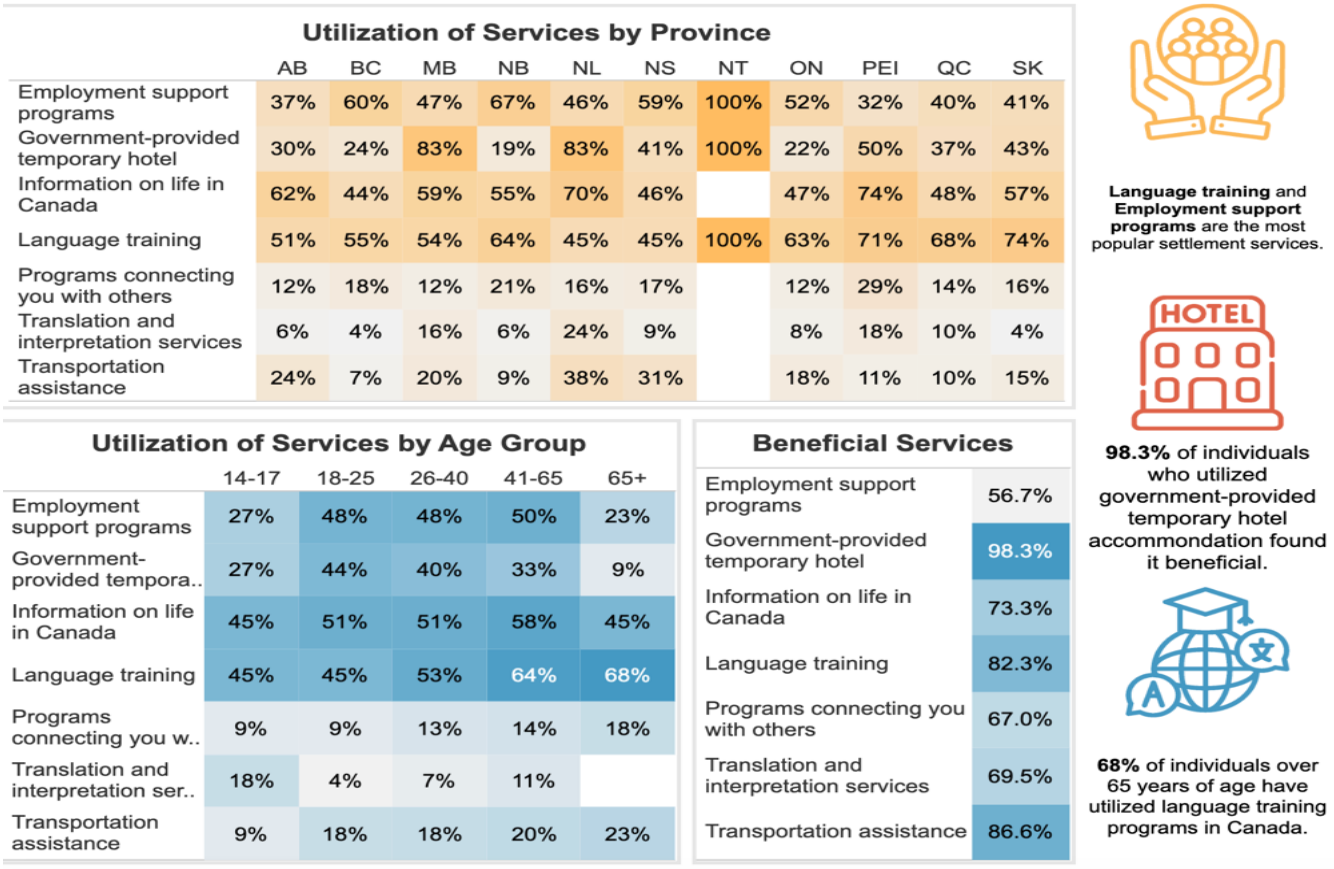
The employment section of the survey reflects portions discussed regarding education as the ability to find employment and level of education are often linked. The post-arrival to Canada survey provides that 57% workforce participants have more than six years of job experience and upon leaving Canada 60.1%. Based on the remarks in the survey, there was a mixed opinion of opportunity for employment in Canada through the CUAET. While there is a high percentage engaged in the workforce the barrier remains to certain industries that are more difficult to enter, or ability to enter without a history of Canadian experience.

While as previously discussed, it is challenging for certain degrees to transfer immediately or easily, such as medical, one of the other main complaints is the lack of opportunity without a history of Canadian experience. This is an interesting phrase, "Canadian experience" used by numerous survey participants because what do employers see as a benefit to hire a person with Canadian experience over someone without such experience. While the survey does not provide an answer, this issue may lie in the same vein as the issue of employment and language.

Attorney Abramovich recognized that concerns about employment under the CUAET program are frequently raised by immigrants. He attributed the issue to a combination of corporate culture, protectionism, and gaps in immigration policy that can create challenges related to adaptability and competency. Abramovich emphasized that, for many employers, the key considerations boil down to: "Are you qualified? Do your skills translate to Canadian work standards?" He noted that employers' hesitation often stems from uncertainty about whether a candidate can deliver the same level of performance, as their ultimate goal is to hire the best and brightest talent.

Further commenting on this issue, Abramovich believes a possible solution considering the end of the CUAET is an employment program. He believes the qualifications may involve that the person (1) has worked for at least one year, (2) the person is still employed, and (3) the person speaks a proficient level of English and/or French. Abramovich stated "the issue with such a proposed employment program is the question arises among other immigrants, why should Ukrainians be preferred?"

Access to Services



Source: https://ukrainesafehaven.ca/data/cuaet-survey/post-arrival-in-canada/

Those who participated in the survey commented:

> "Help with a first rent place will be the most helpful for newcomers."
>
> "Maybe some kind of guarantee for housing rent. We had money in our account, but due to the lack of credit history and official work for a Canadian employer, the search for housing turned into hell."

"It takes time to find a job, the very expensive cost of rent and the lack of resettlement programs at least for the first 5-6 months do not allow you to stay in Canada. I couldn't find a job in the first two months, and I didn't have enough money left to rent housing and eat!"

The portion of the survey for access to services encapsulates the thread among the entire survey and echoes the issues of language barriers and housing. Upon arriving in Canada, language training and employment support were the most popular settlement services, yet the frustration among the survey participants often surrounded the inability to communicate in English with no statistical change in those speaking English from arrival to departure. This begs the question as to what services for languages were the most popular and how access was determined. Further, 68% of individuals over 65 years of age have utilized language training programs. This once again raises the question as to whom the language programs were available to and what barriers were in the way of the younger population utilizing them. While 98.3% of individuals who utilized government-provided temporary hotel accommodation found it beneficial, this was not the issue. Short term accommodations were available but the transition and assistance to more permanent housing remained the issue.

Future Plans

Reasons for Choosing a Province/Territory or City for Settlement

	By province													By percent of total
	AB	BC	MB	NB	NL	NS	NT	NU	ON	PEI	QC	SK	YU	
Access to services	22%	23%	20%	11%	18%	13%	13%		24%	11%	23%	14%		20.7%
Community connections	14%	16%	16%	11%	11%	11%			18%	7%	19%	9%	21%	16.1%
Cost of living	42%	8%	50%	54%	51%	26%	19%		8%	27%	26%	43%		25.1%
Education opportunities	24%	28%	20%	20%	21%	20%	19%		29%	9%	30%	28%	29%	22.0%
Family or friends	42%	37%	44%	35%	28%	38%	25%		53%	39%	45%	49%	14%	44.6%
Job opportunities	54%	52%	45%	40%	40%	47%	44%	67%	57%	32%	47%	52%	64%	52.6%
Natural environment	45%	55%	21%	52%	63%	52%	44%	33%	20%	39%	24%	23%	29%	35.0%
Previous visits	6%	8%	4%	3%	2%	6%			7%	11%	7%	4%		6.5%
Quality of life	38%	42%	20%	20%	27%	27%	13%		30%	18%	34%	21%	14%	33.2%
Recommendations	45%	37%	40%	35%	35%	38%			30%	34%	37%	38%	14%	36.8%
Safety and security	26%	27%	17%	31%	37%	30%	25%	67%	20%	32%	30%	24%	7%	23.6%

65% of participants who indicated the **cost of living** as a significant factor in choosing a location to live are planning to reside in **AB**, **MB**, or **SK**.

56% of individuals are planning to move to Canada permanently.

88% of individuals over 65 years of age are planning to access language training programs.

Intended duration of stay in Canada

Plan to return to Ukraine as soon as it is safe to do so	7.9%
Less than 3 years	4.0%
Until their status document expires	8.6%
Intend to apply for permanent resident status in Canada	56.5%
Don't know	23.0%

Intentions of accessing services in Canada

	18-25	26-40	41-65	65+
Employment support programs	84.9%	87.9%	91.0%	67.8%
Language training	77.7%	85.2%	89.3%	88.9%
Information and orientation on life in Canada	80.1%	80.4%	78.0%	65.6%
Government-provided temporary hotel	66.5%	67.4%	69.5%	52.2%
Programs connecting you with others in the local co..	44.6%	54.4%	57.4%	42.2%
Transportation assistance	39.8%	43.0%	43.9%	32.2%
Translation and interpretation services	32.9%	42.0%	44.6%	34.4%

Source: https://ukrainesafehaven.ca/data/cuaet-survey/pre-arrival-in-canada/

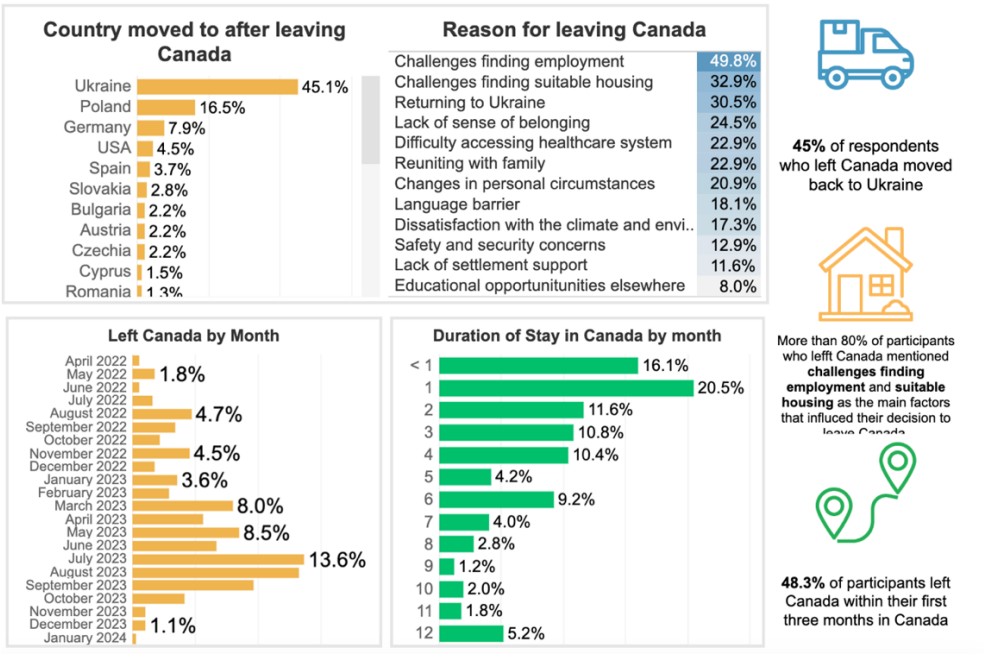
Those who participated in the survey commented:

> "Thank you very much to the Canadian government for the opportunity to come and work. Please extend the deadline by which you can get a work permit."

> "Thank you for everything Canada. Perhaps it is still necessary to simplify the procedure for obtaining permanent residence for Ukrainians."

One of the most critical concerns reflected in this survey is that 56.6% of individuals are planning to move to Canada permanently while only 7.9% want to return to Ukraine when it is safe. While those who came through the CUAET may apply for work or student visas to prolong their stay, those who are not eligible are facing the same issue as those Ukrainians who came to the U.S. through U4U. Both groups will have their temporary status expire. While 56.6% intend to stay in Canada, this begs the question as to how many of those individuals will qualify for the permanent residency offered by Canada. Even before the 2022 invasion, Canada has had the third highest population of Ukrainians in the world. With this, there may be many that have existing family in Canada and will be more inclined to stay in Canada long-term.

Departure



Source: https://ukrainesafehaven.ca/data/cuaet-survey/after-leaving-canada-3/

Two major reasons Ukrainians have listed for their decision to depart from Canada are employment and housing. These issues are a common thread throughout each survey section.

The survey reports that 45% of respondents moved back to Ukraine and while this is a high percentage, even more telling is that for 48% this occurred within the first three months of arrival. This may be for various reasons, but employment and housing are common issues that more than 80% mentioned as the main factors that influenced their decision to leave Canada. While the CUAET was able to provide the immediate relief of safety, the inability to offer housing and employment made coming through the CUAET unsustainable.

5.7 Conclusion

Canada's response to the crisis in Ukraine demonstrates both compassion and pragmatism. The CUAET program provided a lifeline to hundreds of thousands of people fleeing conflict. By swiftly opening its borders and welcoming those in need, Canada upheld its reputation as a humanitarian leader on the global stage. Criticism is inevitable for any large-scale humanitarian program, but it is important to recognize the immense impact that initiatives like the CUAET have in saving lives and providing hope to those facing dire circumstances. As Canada navigates the complexities of refugee resettlement, it is imperative to remain committed to principals of compassion, fairness, and inclusivity. By standing in solidarity with the people of Ukraine and offering sanctuary to those in need, Canada sends a powerful message of support to the international community. In the face of adversity, acts of kindness and generosity serve as beacons of hope, reminding us of our shared humanity and the importance of unity in times of crisis.

Chapter 6
Europe: Poland

6.1 Introduction

Poland, Ukraine's neighbor to the West, is on the front lines of the refugee crisis resulting from Russia's war of aggression in Ukraine. Poland shares a land border spanning approximately 529 km (329 mi) with Ukraine, and since February 24, 2022, more than 13.6 million Ukrainian refugees have crossed into Poland using this border. Ukrainians feel more comfortable staying in Poland compared to other countries they could choose to go to because Ukraine and Poland share such strong cultural, linguistic, and geographic similarities. The Polish government has taken a strong stance against the Russian invasion and has pledged robust and comprehensive support to its Ukrainian neighbors, particularly those who seek refuge in Poland. The Polish government responded quickly to the crisis, and passed the March 12, 2022 Act on assistance to citizens of Ukraine in connection with an armed conflict on the territory of this country (March 12 Act), legislation which guaranteed Ukrainians lawful presence in Poland as well as access to social programs, education and healthcare. The law takes care to consider the needs of Ukrainian families with small children, students, professionals and business owners who have been impacted by the conflict. While many of the refugees who came to Poland in 2023 have since returned to Ukraine, nearly one million remain and the Polish-Ukrainian border sees more than a quarter million crossings every day. As the needs of these displaced Ukrainians changes over time, so too does Polish policy on the issue. Still, two years after the invasion by Russian, Poland remains one of Ukraine's strongest allies and a major provider of humanitarian aid.

6.2 The March 12 Act

In the days following the Russian invasion of Ukraine hundreds of thousands of Ukrainian civilians flooded through the Polish border. The Polish government acted swiftly to push through this comprehensive law, the March 12 Act, which addresses the humanitarian crisis Poland was suddenly a part of. Throughout 2022, pursuant to this legislation the Polish government distributed 364.8 million PLN worth of benefits and assistance to Ukrainians with more than 612,000 families among the beneficiaries. The act applies retroactively from February 24, 2022, in order to cover the Ukrainians who entered Poland before this law could be enacted.

ACT
of March 12, 2022
on assistance to citizens of Ukraine in connection with an armed conflict on the territory of this country

Article 1.
1. The Act specifies specific rules for legalizing the stay of Ukrainian citizens who arrived on the territory of the Republic of Poland directly from the territory of Ukraine in connection with hostilities carried out on the territory this country, and citizens of Ukraine holding the Pole's Card who, together with their immediate family, came to the territory of the Republic of Poland due to these hostilities.
2. Whenever the Act mentions a citizen of Ukraine, it also means a person who does not have Ukrainian citizenship. the spouse of a Ukrainian citizen, provided that he or she arrived on the territory of the Republic of Poland directly from the territory of Ukraine in connection with hostilities conducted in the territory of this country.

3. The Act also specifies:
1) special rules for entrusting work to Ukrainian citizens legally residing in the territory of the Republic of Poland

Polish;
2) assistance provided by voivodes, local government units and other entities to citizens of Ukraine;
3) creation of an Assistance Fund to finance or co-finance the implementation of tasks aimed at helping citizens
Ukraine;
4) certain rights of Ukrainian citizens whose stay on the territory of the Republic of Poland is considered legal;
5) specific rules for extending the periods of legal stay of Ukrainian citizens and documents issued to them by Polish authorities regarding their rights to enter and stay in the territory of the Republic of Poland;
6) certain rights of Polish citizens and Ukrainian citizens who are students, academic teachers or scientific workers entering from the territory of Ukraine;
7) specific regulations regarding the education, upbringing and care of children and students who are citizens of Ukraine, including support for local government units in the implementation of additional educational tasks in this area;
8) specific rules for the organization and operation of universities in connection with the provision of study places for Ukrainian citizens referred to in section 1;
9) specific rules for starting and conducting business activities by Ukrainian citizens legally residing in the territory of the Republic of Poland.

6.2.1 Who has access to March 12 Act benefits?

All Ukrainians have access to benefits in Poland through the March 12 Act. “Ukrainian” here means not only Ukrainian citizens, but also non-citizen family members of Ukrainian citizens who have also come to Poland through their shared land border in connection with the conflict. These non-citizen family members must be able to show proof of their legal residence in Ukraine and documentation from the border which shows they crossed directly from Ukraine. Children who are born to Ukrainian mothers in Poland during this time are also entitled to benefits. In order to maintain access to the benefits conferred by the March 12 Act, Ukrainians may not leave the territory of Poland for more than one consecutive month. The ability to travel back and forth between Ukraine and Poland for short periods of time is essential to many families who have been divided by the war, with the men staying behind. Many Ukrainian women cross the border regularly so they can visit their husbands, brothers, and adult sons while young children remain safely in Poland.

PESEL Registration

Ukrainians who have entered Poland are able to register for a PESEL number, and must do so in order to take part in the majority of benefits conferred by the March 12 Act. PESEL is an acronym which stands for Powszenchny Elektroniczny System Ewidencji Ludnosci, or the Universal Electronic System for the Registration of the Population. A PESEL number is a unique 11-digit identification number assigned to all Polish citizens, similar to Social Security numbers in the United States. The PESEL register has a robust digital infrastructure, and is useful for tracking census information and monitoring how many Ukrainians are in the region and what benefits they are receiving from the government.

Applying for a PESEL number is essential to Ukrainians who wish to remain in Poland for more than a brief stay, if they are to benefit from the extensive benefits afforded under the March 12 Act. Specific procedures for the assignment of PESEL numbers to Ukrainians is set forth in Article 4 of the March 12 Act. The process involves disclosure of biographical information such as name, birthdate, place of birth, etc. The application is available in both Polish and Ukrainian and must be filed in person at any commune office. Ukrainians who are filing for a PESEL number should bring a form of official identification such as a passport and expect to have their fingerprints recorded as a part of the application. Their photograph will also be taken and added to the register, with their consent.

Education

Polish schools which have locations within the territory of Ukraine have offered tuition refunds to students who are affected by the war. Ukrainian students are able to apply for scholarship funds and student loans that are sponsored by the state just as a Polish student would when they are attending universities in Poland. Article 45 of the March 12 Act describes the simplified procedure for current Ukrainian university students to transfer from Ukrainian schools to Polish schools so they may continue their studies.

Ukrainian professors who are able to demonstrate their qualifications are eligible to be hired to work as a research employee at the Polish Academy of Sciences. Professionals who are seeking this position can show their professional title or academic degree, or professorship in Ukraine in order to qualify. This accommodation is significant for researchers who need an institution's support to continue their important work. Ukrainians who were employed as teachers in Ukrainian grade schools are also able to apply for teaching positions in Poland without acquiring any additional certifications. During refugee crises it is common for professionals with higher degrees to take jobs well beneath their qualifications just to make ends meet, and this solution helps these educators continue to use their skills and remain gainfully employed.

Ukrainian children are able to enroll in Polish public schools at no cost. In order to accommodate the large number of young school-aged children crossing the border, the existing rules for the establishment of new schools were relaxed considerably so that impromptu kindergartens could be established in areas with refugee populations. Ukrainian children who do not have sufficient knowledge of the Polish language are entitled to additional Polish language instruction in addition to the typical school curriculum. Polish language courses are also available for Ukrainian adults who wish to learn or improve their Polish language skills in order to adapt better to their new environment.

Employment

Article 22 of the March 12 Act establishes the right of Ukrainians to legally be employed in Poland. There are no additional steps that Ukrainians must take in order to be authorized to work, they are automatically granted this privilege. Ukrainians are also able to receive unemployment services as a Polish citizen would pursuant to the Act of April 20, 2004 on the promotion of employment and labor market institutions. These benefits include services for job seekers such as inclusion in a national database of job seekers, career counseling and unemployment pay. Young Ukrirainians between the ages of 15 and 25 may receive services from the Volunteer Labor Corps, a government entity that provides vocational training and

psychological services for unemployed young people. Ukrainians are granted access to the Centre for Social Inclusion, which provides apprenticeship placement, life skills and money management classes and social events to promote the success and social integration of Polish citizens. Branches of the center can be found in most local municipalities. Article 23 of the March 12 Act establishes the ability of Ukrainian entrepreneurs and business owners to conduct business in Poland as a citizen can.

Healthcare

Ukrainians are entitled to free psychological assistance per Article 32 of the March 12 Act, with the local commune offices being responsible for administering these services. Disabled Ukrainians have access to the Resources of the State Fund for the Rehabilitation of Disabled Persons referred to in the Act of 27 August 1997 on vocational and social rehabilitation and employment of disabled persons. Qualified Ukrainian doctors and dentists are able to practice medicine in Polish territory according to the simplified procedures set forth in Articles 61-62 of the March 12 Act.

Polish citizens have access to healthcare under the Act of August 27, 2004 on healthcare services financed from public funds, and this healthcare is also provided to Ukrainians per Article 37 of the March 12 Act. Coverage for Ukrainians is to be the same as for Polish citizens, with the exception of spa treatments and spa rehabilitation. While PESEL enrollment is required to enroll in the normal health insurance program, no Ukrainian will be denied access to emergency medical services regardless of whether they have a PESEL number or qualify for benefits under the March 12 Act.

Social Programs for Children and Families

Poland offers particularly robust social services to families with children to both its own citizens and legal resident foreigners. The March 12 Act explicitly extends most of these benefits to Ukrainians. Most prominent among these are the family benefits described in the Act of November 28, 2003 on family benefits. Based on factors such as income, and number and age of children, families will receive a money stipend, with additional funds distributed for children with disabilities or especially large families. For the calculation of income necessary for determining the amount of family benefits to be distributed, only the income of family members residing in Poland may be considered. This is critical, as so many Ukrainian women crossed the border with their children while their husbands stayed behind in Ukraine to defend the territory. The income of men left behind in Ukraine will not disqualify their families who have fled to Poland from receiving assistance. All members of the household must be issued a PESEL number in order to qualify for these family benefits. Similarly, Ukrainians with children are able to receive the cash parenting benefit conferred in the Act of February 11, 2016 on state aid to children. Parents with children between the ages of 12 and 35 months will qualify for the Family Care Capital which provides 12,000 PLN for families with young children. Ukrainians may also take advantage of government subsidized rates for child care in a nursery, children's club or day care at institutions that qualify under the Act of February 4, 2011 on the care of children up to 3 years of age.

Article 25 of the March 12 Act sets forth the procedure for the appointment of a temporary guardian for any Ukrainian child who has crossed the border into Poland without a responsible adult. In deciding upon a guardian the court is guided by the principle of the "best

interest of the child." When possible a guardian will be selected for the child out of available relatives. The appointed guardian may have access to any of the social benefits normally available to a parent. Ukrainian children for whom a relative guardian cannot be found are able to receive care from Polish orphanages and the foster care system.

Other Social Programs

Article 29 of the March 12 Act grants Ukrainians monetary and non-monetary benefits under the Act of March 12, 2004 on social assistance, which provides comprehensive assistance to Polish people in need. Articles 2-4 of this Act summarize well the legislative intent behind providing such extensive social support.

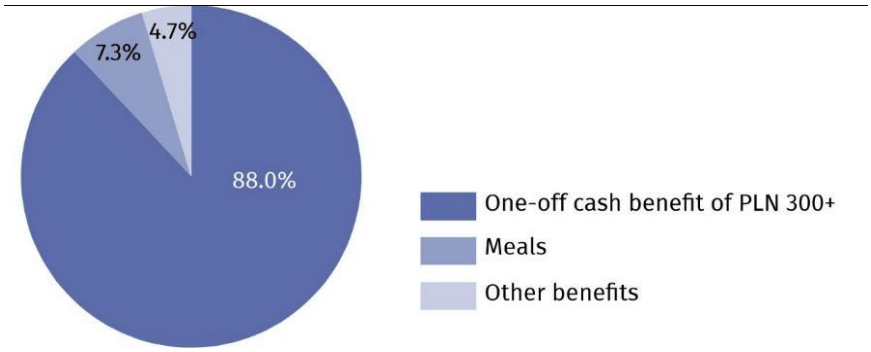
ACT
Of March 12, 2004
On Social Assistance

…**Art. 2.** 1. Social assistance is an institution of the state's social policy aimed at enabling individuals and families to overcome difficult situations in life that they are unable to overcome using their own powers, resources and opportunities.
2. Social assistance is organized by government and local government administration bodies, cooperating in this regard, on a partnership basis, with social organizations and non-governmental organizations, the Catholic Church, other churches and associations, religious entities and natural legal persons.
Art. 3. 1. Social assistance supports individuals and families in their efforts to meet their necessary needs and enable them to live in conditions corresponding to human dignity.
2. The task of social assistance is to prevent the situations in question in art. 2 section 1, by taking actions aimed at achieving life independence of individuals and families and their integration with the environment.
3. The type, form and size of the benefit should be appropriate to circumstances justifying the provision of assistance.
4. The needs of people and families receiving assistance should remain included if they meet the objectives and are within the scope of social assistance.
Art. 4. Persons and families benefiting from social assistance are obligated to: cooperation in solving their difficult life situation.

The act continues to describe procedures for the funding and distribution of crisis intervention, shelter, meals, other necessary items such as clothing, and even a cash allowance. There is an application process which requires beneficiaries to demonstrate their need for these services and may include an interview to confirm the truth of information provided.
Ukrainians are able to receive certain EU sponsored benefits, including food aid provided under the European Fund for Aid to the Most Deprived. Food may also be available to Ukrainians who meet the criteria for the Operational Program Food Aid 2014-2020.
While much of the March 12 Act enumerates existing Polish programs which have had their scope expanded to include Ukrainians in Poland, in Article 31 it creates a new benefit which only applies to Ukrainian refugees.

Art. 31. 1. A citizen of Ukraine whose stay on the territory of the Republic of Poland is considered legal pursuant to Art. 2 section 1 and who has been entered in the PESEL register, is entitled to assistance in the form of a one-off cash benefit in the amount of PLN 300 per person, intended for subsistence, in particular to cover expenses on food, clothing, footwear, personal hygiene products and housing fees.

Unlike other benefits, which have extensive applications where beneficiaries must disclose income information and other assets to prove they are within a certain need threshold in order to qualify, this one-time cash benefit is available to all Ukrainians. Due to the fact that every refugee qualifies for this benefit and the ease of claiming it, the cash benefit described in Article 31 accounts for the overwhelming majority of Polish government spending on humanitarian aid for Ukrainian refugees. The benefit is exempt from income tax, per Article 74. While 300 PLN is a modest amount of money (amounting to roughly $75 USD), it goes a long way towards essentials for Ukrainian families who may have left everything behind in their haste. Parents are able to apply for the benefit on behalf of their children, so the total cash payout per family may be much higher than 300 PLN.



Non-Governmental Support

Even before the March 12 Act was passed, the people of Poland were mobilizing volunteer efforts to aid the Ukrainians pouring through their border however they could. Individuals and organizations alike provided food, shelter, clothing and transportation to anyone they encountered. People rushed to the border with cars full of donated food and medical supplies, and brought Ukrainian families into their own homes.

The Catholic Church and other religious parishes have been instrumental in the overall humanitarian response to the Russian invasion. These organizations are practiced at communicating with and dispatching large numbers of volunteers and are located in every single community across Poland. Overall, Polish churches have collected more than 209 million PLN for the humanitarian assistance of Ukrainians in Poland, and have volunteered countless hours to provide childcare, cook meals, and distribute donations.

The March 12 Act took steps to encourage this philanthropy by Polish citizens by offering a monetary incentive for helpers. Polish citizens who provide housing to Ukrainians are entitled to certain benefits. Article 74 of the March 12 Act provides for income tax breaks on donations which benefit Ukraine.

Amendments to the March 12 Act

The Act has been amended a number of times since its initial passage. Most of these amendments add additional clarity and detail to the programs already set forth in the original Act. Several of the amendments expanded the scope of certain benefits, and some extended the duration of the benefits period. The duration of legal presence and access to benefits has been extended and is currently set to last for most until March 4, 2024. For families with children enrolled in school the timeframe is slightly longer, til August 31, 2024, so that the children may finish their academic term. This new extension is identical to the period of temporary protection offered by the European Union under the Temporary Protection Directive, and signals that Poland is committed to leading the EU in Ukrainian aid efforts. These dates have been extended multiple times already, and so long as the situation in Ukraine remains ongoing there is no reason to think that the Polish government will not continue to extend it as long as there is a need.

While the duration of legal presence has not been a major issue among Polish lawmakers, the cost of benefits has been felt over time. In January, 2023, an amendment to the March 12 Act was introduced which called for Ukrainians to shoulder some of the cost of their shelters.

Act
of January 13, 2023
amending the Act on assistance to Ukrainian citizens in connection with the armed conflict in the territory of this state and certain other acts

…b) after paragraph 17, section is added. 17a-17g as follows:

"17a. After 120 days from the date of first entry of a Ukrainian citizen into the territory of the Republic of Poland, the voivode and the entities specified in section 3 and 4 may provide the assistance referred to in section 1 point 1 and 2, if a Ukrainian citizen has a PESEL number and he or she covers, in advance, 50% of the costs of this assistance, not more than PLN 40 per person per day. The equivalent of 50% of costs of assistance is paid by Ukrainian citizens, entities implementing for the voivode and entities specified in section 3 and 4 services in the field of accommodation and full board meals for citizens of Ukraine referred to in Art. 1 section 1.

17b. After 180 days from the date of first entry of a Ukrainian citizen into the territory of the republic of Poland, the voivode and the entities specified in section 3 and 4 may provide the assistance referred to in section 1 point 1 and 2, if a Ukrainian citizen has a PESEL number and he or she covers, in advance, 75% of the costs of this assistance, not more than PLN 60 per person per day. …

17c. The provisions of section 17 with regard to the period during which assistance may be provided and the provisions of section 17a and 17b do not apply to citizens of Ukraine who:

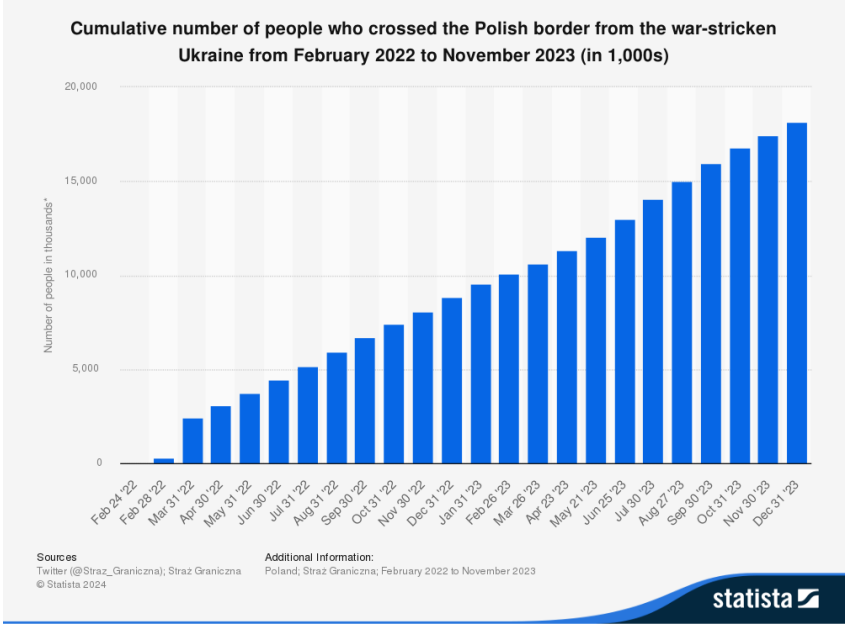
1. Have a certificate of disability or degree of disability or a certificate referred to in Art. 5 of the Act of 27 August 1997 on vocational and social rehabilitation and employment of disabled persons (Journal of Laws of 2023, items 100 and 173);
2. Completed:
a. In the case of women - 60 years of age;
b. For men - 65 years of age
3. Are pregnant women or people raising a child up to 12 months of age;
4. They take care of three or more children alone in the territory of the Republic of Poland;
5. Are minors;

6. Are in a difficult life situation that prevents them from participating in the costs of assistance.

The amount required from Ukrainians is capped, but still goes a fair way in mitigating the financial burden on the Polish government of establishing and maintaining shelter for this population. The language of the statute creates key exceptions to this payment, for the elderly, mothers, disabled people and children. These populations are the ones who are the least likely to have been able to find employment within the territory of Poland within the 120 day timeframe and are less likely to be able to support themselves fully without additional government assistance. This amendment is a compromise which represents a switch in policy from crisis mode to something that may be sustainable over longer periods of time, as there is no quick end in sight to this conflict. Still, critics fear that this amendment signaled the beginning of the end of Polish generosity. As it is, the financial burden of the influx of fleeing Ukrainians grows more manageable overtime as they either settle and become more financially independent or return to their homes in Ukraine.

Leaving Poland

Immediately following the Russian invasion, millions of Ukrainians crossed the border into Poland in tremendous haste. Fleeing the imminent threat of airstrikes and Russian soldiers, these civilians grabbed what little they could carry and left the country with no idea what the future might hold for them. Many people were merely passing through Poland before continuing onward to another country where perhaps they had friends or family who could support them. For most of these people, the intention was never to stay in Poland permanently but rather to return to Ukraine as soon as it is reasonably safe to do so. The violence in Ukraine is more intense in some regions than in others, and many Ukrainians who come from the Western part of the country have already returned to their homes in Ukraine.



As some Ukrainians begin to return home, the nature of Polish humanitarian aid has necessarily transformed over time. In the early months of the war aid was focused on food,

shelter and medicine; prioritizing the things one needs to simply survive. Now the government is able to turn its attention to long term care of the labor economy and create programs that are designed to last.

Polish Political and Military Support of Ukraine

Poland has been among Ukraine's most important allies in this time of war. For citizens of Poland, the Russian invasion represents an existential threat and support of Ukraine's democracy in this conflict is as natural as supporting their own nation. President of Poland, Andrzej Duda, spoke of this connection in a speech he gave at the Ukrainian Parliament building in Kyiv on May 22, 2022, barely 90 days from the invasion.

"By the works of history Ukraine and Poland have a unique political opportunity ahead of them as two kindred nations from the same part of Europe.

Mr President, Volodymyr!

You have pointed out yourself that together we are more than 80 million people strong and that together we are more powerful. We must not waste this opportunity.

Dear Ukrainian Friends!

I would like to let you know that your loved Ones: spouses, parents, children, grandchildren, those millions of people who had to leave Ukraine, fleeing the tragedy of war, also to Poland – are not refugees in our country. They are our guests."

Duda was the first foreign leader to visit Ukraine and speak at its Parliament since the Russian invasion, setting a strong example in solidarity for the world to follow. Poland has offered Ukraine more than mere words of support, it has also been among the top providers of

military aid. Due to its physical proximity to the frontlines, Poland has a substantial interest in combating the advancement of Russian forces. While Poland is not directly involved in the military conflict between Ukraine and Russia, the aid it provides by supplying weapons, medicine, and financial support is an essential part of Ukraine's defense strategy. With the exception of Baltic states, Poland has committed the highest percentage of its GDP to military support of Ukraine out of any country.

Poland has also displayed diplomatic support for Ukraine at every opportunity. On the world stage, in venues like the United Nations and the European Union, Poland continues to bring attention to the conflict and call upon other countries to contribute however they can and support Ukraine for the promotion of global democracy. Poland has also taken aggressive stances on asking for specific aid from allies, like in January, 2023, when Poland publicly called upon Germany to send their available tanks to Ukraine's front lines.

Within the Polish government, this level of financial support for Ukraine has become more controversial over time. Critics of Poland's response say that their deference to the wellbeing of Ukrainians has damaged the Polish economy, taken jobs away from Polish citizens, and created national security vulnerabilities due to the risk of undercover Russian agents. These sentiments were held by only a few on Poland's far right, until recently when tensions have risen in a diplomatic dispute concerning Ukraine's grain exports. Ukraine is unable to export grain from sea ports as it would during peacetime due to Russian interference, so the agricultural giant has opted to export its crop to Western Europe through land routes. This has created competition with Poland's own agricultural exports, and the sentiment among the Polish political right is that this choice by Ukraine demonstrates a lack of gratitude for all the aid Poland has provided up to this point. While tensions are higher than they have been since the start of the recent conflict and Poland has walked back some military support of Ukraine, the country remains as committed as ever to protecting the welfare of those civilians who have found themselves seeking safety in Polish territory.

Conclusion

The following is a statement from the President of the European Union, Ursula von der Leyen, during a visit to Poland in June 2022:

"Russia's war in Ukraine is raging, with disastrous consequences. Millions of people have fled the increasing and incessant shelling, the ruins and the chaos on the ground. Faced with Putin's crimes and aggression, our most important asset is solidarity. First of all, solidarity with the people fleeing the war and those internally displaced in Ukraine. Here, I want to thank the Polish people from the bottom of my heart for their outstanding generosity. History will not forget their solidarity. You have welcomed more than three and a half million refugees with open arms. You opened your houses and your hearts. This is a shining example to the whole world."

Poland responded to the difficult situation of taking on millions of displaced people from its neighbor, Ukraine, with grace and speed. From everyday civilians opening up their homes and pantries, to the defense ministry providing essential military aid, Poland and Ukraine are unified in their desire for a free and democratic Ukraine.

Chapter 7

Europe: United Kingdom

7.1 Introduction

Unlike Poland, which shares a large border with Ukraine, the United Kingdom is 1539 miles (2477 km) away, on the other side of the English Channel. Still, since the start of Russia's full-scale invasion approximately 204,000 Ukrainians have received visas and relocated to the UK. Like much of the rest of Europe, the UK responded quickly to the humanitarian crisis that followed the invasion of Ukraine on February 24, 2022, and passed a series of measures ("Schemes") to relax existing immigration requirements and allow displaced Ukrainians to safely relocate to the UK. In spite of the distance, many Ukrainians chose the UK as their haven because of family or business connections with the country, because of the UK's global position, or because of the resources that the UK provided to Ukrainians once they arrived.

Home Secretary statement on humanitarian support for Ukrainians
Priti Patel, March 1, 2022[27]

[27] Priti Patel, Home Secretary, U.K., Statement to the House of Commons (March 1, 2022).

"With permission, Mr Speaker, I would like to make a statement updating the House on the government's humanitarian response to the terrible, unjust war that Putin is waging in Ukraine. We are united across this House in the horror at what is happening and the whole country stands with the heroic people of Ukraine.

Mr Speaker, I have literally just come from a meeting with our dear friend and colleague, the Ukrainian Ambassador to London, and I have heard first hand some of the real pressures and tensions inside the country. Putin must fail in his assault on Ukraine. Working closely with the Ukrainian Government and allies in the neighboring region, the United Kingdom is standing shoulder to shoulder with Ukraine; sending military support, defensive military aid, training thousands of Ukrainian troops, as well as introducing one of the toughest sanctions regimes in the world. [...]

We will continue to think robustly and creatively about what more we all can do. [...] Mr Speaker, yesterday I announced the first phase of a bespoke humanitarian support package for the people of Ukraine, having listened carefully to the asks and the requests of the Ukrainian Government.

We have already made significant and unprecedented changes to the immigration system. We have helped hundreds of British nationals and their family members resident in Ukraine to leave the country, with Home Office staff working around the clock to assist them. [...]

Family members of British nationals resident in Ukraine who need a UK visa can apply through the temporary location in Lviv, or through Visa Application Centres in Poland, Moldova, Romania, and Hungary. We have created additional capacity in all locations at pace, in anticipation of the invasion of Ukraine. This includes a pop-up Visa Application Centre in Rzeszow in Poland, which has provided total capacity currently of well over 3,000 appointments per week.

Our contingency plans have been enacted now and they are expected further to increase total capacity to 6,000 appointments a week, starting this week. By contrast, demand across these locations is usually approximately 890 biometric appointments per week. There remains availability for appointments and walk-ins across every location. Should more capacity be required, we will of course deliver it.

Mr Speaker, I should also add at this stage, we have our rapid deployment teams already in the region and in fact, the FCDO sent them in a few weeks ago to support this whole effort.

I have also removed the usual language requirements and salary thresholds to come to the UK to be with their family members. And where family members of British nationals do not meet the usual eligibility criteria - but do pass all security checks - we will give them permission to enter the UK outside the usual rules for 12 months. This means that British nationals and any person settled in the UK can bring over immediate Ukrainian family members. Through this policy alone, an additional 100,000 Ukrainians could be eligible to come to the UK and access work and public services.

There is no limit on the numbers eligible under this route, Mr. Speaker.

Anyone in Ukraine intending to apply under the Family Migration route should contact the dedicated 24-hour Home Office line for assistance before applying. Ukrainian nationals already in the UK have been given the option to switch – free of charge – to a points-based immigration route or a family visa route. Visas for Ukrainian temporary workers in some sectors are being extended, so they can stay until at least the 31st of December this year. [...]

As outlined by the Prime Minister earlier today, I can also set out phase two of our bespoke humanitarian support package for the people of Ukraine.

Firstly, we are establishing an expansive Ukrainian Family Scheme so that British nationals and people settled in the UK can bring a wider group of family members to the UK, extending eligibility to parents, grandparents, adult offspring, siblings, and their immediate family members.

Again, this scheme will be free. Those joining family in the UK will be granted leave for an initial period of 12 months. They will be able to work and access public funds.

Secondly, we will establish a humanitarian sponsorship pathway, which will open up a route to the UK for Ukrainians who may not have family ties with the UK but who are able to match with individuals, charities, businesses, and community groups. Those who come under this scheme will also be granted leave for an initial period of 12 months and they will be able to work and access public services. The Home Office will work closely with all our international partners on the ground to ensure that displaced Ukrainians in need of a home are supported.

My colleague, the Secretary of State for Levelling Up, will work with the devolved administrations to ensure that those who want to sponsor an individual or a family can volunteer and be matched quickly with Ukrainians in need.

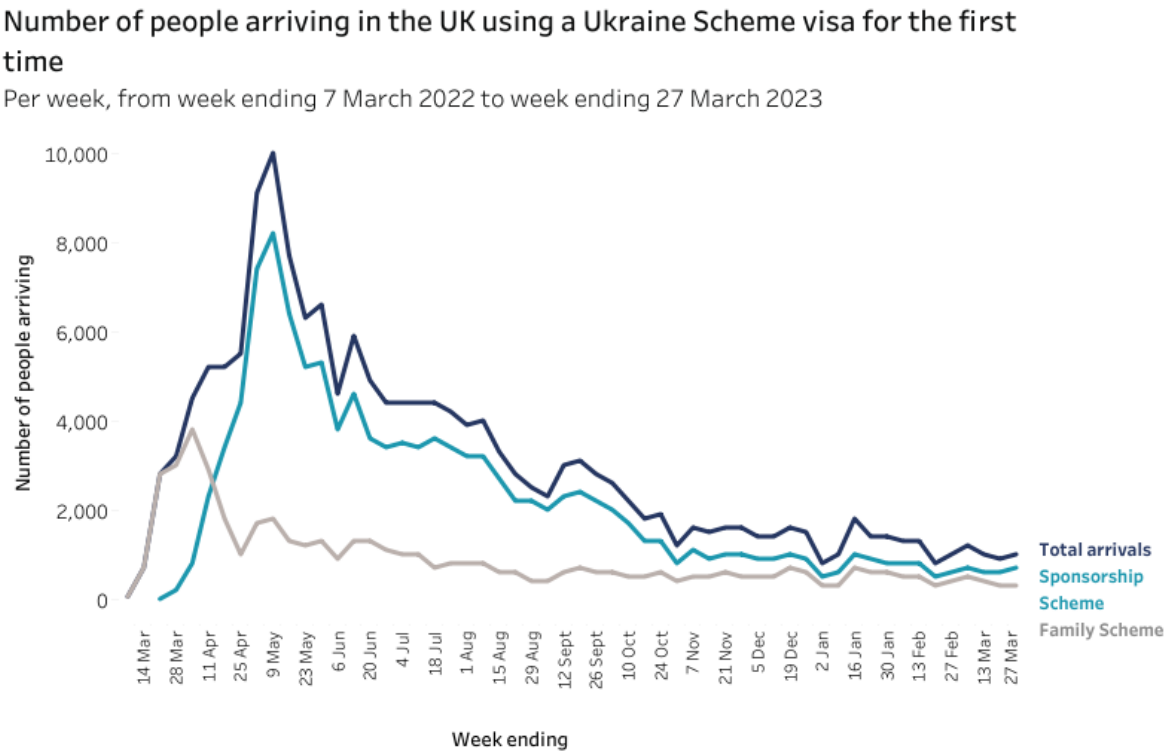
There will be no numerical limit on this scheme, and we will welcome as many Ukrainians as wish to come and have matched sponsors. Making a success of the new humanitarian sponsorship pathway will require a national effort from the entire country. And, Mr Speaker, our country will rise to that challenge.

Mr Speaker, this is a very generous and it is an expansive and unprecedented package. It will mean that the British public and the Ukrainian diaspora can support displaced Ukrainians in the UK until they are able to return to a free and a sovereign Ukraine.

We are striking a blow for democracy and freedom against tyranny. Above all, we are doing right by the courageous people of Ukraine. We will help British nationals and their families to get out of Ukraine safely. We will support our displaced Ukrainian friends. We will respond robustly to Russian threats here in the UK. We, Mr Speaker, will not back down. We will do what is right.

I commend this statement to the House."

Following this declaration, the "Ukraine Family Scheme," the "Homes for Ukraine Scheme," and the "Ukraine Extension Scheme" were established. These three schemes were pathways for Ukrainian nationals to receive or extend visas and benefits in the UK. The first was available to Ukrainans who had family members who were already residents in the UK, and the second was for other Ukrainians, who could come with the aid of a sponsor. Finally the Extension Scheme provided for Ukrainians who happened to already be present in the UK with a visa at the start of the conflict, and now were unable to return home. All of the programs were free to apply to and all of them allowed those granted visas to remain in the UK for a period of up to three years. Now that the three year period is nearing its end, the government has raised a new option for an additional 18 month extension, which Ukrainians can begin to apply to in early 2025. Thousands of Ukrainians utilized these programs and moved west, easing the burden on the border countries such as Poland to which many fled in the initial days of the conflict. The overwhelming majority of these Ukrainian nationals were women and children, with men accounting for a mere 18% of their total numbers.



Source: Migration Observatory analysis of Home Office, Statistics on Ukrainians in the UK, Summary Tables, Table UVS_03.
Notes: The weekly counts above have been rounded to the nearest 100 and relate to individuals who arrived into the UK, where the arrival has been linked to a Ukraine scheme visa. Where individuals have multiple visits, their earliest arrival after the grant has been taken. These data are therefore counts of people (unique individuals), rather than arrivals. The data used to record arrivals on a Ukraine scheme visa may undercount the total number of arrivals, most notably, because a person travelling into the UK from the Common Trav..

7.2 Ukraine Family Scheme

The Ukraine Family Scheme was the first of the UK's efforts to aid Ukrainians seeking refuge from Putin's attack on their home country. This scheme took effect on March 4, 2022. It was a pathway for Ukrainians who have a family member in the UK to be issued a travel visa and remain in the UK for up to 3 years. Those who came to the UK under this plan were entitled to live and work, as well as receive benefits such as healthcare, employment support, and education.

1. Who Qualifies?

This pathway is open to all Ukrainians who have a family member in the UK, and their immediate relatives. "Ukrainians" for the purpose of this scheme are defined as nationals of Ukraine who were residing in Ukraine immediately before January 1, 2022. Their "immediate relatives" includes only their partners and children, not any other relations.[28] To complete the application, the applicant must show that they are related to a UK-based sponsor, a UK citizen who is currently residing in the UK. The Ukrainian applicant's relationship with the UK–based sponsor may be any of the following: partner, child, parent, grandparent, grandchild, sibling,

[28] "Partners" is defined further by the UK government, and includes spouses, co-habitating domestic partnerships, and fiances.

cousin, aunt, uncle, niece, nephew, or the immediate family member (partner or child) of any of these categories. There is no fee to apply.

The application requires identification for both the Ukrainian applicant and the UK-based sponsor to prove their respective eligibility, as well as evidence of the purported relationship. Applicants must attest that they have received certain vaccines which are required in the UK. Applicants must also use the UK Government: ID Check app to provide facial biometrics and provide fingerprint records either before travel to an immigration center or upon arrival. There is no right of appeal, applicants who seek to challenge a decision to deny their application should apply again. Successful applicants will be issued entry papers with permission to stay for up to 36 months.

There are additional considerations and safeguards in place for the welfare of child applicants. Where the Ukrainian applicant is under the age of 18 and traveling unaccompanied, the consent of both parents is required.[29] UK-based sponsors who are responsible for Ukrainian children unaccompanied by their parents may be subject to more rigorous background checks, which may result in longer processing times for the application.

2. Benefits

Ukrainians who relocate to the UK on a visa are able to access all of the same benefits that UK residents can. This includes public healthcare through the National Health Service (NHS), public education for school aged children, and social services such as employment services. This also includes means-tested benefits (such as the universal credit and the pension credit) which are provided to individuals who make below a certain amount and/or don't have any savings. Property which is in Ukraine and cannot be accessed by a Ukrainian in the UK will not be counted for the purposes of determining eligibility for these means-tested benefits. Non-means-tested benefits, which are available regardless of an individual's financial situation, include the child benefit (worth £24 per week for the first child, and £15.90 a week for other children) and disability benefits.

Aside from the "thank-you" payment made monthly to UK-based sponsors of Ukrainian guests, discussed below, there are no monetary benefit programs specifically geared towards Ukrainians. Instead, Ukrainians may simply have access to the already existing benefits set up in the UK. Unlike in the United States, Ukrainians who come to the UK through these schemes can leave the country for a period of up to four weeks without losing their benefits or visa status.

In total, approximately 72,300 visas were issued as a part of the Ukraine Family Scheme. However, this pathway is no longer available. The Scheme closed to new applicants on February 19, 2024. Although new visas are no longer being issued as a part of the Ukraine Family Scheme, Ukrainians who are already in the UK as a part of this program can remain past the original expiration of their visas with the Ukraine Extension Scheme, discussed below.

7.3 Homes for Ukraine Scheme

For all those Ukrainians who did not already have a relative in the UK, the Homes for Ukraine Sponsorship Scheme, launched on March 14, 2022, offered a pathway for entry.

[29] Requirement for one or both parent signatures may be waived with evidence of good cause. For instance, if either parent is deceased or if the father is fighting in the conflict and therefore unavailable to consent.

Through this scheme, Ukrainians can be granted entry with the aid of a UK-based sponsor, who need not be related to the applicant. Sponsors agree to provide accommodation to the Ukrainian applicant for at minimum the first 6 months of their stay. Like the Ukraine Family Scheme, those who qualify for visas may remain in the UK for 3 years, during which time they will have access to benefits including healthcare, employment support, and education.

For their application, Ukrainians must prove their status as a Ukrainian national and provide biometric information, in the same fashion as described above for the Ukraine Family Scheme. Ukrainian applicants must also provide the information of their sponsors, including financial information, proof of British citizenship or settled status, and the address where they will be accommodated when they arrive in the UK. The UK government does not officially provide assistance with matching Ukrainians to willing sponsors. Most Ukrainians who seek to enter through this scheme match up with sponsors through online resources such as chat forums and Facebook groups, or through faith-based organizations or independent charities who specialize in matching and training sponsors.

1. Requirements for Sponsors

Unlike the Ukraine Family Scheme, UK-based sponsors need not be citizens of the UK. Under this scheme, the UK-based sponsor is required to live in the UK and have the right to permanently reside there granted by the date of the guest's visa application.

Sponsors will receive a £350 per month stipend for each month they host a Ukrainian guest for the first 12 months, referred to as a "thank-you payment." That monthly payment increases to £500 per month after the first year, for the remainder of the 36-month visa. This increase in allowance is a clear incentive to consistently support the Ukrainian guest. If the sponsor discontinues support of their Ukrainian guest, the thank-you payments will no longer be received.

While sponsors are encouraged to maintain support of the Ukrainian guest for at least 6 months, if not longer, the sponsorship relationship may be terminated at any time after the Ukrainian guest comes to the UK. This can occur if the Ukrainian guest is financially independent and no longer requires accommodations from their UK-based sponsor. There is also the option for the Ukrainian guest to be "rematched," meaning that the formal relationship with their former sponsor is terminated and they are placed instead with a new UK-based sponsor. The government does not officially coordinate rematching, instead they point sponsors towards resources that can connect them with others looking to sponsor Ukrainians such as NGOs, faith-based groups like churches and synagogues, and other community organizers.

See here for image of woman holding "Refugees Welcome" sign

In total, approximately 183,500 Ukrainians received visas and support from more than 74,000 British sponsors. Like the Ukraine Family Scheme, this pathway has also been discontinued as of February 19, 2024, with previous beneficiaries able to remain in the UK if they choose by renewing their visas through the Ukraine Permissions Extension Scheme (see 6.2.5).

7.4 Ukraine Extension Scheme

Enacted on March 29, 2022, the Ukraine Extension Scheme was the third in a series of schemes passed by Parliament to aid displaced Ukrainians with resettlement in the UK. While the Ukraine Family Scheme and the Homes for Ukraine Sponsorship Scheme address Ukrainians who were living in Ukraine at the time of Russia's invasion, the Extension Scheme addresses those Ukrainians who were already in the UK. Among them were Ukrainian students studying in British universities, people conducting business in the UK, and Ukrainians already on their path to settlement in the UK. Although these individuals did not have to flee Ukraine in February 2022, they now found themselves unable to safely return to their homes in Ukraine, and under this scheme their pre-existing visas were extended.

Eligibility initially required the applicant to show they had a visa and permission to travel to or lawful presence in the UK before May 3, 2022. This initial cut-off date reflects the date when the first of the schemes for the benefit of Ukrainians were enacted, although the date was later pushed back to November 16, 2023. The period of extension is up to 36 months, same as the other schemes. Like the other schemes, this one has no application fee, and applicants must submit evidence of their pre-existing visa as well as any missing biometric or vaccine data. Also like the other schemes, Ukrainians permitted to stay through this program are granted not only an extension on their visa but also full access to all social benefits afforded under the other plans.

So far, 32,200 have been granted permission to extend their existing visas and remain in the UK. The period to submit applications ends on May 16, 2024. After that, the only individuals who will be able to benefit under this program are the children of Ukrainian parents born in the UK, discussed below.

1. Arrivals through the Common Travel Area

The Common Travel Area (CTA) refers to an agreement between Ireland and the UK, dating back to 1922, which allows for citizens of either nation to live and travel freely between the two countries. The terms of the CTA were, for many decades, merely a custom and common law agreement between the UK and Ireland, until they were officially codified on May 8, 2019 in a treaty called The Memorandum of Understanding.[30] This border arrangement was never dependent on the UK's status in the European Union and remains unaffected by Brexit.

In the first days after the invasion, it was much easier for Ukrainian nationals to relocate to Ireland than the UK. Unlike the UK, Ireland lifted the requirement for Ukrainian nationals to hold a visa in order to enter the country on February 25, 2022. Ireland has among the highest number of Ukrainians to population. At 17 Ukrainians per 1000 inhabitants, Ireland has almost 5 times as many Ukrainians per head as the UK. Due to the relaxed border standards in CTA crossings, Ukrainians were able to travel first to Ireland and then enter the UK through the CTA in the first couple of weeks after the invasion.

Ukrainians who entered this way likely received a stamp from border security, entitling them to temporary entry to the UK up to 6 months. Those who can provide evidence of this stamp, if issued between February 25 and March 29, 2022, can apply for an extension under this

[30] Memorandum of Understanding between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland concerning the Common Travel Area and associated reciprocal rights and privileges, IRE-UK, May 8, 2019.

scheme. While the CTA agreement only applies to citizens of the two party nations, because in many places the populations are so closely linked the citizens will cross a border multiple times a day just to commute to work or go to the store, in these areas there are no heightened border checkpoints, or none at all. Instead, Irish customs officers at ports of entry such as Dublin International Airport are supposed shepherded through these checkpoints with little regard for whether they remained in Ireland or traveled to the UK. Border standards between the Republic of Ireland and Northern Ireland are in some places so relaxed that it is possible some Ukrainians made their way across this border without encountering a customs agent, and therefore may have never received the 6 months' permission passport stamp. Individuals in this position still technically qualify for extension under this scheme but are advised to contact the Home Office concerning the evidentiary standard for their application.

2. Ukrainian Children Born in the UK

It is through this scheme that the Ukrainian parents of children born in the UK should apply for their child's visa. Unlike in the United States, children born in the UK to parents who are non-British nationals do not automatically gain British citizenship at birth. If the parents subsequently acquire either Indefinite Leave to Remain or settled status, then the child may be registered for citizenship. If neither parent yet has the requisite immigration status, then the child must also be registered for a visa. For the children of Ukrainian parents who have entered the UK through any of the above schemes, the proper pathway for a visa application is through this Extension Scheme, with the parent's visas submitted as evidence. Even after the Extension Scheme closes to other applicants, it will remain available specifically for the yet-to-be-born children of Ukrainian nationals who remain in the UK for any of these aid schemes. The status of children who are registered under this scheme will be identical to the status of their parents.

7.5 Ukraine Permissions Extension Scheme

Announced on February 18, 2024, this new extension scheme will allow Ukrainians who are present in the UK through the other schemes installed for the aid of Ukrainians to extend their stay for an additional 18 months. Ukrainians who wish to apply for a visa extension under this scheme will be able to do so during the last three months of their existing visa period. The government will begin to collect applications for extension in early 2025; as Ukrainians were granted visas for up to 3 years that will be the soonest any Ukrainian will enter the 3 month application window.

Although the fighting has not yet ceased in Ukraine, many of the Ukrainian nationals who originally relocated to the UK have since returned to Eastern Europe. Of those who remain, many are expected to utilize this Extension Scheme to prolong their stay in the UK. They have begun to put down roots in this new country, with many of these visas belonging to new families raising small children, or individuals who had ties to the UK before the war. These Ukrainians are learning English, working, and enrolling their children in English schools. The implementation of this Extension Scheme by Parliament seems to reflect an intention to care for these Ukrainians for the duration of the conflict, however long that may be.

7.6 Response of British Citizens to the UK's Programs

The British public has a range of opinions concerning the measures taken by Parliament to alleviate the Ukrainian refugee crisis in Europe. Some feel that this is not the UK's conflict

and the country should abstain from overextending resources on a war some citizens feel far removed from, while more yet believe that the measures taken so far have not been enough and are pushing the government to increase their overall support of Ukraine and its citizens. The general attitude towards the policies described above is positive, and the British public has been engaged with its government as well as private organizations to provide support for Ukrainians however they can.

1. Support for Ukraine

Public opinion polls of British citizens report an extremely high level of support for Ukraine in their military conflict with Russia. This support is not merely a prayer for peace; most in favor of Ukraine's victory want not only an armistice but a complete military victory for Ukraine.[31] Since February 2022, Parliament has approved military support packages worth nearly £12 billion total. This aid, including weapons, medical supplies, and funding, has been essential to Ukraine's ongoing defense of its territory against Russian belligerents. The practical effects of this aid are apparent, but the effect of these acts on international solidarity is also greatly important to displaced Ukrainians around the world. The UK joins the U.S. and much of Western Europe in solidarity with Ukraine, demonstrating global support for democratic ideals and recognition of Ukrainian sovereignty. Politically, there has been overwhelming support from British citizenship for any measure that includes military aid for Ukraine.

British support of Ukraine is more than military in nature, however. They also support humanitarian assistance for the people of Ukraine, both within and beyond Ukrainian territory. This has been demonstrated by the enthusiastic response to the Homes for Ukraine Scheme, which thousands of Britons participated in by opening their homes to displaced Ukrainians.

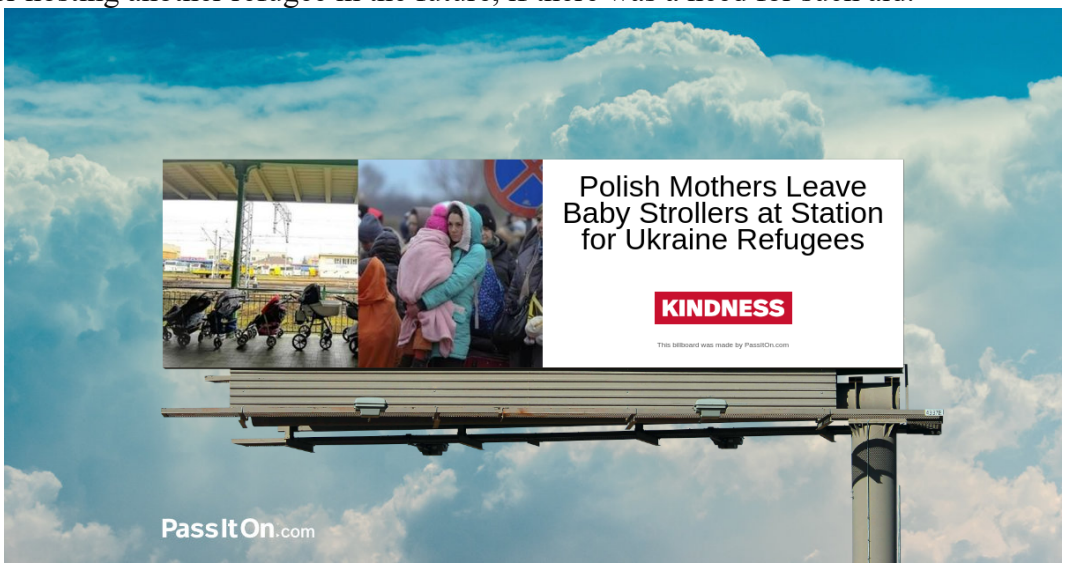
[31] (74% percent of Britons who support Ukraine's victory do not want an armistice.)

Those who do not have a spare room to house a Ukrainian still find ways to help. For example, one Bristol based charity raised over £30,000 for generators to send to Ukraine to help combat the worst of the winter conditions.

UK director of More In Common, Luke Tryl, told the Guardian:

> The Homes for Ukraine scheme shows Britain at its absolute best. Across the country, tens of thousands of ordinary members of the public have stepped up to offer their home to those fleeing conflict – a far cry from the divisive, polarizing debates about immigration and refugees we have heard over the past week. As this research shows, for the overwhelming majority of hosts, over 95% of whom had never been involved in supporting refugees before, the experience has been an immensely positive and enriching one. Despite the natural ups and downs of sharing their houses with strangers, hosts are proud to have done their bit and many would do so again.

Reports from those who have participated in the Homes for Ukraine Sponsorship Scheme as hosts indicate that most found their experience to be a positive one and say that they would consider hosting another refugee in the future, if there was a need for such aid.



Polish mothers support incoming Ukrainian refugees by leaving strollers at Train Stations

2. *General Immigration Concerns*

Immigrants, from any country, and immigration policy remains a politically charged and controversial partisan topic in the UK. British citizens are generally more likely to support measures which involve Ukrainian refugees than refugees from other war-torn regions of the world (in part because of the overwhelming military support for Ukraine but also likely due to the racial similarity of Ukraine to the UK.) Still, some British citizens believe that as a result of the policies in place to benefit Ukraine their country has brought in too many foreigners.

Anxieties about immigration policy were central to many British citizen's opinions when deciding whether to support the UK's 2020 "Brexit" from the European Union. Citizens of European Union member states are able to resettle in other member states with relative ease. Due to other member states' relatively more relaxed and open approach to allowing in refugees and

granting citizenship pathways, many British citizens voiced concern that they could be "overwhelmed" with migrants, burdening the taxpayer with their social needs and oversaturating the job market. Not every British person harbors this nationalistic sentiment, but with this rhetoric at the forefront the Brexit initiative did ultimately come to pass and the United Kingdom officially left the European Union in 2020.

Amid the ongoing refugee situation throughout Europe, with controversy surrounding how and to what extent countries should accommodate displaced persons from Ukraine and also throughout the Middle East, the UK attracted international scrutiny for its passage of the Illegal Migration Act 2023. This law establishes procedures for the detention and deportation of asylum-seekers who arrive in the UK after crossing the English Channel on a small boat or raft. Prime Minister Rishi Sunak was a major supporter of this legislation, and declared "stopping the boats" one of his key priorities. Tens of thousands of immigrants make this crossing every year, sometimes on hand made vessels at great personal peril. Advocates for this new policy hope that the certainty of deportation will deter this dangerous behavior and prevent drownings, as well as reduce the overall number of immigrants in the UK. Critics of the bill point out that fewer than 5% of immigrants cross UK borders in this manner, and the law seems to shirk the UK's obligation to accept asylum seekers, pursuant to its commitments to the United Nations.

The new act does not make any exception for Ukrainians, with the message being that the only way to arrive in the UK and remain there is through the proper legal channels. The Homes for Ukraine Scheme, by requiring UK-based sponsors to bear the financial burden of accommodating Ukrainians, is a *de minimis* drain on the taxpayers. Opponents of the UK immigration policies have been few, and their political impact has been slight, however it is due to the widely held apprehension about immigrants in the UK that measures to benefit Ukrainian refugees were not even more robust in the first place.

7.7 Critiques of the United Kingdom's Policies

Although the programs enacted by the United Kingdom have helped hundreds of thousands of Ukrainians in need of refuge, there are many critiques that have been levied at their overall approach.

1. *Maintaining the Visa Requirement*

One common criticism of the UK's overall approach to implementing new immigration policy for the benefit of Ukrainians is that by maintaining their requirement for individuals to obtain a visa before entering the country they are not addressing the imminence and the emergency nature of the crisis. While Ukrainians who seek to enter the UK wait for their visas to be approved, they remain in potentially dangerous situations or compound the burden on other European countries, particularly Poland with whom Ukraine shares a large border.

In Home Secretary Priti Patel's speech to the Parliament on March 1, 2022, she addressed these concerns as follows:

> As I said yesterday, I have heard some members calling for visa waivers. Russian troops are seeking to infiltrate and merge with Ukrainian forces. Extremists are on the ground and in the region, too. Given this, and also with Putin's willingness to do violence on British soil, and in keeping with our approach, which we retained

> consistently throughout all emergency evacuations, including that of Afghanistan, we cannot suspend any security or biometric checks on people we welcome to our country. We have a collective duty to keep the British people safe and this approach is based on the strongest security advice.

A major issue in the execution of these Ukrainian aid schemes was unexpectedly long processing time before visas could be issued. While Home Secretary Priti Patel had stated publicly that she intended for visas to be issued within only a few days of applications being filed, in the first months of the conflict Ukrainian nationals could expect to wait between 4-8 weeks for a visa. Many British citizens were eager to open their homes to refugees from Ukraine and quickly applied to be sponsors under the Homes for Ukraine Sponsorship Scheme; they had to wait for visas to be issued before the beneficiaries could enter the country. For sponsors, this limbo state caused frustration, as they held space for Ukrainian guests with no clue when they might be able to arrive. For the displaced Ukrainians, the delay was even more dire. Many of those awaiting visas were in temporary shelters in Eastern Europe, forced to sleep on the floor with what little belongings they could carry when they fled Russian bombardment. Processing times did steadily improve, however in the eyes of many critiques the damage had already been done. In the key months immediately following the invasion they were a burdensome obstacle for Ukrainian nationals seeking refuge in the UK.

2. *Safety in Sponsorship Matching*

The UK government's lack of regulation in the sponsorship matching process raised concern about the safety of both sponsors and their Ukrainian guests. Displaced Ukrainians were especially vulnerable. This population was mostly women, many of whom had limited English skills, financial resources, and social connections. Sponsors are not required to submit to any sort of background check, oversight, or agreement to any standard of behavior. Several Ukrainian women have reported that after connecting with a UK-based sponsor online, they arrive in the country only to be exploited for free labor or sexual favors. Although most UK-based sponsors have benevolent motives, bad actors are able to infiltrate this loose system with alarming ease.

The unregulated nature of the sponsorship system also creates a large risk of displacement that could result in the Ukrainian guest homeless and without a sponsor in a strange country. If there is a conflict between UK-based sponsors and their Ukrainian guests, the Ukrainian is at risk of ending up unhoused. Whether due to a breakdown in the relationship between sponsor and guest, a change in circumstance, or a safety concern, more than 1000 Ukrainians (many of them families with small children) have found themselves homeless after they or their sponsor were unable or unwilling to continue with hosting. While rematching is an option under the law, the UK government plays no role in facilitating rematches, and many are unable to procure a suitable replacement sponsor before they are forced to leave their prior accommodations.

7.8 Conclusion

The United Kingdom, although not connected by land to the rest of the European continent, is connected through their shared support of Ukraine in the ongoing defense of their territory from Russian aggressors. The Schemes passed for the benefit of Ukrainians, while

not perfect, helped hundreds of thousands of displaced persons seeking refuge and support in the UK.

When compared to its near allies throughout Europe and the United States, the UK's immigration policies in response to the Ukraine refugee crisis have been relatively small in their scope. Although Ukrainians in the UK have access to existing social programs and benefits, the UK government has not established any new programs to provide special benefits to Ukrainians, like the money benefits provided in Poland. Although they created new pathways through which Ukrainians could obtain visas, they did keep the visa requirement in place throughout the crisis. While the United States similarly kept a visa requirement in place before Ukrainians could enter the country, many other countries in Europe waived their visa requirements. The Ukrainians who elected to travel to the UK to find sanctuary typically did so not because it was the most convenient or most advantageous option, but because they already had family or some other connection to the country.

Chapter 8

Latin America

8.1 Mexico

8.1.1 Introduction

The war in Ukraine resulted in the displacement of an estimated one third of the population of Ukraine. Ukrainians sought refuge among many countries in various geographic regions, including in Latin America. The most prominent Latin American countries that saw an influx of Ukrainian refugees were Mexico, Argentina, and Brazil. Mexico's proximity to the United States accounts for the country being a favored choice, since many refugees traveled through (or attempted to travel through) Mexico as a gateway into the United States.

However, Argentina and Brazil, perhaps surprisingly, have a longstanding historical connection with Ukraine. Ukrainians had previously settled in large enough numbers to establish ethnic and cultural enclaves within these two countries, making each a natural choice for refugees fleeing Ukraine in 2022. The relaxed entry requirements for Ukrainians also helped. As depicted in the map on the following page, all three countries are ones where only an eVisa is required (Mexico), or no visa is required (Argentina and Brazil).

Behind the facts and figures discussed are people, each of whom has a unique story, perspective, and hardship that they have endured. Therefore, each section will also feature a personalized account of real stories from on-the-ground journalists who spoke with refugees in each country. (See map).

8.1.2 Mexico's Response

The Mexican government initially responded to the crisis in late February 2022 with a resounding assurance that the country would accept Ukrainian refugees with open arms. The Commissioner of the "National Institute of Migration" (El Instituto Nacional de Migración, or INM) issued a statement that asylum and refuge would be given to those who request it, and Ukrainians visiting Mexico at the time would be given a renewable extension of 180 days after the expiration of their visitor permit. The government also authorized the establishment of refugee camps in cities where refugees arrived by plane, including the Tijuana, which borders the San Ysidro Port of Entry (in California) and Mexico City.

Tijuana received the highest number of refugees at 9,903 in early 2022, as reported by the INM. Out of these refugees, 6,050 arrived in January 2022 and 3,853 arrived in February 2022. *Id*. In the Iztapalapa borough of Mexico City, there were at least 500 refugees by May 2022, after the camp had been open for only a week, and dozens more arrived each day. United with Ukraine, a nongovernmental organization worked in tandem with Mexican government officials to set up the camp, which provided food, transit, security, and a place to sleep. *Id*.

After the United States announced its U4U program on April 21, 2022, many refugees made their way to Mexico in the hopes of receiving humanitarian parole at a border crossing, most frequently at San Ysidro. They would wait a few days while at the camp before being transported to the crossing.

Over the month that the refugee camp was open, approximately 1,000 Ukrainians passed through. At one point, the influx of refugees to the camp areas became so overwhelming that the government began to discourage arrivals by those intending to reach the United States.

These makeshift camps took the form of multiple rows of tents set up outdoors, as with the camp in the Iztapalapa borough of Mexico City; additionally, there were rows of mats and bunk beds placed inside a gymnasium, as in both Mexico City and the Benito Juarez Sport Complex in Tijuana. Being inside of a large sports complex, there were other areas of the camp where recreational activities took place, including soccer, volleyball, and swimming. Both of these refugee camps are pictured below.

Behind the facts and figures provided are people, each of whom has a unique story, perspective, and hardship that they have endured. Below is the story of Tatiana, one of the 9,903 refugees who passed through to the United States via Tijuana. For personal accounts of the refugees see this NPR story.

8.1.3 Mexico's Electronic Travel Authorization for Ukrainians (ETA or SAE)

Aside from geography, another factor that played into Mexico's prominence as a gateway for refugees was the relatively streamlined process for obtaining a permit without needing to process a standard visa. This online permit, which is valid for 30 days as of August 17, 2022, is known as the "Electronic Travel Authorization" (ETA) (Sistema de Autorización Electrónica or SAE). This permit is available to Russian, Turkish, or Ukrainian individuals traveling to Mexico, by plane via a participating airline (land and sea travelers require a standard visa), to conduct activities such as tourism and business.

As noted on the Mexican government website, “To use this system and obtain electronic authorization, it is essential to comply with the following conditions:

- Be Russian, Ukrainian or Turkish.
- Have a valid passport.
- Fill out an application by entering: **I want to obtain an Electronic Authorization.**”

Because refugees arrived in Mexico by plane, the ETA affords an opportunity to seek a travel permit with relative ease. While many of the refugees who came to Mexico were able to gain admission into the United States, others did not have the option.

8.1.4 You’re Here, Now What?

For those refugees who could not surmount the bureaucratic obstacles to be admitted into the United States, or had other reasons for not leaving Mexico, there is the option of officially applying for refugee status with the “Mexican Commission for Refugee Assistance” (*Comisión Mexicana de Ayuda a Refugiados* or COMAR). COMAR is the Mexican government agency tasked with the receipt and consideration of applications to determine if individuals qualify as refugees under the Law on Refugees, Complementary Protection and Political Asylum. Under this law, individuals are considered refugees if they:

“Are afraid of being persecuted for reasons of race, religion, nationality, gender, membership of a particular social group, or political opinion;

Are outside of their country of nationality and don’t have the protection of their country;

Have fled their country because their life, security or liberties have been threatened by widespread violence, foreign aggression, internal conflicts, massive breach of human rights, or other circumstances that have severely disrupted the public order.”

A refugee could have been subjected to, or believes they may be subjected to one or more of these scenarios:

- “Extortion, harassment, intimidation, physical or sexual violence from gangs or armed groups:
    - For refusing to cooperate or become a member;
    - For refusing to pay war taxes or their dues;
    - For refusing to become partners of people related to criminal groups;
- For being witnesses to a crime committed by these groups;
- Discrimination, threats, physical aggression on the basis of their religion or beliefs, political ideas, nationality or race;
- Physical violence, harassment, sexual violence on the basis of their gender identity, sexual orientation, or gender expressions, for example, lesbian, gay, bisexual, transgender, or intersex persons from a collective (LGBTI);
- Bullying, threats, physical or sexual violence from their partner, former partner, family members, or others;
- Being victims of housing occupation dispossession of land or other property;

- Being forced into prostitution or marriage;
- Having their life, liberties, or security threatened due to armed conflicts, serious situations of violence, or insecurity."

One can seek consideration for refugee status by (1) submitting an application, (2) completing an eligibility interview, and (3) awaiting a decision.

1) Application

The application can be submitted at the COMAR office or INM office (if there is no COMAR office) in the Mexican state where one is residing (as you must request permission from COMAR to move states, or else forfeit your application). The application should note the reasons for leaving the home country, and whether or not your family moved with you, or they remain in the home country.

COMAR will then issue a certificate (*Constancia*), which is proof of starting the process, and provide the applicant with a Unique Population Registry Code (CURP). *The allows for access to public services* and assists with other procedural steps. Refugees have a right to not be sent back while in the application process. In fact, an applicant can contact the INM and use the certificate to apply for Visitor Card for Humanitarian Reasons (TVRH), which is a temporary employment authorization while the application is pending. The UN Refugee Agency is also available to offer general guidance or recommend pro bono legal counsel, which an applicant is entitled to have during the application process.

2) Eligibility Interview

The applicant will then sit for an interview with COMAR, wherein they ascertain the circumstances surrounding the applicant's decision to leave the country. The applicant must articulate the reasons for not wanting or not being able to return. While any supporting documentation can be provided, it is not required. *Applicants also have a right to an interpreter throughout.* The interview will be one-on-one, with the applicant having a choice of a male or female interviewer.

3) Decision

The timeline for COMAR to render a decision can take up to a few months. If the refugee status is denied, the applicant can appeal within 15 business days of receiving that decision. This triggers a secondary review by COMAR whereby they will reach another decision within 3 months. If the applicant receives a second denial, the applicant is entitled to counsel to appeal the decision before a judge.

8.1.5 Can You Stay?

Yes, if the refugee status application is granted, the applicant will work with COMAR to have their Permanent Residency status as a refugee processed, which will allow the refugee to live anywhere in Mexico. The applicant and every family member listed on the application will have official refugee status.

8.2 Argentina

8.2.1 Introduction

As previously mentioned, Ukraine and Argentina share a history that is inextricably intertwined, with established communities of Ukrainians present in various parts of Argentina, totaling between 350,000 and 500,000 based on different calculations. According to the Presidential Office of Ukraine's website, August 27, 1897 marks the starting point of Ukrainian migration to Argentina, which happened in various phases. This year is corroborated by Dr. Serge Cipko, who is the Assistant Director of Research at the University of Alberta's Canadian Institute of Ukrainian Studies.[32] Dr. Cipko has written that "Ukrainians came to Argentina in three separate waves," with the first consisting of the migration of 10,000 Ukranians to Argentina between 1897 and 1914. These migrants were "transient workers" who hailed from either the Russian Empire or Austia-Hungary in search of low-cost land for farming. The second wave brought 70,000 Ukrainians between 1920 and 1939, who primarily came from the Post-World War I countries of Czechoslovakia, Romania, and Poland. *The third wave occurred saw 6,000* Ukranians, many of whom were highly educated professionals, move in and around Buenos Aires between 1945 and 1950.

Beyond the migratory movement, Argentina was also the only country in Latin America to recognize an independent Ukraine in 1921 and forge diplomatic ties. Once the Soviet Union fell in 1991, Argentina was the first country to recognize an independent Ukraine.

8.2.2 Argentina's Response

More recently, Argentina has signaled its support for Ukraine via action, if not speech, by sending 12 shipments of humanitarian aid over the first twelve months of the war. However, the statements issued by the President at the time, Alberto Fernández, and officials of his administration had generally been conciliatory towards Russia, until his public comments made to the G7 on June 27, 2022. Prior to that point Argentina and Brazil abstained from signing onto a condemnation of Russia's invasion of Ukraine by the Organization of American States (OAS). *On the other hand, both countries were also the first in Latin America to offer to take in* refugees.

Ukrainian organizations within Argentina have also been directly involved in sending aid packages to Ukraine in collaboration with the Ukrainian Embassy in Argentina and the Ministry of Foreign Affairs. The aid packages included among other items, "food, bicycles for people with disabilities, medicines and tablets for water purification." *As of August 15, 2023, Argentina had sent 14 batches of aid, consisting of 7,000 kilograms (*15,432 lbs.) of food and "more than 122 tons of humanitarian cargo to Ukraine," leading all Latin American countries in food (and humanitarian aid generally) sent to Ukraine. These organizations have also held numerous demonstrations and marches to protest the war around the anniversary of Russia's invasion. Their humanitarian aid and protest efforts were so noteworthy that the President of Ukraine, Volodymyr Zelenskyy himself, met with members of these organizations personally and thanked them for their support in a December 2023 visit to Argentina.

8.2.3 Argentina's Humanitarian Visa

[32] Serge, Cipko,. *THE UKRAINIAN EXPERIENCE IN ARGENTINA, 1897-1950: AŃ HISTORICAL OVERVIEW*, Studia Migracyjne-Przeglad Polonijny 4, no. 38 (2012): 103-116.

Similar to Mexico's INM, Argentina's counterpart, the "National Direction of Migration" (Dirección Nacional de Migraciones or DNM) is the agency responsible for receiving and processing visas, and this agency has the authority to issue regulations around these visas. The DNM, under the authority of its Chief, Florencia Carignano, decided to grant humanitarian visas to Ukrainians and their families, which provides a temporary protection for 3 years. The full translated statement, issued by the Ministry of the Interior on March 8, 2022, is as follows:

> "The National Directorate of Migration (DNM), an agency under the Ministry of the Interior, issued a provision that authorizes the entry and stay for humanitarian reasons to Argentina of Ukrainian citizens and their immediate families, regardless of their nationality, in response to the crisis caused by the war that country is going through.
> The measure adopted by the body dependent on the Interior portfolio led by Wado de Pedro is part of the human rights protection policies carried out by Argentina and aims to facilitate and guarantee the family reunification of Ukrainian citizens.
> The provision of the DNM, in charge of Florencia Carignano, grants the status of temporary protection to guarantee the entry and permanence in the country of Ukrainians and immediate relatives, with a period of stay of up to 3 years in our country. Once that period has expired, beneficiaries can apply for and access permanent residency in our country.
> This visa is framed in Migration Law 25,871, and precisely in its article 23 paragraph M, which considers temporary residents for humanitarian reasons all those who enter invoking "reasons that justify in the opinion of the National Directorate of Migration a special treatment."
> From the DNM they stressed that the measure aims to provide protection to those people who, not being refugees or asylees, temporarily cannot stay or return to their country, while the beneficiaries will be exempt from the payment of immigration fees in response to the crisis that Ukraine is going through."

As mentioned, the legal basis for this decision stems from Title II, Article 23, subsection (m), of Argentina's "Migration Law" (*Ley Migraciones*) 25.871. The relevant section states:

"'Temporary residents' will be considered all those foreigners who, under the conditions established by the regulations, enter the country in the following subcategories:

m) Humanitarian Reasons: Foreigners who invoke humanitarian reasons that justify, in the judgment of the National Director of Migration, special treatment…"

Here, the extenuating circumstances caused by the Russian invasion are such that many do not have a safe place in Ukraine to stay or return to, for an indefinite period of time. Therefore, the DMN Director lawfully exercised his authority under this statute.

8.2.4 You're Here, Now What?

Ukrainians who are traveling to Argentina for 3 months or less are permitted to stay without a visa. Those who plan to stay longer can apply for the humanitarian visa referenced above at an Argentinian consular office.

8.2.5 Can You Stay?

Yes, because the DNM Chief's statement announcing the humanitarian visa stated that after the humanitarian visa's 3-year period elapses, refugees are then eligible to apply for permanent residency.

8.2.6 Life as a Refugee in Argentina

While there is no specific government social welfare program in place for Ukrainian refugees, the Ukrainian community organizations' efforts are a testament to how tightly knit Ukrainians living in Argentina are. They welcomed the first group of arriving refugees openly, as shown in Bogdan's Holovchak's story below.

A Ukrainian in Misiones: Refugee Prepares for New Life in Argentina's North

A Ukrainian refugee who fled his homeland due to the ongoing Russian invasion says he's looking forward to starting a new life in Argentina's north. Bogdan Holovchak, one of the first Ukrainian refugees to arrive in the country, arrived in Posadas, Misiones Province, on Wednesday. And despite having no previous connection to Argentina – other than a single friend – he says he's looking forward to "being a part of society" again.

The 37-year-old landed at Ezeiza International Airport in Buenos Aires last Saturday on a humanitarian flight organized by the Solidaire NGO, which is run by Argentine pilot and film director Enrique Piñeyro. He was joined by four other individuals, all of whom entered Argentina as tourists and are now beginning the process of formally becoming refugees.

Fellow traveler Alina, who embarked upon the long journey with her two children, was reunited with a second uncle, who is originally from the city of Kharkiv and has been living in Argentina for several years. The final passenger, 72-year-old Irina was welcomed by her daughter and two granddaughters, whom she had not seen since 2019.

Holovchak, however, is the only one of the five travellers who, just a few days after arriving in the country, got back on a plane. Unlike the other four, Bogdan – who was unable to enlist in the Army due to medical reasons – has no relatives in Argentina. His partner and mother are still in Ukraine, according to local news reports.

Upon his arrival in Buenos Aires last Saturday, Holovchak initially stayed at the flat of journalist and press correspondent Fernando Ortega Zabala, who offered to help the Ukrainian while he began the paperwork to become a refugee. The journalist told a local radio station this week that Bogdan "couldn't join the Army because he has a small problem with his leg, so he decided to escape, leaving his mother and girlfriend in his country." Holovchak, who speaks English and Italian (but no Spanish), has previously worked in the tourism industry, as a bank clerk and as a freelance journalist.

Russian invasion

Holovchak comes from a city called Ivano-Frankivsk in Western Ukraine, where he was based until Russia's missiles started hitting Ukraine.

The town was home to a large Ukrainian population that fled there from the east to escape the constant threat of attacks on the Russian border. But an upsurge in bombing led the

mayor of the region to call for residents to leave immediately for fear of further attacks on May 5.

Bogdan is one of more than eight million people who have been displaced from their homes by the Russian invasion.Though just five arrived on last weekend's flight to Argentina, others have already travelled by their own means. Between 350,000 and 400,000 Ukrainians live in the country as a result of various waves of migration, according to government figures.

Upon his arrival in Misiones, Bogdan was received by the provincial Governor Oscar Herrera Ahuad, and representatives of the local Ukrainian community. The local government has opened its arms to fleeing refugees and even has an Honorary Ukrainian Consulate. "I want to be part of the society," the new arrival told Herrera Ahuad emotionally, promising to put himself at the "service of the community and culture of Misiones."

For now, Bogdan plans to stay with a local family until he can find work. He says he will soon start taking Spanish classes and look to rebuild his life after the horrors of the Ukraine war.

8.3 Brazil

8.3.1 Introduction

Brazil currently has a Ukrainian population estimated to be about 600,000, with many concentrated in the area of Prudentopolis (endearingly referred to as "Little Ukraine" and pictured on the next page) given the prominence of Ukrainian migration to the area. Similarly to Argentina, Brazil also experienced various waves of migration, but in even larger numbers. Also mirroring the Ukrainian migration to Argentina, "[the first immigrants arrived from Galicia…in the 1890s, drawn by the offer of fertile agricultural lands." There was also another phase of migration in the midst of World War II since Brazil was one of the countries accepting refugees. The Ukrainian influence can be seen in the architecture of the churches and the Ukrainian easter eggs that adorn Taras Shevchenko Square (both pictured in the following pages).

8.3.2 Brazil's Response

Brazilian President at the time, Jair Bolsonaro, announced on February 28, 2022 that the country would accept Ukrainians and grant them a humanitarian visa. He noted that the government was working out the details, but asserted that "the country will do whatever is possible to receive Ukrainians in Brazil." While at first glance, Bolsonaro's quick action may suggest unabashed support for Ukraine, his explicit expressions of neutrality, rhetoric about Zelenskyy and the war, and criticisms regarding Russian sanctions contravene that view.

8.3.3 Brazil Humanitarian Visa

However, just 3 days after the announcement, the Ministry of Justice and Public Security/Minister's Office **(***Ministério da Justiça e Segurança Pública/Gabinete do Ministro*) published an ordinance to that effect on March 3, 2022. Here are the first 4 Articles, which concern the humanitarian visa portion, of translated ordinance:

INTERMINISTERIAL ORDINANCE MJSP/MRE Nº 28, OF MARCH 3, 2022

Provides for the granting of a temporary visa and a residence permit for the purpose of humanitarian reception to Ukrainian nationals and stateless persons who have been affected or displaced by the situation of armed conflict in Ukraine.

THE MINISTERS OF STATE OF JUSTICE AND PUBLIC SECURITY AND FOREIGN RELATIONS, in the use of the attributions conferred on them by item II of the sole paragraph of art. 87 of the Constitution, in view of articles 37 and 45 of Law No. 13,844, of June 18, 2019, the provisions of § 3º of art. 14, and paragraph "c" of item I of art. 30 of Law No. 13,445 of May 24, 2017, and § 1º of art. 36 and § 1º of art. 145 of Decree 9.199, of November 20, 2017, and what is contained in Administrative Procedure nº 08018.012564/2022-21, resolve:

Art. 1º This Ordinance provides for the granting of a temporary visa and a residence permit for the purpose of humanitarian reception to Ukrainian nationals and stateless persons affected or displaced by the situation of armed conflict in Ukraine.

§ 1º For the purpose of the provisions of the chapter, the provisions of § 3º of art. 14, and paragraph "c" of item I of art. 30 of Law No. 13,445, of May 24, 2017, and § 1º of art. 36, and § 1º of art. 145 of Decree No. 9,199, of November 20, 2017, shall be observed.

§ 2º The provisions of this Ordinance will be in force until August 31, 2022 and do not rule out the possibility of other measures that may be adopted by the Brazilian State for the protection of Ukrainian nationals and stateless persons residing in Ukraine.

Art. 2º The temporary visa for humanitarian reception may be granted to Ukrainian nationals and stateless persons affected or displaced by the situation of armed conflict in Ukraine.

§ 1º The temporary visa provided for in this Ordinance will have a validity period of one hundred and eighty days.

§ 2º The granting of the visa referred to in the chapter will occur without prejudice to the other visa modalities provided for in Law No. 13,445 of 2017 and Decree No. 9,199 of 2017.

§ 3º The stateless immigrant, within ninety days after his entry into national territory, must begin the process of recognition of the stateless status with the Ministry of Justice and Public Security, as established in art. 95 et seq. of Decree No. 9.199, of 2017, through the SisApatridia system, available on the GOV.BR platform.

Art. 3º To apply for the temporary visa provided for in this Ordinance, the applicant must submit to the Consular Authority:

I - valid travel document;
II - completed visa application form;
III - proof of means of transport of entry into the Brazilian territory; and
IV - certificate of criminal record issued by Ukraine or, in the impossibility of obtaining it, declaration, under the penalties of the law, of absence of criminal record in any country.

§ 1º Exceptionally and duly motivated, the visa referred to in the chapter may be granted, by consultation with the Secretariat of State for Foreign Affairs, even if in the absence of some or some of the documents described in items I to IV, also of the chapter.

§ 2º The granting of a visa referred to in this Ordinance will be preceded by a face-to-face interview, which may be waived, at the discretion of the consular authority.

Art. 4º The immigrant holder of the visa referred to in art. 2º must register in one of the units of the Federal Police within ninety days after his entry into national territory.
Single paragraph. The temporary residence resulting from the registration referred to in the chapter will have a period of two years.

8.3.4 You're Here, Now What?

Ukrainians refugees can travel to Brazil without a visa, but can apply for the humanitarian visa, which will remain valid for 180 days, for an extended stay. Just like with Argentina, the fees associated with obtaining a visa, registration, and a residence permit are waive. The UN Refugee Agency advises upon arrival "if there is no place to settle, there are options for sheltering offered by the public network of the government and civil society organizations. It is important to note that these options are free, temporary, often shared and/or profiled (e.g. women's shelter, men's shelter, family shelter). In general, there are few family shelter options."

8.3.5 Can You Stay?

Potentially, yes in the long-term, and certainly for the short-term. The residency permit allows one to stay for a period of two years, and the provisions of the ordinance "do not rule out the possibility of other measures that may be adopted by the Brazilian State for the protection of Ukrainian nationals and stateless persons residing in Ukraine." If the visa/residency permit programs are extended, a refugee can potentially reach the 4-year permanent residency requirement for naturalization.

8.3.6 Life as a Refugee in Brazil

As you read the personal accounts of refugees living in Brazil's "Little Ukraine" below, consider the tension between the comfort provided by cultural familiarity/camaraderie and the desire to return home to loved ones and a sense of normalcy, which has been shattered by the horrors of war.

On May 13, 2022, Reuters published an article about Ukrainian refugees living in “Little Ukraine.” This area, “Prudentopolis, dubbed ‘Little Ukraine,’ has a large Christian Orthodox church that is the center of a community of descendants of Ukrainian immigrants. A flag of Ukraine covers its facade.” The church has provided the refugees with a sense of community outside of their homeland. Given the opportunity to cherish traditional Ukrainian folk songs and dances, they celebrate rebirth and the resurrection of Christ.

8.3.7 Analysis of Latin America’s Response

Though the three Latin American countries discussed may be overshadowed by the numbers of refugees accepted by the United States or adjacent Eastern European countries, they still all played a critical role in assisting the Ukrainian victims of displacement. Mexico served as a conduit to the United States, at a time when governments were still figuring out how to respond and manage the mass influx of refugees in an efficient, orderly manner. The eVisa requirement allowed many Ukrainians to travel to Mexico, and eventually the United States, with relative ease (strictly from a procedural viewpoint). While the conditions of the makeshift camps were far from ideal, the objective of being able to provide a large number of refugees with food, shelter, security, transit, and other resources was met. Though Argentina did not host as many refugees as the other countries, the government showed a willingness to openly accept refugees and streamline the process as much as possible. Moreover, the Ukrainian-Argentinian community’s humanitarian aid was critical to assisting Ukraine. President Zelenskyy directly addressed the aid received and its impact. Argentina also had the most generous visa program out of the 3 countries, in terms of the length of time it is valid for. Despite President Bolsonaro’s hesitation to take a firm stance or unequivocally condemn Russia’s actions, in part due to Brazil’s reliance on Russian fertilizer, his administration acted swiftly in terms of drafting a humanitarian visa program carved out specifically in response to the crisis.

8.3.8 Conclusion

Despite Latin America's overlooked presence on the global stage, Mexico, Argentina, and Brazil were together able to make an outsized impact in terms of mitigating the harmful effects of displacement for Ukrainian refugees. While their governments at the time claimed neutrality, the fact that these governments worked to accommodate refugees demonstrates a willingness to being on the right side of history. During his trip to Argentina, President Zelenskyy acknowledged the importance of having the unified support of Latin American countries in the war against Russian aggression. Perhaps as the war draws on, attitudes among the new leadership of the Latin American countries will shift towards unequivocal condemnation of Russia's atrocities and support of Ukraine.

Chapter 9

State Responsibility

9.1 Introduction

The situation in Ukraine and Russia since 2014 has undoubtedly led to many violations of international law, not only by both States but also by the self-proclaimed entities (the Donetsk People's Republic (DPR) and the Luhansk People's Republic (LPR)). Under international law, States and non-State actors that possess certain qualities are bound by treaty law and customary international law. Violations of these treaties and customs give rise to the responsibility of the State when such acts (or omissions) can be imputed to the State. Indeed, under State responsibility, the mechanism whereby a State is held accountable for a violation of international, two elements must be present (*see* e.g. Draft Articles on the Responsibility of States for Internationally Wrongful Acts [ARSIWA] art. 2). First, there must be an internationally wrongful act or omission. Second, that breach must be attributed to the State, usually through its agents and organs (*see* e.g. ARSIWA, art. 4) but a State can also be responsible for acts carried out by others provided it can be demonstrated that others were "acting on the instructions of, or under the direction or control of, the State was in effective control of" these actors (ARSIWA, art. 8). Some international legal regimes, such as norms of international human rights law, also hold States responsible for acts carried out by individuals and groups not under its control if the State fails to act with due diligence to prevent such acts (under the obligation to protect rule) (*see* OSCE 2023, p. 71). A State remains responsible unless it ceases to comply with its obligations (*see* e.g. ARSIWA, art. 30). It must offer appropriate assurances and guarantees of non-repetition (*see* e.g. ARSIWA, art. 30) and provide adequate reparations, which can take various forms (*see* e.g. ARSIWA, arts 31 and 34−38).

A variety of mechanisms exist to determine whether a State is responsible for violations of international law. These include judicial bodies that adjudicate any matter relating to international law (e.g. the International Court of Justice) and those that focus on specific legal regimes such as

human rights law (e.g. the European Court of Human Rights). In the context of the Russian-Ukrainian war, these mechanisms have been extensively utilized by Ukraine to raise concerns about a broad range of violations by Russia. For instance, Ukraine has initiated (1) two sets of proceedings before the International Court of Justice, one concerning terrorism funding (*see* Chapter 9.2) and another related to genocide (*see* Chapter 9.4); (2) ten complaints before the European Court of Human Rights; (3) one before the International Tribunal of the Law of the Sea; and (4) one before the Arbitral Tribunal Constituted under Annex VII to the 1982 United Nations Convention on the Law of the Sea (*see* Chapter 9.3). In some respects, Ukraine is employing lawfare, a term which refers to the strategic use of law as a weapon, with a view to delegitimizing the perpetrator's (here Russia) actions.

Other mechanisms available include political or quasi-judicial bodies that monitor the compliance of States with obligations stemming from a variety of treaties and customary obligations (e.g. the United Nations General Assembly, the Moscow Mechanism under the OSCE (¶ 8), the United Nations Human Rights Council, and various international law committees that monitor compliance with specific human rights treaties).

It goes without saying that this Chapter cannot cover all instances of State responsibility under international law. Instead, it focuses on the most significant violations of international law committed in the Russian-Ukrainian war, specifically acts of terrorism, the use of force and genocide. This Chapter also highlights the two most relevant legal regimes: international humanitarian law and international human rights law. Additionally, it presents two case studies that combine these legal regimes: sexual and gender-based violence and violence against children.

9.2 State Responsibility for Terrorist Funding

In the wake of the 2014 events in Ukraine, both in Crimea and in eastern Ukraine, Ukraine responded with a lawsuit against the Russian Federation before the International Court of Justice (ICJ). Since it is difficult to get the ICJ generally to accept a claim and, more specifically, for matters relating to the use of force, Ukraine decided to use the compromissory clause of Article 24(1) of the International Convention for the Suppression of the Financing of Terrorism. No doubt it was a way for Ukraine to bring Russia to the ICJ on matters relating to not only the aforementioned events but also the downing of Malaysia Airlines Flight 17 above Ukrainian territory. It was probably the only door through which Ukraine had access to judicial settlement on the principle of non-intervention, the prohibition of the use of force and the right to life of its nationals. The ICJ issued its decision in 2024. As the Court noted, "the case before the Court is limited in scope" (¶ 16). The proceedings are explained in Figure 1.

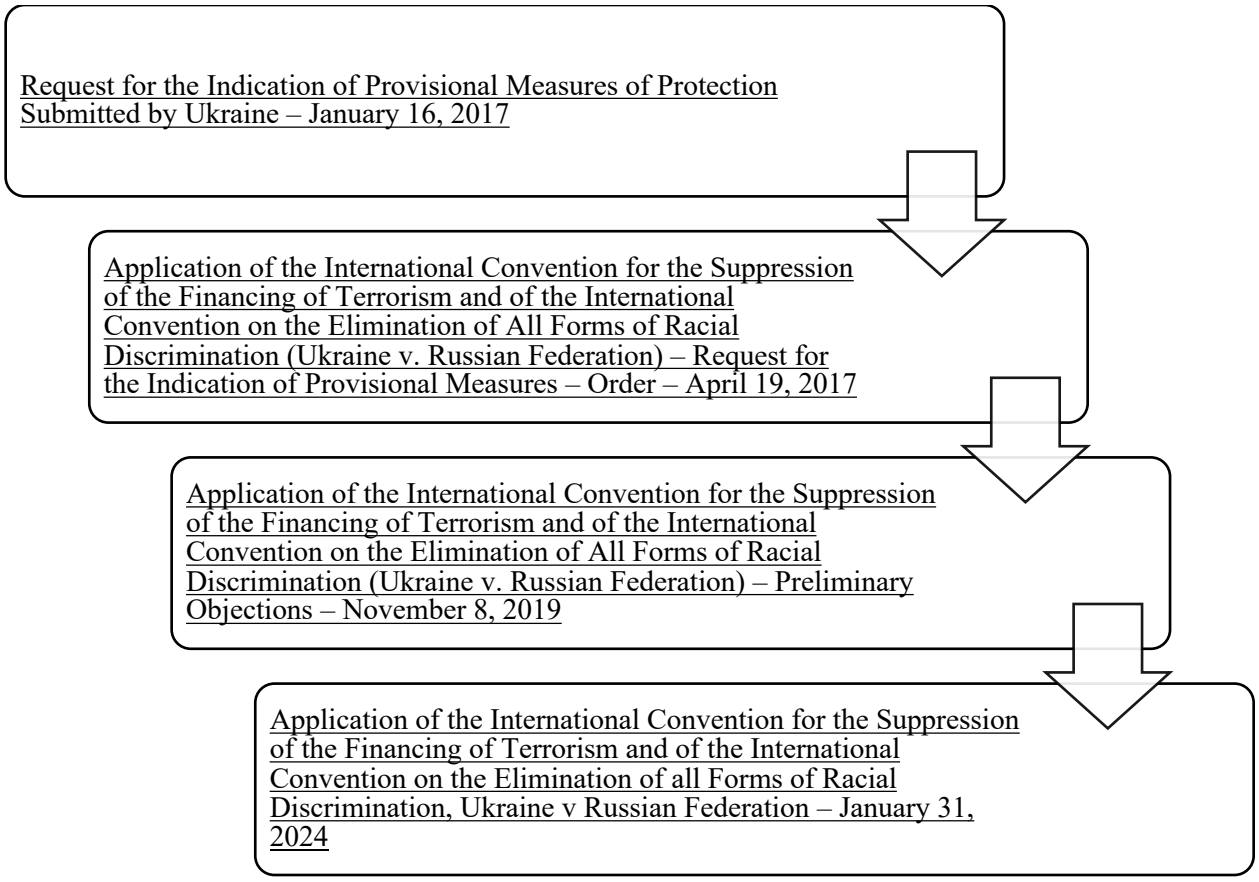


Figure 1: ICJ - Ukraine v. Russia – ICSFT and CERD

International Court of Justice – Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v Russian Federation) – Order (Provisional Measures) – April 19, 2017

16. The context in which the present case comes before the Court is well known. In large parts of eastern Ukraine, that context is characterized by periods of extensive fighting which, as the record before the Court demonstrates, has claimed a large number of lives. The destruction, on 17 July 2014, of Malaysia Airlines Flight MH17 while it was flying over Ukrainian territory en route between Amsterdam and Kuala Lumpur, caused the deaths of 298 people. The Court is well aware of the extent of this human tragedy. Nevertheless, the case before the Court is limited in scope. In respect of the events in the eastern part of its territory, Ukraine has brought proceedings only under the ICSFT. With regard to the events in Crimea, Ukraine's claim is based solely upon CERD and the Court is not called upon, as Ukraine expressly recognized, to rule upon any issue other than allegations of racial discrimination.

...

74. Thus, the obligations under Article 18 and the corresponding rights are premised on the acts identified in Article 2, namely the provision or collection of funds with the intention that they should be used or in the knowledge that they are to be used in order to carry out acts set out in paragraphs 1 (a) and 1 (b) of this Article. Consequently, in the context of a request for the indication

of provisional measures, a State party to the Convention may rely on Article 18 to require another State party to co-operate with it in the prevention of certain types of acts only if it is plausible that such acts constitute offences under Article 2 of the ICSFT.

75. In the present case, the acts to which Ukraine refers (see paragraph 66 above) have given rise to the death and injury of a large number of civilians. However, in order to determine whether the rights for which Ukraine seeks protection are at least plausible, it is necessary to ascertain whether there are sufficient reasons for considering that the other elements set out in Article 2, paragraph 1, such as the elements of intention or knowledge noted above (see paragraph 74), and the element of purpose specified in Article 2, paragraph 1 (b), are present. At this stage of the proceedings, Ukraine has not put before the Court evidence which affords a sufficient basis to find it plausible that these elements are present.

76. Therefore, the Court concludes that the conditions required for the indication of provisional measures in respect of the rights alleged by Ukraine on the basis of the ICSFT are not met.

International Court of Justice – Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of all Forms of Racial Discrimination, Ukraine v Russian Federation – January 31, 2024

53. In light of the foregoing, the Court concludes that the term "funds", as defined in Article 1 of the ICSFT and used in Article 2 of the ICSFT, refers to resources provided or collected for their monetary and financial value and does not include the means used to commit acts of terrorism, including weapons or training camps. Consequently, the alleged supply of weapons to various armed groups operating in Ukraine, and the alleged organization of training for members of those groups, fall outside the material scope of the ICSFT. In the present case, therefore, only monetary or financial resources provided or collected for use in carrying out acts of terrorism may provide the basis for the offence of terrorism financing, assuming that the other elements of the offence referred to in Article 2, paragraph 1, are also present.

...

64. A determination of whether the element of "knowledge" is present must be made on the basis of objective factual circumstances. The element of "knowledge" may be established if there is proof that the funder knew that the funds were to be used for the commission of a predicate act. In this regard, it may be relevant to look to the past acts of the group receiving the funds in order to establish whether a group is notorious for carrying out predicate acts; for instance, where a group has previously been characterized as being terrorist in nature by an organ of the United Nations. The existence of the element of "knowledge" may be inferred from such circumstances. On the other hand, the characterization by a single State of an organization or a group as "terrorist" is insufficient, on its own, to displace the need for proof of the funder's knowledge that the funds in question are to be used to carry out a predicate act under Article 2, paragraph 1 (a) or (b).

...

76. Finally, the Court notes that it does not have sufficient evidence before it to characterize any of the armed groups implicated by Ukraine in the commission of the alleged predicate acts as groups notorious for committing such acts. In the circumstances, the funder's knowledge that the funds are to be used to carry out a predicate act under Article 2 of the ICSFT cannot be inferred from the character of the recipient group (see paragraph 64 above). Accordingly, to establish the

element of knowledge, it must be shown that, at the time the funds were allegedly collected or provided to the groups, the alleged funder knew that the funds were to be used to carry out predicate acts under Article 2, paragraph 1 (a) or (b), of the ICSFT.

...

149. By the present Judgment, the Court declares that the Russian Federation has violated its obligations under Article 9, paragraph 1, of the ICSFT and continues to be required under that provision to undertake investigations into sufficiently substantiated allegations of acts of terrorism financing in eastern Ukraine.

Commentary

1. In 2017 Ukraine initiated proceedings against Russia before the International Court of Justice (ICJ), alleging that the Russian Federation had failed to prevent and suppress the terrorism financing related to the situation in eastern Ukraine and the Crimean Peninsula in early 2014 and thus had violated the International Convention for the Suppression of the Financing of Terrorism. The alleged acts included the downing of the Malaysia Airlines Flight 17, kidnappings and extrajudicial killings of individuals, and shelling of civilians in eastern Ukraine (¶ 10). Ukraine requested the ICJ to order provisional measures against Russia under Article 14 of its Statute but the ICJ did not find enough evidence to support the request (¶ 76).
2. In 2024, the ICJ issued its decision on the merits. Regarding the case on merits, the Court clarified several points concerning the application of the Convention. First, the Convention only covers the financing of acts of terrorism and not the alleged supply of weapons or organization of training of armed groups (¶¶ 53 and 74). Second, the Convention requires funds to be provided or collected with the intention or knowledge that they would be used to carry out terrorist acts, although the actual use of the funds is not necessary (¶ 63). In this regard, the Court specified that knowledge can be inferred if the "group is notorious for carrying out predicate acts" (¶ 64) yet the Court found there was insufficient evidence to support this in the case at hand (¶ 76). Third, the Court explained that, according to Article 2(1)(b) of the Convention, deliberate killings or serious bodily injury must have been committed with "the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act" (¶ 69).
3. While Ukraine claimed that Russia had breached Articles 8, 9, 10, 12 and 18 of the Convention, the Court found a violation of the obligation to undertake investigations under Article 9(1) only. In all other instances, the Court explained that Ukraine had not adduced sufficient evidence to prove a violation. It was not possible to demonstrate that Russia had reasonable grounds to suspect funds were allocated for carrying out predicate acts under Article 8(1) of the ICFST (¶¶ 97−98). In contrast, as the Court noted that Ukraine had provided sufficient information to Russia to initiate an investigation pursuant to Article 9(1) ICFST, Russia had failed to conduct a meaningful investigation (¶¶ 110−111 and 149). Yet, Russia did not violate Article 10(1) of the ICFST, which requires a State to either prosecute or extradite alleged offenders of terrorism financing offences under Article 2, as Ukraine not only did not provide enough evidence to Russia but also left to the competent State authorities to determine whether prosecution is warranted (¶¶ 118−120). The Court then dismissed Ukraine's claim that Russia had breached Article 12(1) of the ICST regarding the obligation to provide legal assistance, stating that no clear evidence had been provided to Russia (¶ 131). Likewise, since Ukraine did not provide enough evidence, Russia had no reasonable grounds to suspect the funds were used for the purpose of terrorism financing, and so required to take measures against the DPR

and the LPR and notably to designate the groups as terrorist entities under its domestic law or to restrict funding to them in accordance with Article 18(1) of the ICSFT (¶¶ 145−146).

4. In conclusion, while Ukraine succeeded in bringing the Russian Federation before the ICJ and was given an opportunity to expose the latter's actions, the use of an inappropriate and less relevant treaty meant that the Court did not find Russia to be in violation of the treaty, barring its Article 9(1) on the obligation to carry out meaningful investigations. The Court's interpretation of the word "funds" (¶ 53) led to the conclusion that the "alleged supply of weapons to various armed groups operating in Ukraine, and the alleged organization of training for members of those groups, [fell] outside the material scope of the ICSFT" (¶ 53). Moreover, the Court refused to view the DPR and LPR as "notorious" terrorist groups on the basis that one State, Ukraine, had characterized them as terrorist groups. Therefore, Ukraine's lawfare strategy only worked to the extent that it obliged Russia to defend itself before the ICJ and thereby engage with Ukraine's arguments.
5. **For further reading**, *see* (1) Iryna Marchuk, "Unfulfilled Promises of the ICJ Litigation for Ukraine: Analysis of the ICJ Judgment in Ukraine v Russia (CERD and ICSFT)," EJIL:Talk! (Feb. 22, 2024); (2) Oona Hathaway, "Taking Stock of ICJ Decisions in the Ukraine v. Russia Cases – And Implications for South Africa's case against Israel," Just Security (Feb. 5, 2024); (3) Lauri Mälksoo, *Application of the International Convention for the Suppression of the Financing of Terrorism and of International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Judgment*, 118 AMERICAN JOURNAL OF INTERNATIONAL LAW 519 (2024); (4) Iryna Marchuk, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v Russia)*, 18 MELBOURNE JOURNAL OF INTERNATIONAL LAW 436 (2017).

9.3 State Responsibility for Violations of the Principles of Non-Intervention and of the Prohibition of the Threat of and Use of Force

The crisis that began with the Maidan protests expanded to other parts of Ukraine. In Crimea, paramilitary groups known as self-defence groups emerged and took control of the Autonomous Republic of Crimea. They organized a referendum in March 2014 to join the Russian Federation. It later became clear that these groups, commonly referred to as "little green men", were actually Russian soldiers (*see* Schreck). In the eastern regions of Donetsk, Kharkiv and Luhansk, as well as in the South, demonstrations (widely supported by Russia) were held demanding a referendum. In April 2014, the Ukrainian government attempted to regain control, but in May 2014, the self-proclaimed "people's republics" of Donetsk and Luhansk held referenda and declared their independence. It is widely believed that in the ensuing fighting between Ukrainian and separatist forces, the latter were backed by Russia. On February 21, 2022, Russia officially recognized the DPR and the LPR as independent States. Three days later, Russian troops were deployed in Ukraine in what President Putin termed a "special military operation". In September 2022, after referenda were held in occupied territories in the eastern regions of Ukraine, these "independent" States were formally incorporated into Russia, signing treaties with Russia to that effect.

All these events are linked to the sovereignty and territorial integrity of Ukraine. Under international law, the principles of non-intervention and the prohibition of the threat of or use of force are cardinal principles under Article 2 of the United Nations Charter. As the international law

regime is decentralized, there is no single body that determines whether the sovereignty of a State has been encroached upon or whether the territorial integrity of a State has been violated. This means that a wide range of actors, from international organizations and coalitions of States to individual States, voice their opinions on whether these principles have been complied with. The reader will thus not be surprised to realize that various bodies such as the United Nations (General Assembly and Human Rights Council), NATO and the G7 have expressed their views on Russia's activities in Ukraine. In contrast, other bodies, notably judicial bodies, such as the International Court of Justice (depending on the basis for its seisin), the European Court of Human Rights or an arbitration tribunal constituted under the United Nations Convention on the Law of the Sea might, due to jurisdictional issues, be unable to assess the legality of the acts committed by Russia. While Russia did not expressly justify its actions in Crimea (and to some extent in the eastern regions of Ukraine) at the time of the events, it did so in 2022 when it also justified its 2022 attack against Ukraine by sending a letter to the United Nations Security Council to which a speech by President Putin was appended.

United Nations General Assembly – Resolution 68/262 – Territorial Integrity of Ukraine – March 27, 2014

The General Assembly,

...

Noting that the referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014 was not authorized by Ukraine,

1. Affirms its commitment to the sovereignty, political independence, unity and territorial integrity of Ukraine within its internationally recognized borders;

2. Calls upon all States to desist and refrain from actions aimed at the partial or total disruption of the national unity and territorial integrity of Ukraine, including any attempts to modify Ukraine's borders through the threat or use of force or other unlawful means;

3. Urges all parties to pursue immediately the peaceful resolution of the situation with respect to Ukraine through direct political dialogue, to exercise restraint, to refrain from unilateral actions and inflammatory rhetoric that may increase tensions and to engage fully with international mediation efforts;

...

5. Underscores that the referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014, having no validity, cannot form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol;

6. Calls upon all States, international organizations and specialized agencies not to recognize any alteration of the status of the Autonomous Republic of Crimea and the city of Sevastopol on the basis of the above-mentioned referendum and to refrain from any action or dealing that might be interpreted as recognizing any such altered status.

Wales Summit Declaration – September 5, 2014

16. We condemn in the strongest terms Russia's escalating and illegal military intervention in Ukraine and demand that Russia stop and withdraw its forces from inside Ukraine and along the Ukrainian border. This violation of Ukraine's sovereignty and territorial integrity is a serious breach of international law and a major challenge to Euro-Atlantic security. We do not and will not

recognise Russia's illegal and illegitimate 'annexation' of Crimea. We demand that Russia comply with international law and its international obligations and responsibilities; end its illegitimate occupation of Crimea; refrain from aggressive actions against Ukraine; withdraw its troops; halt the flow of weapons, equipment, people and money across the border to the separatists; and stop fomenting tension along and across the Ukrainian border. Russia must use its influence with the separatists to de-escalate the situation and take concrete steps to allow for a political and a diplomatic solution which respects Ukraine's sovereignty, territorial integrity, and internationally recognised borders.

United Nations Security Council – Letter dated 24 February 2022 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General – February 24, 2022

The further expansion of the North Atlantic alliance's infrastructure and the militarization of Ukrainian territories are unacceptable to us. Of course, the issue is not with NATO itself – it is only a tool of United States foreign policy. The problem is that on the territories adjacent to ours – I note, on our own historical territories – an "anti-Russia" hostile to us is being created, placed under full external control, intensively settled by the armed forces of NATO countries and pumped full of the most modern weapons.

For the United States and its allies, this is the so-called policy of containment of Russia, with obvious geopolitical dividends. But for our country this is ultimately a matter of life and death, the question of our historical future as a people.

And this is not an exaggeration – it is a fact. This is a real threat not just to our interests, but to the very existence of our State and its sovereignty. This is the red line that has been talked about many times: they have crossed it.

...

This brings me to the situation in Donbass.

... [O]ne cannot look without compassion at what is happening there, but all of this became simply impossible to tolerate. We had to stop this nightmare – a genocide against the millions of people living there who are pinning their hopes only on Russia, on us alone. It is their aspiration, the feelings and pain of these people that were the main motivating force behind our decision to recognize the independence of the Donbass People's Republics.

I believe it is also important to emphasize the following. Focused on their own goals, the leading NATO countries are supporting the nationalist fringe and neo-Nazis in Ukraine who will never forgive the people of Crimea and Sevastopol for freely making a choice to reunite with Russia.

They will undoubtedly bring war to Crimea just as they have done in Donbass, to kill defenceless people, just as members of the punitive units of Ukrainian nationalists and Hitler's accomplices did during the Great Patriotic War. They have also openly laid claim to a number of other Russian territories.

The entire course of events and an analysis of incoming reports demonstrate that confrontation between Russia and these forces is inevitable. It is only a matter of time. They are getting ready and waiting for the right moment.

... We simply have been left with no other way to defend Russia and our people than the one we are forced to use today. The circumstances require us to act decisively and immediately. The People's Republics of Donbass appealed to Russia for help.

In this regard, in accordance with Article 51 (chapter VII) of the Charter of the United Nations, I have decided to conduct a special military operation with the approval of the Federation Council of Russia and pursuant to the treaties on friendship and mutual assistance with the Donetsk People's Republic and the Lugansk People's Republic, as ratified by the Federal Assembly on 22 February this year.

Its purpose is to protect people who have been subjected to abuse and genocide by the Kiev regime for eight years. And to this end, we will seek the demilitarization and de-Nazification of Ukraine, as well as the prosecution of those who have committed numerous bloody crimes against civilians, including citizens of the Russian Federation.

...

However, our plans do not include the occupation of Ukrainian territories. We are not going to impose anything on anyone by force. ...

... Our policy is based on freedom, the freedom of choice for all to determine their own future and that of their children. And we consider it important that all peoples living on the territory of today's Ukraine, all those who want to exercise this right – the right to choose – should have the right to do so.

In this context, I would also like to address the citizens of Ukraine. In 2014, Russia was obligated to protect the residents of Crimea and Sevastopol from those you yourselves call "nats" or nationalists. The people of Crimea and Sevastopol made their choice to be with their historic homeland, with Russia, and we supported that.

...

Again, our actions are self-defence against the threats posed to us and against an even greater calamity than what is happening today. ...

United Nations General Assembly – Resolution ES-11/1 – Aggression against Ukraine – March 18, 2022

The General Assembly,

...

1. Reaffirms its commitment to the sovereignty, independence, unity and territorial integrity of Ukraine within its internationally recognized borders, extending to its territorial waters;

2. Deplores in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2 (4) of the Charter;

3. Demands that the Russian Federation immediately cease its use of force against Ukraine and to refrain from any further unlawful threat or use of force against any Member State;

4. Also demands that the Russian Federation immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders;

5. Deplores the 21 February 2022 decision by the Russian Federation related to the status of certain areas of the Donetsk and Luhansk regions of Ukraine as a violation of the territorial integrity and sovereignty of Ukraine and inconsistent with the principles of the Charter;

6. Demands that the Russian Federation immediately and unconditionally reverse the decision related to the status of certain areas of the Donetsk and Luhansk regions of Ukraine;

7. Calls upon the Russian Federation to abide by the principles set forth in the Charter and the Declaration on Friendly Relations;

...

10. Deplores the involvement of Belarus in this unlawful use of force against Ukraine, and calls upon it to abide by its international obligations;

...

14. Urges the immediate peaceful resolution of the conflict between the Russian Federation and Ukraine through political dialogue, negotiations, mediation and other peaceful means;

G7 Leaders' Statement on the Invasion of Ukraine by Armed Forces of the Russian Federation – February 24, 2022

We the Leaders of the Group of Seven (G7) are appalled by and condemn the large-scale military aggression by the Russian Federation against the territorial integrity, sovereignty and independence of Ukraine, directed partly from Belarusian soil. This unprovoked and completely unjustified attack on the democratic state of Ukraine was preceded by fabricated claims and unfounded allegations. It constitutes a serious violation of international law and a grave breach of the United Nations Charter and all commitments Russia entered in the Helsinki Final Act and the Charter of Paris and its commitments in the Budapest Memorandum.

...

This crisis is a serious threat to the rules-based international order, with ramifications well beyond Europe. There is no justification for changing internationally recognized borders by force.

...

We condemn in the strongest possible terms Russian President Putin's decision on February 21 to recognize the Donetsk and Luhansk self-declared entities in eastern Ukraine as "independent" states as well as his decision to send Russian military forces into these regions. We call on other states not to follow Russia's illegal decision to recognize the proclaimed independence of these entities. The decision by President Putin is a grave violation of the basic principles enshrined in the UN Charter, in particular the respect for the territorial integrity and sovereignty of states and also a blatant breach of UN Security Council resolution 2202 – supported by the Russian Federation as a permanent member of the Security Council – as well as of the Minsk agreements, which stipulate the return of the areas concerned to the control of the Ukrainian Government.

We reaffirm our unwavering commitment to Ukraine's sovereignty and territorial integrity within its internationally recognized borders and territorial waters as well as the right of any sovereign state to determine its own future and security arrangements. We reaffirm that illegally occupied Crimea and the self-declared "people's republics" are an integral part of Ukraine.

United Nations Human Rights Council – Report of the Independent International Commission of Inquiry on Ukraine – March 15, 2023

3. In line with its independence and impartiality, the Commission has assessed whether the situation in Ukraine is an act of "aggression against Ukraine by the Russian Federation", as stated in resolution 49/1. In accordance with the definition of aggression provided in General Assembly resolution 3314 (XXIX), it has found reasonable grounds to conclude that the invasion and Russian armed forces' attacks against Ukraine's territory and armed forces qualify as acts of aggression against Ukraine.

...

90. ... Moreover, the Commission concludes that the annexation of the four regions is unlawful, based upon principles of international law holding that "[n]o territorial acquisition resulting from the threat or use of force shall be recognized as legal".

International Court of Justice – Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation) – Order (Preliminary Objections) – November 28, 2019

29. In the present case, the Court notes that Ukraine is not requesting that it rule on issues concerning the Russian Federation's purported "aggression" or its alleged "unlawful occupation" of Ukrainian territory. Nor is the Applicant seeking a pronouncement from the Court on the status of Crimea or on any violations of rules of international law other than those contained in the ICSFT and CERD. These matters therefore do not constitute the subject-matter of the dispute before the Court.

European Court of Human Rights – Ukraine v. Russia (re Crimea) – Applications Nos 20958/14 and 38334/18 – Admissibility – December 16, 2020

244. Having regard to the parties' written submissions, the Court considers that it is not called upon to decide in the abstract on the "legality" of the Russian Federation's purported "invasion" and "occupation" of Crimea other than by reference to the rules contained in the Convention. Nor are the applicant Government seeking a ruling from the Court on the legality *per se* under international law of the "annexation of Crimea" and, accordingly, of its consequent legal status thereafter. These matters were not referred to the Court and do not therefore constitute the subject matter of the dispute before it. Accordingly, they are outside the scope of the case and will not be directly considered by the Court.

Arbitral Tribunal Constituted under Annex VII to the 1982 United Nations Convention on the Law of the Sea, Ukraine and Russian Federation – Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait – Award Concerning the Preliminary Objections of the Russian Federation – February 21, 2020

154. ... The Arbitral Tribunal therefore considers that the question as to which State is sovereign over Crimea, and thus the "coastal State" within the meaning of several provisions of the Convention invoked by Ukraine, is a prerequisite to the decision of the Arbitral Tribunal on a significant part of the claims of Ukraine. ...

...

161. ... In the view of the Arbitral Tribunal, therefore, the real issue of contention between the Parties in the present case is whether there exists a sovereignty dispute over Crimea, and if so, whether such dispute is ancillary to the determination of the maritime dispute brought before the Arbitral Tribunal by Ukraine.

...

197. In light of the foregoing, the Arbitral Tribunal concludes that pursuant to Article 288, paragraph 1, of the Convention, it lacks jurisdiction over the dispute as submitted by Ukraine to the extent that a ruling of the Arbitral Tribunal on the merits of Ukraine's claims necessarily

requires it to decide, expressly or implicitly, on the sovereignty of either Party over Crimea. As a result, the Arbitral Tribunal cannot rule on any claims of Ukraine presented in its Notification and Statement of Claim and its Memorial which are dependent on the premise of Ukraine being sovereign over Crimea.

International Court of Justice – Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation: 32 States Intervening) – Preliminary Objections – February 2, 2024

25. In the written proceedings on the merits, the following submissions were presented on behalf of the Government of Ukraine in its Memorial:

"178. For the reasons set out in this Memorial, Ukraine respectfully requests the Court to:

...

(c) Adjudge and declare that the Russian Federation's use of force in and against Ukraine beginning on 24 February 2022 violates Articles I and IV of the Genocide Convention.

(d) Adjudge and declare that the Russian Federation's recognition of the independence of the so-called 'Donetsk People's Republic' and 'Luhansk People's Republic' on 21 February 2022 violates Articles I and IV of the Genocide Convention."

...

146. ... Thus, in the present case, assuming - for the sake of argument - that by recognizing the DPR and LPR and by launching the "special military operation", the Russian Federation sought to implement its obligations under the Convention, and that the acts in question are contrary to international law, it is not the Convention that the Russian Federation would have violated but the relevant rules of international law applicable to the recognition of States and the use of force. These matters are not governed by the Genocide Convention and the Court does not have jurisdiction to entertain them in the present case.

147. In conclusion, the acts complained of by Ukraine in submissions (c) and (d) of the Memorial, from whichever point of view they are considered, are not capable of constituting violations of the provisions of the Convention relied on by Ukraine. These acts do not fall within the provisions of the Convention and, consequently, submissions (c) and (d), which constitute the second aspect of the dispute brought before the Court by Ukraine, fall outside the scope of the compromissory clause of Article IX.

Commentary

1. To understand how Russia has violated the principles of non-intervention and of the prohibition of the threat or use of force under international law, we need to look at the relevant legal framework. The Friendly Relations Declaration enunciates the principle of non-intervention in domestic matters, emphasizing that States have the right to choose their political, economic, social and cultural systems without interference from other States. This principle encompasses the ban on armed intervention and other forms of (attempted) interference against another State as well as organizing or supporting activities aimed at overthrowing the regime of another State. Moreover, under Article 2 of the United Nations Charter, States are required to refrain from threatening or using force against the territorial integrity or political independence of any State. The principle, as elaborated upon in the Friendly Relations Declaration, prohibits *inter alia*: 1) the violation of existing international boundaries, 2) the use of force to solve international disputes, 3) acts that deprive peoples of the right to self-determination, 4) the

organization, support or participation in violent acts in another State or the acquiescence within its territory of actions directed towards the commission of such violent acts, 5) military occupation resulting from an unlawful use of force, and territorial acquisition resulting from the threat or use of force. Specifically, with regard to the prohibition of the use of force, which is also a customary norm (¶¶ 174−178), the United Nations General Assembly has crafted a definition of aggression. This includes the invasion and occupation of another State's territory, the bombardment of another State's territory, the blockade of post, attacks against the land, sea or air forces of another State, and sending armed bands, irregulars, or mercenaries. It should be noted that the prohibition of aggression is a *jus cogens* norm (Draft Conclusions on Peremptory Norms p. 141, ARSIWA p. 112).

2. While the principles are somehow clear in scope, two issues remain. First, there is no single entity that can assess the situation and determine if there has been a breach of these principles. Although under Article 24 of the U.N. Charter, the United Nations Security Council has "primary responsibility for the maintenance of international peace and security," it is not the sole arbiter of international law violations. In fact, due to the veto power of the five permanent members of the Security Council under Article 27 of the U.N. Charter, violations of this principle by either members of the Security Council or their allies are not condemned. Second, in some instances, it is difficult to prove that a State has been meddling in the affairs of another State or is supporting terrorist, armed or irredentist groups on the territory of another State.
3. The use of force is not completely banned as there are two exceptions enshrined in the U.N. Charter. Firstly, there is the inherent right of individual and collective self-defence under Article 51, which is also a customary right. Under Article 51 of the U.N. Charter, this right is only triggered "if an armed attack occurs against a Member of the United Nations." Under customary international law, this right, called anticipatory self-defence, can also be activated if the attack is imminent (*see* Caroline incident). Secondly, actions taken under Chapter VII of the UN Charter are also considered exceptions. Additionally, military assistance on request is a well-established justification for the use of force, as a State can consent to another State using force on its territory (¶ 53). Scholarly disagreement exists on whether there are additional exceptions, such as humanitarian intervention and the protection of nationals abroad.
4. Let us start with the events in 2014. Originally, Russia denied involvement in Crimea, claiming that the violent acts against the Ukrainian authorities had been carried out by local groups. Later, Putin avowed that he "gave orders to the Defense Ministry -- why hide it? -- to deploy special forces of the GRU (military intelligence) as well as marines and commandos there under the guise of reinforcing security for our military facilities in Crimea." Russia tried to justify its presence by invoking a bilateral treaty that permitted Russia's naval presence in Crimea and the necessity to protect the Russian-speaking local population from violence and oppression by Ukrainian nationalists. Undoubtedly, the treaty did not permit the extensive deployment of Russian troops that were already on the ground, nor did it allow for additional troops to be sent to Crimea. Moreover, many scholars agree that there is no legal basis in international law to unilaterally use force to protect the local population. Such intervention is, however, permitted under the concept of the responsibility to protect ("R2P"), which not only requires the involvement of the UN Security Council under Chapter VII but also the commission of international crimes (genocide, war crimes, ethnic cleansing and crimes against humanity) (¶ 139). In this instance, the UN Security Council did not pass a resolution to this effect, and it is doubtful that such crimes were committed by Ukrainian authorities against Russian-speakers. A related issue is the organization of a referendum held on March 16, 2014,

without the consent of Ukraine. Its result, which led to the secession of Crimea from Ukraine and then its incorporation into the Russian Federation, was considered by the UN General Assembly to "hav[e] no validity" and thus "cannot form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol" (¶ 5). Accordingly, the UN General Assembly called upon the international community to refrain from recognizing the Republic of Crimea (¶ 6).

5. In eastern Ukraine the situation was slightly different. The anti-government protests were orchestrated and financed by Russia with the aim of destabilising the regions, and local activists were supported by trained militants from Russia. A myriad of separatist armed groups appeared in the DPR and the LPR, all supported by Russian special forces and paramilitaries. In each region, these groups organized themselves and held referenda in May 2014. The referenda, like the one in Crimea, were not recognized as valid under international law. Hostilities intensified between the government and separatist forces which received funding, training, and weapons from Russia (¶¶ 690−697). In doing so, Russia not only violated the principle of non-intervention but also the prohibition of the use of force as the organization, support or participation in violent acts in another State is banned. In addition, as Russian troops entered Ukrainian territory and engaged Ukrainian armed forces, Russia breached the prohibition of the use of force. On September 5, 2014, the Minsk Protocol (Ru.), which provided for a ceasefire, an exchange of prisoners and the establishment of border control, was signed. In the following years, in violation of the Minsk Protocol, Russian troops were present in the eastern regions of Ukraine, again breaching the prohibition on the use of force.
6. On February 22, 2022, Russia launched a full-scale invasion against Ukraine by sending its armed forces to Ukrainian territory. Russia justified its action on several grounds. First, it invoked the individual right to defend itself in light of the perceived threat posed by NATO's expansion. Yet, as no armed attack had occurred, such a right is difficult to invoke. Even its more expansive definition, that of anticipatory self-defence, does not work as there was no imminent attack by NATO. Likewise, Russia claimed that Ukraine was a threat, but again, Ukraine did not attack Russia, and there was no imminent threat. Second, Russia invoked the right of self-defence in relation to Russian people abroad, a claim known as "protection of nationals abroad," though again, it failed the test identified following Israel's Entebbe raid in 1976. Third, alongside the individual right to self-defence, Russia invoked the collective right to self-defence, claiming that it was acting in pursuance of a friendship and mutual assistance treaty with the Donetsk People's Republic and the Luhansk People's Republic. Given that such entities are not recognized as States, these treaties are null and void and thus cannot serve as the bases for a right of collective self-defence. Even if one accepts that they were independent States, the proof that they had been attacked by Ukraine was missing. Fourth, Russia, by referring to the suffering of Russian speakers in the eastern regions, seems to have invoked the right to humanitarian intervention. The ICJ, erring on the side of caution, explains that "it is doubtful that the Convention, in light of its object and purpose, authorizes a Contracting Party's unilateral use of force in the territory of another State for the purpose of preventing or punishing an alleged genocide" (¶ 59). Putting aside the fact that unilateral humanitarian intervention is a highly controversial legal justification for the use of force, there was no proof to corroborate the claim that Ukraine was carrying out mass violations of human rights in these areas, which were, in fact, under the control of the LRP and the DRP and constantly monitored by various international organizations. In the NATO Parliamentary Assembly's words,

"Russia's ongoing unprovoked, unjustified, brutal and illegal war of aggression against Ukraine" must be "[c]ondemn[ed] in the strongest possible terms" (¶ 2).

7. Another set of issues to be considered is the recognition and eventual annexation of Ukrainian territories. In 2022, Russia recognized the LRP and DRP as independent States, which was widely condemned as a "violation of the territorial integrity and sovereignty of Ukraine and [as] inconsistent with the principles of the Charter" (¶ 5). Their eventual incorporation into the Russian Federation, together with the occupied territories of Kherson and Zaporizhzhia, following referenda and then treaties of accession in September 2022, was condemned in similar terms by, amongst others, the United Nations General Assembly (¶¶ 3 and 5) and the G7.
8. While many international organizations have strongly condemned the violation of the principles of non-intervention and the prohibition of the use of force, Ukraine has faced challenges in bringing cases before international and regional courts to obtain similar judicial determinations either directly or indirectly. As explained in Chapter 9.2, Ukraine brought a case against Russia before the International Court of Justice, invoking the ICSFT and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). Ukraine did not, and rightly so, ask the Court to examine the "Russian Federation's purported 'aggression' or its alleged 'unlawful occupation' of Ukrainian territory" (¶ 29). Ukraine also brought proceedings before the European Court of Human Rights (*see* Chapter 9.6), focusing on human rights violations allegedly perpetrated by Russia. In contrast, Ukraine had hoped that an Arbitral Tribunal constituted under the United Nations Convention on the Law of the Sea would determine which State is the territorial sovereign in Crimea, but the Tribunal declined to do so, citing a lack of jurisdiction over such or related matters (¶ 197). More recently, Ukraine seized the ICJ regarding the Genocide Convention, asking the Court to determine that Russia had falsely accused Ukraine of committing genocide, and thus the Russian Federation's justification for intervention was unfounded. The Court issued an order in March 2022 requesting Russia to "immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine" and "ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of the military operations" (¶ 86)order going beyond Ukraine's request to suspend the operations based on the pretext of genocide in the eastern regions of Ukraine. Yet, in its Judgment on Preliminary Objections, the Court refused to examine the lawfulness of the use of force and the recognition of Ukraine's eastern regions by Russia on the basis that it fell outside its *ratione materiae* jurisdiction under the Genocide Convention (¶ 147).
9. **For further reading**, *see* (1) Masahiko Asada, *The War in Ukraine under International Law: Its Use of Force and Armed Conflict Aspects*, 26 INTERNATIONAL COMMUNITY LAW REVIEW 5–38 (2024); (2) Ingrid Brunk and Monica Hakimi, *The Prohibition of Annexations and the Foundations of Modern International Law,* 118 AMERICAN JOURNAL OF INTERNATIONAL LAW 417 (2024); (3) Olivier Corten and Vaios Koutroulis, *The 2022 Russian Intervention in Ukraine: What Is its Impact on the Interpretation of Jus Contra Bellum,* 36 LEIDEN JOURNAL OF INTERNATIONAL LAW 997 (2023); (4) Michael J. Kelly, *The Role of International Law in the Russia-Ukraine War*, 55 CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW 61–92 (2023); (5) Michael Ramsden, *Strategic Litigation in Wartime: Judging the Russian Invasion of Ukraine through the Genocide Convention,* 56 VANDERBILT JOURNAL OF TRANSNATIONAL LAW 181 (2023); (6) Thomas D. Grant, *Sovereignty in Crimea and Donbas at the European*

Court of Human Rights, 39 CONNECTICUT JOURNAL OF INTERNATIONAL LAW 43 (2023); (7) Christina Binder, *The Russian War of Aggression against Ukraine: A Classification under International and Human Rights Law* *in* RUSSIA'S WAR OF AGGRESSION AGAINST UKRAINE 223 (Stefan Hansen, Elha Husieva and Kira Frankenthal, eds, 2022); (8) James A. Green, Christian Henderson & Tom Ruys, *Russia's Attack on Ukraine and the jus ad bellum*, 9 JOURNAL ON THE USE OF FORCE AND INTERNATIONAL LAW 4-30 (2022); (9) Lauri Mälksoo, "Illegality of Russia's Annexations in Ukraine," Articles of War (Oct. 3, 2022); (10) Lawrence Hill-Cawthorne, "Litigating Russia's Invasion of Ukraine," Articles of War (Apr. 27, 2022).

9.4 State Responsibility for Violations of the Genocide Convention

Genocide is considered a violation of international law and an international crime. This chapter focuses on State responsibility and examines the alleged violations of the prohibition of genocide under the Genocide Convention rather than an international crime under the ICC Statute (*see* Chapter 10).

Allegations of genocide and other atrocities have been made by both Ukraine and Russia (*see* Chapter 9.3). First, Ukraine initiated proceedings before the ICJ using the compromissory clause of CERD. While Ukraine did not make any claim of genocide in these proceedings, they are examined under this section of the chapter because Ukraine maintained "that in Crimea, the Russian Federation is conducting a 'policy of cultural erasure' through its discrimination against the Crimean Tatar and ethnic Ukrainian population" (¶ 91). The Court accepted that Ukraine "challenge[d], on the basis of the CERD, the alleged pattern of conduct" (¶ 130). For an overview of the procedure relating to this case before the ICJ, *see* Figure 1. Second, Russia has accused Ukraine of genocide to justify its intervention in Ukrainian territory. Ukraine then initiated proceedings before the ICJ to prove that it had not committed genocide. The procedure of this case is explained in Figure 2. Third, Russia's acts in the occupied territories of Ukraine have led to the claim that Russia is committing genocide against ethnic Ukrainians.

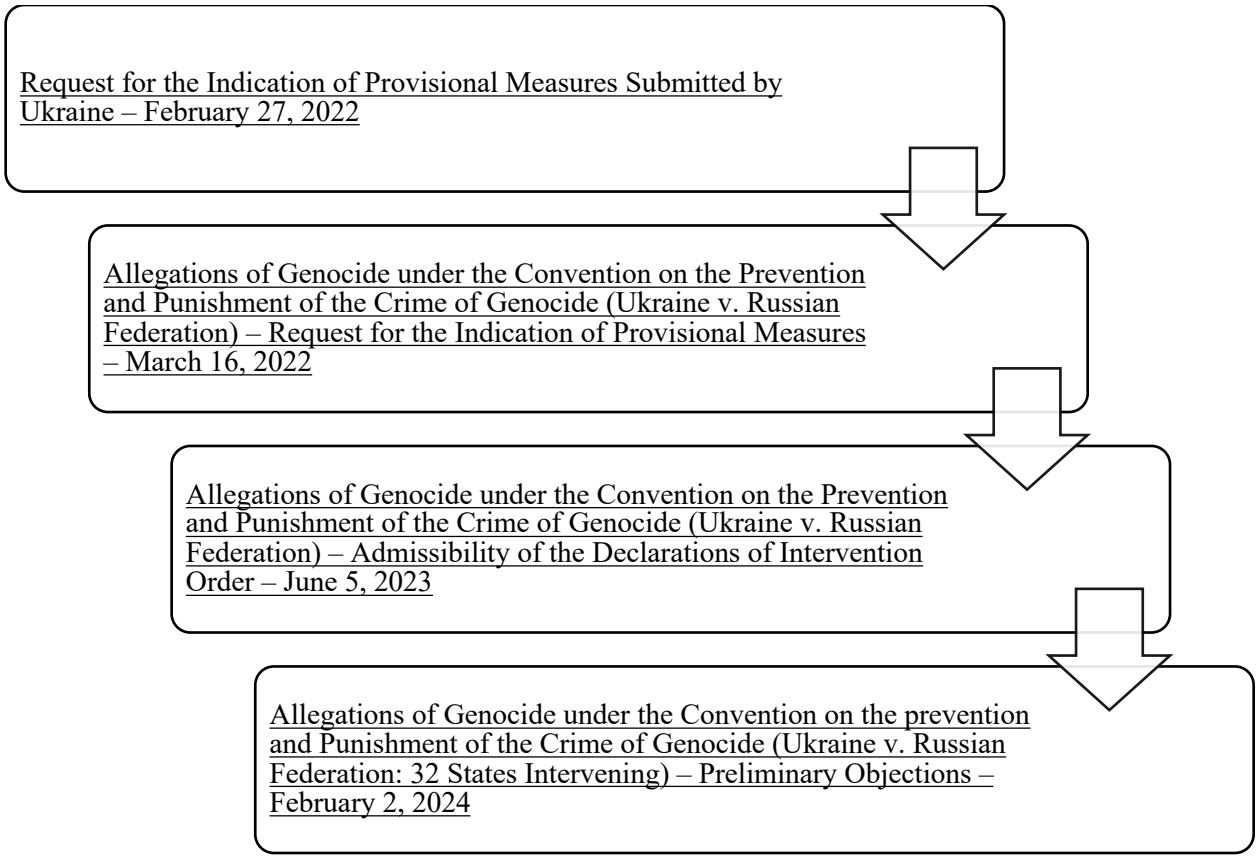


Figure 2: ICJ – Ukraine v. Russia – Genocide Convention

International Court of Justice – Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of all Forms of Racial Discrimination – January 31, 2024

369. To find whether the Russian Federation violated its obligations under CERD in the present case, the Court needs to determine if the violations found constitute a pattern of racial discrimination (see paragraph 161 above). The legislative and other practices of the Russian Federation with regard to school education in the Ukrainian language in Crimea applied to all children of Ukrainian ethnic origin whose parents wished them to be instructed in the Ukrainian language and thus did not merely concern individual cases. As such, it appears that this practice was intended to lead to a structural change in the educational system. The Court is therefore of the view that the conduct in question constitutes a pattern of racial discrimination. On the other hand, the Court is not convinced, based on the evidence before it, that the incidents with regard to school education in the Crimean Tatar language constitute a pattern of racial discrimination

International Court of Justice – Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation) – Order – March 16, 2022

45. The statements made by the State organs and senior officials of the Parties indicate a divergence of views as to whether certain acts allegedly committed by Ukraine in the Luhansk and

Donetsk regions amount to genocide in violation of its obligations under the Genocide Convention, as well as whether the use of force by the Russian Federation for the stated purpose of preventing and punishing alleged genocide is a measure that can be taken in fulfilment of the obligation to prevent and punish genocide contained in Article I of the Convention. In the Court's view, the acts complained of by the Applicant appear to be capable of falling within the provisions of the Genocide Convention.

International Court of Justice – Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation: 32 States Intervening) – Preliminary Objections – February 2, 2024

51. The Court thus concludes that, on the date of the Application, a dispute existed between the Parties on the question whether acts of genocide attributable to Ukraine had been committed in the Donbas region and on the lawfulness of the Russian Federation's actions allegedly undertaken on the basis of such an accusation.

...

78. The Applicant requests the Court to "[a]djudge and declare that there is no credible evidence that Ukraine is responsible for committing genocide in violation of the Genocide Convention in the Donetsk and Luhansk oblasts of Ukraine". The Court notes that its jurisprudence and that of its predecessor make clear that the Court may, in an appropriate case, issue a declaratory judgment (*Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece), Judgment, I.C.J. Reports 2011 (II),* p. 662, para. 49, citing *Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1963*, p. 37). The purpose of a declaratory judgment "is to ensure recognition of a situation at law, once and for all and with binding force as between the [p]arties; so that the legal position thus established cannot again be called in question in so far as the legal effects ensuing therefrom are concerned" (*Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13,* p. 20).

79. The Court observes that the first aspect of the dispute between the Parties involves a disagreement on a point of fact as well as on the interpretation, application or fulfilment of their rights and obligations under the Genocide Convention. A declaratory judgment on whether there exists credible evidence that Ukraine is responsible for committing genocide in violation of its obligations under the Convention would have the effect of clarifying whether the Applicant acted in accordance with its obligations under Article I of the Convention.

Statement of the Riigikogu – On the War Crimes and Genocide Committed by the Russian Federation in Ukraine – April 21, 2022

In the temporarily occupied territories, in particular the towns of Bucha, Borodyanka, Hostomel, Irpin, Mariupol, and many other Ukrainian settlements, the Russian Federation has committed acts of genocide, inter alia mass atrocities against the civilian population.

... the Riigikogu:

– Recognizes as genocide against the Ukrainian people the actions of the Armed Forces of the Russian Federation and its political and military leadership in conducting the renewed military aggression against Ukraine from 24 February 2022;

NATO Parliamentary Assembly – United and Resolute in Support of Ukraine, Declaration 482 – May 22, 2023

13. Determined to hold accountable the Russian regime, its co-aggressors in the Belarusian regime and all other perpetrators, including for the crime of aggression, war crimes, crimes against humanity and possible acts of genocide committed in Ukraine;

United Nations Human Rights Council – Report of the Independent International Commission of Inquiry on Ukraine – March 18, 2024

98. The Commission has previously expressed concerns about allegations of genocide in Ukraine. Its investigations are ongoing. It has examined allegations that raise issues under the Convention on the Prevention and Punishment of the Crime of Genocide, in particular whether the rhetoric transmitted in Russian state and other media constitutes direct and public incitement to commit genocide. The Commission has reviewed many public statements that use dehumanizing language and call for hate, violence and destruction. It is concerned about statements by individuals supporting the full-scale invasion of Ukraine by the Russian Federation and calling for the killing of a large number of persons. The Commission recommends continued investigations into this important matter and underlines the responsibility of States to prevent such utterances.

Commentary

1. The definition of genocide is set out in Article 2 of the Genocide Convention. This definition, which is also considered customary (¶ 807), has been adopted *verbatim* in the statutes of various international criminal tribunals and courts such as the Statute of the International Criminal Court. The definition consists of acts (the *actus reus* of the crime) and intent (the *mens rea*) (¶ 186). For an act to be classified as genocide, three elements must be met. First, the act must fit into one of the five categories of acts listed in the definition. Second, the act must target a specific group protected by the Genocide Convention. Contrary to common belief, mass violence is not a prerequisite. Third, the act must be perpetrated with the specific intent (or *dolus specialis)* to destroy that protected group. The last criterion is the most difficult to prove, which means that, often, States prefer to point to patterns of discrimination based on certain grounds. This might explain why Ukraine initially initiated proceedings using the CERD before the ICJ against Russia for racial discrimination against Crimean Tatars and Ukrainians in Crimea after Russia took control of the peninsula, rather than suing Russia under the Genocide Convention. Such a move is reminiscent of the way Georgia brought a case against Russia as a means for the ICJ to examine whether Russia had carried out ethnic cleansing in the territories of South Ossetia and Abkhazia. Although the Court determined that there was a dispute between Georgia and Russia with regard to the latter's compliance with its obligations under the Convention (¶ 113), the Court found itself not competent (¶¶ 149 and 183−184).
2. In contrast, the ICJ adjudicated the matter in favor of Ukraine, reminding Russia to "refrain, pending the final decision in the case, from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis. In addition, the Russian Federation must ensure the availability of education in the Ukrainian language" (¶ 102). Nonetheless, in the judgment on merits in 2024, the Court was not convinced that the measures were discriminatory on the basis of

the prohibited ground (¶¶ 217, 221, 244, 251, 272, 288, 323 and 337) That said, it found that Russia had breached the Convention regarding school education in the Ukrainian language (¶ 369).

3. Calling a particular situation genocide has a wide range of consequences, among others a tarring effect and a moral or possibly legal duty "to do something." This might explain why Ukraine requested a negative declaratory judgment from the ICJ to ensure that the claim that it carried out genocide in the eastern regions of Ukraine is declared unfounded. As mentioned earlier (Chapter 9.4), Ukraine brought a case before the ICJ, alleging that Russia had falsely accused it of committing genocide in the eastern regions. The Court agreed that there was a dispute between Russia and Ukraine as to whether genocide had been committed (ICJ 2002 ¶ 45; ICJ 2024 ¶ 51) and that one remedy sought was a declaration that Ukraine had not breached Article I of the Genocide Convention. As of October 15, 2024, the case is still pending.
4. As the Russian-Ukrainian conflict intensified in March 2022, attacks conducted by the Russian forces against a vast range of civilian buildings, including cultural heritage sites, shelters, schools and hospitals led Ukrainian President Zelenskyy to accuse Russia of carrying out genocide. Later, in April, US President Biden and the parliaments of Estonia and Latvia declared the situation in Ukraine to be genocide. However, as explained earlier, to demonstrate genocide is a rather difficult task. In May 2022 the New Lines Institute for Strategy and Policy together with the Raoul Wallenberg Centre for Human Rights published a report that "establishe[d] 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" (p. 39). The same authors issued an updated report in July 2023 claiming it had found evidence "that the Russian Federation has not only continued but escalated its efforts to commit genocide. Beyond a serious risk of genocide, we conclude there are violations of the Genocide Convention beyond a reasonable doubt" (p. 4). A year later, the NATO Parliamentary Assembly referred to "possible acts of genocide committed in Ukraine" in its United and Resolute in Support of Ukraine Declaration 482. Yet, no report stemming from an international organization has expressly drawn the conclusion that Russia was committing genocide in Ukraine. Some reports have, however, expressed concerns that the rhetoric used in public statements and transmitted in Russian media might "constitute[] direct and public incitement to commit genocide" (¶ 98). Whether Russia's conduct in Ukraine qualifies as genocide is hotly debated amongst legal experts. As this book is meant to be an objective presentation of the law and facts, it is not the place to enter this debate and provide an interpretation and application of the law that would irremediably be deemed biased. Less controversial is probably the treatment of Ukrainian children by Russia (*see* Chapter 9.8) which more States and academics tend to consider genocide.
5. **For further reading**, *see* (1) Dai Tamada, *War in Ukraine and the International Court of Justice: Provisional Measures and the Third-Party Right to Intervene in Proceedings*, 26 INTERNATIONAL COMMUNITY LAW REVIEW 39 (2024); (2) Iryna Marchuk and Aloka Wanigasuriya, "The Curious Fate of the False Claim of Genocide - On the ICJ's Preliminary Objections Judgment in Ukraine v. Russia and Beyond," Verfassungsblog (Feb. 24, 2024); (3) Oona Hathaway, "Taking Stock of ICJ Decisions in the Ukraine v. Russia Cases – And Implications for South Africa's case against Israel," Just Security (Feb.

5, 2024); (4) Marko Milanovic, "ICJ Delivers Preliminary Objections Judgment in the Ukraine v. Russia Genocide Case, Ukraine Loses on the Most Important Aspects," EJIL:Talk! (Feb. 2, 2024); (5) Denys Azarov, Dmytro Koval, Gaiane Nuridzhanian, Volodymyr Venher, *Understanding Russia's Actions in Ukraine as the Crime of Genocide*, 21 JOURNAL OF INTERNATIONAL CRIMINAL JUSTICE 233 (2023); (6) Marchuk, I., & Wanigasuriya, A, *Beyond the False Claim of Genocide: Preliminary Reflections on Ukraine's Prospects in Its Pursuit of Justice at the ICJ,* 25 Journal of Genocide Research 256 (2022); (7) Noëlle Quénivet, *The Conflict in Ukraine and Genocide,* 25 JOURNAL OF INTERNATIONAL PEACEKEEPING 141 (2022); (8) William A Schabas, *Genocide and Ukraine: Do Words Mean What We Choose them to Mean?*, 20 *JOURNAL OF INTERNATIONAL CRIMINAL JUSTICE* 846 (2022).

9.5 State Responsibility for Violations of International Humanitarian Law

International humanitarian law is the legal regime that regulates the conduct of parties in an armed conflict, the means and methods of warfare and protects those who do not or no longer take a direct part in the hostilities. The conflict between Ukraine and the Russian Federation, which started in February 2014 with the occupation and unlawful annexation of Crimea and Russia's support of armed groups in the eastern regions of Ukraine and eventual unlawful annexation, is an international armed conflict under Common Article 2 of the Geneva Conventions (GC I, GC II, GC III and GC IV). Common Article 2 of the Geneva Conventions refers to an armed conflict between two or more States and specifies that the Geneva Conventions also "apply to all cases of partial or total occupation of the territory of a [State], even if the said occupation meets with no armed resistance". Accordingly, the legal framework includes the four 1949 Geneva Conventions, the 1977 Additional Protocol I to the Geneva Conventions (AP I), the 1907 Hague Convention IV with its annexed Regulations concerning the Laws and Customs of War on Land (Hague Regulations) and other relevant treaties, notably relating to weapons (*see* Figure 3). Both parties are also bound by the rules of customary international humanitarian law. Concerning the territorial scope of application of IHL, it applies to the entire territory of both parties to the conflict to the extent that such activities relate to the armed conflict.

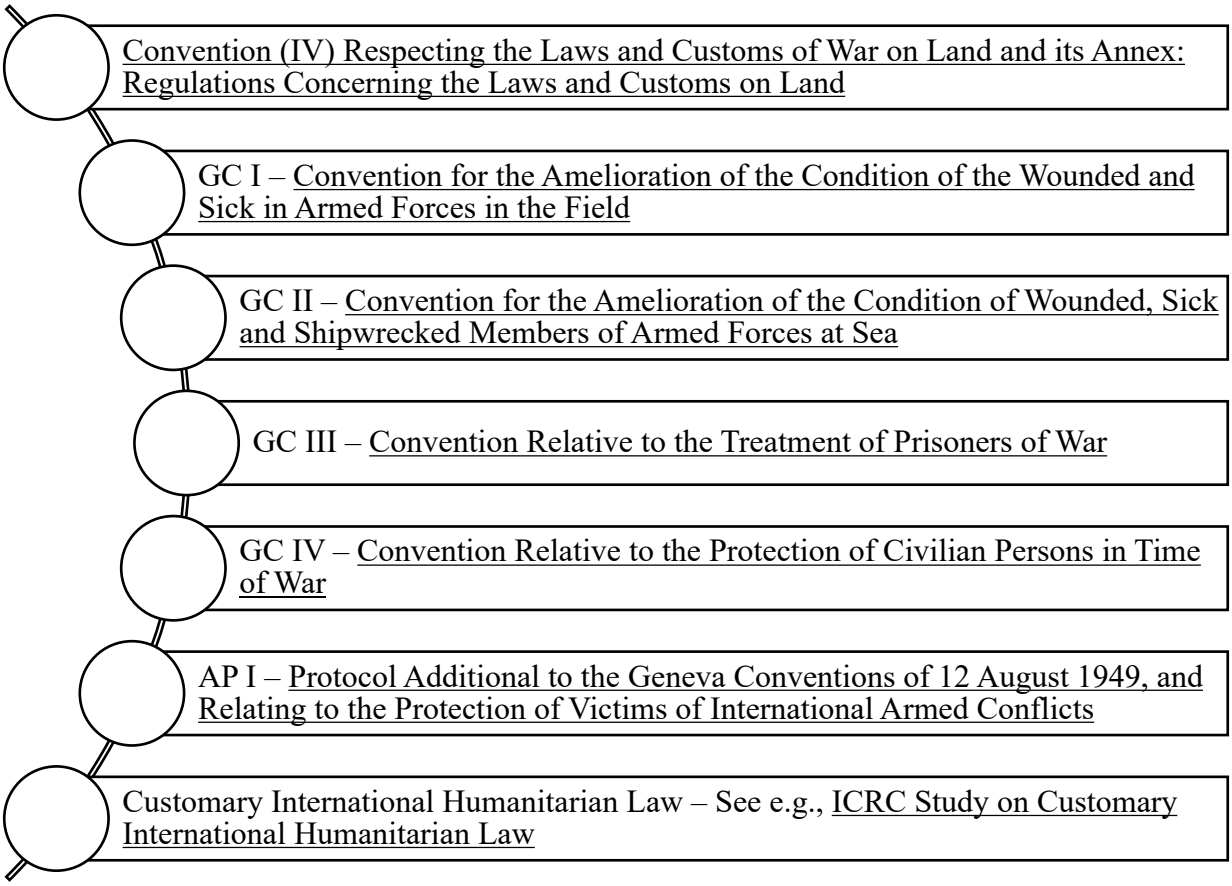


Figure 3: International Humanitarian Law Framework Applicable in the Russian-Ukrainian War

The conflict (and its beginning in particular) is characterized by a vast range of violations of international humanitarian law, some of which qualify as war crimes (*see* Chapter 10). Amongst the violations are wilful killings (¶¶ 56−57), torture and other inhumane/degrading treatment (*see* Chapter 9.7 in relation to sexual and gender-based violence), unlawful displacement/deportation of civilians, unlawful use of specific means and methods of warfare such as siege (*see* e.g. Mariupol (¶¶13−24) and explosive weapons, denial of or limitation to humanitarian aid (¶ 5), unlawful attacks on civilian objects and civilians (*see* below), violations of the rules of occupation (*see* below), violations against protected persons (*see* below), etc. As early as March 2022, the U.N. Human Rights Council already expressed its concerns "about increasing reports of civilian casualties, including children, the forced displacement, including more than 660,000 refugees, and at damage to and destruction of residential areas, schools, cultural sites and critical civilian infrastructure, including hospitals and civilian water, sanitation and fuel supplies, caused by Russian bombing and shelling in populated areas" (prmbl.). As this book cannot possibly cover all types of violations and an overview would not be considered an adequate treatment of the subject matter, the author has decided to focus on three themes: the conduct of hostilities and especially attacks on energy-related infrastructures, protected persons and especially the treatment of prisoners of war, and occupation. Sexual and gender-based violence and violence against children are dealt with respectively under Chapter 9.7 and Chapter 9.8, as the subjects should be approached from two angles: international humanitarian law and human rights law.

Moreover, the abundance of reports on violations of international humanitarian law in the conflict in Ukraine made it challenging to select examples for this book. Indeed, an array of international organizations have issued reports documenting and commenting upon these violations. Amongst them are the Organization for Security and Co-operation in Europe (OSCE), including its Moscow Mechanism and its Office for Democratic Institutions and Human Rights, the United Nations, including the Human Rights Council and the Independent International Commission of Inquiry on Ukraine, etc. The reports included in this book are either recent, some building upon previous ones, and/or focused on the specific subject matter to provide a comprehensive examination of the issues.

9.5.1 Conduct of Hostilities

United Nations Human Rights Council – Report of the Independent International Commission of Inquiry on Ukraine – March 15, 2023

28. The Commission has investigated attacks carried out with explosive weapons in populated areas controlled by the Government of Ukraine. Some of these were conducted in the context of Russian armed forces' attempts to capture towns or cities, while others struck areas far from frontlines. The attacks investigated are a small fraction of the total number.

29. According to international humanitarian law, attacks which are not directed at a specific military objective or employ a method or means of combat which cannot be directed at a specific military objective, or effects of such methods or means cannot be limited, are indiscriminate. The attacks documented have impacted civilian objects, including residential buildings, hospitals, schools, a hotel, shops, a theatre, a pharmacy, a kindergarten, and a train station.

30. In some of the situations examined, the Commission could not identify a military objective. When objects of military value that might have been the intended targets of the attacks were present in the vicinity of some of the impact sites, the Commission has generally found that Russian armed forces used weapons that struck both military and civilian objects without distinction. It has identified four types of weapons, the use of which in populated areas led to indiscriminate attacks: unguided bombs dropped from aircraft; inaccurate long range anti-ship missiles of the Kh-22 or Kh-32 types, which have been found to be inaccurate when striking land targets; cluster munitions, which, by design, spread small submunitions over a wide area; and multiple launch rocket systems, which cover a large area with inaccurate rockets.

31. The circumstance of the attacks launched or likely launched by Russian armed forces that the Commission investigated has led it to determine that a majority of them were indiscriminate. ...

32. In several attacks, the Commission found that Russian armed forces failed to take feasible precautions to verify whether civilians were present. ... Irrespective of whether there was a military objective, an assessment of the targets should have alerted the Russian armed forces to the presence of large numbers of civilians.

33. That the attacks impacted civilian buildings, such as functioning medical institutions, also manifests the failure to take precautions. ... Even if the Russian armed forces had military objectives in conducting the attacks, the special protected status of medical institutions should have led them to take extra care.

34. The Commission has concluded that Russian armed forces have committed, and in some cases are likely to have committed, indiscriminate and disproportionate attacks, which are

violations of international humanitarian law. The multiple examples of such attacks and the failure to take feasible precautions show a pattern of disregard on the part of Russian armed forces for the requirement to minimize civilian harm.

...

36. The Commission has found instances where Ukrainian armed forces likely used cluster munitions and rocket-delivered antipersonnel landmines to carry out attacks in Izium city, Kharkiv region, from March to September 2022, when it was controlled by Russian armed forces. Ukraine, unlike the Russian Federation, is a state party to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction, which bans all use of anti-personnel landmines.

...

38. Witness testimonies also indicate that antipersonnel high-explosive landmines were used in populated areas from July 2022, and in particular before Russian armed forces withdrew. They led to grave civilian injuries. After inspection of unexploded landmines, photographs, and weapon remnants, the Commission has identified them as antipersonnel high-explosive landmines (PFM), also called "butterfly mines", likely delivered by Uragan rockets. Ukrainian armed forces were at that time stationed within striking distance of such rockets.

39. After considering the context of these incidents, notably that attacks struck an area during a period when it was controlled by Russian armed forces, the weapons systems used, the fact that the attacks were repeated, and have impacted civilians or civilian objects, the Commission found it likely that Ukrainian armed forces have committed indiscriminate attacks, in violation of international humanitarian law.

OSCE and ODIHR – Fifth Interim Report on Reported Violations of International Humanitarian Law and International Human Rights Law in Ukraine – July 22, 2024

19. ODIHR's monitoring shows that, during the period, the Russian armed forces continued to use explosive weapons with wide area effects in attacks on densely populated urban areas of Ukraine, leading to numerous civilian casualties and extensive damage to, or destruction of civilian infrastructure. While shelling and MLRS attacks primarily affected residents located close to heavy fighting, missile, loitering munition and airstrikes often hit civilian objects far from the frontline. Such attacks show the Russian authorities' continued disregard for the IHL principles of distinction and proportionality.

...

21. From late March 2024, the Russian armed forces initiated a new wave of attacks on energy-related infrastructure across Ukraine, causing major damage and destruction to power generation facilities and electricity substations. For instance, on 22 March, Russian forces conducted one of the largest attacks to date on Ukraine's energy sector, damaging 20 substations and eight power plants, including Dnipro power plant. From 22 March to 8 May, Russian forces conducted five waves of large-scale coordinated attacks on major thermal and hydroelectric power plants in the country, which resulted in their damage and significantly reduced their ability to generate power. The attacks caused civilian casualties and temporarily disrupted access to electricity, gas and water for millions of Ukrainians. Rolling power cuts were additionally implemented in all areas of the country, and the Ukrainian authorities fear the electricity supply during cold months of 2024−2025 will be particularly difficult. Reports of repeated attacks on the Dnipro Dam also raise concerns of possible ecological and humanitarian disasters. Since April

2024, Russian armed forces have increased attacks on the Ukrainian railway system, exacerbating risks to the civilian population.

United Nations Human Rights Council – Report of the Independent International Commission of Inquiry on Ukraine – March 18, 2024

25. During its second mandate, the Commission continued its examination of attacks with explosive weapons in populated areas. It documented examples of such attacks, which caused numerous civilian casualties and affected civilian objects such as residential buildings, functioning medical institutions, historical buildings, including churches, a railway station, a restaurant, a café, supermarkets, a warehouse for civilian use and a gas station.

26. Attacks with explosive weapons in populated areas remain the leading cause of death and injury among the civilian population in Ukraine. As at 15 February 2024, 8,898 had been killed and 18,818 injured in such attacks, according to OHCHR. The actual number is likely higher.

...

46. In each of its reports, the Commission has reviewed multiple cases of attacks with explosive weapons committed by the Russian armed forces that constituted violations of international humanitarian law. Those attacks were indiscriminate, including some being disproportionate. The Commission also found that Russian armed forces failed to take feasible precautions to, among other things, verify that the objects of the attacks were not civilian. Certain attacks amounted to the war crime of excessive incidental death, injury or damage. The continuation of such attacks, for over two years of armed conflict, further demonstrates a pattern of disregard for the requirement to maintain the distinction between military objectives and civilians, as previously underscored by the Commission.

Commentary

1. Let us start with a brief overview of the key principles of international humanitarian law relating to the conduct of hostilities, i.e. the way in which a party to an armed conflict may carry out military operations. All four principles aim to protect civilians from the effects of hostilities. The first principle is that of distinction which obliges those taking part in the hostilities to distinguish a military objective from a civilian object and a combatant or a person taking a direct part in the hostilities from a civilian (Arts 48 and 52(1) of AP I). Attacks cannot be directed at civilian objects unless they fall within the definition of a military objective set out in Article 52(2) of the AP I and Rule 8 of the Study of the International Committee of the Red Cross (ICRC) on Customary International Humanitarian Law. Several civilian objects such as hospitals (Art. 18 of the GCIV; Rule 28 of the ICRC Study), installations containing dangerous forces (Art. 56 of the AP I; Rule 42 of the ICRC Study), cultural property (Art. 53 of the AP I; Rules 38−41 of the ICRC Study; Convention for the Protection of Cultural Property in the Event of Armed Conflict) and goods indispensable for the survival of the population (Art. 54 of the AP I; Rule 54 of the ICRC Study), enjoy additional protection. In case of doubt, objects normally dedicated to civilian purposes are presumed to have civilian status (Art. 52(3)). Once that distinction is made, only military objectives and combatants or a person taking a direct part in the hostilities can be attacked. Under the principle of discrimination, indiscriminate attacks are prohibited (Art. 51(4) and (5) of the AP I; Rule 11 of the ICRC Study). Further, attacks must adhere to the principle of proportionality that prohibits attacks that may be expected to cause incidental loss of civilian life, injury to civilians and/or damage

to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated (Art. 51(5) of the AP I; Rule 12 of the ICRC Study). Moreover, before launching and while engaged in an attack, a party to an armed conflict must, under the principle of precautions, take constant care to spare civilians and civilian objects, take all feasible precautions in the choice of means and methods of warfare and avoid, or keep to a minimum, the incidental harm to civilians and civilian objects (Art. 57 of the AP I; Rule 15 of the ICRC Study). All these principles mandate that the parties to the conflict select tactics and deploy weapons that comply with these principles. In fact, a wide range of treaties and customary law use regulates or bans the use of specific means and methods of warfare.

2. As explained in the above excerpts, attacks carried out by the Russian armed forces in Ukraine often failed to have a clearly identifiable military objective (¶ 30), thus violating the principle of distinction. Attacks on residential areas in large cities are highly unlikely to comply with international humanitarian law. Such an example is the siege of Mariupol (¶¶ 13−24). Moreover, on many occasions, provided a military objective could be identified, the attack failed to comply with the principles of precautions and proportionality. While it is agreed that urban warfare is a particularly difficult task because of the co-mingling of military objectives and with civilians and civilian objects, Russia is still obliged to ensure that it deploys that are not running afoul of international humanitarian law. The use of explosive weapons, unguided bombs, inaccurate long-range anti-ship missiles, cluster munitions and multiple launch rocket systems (*see* Commission of Inquiry [CoI] 2023 ¶ 30 and Commission of Inquiry [CoI] 2024 ¶¶ 25−26 and 46) in densely populated urban areas is bound to lead to excessive civilian casualties, deaths and damages as the attacks are either not directed at a specific military objective, the weapon cannot be directed at a specific military objective or the effects of the weapon cannot be limited as required by international humanitarian law. Likewise, the use of rocket-delivered antipersonnel landmines by Ukraine in cities is a violation of international humanitarian law (¶ 36).
3. Attacks on critical energy infrastructure (¶ 21), such as power stations, electrical grids, dams, etc, are of particular concern. While these "targets" might be assumed to be lawful due to their frequent targeting during armed conflicts and their perceived support of the war effort, they can only be considered valid targets if they qualify as military objectives. Military objectives are defined as "those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage," (Art. 52(2) of the AP I), a definition that is also customary. It is doubtful that many energy infrastructures qualify as such. Firstly, they must make an effective, actual contribution to military action; it is unlikely that every component of Ukraine's power infrastructure is used for military purposes. Secondly, their destruction or neutralisation must offer a definite military advantage, i.e. a definite benefit accrues from the attack, and that benefit is of a military nature. In many cases, such a definite military advantage is difficult to identify. It appears that the motivation for attacking these objects is to undermine civilian morale, which is not a valid justification. Even if the energy infrastructure qualifies as military objectives, the strikes must comply with the principles of proportionality and precautions. The use of indiscriminate weapons on these energy infrastructures, resulting in civilian casualties, and a widespread campaign against power infrastructure, suggest that such strikes are plainly unlawful. From an international humanitarian law perspective, there are differing views on whether the broader effect on the civilian population should be considered when assessing the principle of proportionality.

Power outages from these attacks have notably affected the health and well-being of vulnerable categories of the population, such as older persons and persons with disabilities, and have disrupted children's education. Yet, it remains unclear whether such elements must be included in the assessment of compliance with the principle of proportionality. Moreover, it could be argued that these attacks violate the prohibition of "acts or threats of violence the primary purpose of which is to spread terror among the civilian population" (Art. 51(2) of the AP I) which is of customary nature (Rule 2 of the ICRC Study and Galić ¶¶ 87−90). The widespread and intensive nature of the attacks and their severe impact on the population indicate that terror is intended and, thus, their primary purpose. In addition, the scale and scope of the attacks appear to violate the prohibition of attacks on objects indispensable to the civilian population (Art. 54(2) of the AP I, imposing severe hardship on civilians deprived of water or heat, which can be vital depending on the time of the year.

4. **For further reading**, *see* (1) Salma Ben Mariem, "UN Report Says Russia Strikes on Ukraine Facilities Possibly Violated International Law," JURISTnews (Sep. 20, 2024); (2) Surbhi Soni, *Proportionality in Bello: A Case Against Indirect Military Advantage in War*, JOURNAL OF INTERNATIONAL HUMANITARIAN LEGAL STUDIES (Online Advanced 2024); Andriy Kostin, "Plunging into Darkness – Russia's Indiscriminate Attacks on Ukraine's Infrastructure," International Bar Association (July 31, 2023); Francesca Capone, *The Wave of Russian Attacks on Ukraine's Power Infrastructures: An Opportunity to Infuse Meaningfulness into the Notion of 'Dual-use Objects'?*, 8 EUROPEAN PAPERS 741 (2023); Jelena Pejic, "Expert Q&A on IHL Compliance in Russia's War in Ukraine," Just Security (Apr. 7, 2023); Michael N. Schmitt, "Further Thoughts on Russia's Campaign against Ukraine's Power Infrastructure," Articles of War (Nov. 25, 2022).

9.5.2. Protected Persons

United Nations Human Rights Council - Treatment of Prisoners of War and Persons hors de Combat in the Context of the Armed Attack by the Russian Federation against Ukraine: 24 February 2022 – 23 February 2023 – March 29, 2023

27. Through interviews with 203 Ukrainian POWs (179 men and 24 women) who were released, OHCHR documented the following violations of IHL and IHRL by Russian armed forces upon their capture and during evacuation: summary executions, torture or other ill-treatment, evacuation in inhumane conditions, denial of medical attention (sometimes leading to death), denial of access to food and water, and pillage of belongings.

...

35. Of the 203 Ukrainian POWs interviewed by OHCHR, 122 (103 men and 19 women) reported the pillage of their belongings by Russian armed forces at various stages from the moment of their capture to their arrival at places of internment. ...

36. OHCHR notes with concern the abundance of videos publicly available online exposing Ukrainian POWs to intimidation, humiliation and public curiosity in violation of IHL. POWs appear in these videos as partially naked or visibly in pain, and in need of medical assistance or receiving medical assistance. In some videos, the POWs are verbally abused, threatened and compelled to apologise, disparage their command, glorify the Russian armed forces, shout slogans or congratulatory words to specific military units or individuals, or make statements about their adequate treatment in captivity. Some videos were later broadcasted on Russian television.

...

38. OHCHR documented 19 cases of Ukrainian POWs evacuated in a manner and under conditions contravening the Third Geneva Convention, which prescribes that the evacuation of POWs be carried out humanely and in conditions similar to those for the forces of the Detaining Power during their change of station. ... This raises concerns regarding respect of the obligation to treat POWs humanely and the prohibition of humiliating or degrading treatment.

...

82. OHCHR interviewed eleven Ukrainian POWs who faced criminal prosecution for conduct amounting to mere participation in the hostilities. Furthermore, 68 interviewed POWs were tortured to provide testimonies against other servicepersons in violation of Article 17 of the Third Geneva Convention, which prohibits physical or mental torture, or any other form of coercion, to secure information of any kind.

83. OHCHR interviewed 10 men and 1 woman POWs who were indicted, tried and/or sentenced in Donetsk by so-called 'courts' of Russian-affiliated armed groups for conduct that amounted to mere participation in hostilities. Under international law, combatants enjoy combatant immunity and cannot be prosecuted for mere participation in hostilities, or for lawful acts of war committed in the course of the armed conflict, even if such acts would otherwise constitute an offense under domestic law.

84. All the POWs interviewed reported being tortured or otherwise ill-treated before or during interrogations by so-called 'prosecutors' of Russian-affiliated armed groups, either to compel them to confess or to sign records of interrogations which included statements they had not made. Five of them were compelled to waive their rights to legal counsel during investigation, because no lawyers were available.

85. Three POWs interviewed by OHCHR were tried *in camera* by a so-called 'court' which lacked essential guarantees of lawfulness, independence and impartiality. ... Under IHL rules, POWs can be validly sentenced only if the provisions on judicial proceedings of the Third Geneva Convention are respected, which includes the prohibition on exerting moral or physical coercion to induce admission of guilt, the right to defence by a qualified advocate or counsel of one's own choice and the obligation to communicate charges and documents to the accused in a language he or she understands. OHCHR is concerned that the POWs were not validly sentenced according to IHL, particularly where they confessed under duress and their rights to a defence were violated. OHCHR recalls that wilfully depriving a POW of the rights to a fair and regular trial constitutes a grave breach of the Third Geneva Convention.

86. OHCHR is concerned that Ukrainian POWs being released and exchanged were repatriated in inhumane conditions and subjected to ill-treatment, in breach of article 119 of the Third Geneva Convention. ... In total, POWs spent almost two full days tied and blindfolded, without food, water, or access to a toilet. This raises concerns regarding respect of the obligation to treat POWs humanely and the prohibition of humiliating or degrading treatment. ...

...

127. In the cases analysed, the humane treatment of POWs by Ukraine was not ensured, particularly upon capture and during initial interrogations. OHCHR documented summary executions, torture and ill-treatment of POWs upon their capture and during evacuations by members of Ukrainian armed forces, as well as instances of torture or other ill-treatment during internment. While the Ukrainian authorities have opened at least three investigations into allegations of summary executions and torture, no perpetrators have yet been held to account. OHCHR observed that, in overall terms, POWs in the hands of Ukraine were treated in better

fashion, once held in transit and permanent places of internments. In this regard, OHCHR notes that the Government of Ukraine gave OHCHR access to the places of internment and provided POWs with means to communicate with their relatives, including digital means of communication, although a number of POWs were not offered to contact their relatives for weeks and months of internment.

United Nations Human Rights Council – Report of the Independent International Commission of Inquiry on Ukraine – March 18, 2024

65. In most facilities, the prisoners of war underwent a brutal "admission procedure", with beatings and electric shocks. One victim recalled being greeted with "welcome to hell". Torture occurred during interrogation sessions, where detainees were questioned about the Ukrainian armed forces and their military units. Torture was also employed to intimidate and punish. Victims reported torture "everywhere", in cells, corridors, the courtyard and the bathhouse. A perpetrator told a victim: "We will now teach you how to fight against the Russians." Another victim heard a prison guard stating: "Our goal is that you never return to war." According to detainees, particularly harsh treatment was inflicted on prisoners of war from Mariupol or western Ukraine, on those who were not fluent in Russian and when Russian armed forces lost control of areas in Ukraine.

66. Methods of torture used recurrently included severe and repeated beatings with various instruments on different parts of the body. One victim recounted that during beatings, perpetrators said: "When will you finally die?" Electric shocks using various tools were administered on various parts of the body, including when detainees went to the bathhouse and were wet. Another victim stated that he was in shock, as was every other fellow prisoner of war: "It was barbaric. It was unbearably painful. I was almost all the time on the floor, as my wounds were bleeding, but those animals were laughing and ordering me to stand up."

...

68. In several of the facilities investigated, conditions of detention were inhuman or degrading. Medical support was mostly denied or inadequate. The food was poor and scarce and, in some places, only 2 to 7 minutes were allowed for eating. Victims reported deep suffering from hunger and resorted to eating worms, soap, paper and remnants of dog food, leading to a sharp decline in body weight. In some of the facilities, access to showers and toilets was limited, or a hole in the ground served as the toilet.

...

70. Interviews with prisoners of war, persons who declared themselves to be former members of a special purpose unit operating under the Federal Penitentiary Service, and a former Russian soldier indicated that the treatment of prisoners of war appeared to have been encouraged, or at a minimum tolerated, by higher-ups within the respective organizational hierarchies and that there was an apparent sense of impunity.

OSCE and ODIHR – Fifth Interim Report on Reported Violations of International Humanitarian Law and International Human Rights Law in Ukraine – July 22, 2024

57. After their initial capture and filtration, and upon arrival and/or transfer to a more permanent detention site, POWs interviewed by ODIHR reported undergoing routine initiation procedures, known as '*Priyomka*' [Прийомка]. Specifically, POWs sustained verbal abuse,

humiliation and brutal beatings by prison staff. Four of those interviewed clarified that the beatings followed a medical examination whereby POWs were forced to fully undress and pose for photos, to demonstrate a lack of injuries before a beating. ...

...

58. Those interviewed by ODIHR also described the various forms of humiliation, torture and ill-treatment they endured throughout of their detention. Such treatment included routine and intense physical beatings using a wide array of methods (fists, kicks, blunt instruments), electrocution, waterboarding, dog bites, being forced to endure intense physical activities, being forced into stress positions, being subjected to mock executions with the use of firearms, and threats of mutilation and sexual violence. Interviewees recalled that each of these abuses were conducted both as part of interrogations by the Russian authorities (see below) and as part of the daily routine employed by prison staff while detained. ...

...

60. Witnesses also explained aspects of daily life while detained. Many stated that they were forced to learn and recite Russian poems, songs, the national anthem and the prison rules, and failure to do so led to collective punishments of the POWs. POWs who spoke Ukrainian were immediately punished. ... Interviewees also recalled being subjected to forced labour and exposed to public curiosity by being made to conduct recorded interviews with Russian journalists and television crews. ODIHR's monitoring demonstrates that both Russian and Ukrainian POWs were exposed to public curiosity, with significantly higher documented exposure of Ukrainian POWs.

61. Witnesses further described being subjected to physical and psychological abuse through routine interrogations. Interrogations were conducted by numerous actors, such as local investigators or prison staff, local prosecutors, FSB members or members of the Russian Investigative Committee. Interrogators often sought general and military information from POWs and, in some cases, sought to extract confessions to crimes through torture.

...

63. All former POWs interviewed by ODIHR gave detailed accounts of the conditions of their detention. They described overcrowded cells/barracks, with POWs forced to either sleep in shifts, share beds or sleep on the floor. In certain detention sites, former POWs reported being denied adequate clothing or heating in colder seasons and ventilation during the summer.

64. The witnesses universally noted that the food was of poor quality and insufficient quantity, which occasionally led to instances of food poisoning or malnutrition. ... Likewise, the amount and quality of water provided to POWs was also reported to be lacking, with POWs forced to drink contaminated and/or technical water, often leading to illness.

65. Witnesses also described being given limited, or no access to shower and toilet facilities. When access was permitted, those interviewed stated that the time given was insufficient and was often accompanied by beatings (including electric shocks) as well as being subject to humiliation by prison staff.

66. All former POWs interviewed by ODIHR noted that, due to the lack of hygiene and overcrowding of cells/barracks, there were insect infestations and outbreaks of infectious diseases, such as tuberculosis and hepatitis, which caused additional illnesses among detainees. Nevertheless, the majority of those interviewed indicated that medical aid was usually denied and/or delayed, and that those who requested aid were often subjected to beatings and other punishments (including electric shocks) by prison and medical staff. ...

...

68. ... Nine POWs interviewed by ODIHR stated that, during their detention, they had no interaction with any international or humanitarian organizations, specifically, the ICRC, with the remaining five recalling brief interactions/visits by representatives of the 'Red Cross' during their detention, although it was unclear whether it was the ICRC or the Russian Red Cross.

...

72. ODIHR notes the ongoing challenges in accessing Ukrainian POWs to assess conditions of detention and treatment. The Ukrainian authorities have publicly stated that many Ukrainian POWs did not see ICRC representatives while in detention, and discussions regarding access for mediating states and/or ombudsmen continue without resolution. This is in contrast to the situation in Ukrainian detention sites housing Russian POWs, where Russian POWs are allowed to communicate with relatives, and the authorities provide access to civil society representatives and international organisations to assess conditions of detention and treatment of prisoners, as well as conduct interviews. ODIHR does, however, note concerns regarding the publication of images/videos of Russian POWs by both the media and the Ukrainian authorities, which expose them to public curiosity.

73. Despite the positive information received regarding Ukraine's adherence to IHL and the humane treatment of Russian POWs held in detention, ODIHR nevertheless remains concerned regarding the reports of torture, ill-treatment and summary executions of Russian POWs at the point of capture and in transit places, as noted by the UN OHCHR and in credible media reports.

Commentary

1. Under international humanitarian law, the concept of protected persons refers to individuals who are under the control of an adversary or have fallen into their hands. There are four categories of protected persons: wounded and sick; wounded, sick and shipwrecked; prisoners of war (POWs); and civilians who find themselves in the hands of a party to the conflict of which they are not nationals, typically in situations of occupation. Each of the Geneva Conventions protects one of these categories, while Additional Protocol I refers to victims. The treatment of POWs is covered by the Third Geneva Convention (GC III), which outlines rules applicable upon capture, during detention and at the time of release. Additional rules in API and customary IHL, which are binding on both Ukraine and the Russian Federation, also apply. Generally, POWs are defined as combatants (as per Art. 4 of the GC III and Arts 43 and 44(3) of the API) who have fallen into the hands of the enemy and are entitled to prisoner-of-war status (Art. 44(1) of the AP I). Moreover, under Article 33 of the GC III, individuals performing medical and religious duties in the armed forces can be retained. While they do not have POW status, they benefit from the same protection. Thus, members of the Ukrainian armed forces qualify as POWs upon capture by the Russian forces, and their medical and spiritual personnel are treated similarly.
2. Article 13 of the GC III is the key legal provision for the protection of POWs, stating that "[p]risoners of war must at all times be humanely treated." The purpose of detaining POWs is not to punish them but to prevent them from participating in the hostilities and/or to protect them (if they are, for example, wounded or sick) (¶ 20). The legal provisions in GC III and relevant ones in AP I must be interpreted in this light. The safeguards represent a delicate compromise between the interests of the detaining power, the power on which the prisoner depends (usually their State of nationality), and the prisoner. It is important to note that POWs cannot renounce their rights or status, as IHL views them as soldiers of their country.

3. The protection offered to POWs starts "from the time they fall into the power of the enemy and until their final release and repatriation." (Art. 5 of the GC III). Both Russia and Ukraine have a fundamental duty to treat all POWs humanely at all times, from capture until release and repatriation. While Ukraine's treatment of Russian POWs has mostly complied with international humanitarian law (UNHRC 2023 ¶ 127; OSCE/ODIHR 2024 ¶ 73; UNSPT ¶¶ 53−70), Russia's treatment of Ukrainian POWs has violated numerous well-established rules. Owing to space constraints, this section focuses on three key issues: the use of violence against POWs, detention conditions, and the prosecution of POWs for participation in the conflict.
4. Upon capture, POWs must be treated with respect and protected from any physical or psychological abuse or threat thereof. This includes prohibiting humiliating treatment, such as subjecting them to public curiosity and insults (Art. 13 of the GC III). Broadcasting videos showing Ukrainian POWs "partially naked or visibly in pain," being "verbally abused, threatened and compelled to apologise, disparage their command, glorify the Russian armed forces" is a clear violation of this obligation (UNHRC 2023 ¶ 36; OSCE/ODIHR 2024 ¶ 60). Reports document numerous instances of violence and abuse, including humiliation, executions, death threats, torture and ill-treatment during initial capture and processing, detention (CoI 2024 ¶¶ 63−66; OSCE/ODIHR 2024 ¶¶ 52−62; SRHRRF 2024 ¶ 92) and repatriation (¶ 86). This unlawful treatment was perpetrated by the Russian armed forces and prison guards (CoI 2024 ¶¶ 62−66; OSCE/ODIHR 2024 ¶ 58), and some interrogations were led by members of the Federal Security Service of the Russian Federation (¶ 63).
5. The Third Geneva Convention details the conditions in which POWs are to be detained. They must be housed in camps at a safe distance from active combat zones (Art. 23) and held with other POWs with whom they served (Art. 22 para 3). Their living quarters must be similar to those of the detaining forces (Art. 25). Additionally, their accommodation (Art. 25), food (including water) (Art. 26), clothing (Art. 27), hygiene (including sanitation) (Art. 29), and medical care (Arts 30-31) must meet certain standards to ensure humane treatment. The conditions described in reports indicate that all these rules have been (and are being) breached by the Russian Federation. While some POWs were held in cells (sometimes with civilians (¶ 54)), the majority were housed in overcrowded barracks (¶ 63) where infectious diseases were rampant (¶ 66). Often, they were denied clothing (¶ 63), food and water (CoI 2024 ¶ 68; UNHRC 2023 ¶ 27), access to shower or toilet facilities (¶ 65), and medical attention (CoI 2024 ¶ 68; OSCE/ODIHR 2024 ¶ 66; UNHRC 2023 ¶ 27), all in violation of the Geneva Conventions, AP I and customary IHL.
6. Combatants have the right to participate in armed conflicts, and thus cannot be prosecuted for mere participation (¶ 20). Despite having "combatant immunity," POWs can be prosecuted for offences under the criminal code of the Detaining Power and for violations of IHL, especially war crimes. POWs can only be held criminally accountable for acts for which they are deemed responsible and do not lose their POW status during this process (Art. 85 of the GC III). From the moment the investigation begins, they are entitled to due process and a fair trial. They must be tried by courts that "offer the essential guarantees of independence and impartiality as generally recognized," (Art. 84) given an "opportunity to present [their] defence and the assistance of a qualified advocate or counsel" (Art. 99) as well as the possibility of appealing the judgment (Art. 106). The sentence must be similar to the penalties for members of the Detaining Power, with certain punishments prohibited. Generally, a POW may not be sentenced to death (Art. 100). Several Ukrainian POWs were indicted, tried, and sentenced for mere participation in hostilities (¶ 82), some were charged with terrorism, espionage or

extremism (¶ 96). Throughout the process, they were subjected to torture and ill-treatment, and some were compelled to waive their rights to legal counsel (¶ 84). The courts also could not be seen as regularly constituted and lacked essential guarantees of independence and impartiality (¶ 85).

7. Most importantly, it should be remembered that certain violations relating to the treatment of POWs are deemed grave breaches of the Geneva Conventions and war crimes under the Statute of the International Criminal Court: "wilful killing," "torture or inhuman treatment," "wilfully causing great suffering, or serious injury to body or health," "compelling a prisoner of war ... to serve in the forces of the hostile Power," or "wilfully depriving a prisoner of war ... of the rights of fair and regular trial." (arts 8(2)(a)(i)(ii)(iii)(v)(vi) of the ICC Statute).
8. **For further reading**, *see* (1) Oksana Kuzan, "Russia's Weaponization of Ukrainian Prisoner Exchanges," Lawfare (July 29, 2024); (2) Rachel E. VanLandingham, *Captured in the News: Prisoners' Words and Images as Lawful Weapons of War,* 73 Syracuse Law Review 551 (2023); (3) Michael N. Schmitt and William Casey Biggerstaff, "Prisoners of War Status and Nationals of the Detaining Power," Articles of War (Sep. 5, 2023) (4) Maksym Vishchyk, "Trials of Ukrainian Prisoners of War in Russia: Decay of the Combatant's Immunity," Just Security (Aug. 21, 2023); (5) Saeed Bagheri, "Treatment of Persons Hors de Combat in the Russo-Ukrainian War," EJIL:Talk! (March 7, 2022).

9.5.3. Occupation

OSCE and ODIHR – Fifth Interim Report on Reported Violations of International Humanitarian Law and International Human Rights Law in Ukraine – July 22, 2024

79. Under IHL, occupation is presumed to be a transitional and temporary regime. The occupying power does not acquire sovereignty over the occupied territory and must refrain from bringing about irreversible changes which would fundamentally alter the status or character of such territories. The so-called 'annexation' of territories under occupation by the Russian Federation remains illegal, effects no change to their status as Ukrainian territory under international law and cannot deprive civilians of the protections afforded to them under IHL. ODIHR has continued to receive accounts of coercion of residents in the occupied territories to acquire Russian citizenship, as well as on the imposition of Russian Federation curriculum in schools and of military-patriotic education for school-aged children, which suggests that the Russian authorities are intensifying efforts to alter the demographic composition of the territory and change the social status quo.

80. ODIHR has continued to monitor the sustained and systematic efforts by the Russian authorities to force the residents of occupied areas of Ukraine to acquire Russian citizenship.

81. Information provided to ODIHR, along with witness testimonies, confirmed previously reported information that Russian citizenship was required for residents to: access employment, education, and public healthcare; receive pensions, humanitarian assistance, and social benefits; and be able to move freely, including to leave the occupied territories. In addition to violating the IHL framework on belligerent occupation, the regulations, restrictions and intimidation reportedly applied against Ukrainian citizens may violate the prohibition against discrimination based on nationality and amount to forced declarations of allegiance to an occupying power. The imposition of Russian citizenship may further lead to forced conscription, which is explicitly prohibited under IHL.

...

88. Over the course of its monitoring activities, ODHIR has continued to receive reports, including through witness testimonies, of grave and systematic changes related to the provision of education in the occupied territories of Ukraine, including the imposition of the Russian Federation curriculum in schools and military-patriotic education for school-aged children. An occupying power must respect institutions based on local legislation and may only arrange children's education where local institutions are inadequate. As far as possible, it must further ensure educators are of the same nationality, language and religion as the children. The widespread replacement of the Ukrainian curriculum with that of the Russian Federation, along with the introduction of Russian military-patriotic education for children, appears to violate these principles and fundamentally alter the status quo ante.

...

97. ODHIR has continued to received accounts, including through 13 witness testimonies, on the forced conscription and mobilization of Ukrainian civilians into the Russian armed forces. There is a clear prohibition in IHL against compelling civilians to serve in the occupying power's armed or auxiliary forces, including by employing propaganda aimed at securing voluntary enlistment, and forced conscription of civilians to an occupying power's armed forces constitutes a war crime. While it remains the prerogative of States to conscript their own nationals, given the widespread reports of forced adoption of Russian citizenship, instances in which Ukrainian men were forced to acquire Russian citizenship and then subsequently conscripted should properly be understood as forced conscription of Ukrainians.

...

105. According to information provided by the Ukrainian authorities, 3932 criminal cases for alleged collaboration have been opened during the reporting period and 156 people detained under these charges. There have been a total of 1622 first-instance decisions on collaboration cases issued since the law was enacted in March 2022, with 634 being issued during the reporting period, which suggests an increase in their prosecution.

106. ODIHR notes that the relevant provisions of the Criminal Code and the trends in its application remained problematic. The lack of distinction between voluntary and involuntary cooperation is concerning, particularly when the Ukrainian authorities have recognized the following as 'collaboration': working in schools using Russian curricula, running small businesses in Crimea and engaging generally with occupying authorities in occupied territories.

...

108. Under IHL, occupying powers are subject to specific obligations relating to compelled work: only adults may be compelled to work, and then, only on work which is necessary for the maintenance needs of the occupying army, public utility services, or the feeding, sheltering, clothing, transportation and health of the population of the occupied territory. This should be read in conjunction with the occupying power's obligations to the occupied population. With respect to judges and public officials, the occupying power may not alter their status, nor may it apply sanctions or take measures of coercion against them should they resign for reasons of conscience — such individuals have a right to resign. This does not, however, prejudice the occupying power's limited right to requisition work for the above-enumerated reasons, many of which may fall under the duties of public officials.

...

110. ODIHR witnesses noted situations where civil servants worked under the authorities in an occupied territory, with one witness stating that individuals who refrained from continuing

in such roles were replaced with Russian appointees. There were reports of the occupying authorities coercing residents of the occupied territories to stay in public service roles, such as in schools, the police, energy plants, and treasury or pension funds. Ill-treatment, arbitrary detention and enforced disappearances, including the detention of close relatives, were each reported as methods by which the occupying authorities coerced residents of the occupied territories to remain in their roles.

United Nations Secretary-General - Situation of Human Rights in the Temporarily Occupied Territories of Ukraine, including the Autonomous Republic of Crimea and the City of Sevastopol – July 3, 2024

19. Since 24 February 2022, the Russian Federation has imposed its own political, legal and administrative systems in the occupied areas of Kherson, Zaporizhzhia, Donetsk and Luhansk regions, which may amount to violations of international humanitarian law, which provides that the occupying Power "shall take all the measures in its power to restore and ensure, as far as possible, public order and safety [l'ordre et la vie publics], while respecting, unless absolutely prevented, the laws in force in the country" and that "[t]he penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the occupying Power in cases where they constitute a threat to security or an obstacle to the application of the present [sc. Fourth Geneva] Convention". The Occupying Power may, however, "subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them".

20. On 30 September 2022, the Russian Federation adopted legislation purporting to annex these four regions of Ukraine, some of the territory of which was under its control. "Accession treaties" signed between Russian authorities and the Russian-appointed de facto heads of the four regions on the same day declared that Ukrainian penal legislation would be replaced with Russian penal legislation. In addition, since the illegal annexation, the State Duma and the Council of the Federation of the Russian Federation adopted at least 32 laws that changed administrative processes in the temporarily occupied areas of the four regions of Ukraine, aligning them with Russian systems in wide-ranging areas such as taxation, banking, inheritance, social protection and social services.

21. By September 2023, the Supreme Court of the Russian Federation announced that the Russian court system had become operational in the illegally annexed regions. By the end of 2023, it had appointed 436 judges there, the majority from the Russian Federation. The establishment of Russian courts presided over by Russian judges applying Russian law effectively resulted in the complete imposition of the Russian legal system in the temporarily occupied areas of the four regions of Ukraine.

22. The Russian Federation also imposed its own education system. ...

23. The occupying authorities organized so-called "referendums" and "elections". In September 2022, they organized a "referendum" on joining the Russian Federation and in September 2023, they organized "local elections" in which they only allowed parties represented in the Russian Duma, all of which support the occupation, to put candidates on the ballot to run for position in "local legislative councils."

24. International humanitarian law prohibits the occupying Power from compelling the population of occupied territory to swear allegiance to the hostile Power. The occupying authorities pressured the population in the temporarily occupied areas of Kherson, Zaporizhzhia, Donetsk and Luhansk regions of Ukraine to obtain Russian citizenship. With the imposition of Russian legal and administrative systems, those without Russian passports faced discrimination in the enjoyment of their rights to work and social security, property rights, freedom of movement, and in their access to healthcare and public services.

25. Residents also recounted how security forces at checkpoints and border crossings singled out people without Russian passports, questioning their loyalty, searching their personal belongings and phones, and sometimes prohibiting them from passing or crossing. Some people reported receiving direct threats seeking to compel obtaining of Russian citizenship. For example, parents were threatened that their children would be taken away from them if they did not obtain Russian citizenship for them. Many residents therefore felt compelled to obtain Russian citizenship.

26. After the beginning of the occupation, authorities in the temporarily occupied areas of Kherson, Zaporizhzhia, Donetsk and Luhansk regions of Ukraine transferred civilians, including children, within the temporarily occupied territories of Ukraine or transferred civilians to the Russian Federation.

...

28. In November 2022, the occupying authorities transferred hundreds of civilian prisoners who had been serving sentences in various penal colonies in Kherson region of Ukraine, since before February 2022 to penal colonies in the Russian Federation. Those who completed their sentence have faced significant hurdles in returning to Ukraine.

29. The occupying authorities also transferred civilians from the temporarily occupied territories to territory controlled by the Government of Ukraine. In most of the cases verified by OHCHR, the occupying authorities transferred people who refused to cooperate with the occupying authorities or expressed opposition to the occupation. Such transfers were generally preceded by detentions, enforced disappearance, torture or ill-treatment, or intimidation and threats.

30. In April 2023, the Russian Federation adopted a decree stipulating that residents of the temporarily occupied areas of Zaporizhzhia, Kherson, Donetsk and Luhansk regions of Ukraine who had not obtained Russian citizenship were to be considered as "foreigners", thereby increasing the risk of further transfers. The provision was expected to be given effect from 1 July 2024, but the deadline was moved to 31 December 2024.

OSCE – Report on Violations and Abuses of International Humanitarian Law and Human Rights Law, War Crimes and Crimes against Humanity, Related to the Arbitrary Deprivation of Liberty of Ukrainian Civilians by the Russian Federation – April 25, 2024

Throughout 2023 and 2024 the Russian authorities have continued to impose Russian legal and administrative systems in the temporarily occupied territories. Intimidation and violence have been relied on to coerce members of key public sector professions to cooperate with Russian occupying authorities. According to the testimonies received by the Mission, those who resist, risk arbitrary detention, violence, and other reprisals. Residents without a Russian passport are especially singled out by the occupying authorities, experiencing harsher treatment, restrictions on their freedom of movement as well as arbitrary detention.

...

Arbitrary deprivation of liberty of Ukrainian civilians started in the occupied and unlawfully annexed Crimea in spring 2014, and quickly spread to the areas of the Donetsk and Luhansk regions controlled by the so-called People's Republics. Since the outbreak of the full-scale invasion on 24 February 2022, this practice has become pervasive in all the areas that have got under the temporary occupation of the Russian Federation (especially areas within the Chernihiv, Kharkov, Kherson, Kyiv, Sumy, and Zaporizhzhia regions, as well as, again, in Crimea and the Donetsk and Luhansk regions). ...

IHL and IHRL establish legal grounds enabling Parties to the conflict to deprive civilians belonging to the other party to the conflict of their liberty. The Mission, however, concludes that the deprivation of liberty of the overwhelming majority by the Ukrainian civilians by the Russian Federation has taken place outside this legal framework. ...

The Mission concludes that in the overwhelming majority of cases of Ukrainian civilians detained by the Russian Federation, the detention lacks lawful grounds and, as such, amounts to arbitrary deprivation of liberty. ...

Moreover, to be lawful and non-arbitrary, every instance of the deprivation of liberty needs to follow certain procedural guarantees stemming from both IHL and IHRL. These include: (a) the obligation to inform persons deprived of liberty of the reasons for the detention, (b) the obligation to provide persons deprived of liberty with an opportunity to challenge the lawfulness of their detention; (c) periodic reviews of the detention; (d) information obligations; (e) fair trial guarantees; (f) the prohibition of collective detention; and (g) the prohibition of incommunicado detention and enforced disappearances. ...

The Mission concludes that Ukrainian civilians deprived of liberty by the Russian Federation have been consistently denied these guarantees. ...

Moreover, and notwithstanding arbitrary deprivation of liberty in and of itself being a serious violation of IHRL and IHL, the Mission has further established that this violation has been conducive to other serious violations of these two bodies of law. Ukrainian civilians detained by the Russian Federation have been subjected to torture and other cruel, inhuman or degrading treatment or punishment, sexual violence and other forms of serious mistreatment. They have endured harsh conditions of detention and have been denied contact with the outside world, turning their deprivation of liberty into incommunicado detention and enforced disappearances. The Mission has further recorded cases of extrajudicial killings of arbitrarily detained Ukrainian civilians. Other detained civilians have been denied fundamental fair trial guarantees in criminal prosecutions. They have been tried under legislation which should not apply to them in the first place and their procedural rights and the right to defence and legal assistance have not been respected. The Mission recalls that the denial of fundamental fair trial guarantees renders in and of itself any detention related to the criminal prosecution arbitrary.

United Nations Human Rights Council – Report of the Independent International Commission of Inquiry on Ukraine – March 15, 2023

90. The Commission examined the context and circumstances in which the authorities of the Russian Federation organized and held so-called referendums between 23 and 27 September 2022 in the occupied areas of Donetsk, Kherson, Luhansk and Zaporizhzhia Provinces concerning the annexation of the provinces to the Russian Federation. It found that the holding of the so-called referendums was in disregard for the Ukrainian Constitution, which regulates the organization of

referendums in Ukraine. The referendums were therefore held in violation of international humanitarian law, which prescribes that an occupying Power must respect the laws in force in the territory that it occupies. Moreover, the Commission concludes that the annexation of the four provinces was unlawful on the basis of principles of international law that no territorial acquisition resulting from the threat or use of force may be recognized as legal.

91. In addition, the Commission found that the so-called referendums were held in a general climate of fear and coercion. Some interlocutors reported that, prior to the vote, the authorities of the Russian Federation had carried out visits to private residences to ask people what they would do in relation to the referendum. On voting days, interlocutors had seen "electoral staff" accompanied by armed personnel going from door to door with ballot boxes.

92. Pursuant to the so-called annexation "treaties" between the Russian Federation and the four occupied provinces, citizenship of the Russian Federation was granted in the areas concerned. The Commission was informed of situations in which local residents had felt compelled to apply for passports of the Russian Federation. Civilians of retirement age, in particular, had applied for passports after receiving messages from representatives of the authorities of the Russian Federation suggesting that they would need to do so in order to receive or continue to receive pensions. Civil servants and other employees of State services who sought to retain their employment under the administration of the Russian Federation were required to apply for passports as a condition for maintaining their positions.

93. According to testimonies, the authorities of the Russian Federation detained local officials and employees in the occupied areas to force them to cooperate. In March 2022, the Mayor of Melitopol, in Zaporizhzhia Province, was detained at the Palace of Culture in Melitopol. Furthermore, in August 2022, the head of a rural community in Kherson Province was detained by the armed forces of the Russian Federation, who broke into her home. The Commission obtained the names of 27 heads of territorial communities in Kherson Province who were reportedly detained by the authorities of the Russian Federation. There were also cases in which school principals and teachers were detained, subjected to ill-treatment and expelled from their hometowns to force them to apply the curricula of the Russian Federation in schools. Threatening and intimidating messages were sent to parents to force them to enrol their children in schools operating under the system of the Russian Federation in occupied areas.

Commentary

1. According to international humanitarian law, occupation is defined as the situation where the "[t]erritory is ... actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised" (Art. 42 of the Hague Regulations). In other words, three key elements must be present: (1) the armed forces of another State are physically present on the territory without the consent of the territorial and sovereign State; (2) the territorial State is unable to exercise its authority; and (3) the occupying forces are able to establish their authority over the territory (¶ 304). Occupied territory is regulated by a wide range of provisions in The Hague Regulations of 1907, the Fourth Geneva Convention and Additional Protocol I and by customary international humanitarian law (*see* Legal Framework). Under the law of occupation, there are four key principles. First, the occupying power does not acquire sovereignty over the territory. Second, it is obliged to preserve the status *quo ante* in the occupied territory (Art. 43 of the Hague Regulations). Third, recognizing the challenges of managing a hostile territory, international humanitarian law strives to balance the interests of the territorial power and the local

population on the one hand and the security needs of the occupying power on the other (Art. 64 para 2 of the GC IV). With this view, the responsibilities of the occupying power include ensuring the humane treatment of the local population (Art. 27 of the GC IV), meeting their needs (Art. 43 of the Hague Regulations; Art. 55 of the GC IV), respecting private properties (Arts 46 para 2 and 52 of the Hague Regulations; Rule 51 of the ICRC Study), managing public properties (Arts 53 and 55 of the Hague Regulations), maintaining educational establishments and curricula (Art. 50 of the GC IV), ensuring medical services (Art. 56 of the GC IV) and, if necessary, allowing relief operations (Arts 55(1) and 56(1) of the GC IV; Art. 69 of the AP I). To maintain its own security, the occupying power is also permitted to adopt constraining measures, including the internment of individuals within the local population when necessary for security reasons (Arts 41, 42, 43 and 78 of the GC IV). Fourth, the occupying power cannot exercise its authority to further its own interests or use the inhabitants, resources or assets for its own benefit. It should be noted that civilians in occupied territories are protected persons (Art. 4 of the GC IV).

2. There is no doubt that Russia has established control over and occupied Crimea, as well as the regions of Donetsk and Luhansk since at least April 2014. Additionally, since around February 2022, Russia has occupied parts of Kherson, Zaporizhzhia, and other territories in eastern Ukraine (¶¶ 6–7). As explained in Chapter 9.3, the Russian Federation directly or indirectly organized referenda in Crimea, Donetsk, and Luhansk, leading to their incorporation into the Russian Federation. This action clearly violates a key principle of occupation law, which states that the occupying power cannot acquire sovereignty over the territory, whether consensually or non-consensually. By integrating these regions into Russia, the latter has imposed its own legal, administrative, judicial, economic, and social systems onto the occupied territories (¶¶ 19–21). This constitutes a violation of the second key principle of occupation law which mandates that the occupying power must maintain the status *quo ante,* as occupation is temporary and the territory is meant to return to the control of the territorial State, i.e., Ukraine.
3. It should be stressed that the fact that the occupying power, i.e. Russia, unilaterally annexed all or part of an occupied territory or made changes "into the institutions or government of the said territory" does not deprive the protected persons of the benefits of the Geneva Convention IV (Art. 47 of the GC IV). It is crucial to bear this in mind when assessing the broad range and widespread nature of Russia's breaches of occupation law: ill-treatment of the local population, including unlawful detention (OSCE/ODIHR 2024 ¶ 42–51 and 110; UNSG 2024¶¶ 42–46), misappropriation of private and public property (OSCE/ODIHR 2024 ¶ 44; UNSG 2024¶¶ 58–60), replacement of Ukrainian law by Russian law (ECtHR 2024 ¶¶ 944–946; UNSG 2024¶¶ 19–23), compulsory work and conscription, changes in school curricula (*see* Chapter 9.8), transfer of the civilian population (UNSG 2024¶¶ 26–30) (in relation to children, *see* Chapter 9.8), etc. Our commentary focuses on two important and related issues: the forced adoption of Russian citizenship and forced conscription into the Russian armed forces.
4. Article 45 of The Hague Regulations clearly specifies that "[i]t is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power." The prohibition underscores that "occupation does not sever the bond existing between the inhabitants and the conquered State" (p. 346). It encompasses a broad spectrum of coercive acts, ranging from forcing civilians to pledge allegiance, thereby undermining their citizenship duties, to subjecting them to threats and harassment, to passing laws and policies that effectively require the local population to swear allegiance to or adopt the nationality of the occupying power to access basic rights and necessities, to enacting legislation that imposes that nationality on the

civilians. These practices have been observed in the occupied territories. First, civil servants are forced to swear allegiance to maintain their jobs, notably through the requirement of applying for a Russian passport (¶ 92). This action is considered collaboration by the Ukrainian authorities, leading to charges under the Criminal Code, without distinguishing between voluntary and involuntary cooperation (¶¶ 105−106). Second, civilians lacking Russian passports face discrimination, including being subjected to searches and threats and being blocked from crossing checkpoints (UNSG 2024 ¶ 25). Third, possessing a Russian passport becomes a prerequisite for accessing employment, education, public welfare, pensions (¶ 92), social benefits, humanitarian aid, and for the freedom of movement within (and departure from) the occupied territories (OSCE/ODIHR 2024 ¶ 81; UNSG 2024 ¶ 24). Those without a Russian passport are deemed "foreigners" and face the risk of deportation (UNSG 2024 ¶ 30). Fourth, certain individuals were given Russian nationality without their consent, e.g. "children who were held in orphanages and in boarding schools at the time, persons in psychiatric institutions and persons who were in custody or in places of detention, as well as children born after the 'occupation'" in Crimea (¶ 64). These actions underscore the russification of the occupied territories, directly contravening the principle that occupation should be a transitional and temporary regime.

5. The Hague Regulations prohibit a party to "compel the nationals of the hostile party to take part in the operations of war directed against their own country" (Art. 23(h)). This provision is limited to those who hold Ukrainian nationality and those who take an active part in the hostilities, rather than being simply conscripted and receiving military training. However, within the broader context of the prohibition of forced labor in occupied territories (Art. 51 of the GC IV; Rule 95 of the ICRC Study), the occupying power "may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted" (Art. 51 of the GC IV). This provision applies more widely to protected persons rather than to enemy nationals. It is crucial to underline that the adoption of Russian nationality by Ukrainian citizens in the occupied territories does not strip them of their rights and benefits under occupation law. Moreover, unlike the rule under the Hague Regulations, it also includes serving in the armed or auxiliary forces (pp. 296−297). Ukrainian nationals have been forcefully conscripted and mobilized by the Russian armed forces, and propaganda has been deployed to secure voluntary enlistment (¶ 97). Additionally, Ukrainian nationals who were registered with relatives in Russia were obligated to fulfil military service requirements (p. 24). Reports also indicate that the occupation administration indirectly distributed leaflets urging segments of the population to join the occupying power (pp. 24−25). It should be emphasized that such acts qualify as war crimes under Article 147 GCIV and Article 8(2)(a)(v) ICC Statute.
6. **For further reading**, *see* (1) Maksym Vishchyk & Jeremy Pizzi, "Nationality as the Basis of Protected Status under Geneva Convention IV: A Mysterious Case of Mistaken Death," EJIL:Talk! (Aug. 23, 2024); Manuel Galvis Martínez, *Allegiance in International Humanitarian Law: The Duty of Fidelity and the Laws of Armed Conflict*, 29 JOURNAL OF CONFLICT AND SECURITY LAW 213 (2024); Agnieszka Szpak & Julia Kolodziejska, *The Use of the OSCE Moscow Mechanism and International Humanitarian Law in the Russian Aggression against Ukraine,* 32 JOURNAL OF CONTEMPORARY EUROPEAN STUDIES 20 (2023); David Wallace, "The Law of Belligerent Occupation," Articles of War (Mar. 8, 2023); Kenneth Watkin, *Occupation: Treachery, Treason and Ukraine's War in the Shadows,* 58 TEXAS INTERNATIONAL LAW JOURNAL 1 (2023); Anastasiya Donets & Alexandre Prezanti, *A Hostage*

City: Hunger, Disease, and Inhumanity in Russian-Occupied Mariupol, 58 TEXAS INTERNATIONAL LAW JOURNAL 99 (2023); Marten Zwanenburg, "Forced Conscription in the Self-Declared Republics," Articles of War (Aug. 8, 2022).

9.6 State Responsibility for Violations of International Human Rights Law

Since the conflict began in 2014, both Russia and Ukraine have breached international human rights law. Following the invasion, the Human Rights Council "demand[ed] that the parties respect human rights and fully comply with their applicable obligations under international law, including international human rights law" (prmbl). International human rights law requires States to respect, protect and fulfil the human rights of all individuals within their territory or under their jurisdiction. The main sources of this legal regime are universal (e.g. the International Covenant on Civil and Political Rights (ICCPR)) and regional (e.g. the European Convention on Human Rights (ECHR)) treaties. It should be stressed that the most fundamental rules of international human rights law also form part of customary international law and are of *jus cogens* (i.e. peremptory) nature.

Human rights are traditionally categorized into three interrelated generations, each representing a different set of rights: first-generation rights include civil and political rights such as the right to liberty and security; second-generation rights encompass economic, social, and cultural rights; and third-generation rights include solidarity rights (*see* Vasak). The sheer number and type of human rights violations committed by the parties to the conflict since 2014 prevents us from offering an overview of such violations. Accordingly, this Section focuses on first-generation rights, notably freedom from torture and cruel, inhuman or degrading treatment (such type of treatment that includes a sexual component is addressed in Chapter 9.7), and the right to liberty and security in the form of enforced disappearance, both norms being of *jus cogens* nature and applicable to both State and non-State actors (¶ 106). Part V covers freedom of expression and freedom of religion and belief in relation to repression in Russia and the occupied territories. The documents have been chosen because they are either thematic reports or the latest reports building upon previous reports.

A vast array of mechanisms has been deployed to monitor international law (including human rights law) compliance in the armed conflict in Ukraine: the United Nations Human Rights Council has passed resolutions, an Independent International Commission of Inquiry on Ukraine was established in March 2022 (¶ 11), and a Special Rapporteur on the Situation of Human Rights in the Russian Federation was established in October 2022. All U.N. treaty- and U.N.-Charter-based bodies can be involved in examining human rights violations via reporting and complaints mechanisms. At the European level, the European Court of Human Rights has adjudicated several cases in which Ukraine was the claimant and Russia the defendant, and it has received a sizeable number of complaints from individuals whose rights have been violated since the beginning of the conflict in 2014.

Office of the United Nations High Commissioner for Human Rights and United Nations Human Rights Monitoring Mission in Ukraine – Enforced Disappearances in the Autonomous Republic of Crimea and the City of Sevastopol, Ukraine, Temporarily Occupied by the Russian Federation – March 31, 2021

Since the beginning of the occupation of Crimea in 2014, OHCHR has documented 43 cases of enforced disappearances in Crimea. ... For the most part, the 43 documented enforced disappearances took the form of abductions and kidnappings. Some cases began with what was ostensibly a legal arrest at the initial stages of deprivation of liberty but ultimately culminated in an undeclared detention and concealment of whereabouts of the victim.

...

In cases where victims were released, they raised credible allegations of ill-treatment and torture, particularly, by the FSB and the Crimean self-defense group. Torture and ill-treatment methods included electrocution, beatings, knife cuts, death threats, shootings into the limbs with pneumatic guns, pressing burning cigarettes into the skin, drowning, suffocation, and mock execution. Some victims were also deprived of access to food, water, and use of a toilet. Incidents of sexual violence against the victims also took place and included forced nudity, rape threats, and electrocution of the genitals.

Perpetrators resorted to torture and ill-treatment, inter alia, with the aim of forcing victims to self-incriminate or testify against others. In cases where the released victims attempted to have their injuries documented by medical staff in public hospitals in Crimea, they encountered a general reluctance among hospital staff to examine them, exercise proper due care during such examinations or provide them with documentation. This practice seriously hampered the already poor prospects of ensuring accountability for torture and ill-treatment, as proper medical documentation of injuries can provide key evidence when seeking justice and remedies. In addition to the specific ill-treatment and torture techniques mentioned above, depriving victims of their liberty coupled with uncertainty about their whereabouts, fate, and duration of detention, and concealing this and other relevant information from relatives can amount to ill-treatment in itself. Released victims told OHCHR that they were placed in unidentified buildings, such as derelict basements in industrial or office buildings and private houses with poor conditions, without any access to the outside world or clear information about the reasons for which they were being kept.

Russian Federation authorities have not been transparent about investigations into enforced disappearances in Crimea. Official information from the Russian Federation authorities is often lacking on whether formal investigations have been initiated and of any eventual outcomes. As a general rule, the relatives of victims are denied access to the investigation's case files and, as such, allege that these are only pro-forma investigations.

OHCHR's documenting of cases shows that not one individual has been prosecuted in relation to any of the disappearances described in this paper, including the missing persons, the victim of summary execution, and the cases where victims have been eventually released. Inquiries and investigations that were opened in relation to the documented cases have not reached the trial stage, even though 28 of the enforced disappearances occurred in 2014.

The authorities did not make progress in investigating enforced disappearances in early cases where there was evidence that members of the Crimean self-defense were the perpetrators. In 2014, the Parliament of Crimea legalized the Crimean self-defense by turning it into a civil group with powers to assist the police. This recognition of the group as agents of the state took place despite the numerous testimonies implicating members of the self-defense in crimes and human rights violations with apparent impunity. In later years, when available evidence pointed to the FSB as the main perpetrator, investigations again showed no results.

...

The authorities in mainland Ukraine, in particular the Prosecutor's Office for the Autonomous Republic of Crimea, have opened criminal investigations in certain cases but, without

physical access to the territory of the peninsula, have faced objective difficulties in their attempts to bring perpetrators to justice.

Office of the United Nations High Commissioner for Human Rights – Arbitrary Detention, Torture and Ill-Treatment in the Context of Armed Conflict in Eastern Ukraine, 2014−2021 – July 5, 2021

31. ... The armed conflict resulted not only in military and civilian casualties and substantial damage to civilian objects and infrastructure, but also in wide-scale detention, including arbitrary, secret and incommunicado detention, and torture and ill-treatment of detainees, including conflict-related sexual violence.

32. OHCHR believes that the scale and gravity of these human rights violations were exacerbated by the already existing endemic torture and ill-treatment of detainees in Ukraine before 2014, and the collapse of law and order in the conflict zone. Armed actors seemed unaware of their obligations under international human rights law and international humanitarian law, and there was a lack of oversight over armed actors and some commanders were believed to be complicit. Hate speech and disinformation aimed at dehumanizing and demonizing opposing parties resulted in an atmosphere of hatred and incitement to violence.

...

34. In Crimea, individuals opposed to the Russian Federation's occupation or critical of Russian Federation policies applied on the peninsula, such as journalists, bloggers, supporters of the Mejiis and pro-Ukrainian and Maidan activists, were targeted for prosecution and often became victims of arbitrary detention, torture and ill-treatment by the State agents of the Russian Federation. For a three-week period following the overthrow of Ukrainian authorities in Crimea, human rights violations occurring on the peninsula were mostly attributed to members of the Crimean self-defence and various Cossack groups. Following Crimea's temporary occupation, representatives of the Crimean Federal Security Service of the Russian Federation (FSB) and police were more frequently mentioned as perpetrators. OHCHR found that torture by beating, electrocution, asphyxiation, mock executions and sexual violence had been used, allegedly by Russian state agents, against people in detention or in the time between their de facto deprivation of liberty and formal placement in detention.

...

36. OHCHR estimates that since the launch of the ATO in mid-April 2014 until 30 April 2021, Government actors have detained from 3,600 to 4,000 individuals in the context of the armed conflict.

...

43. From the beginning of the armed conflict, conflict-related detainees faced torture and ill-treatment by Government actors. From April 2014 to 30 April 2021, OHCHR documented the detention of 767 individuals (655 men and 112 women), 68.8 percent of whom (528, including 456 men and 72 women) were subjected to torture or ill-treatment, including conflict-related sexual violence. The extrapolation of these proportions to the estimated total number of arbitrary conflict-related detentions by Government actors during the entire conflict period (2,300) indicates that there would have been approximately 1,500 victims of conflict-related torture and ill-treatment.

44. Sixty per cent of all cases of torture and ill-treatment by Government actors documented by OHCHR occurred between 2014 and 2015; 74 per cent of individuals arbitrarily detained during that period were tortured or ill-treated.

45. According to victims interviewed by OHCHR, torture and ill-treatment were used to extract confessions or information, or to otherwise make detainees cooperate, as well as for punitive purposes, to humiliate and intimidate, and to extort money and property.

46. Methods of torture and ill-treatment included beatings, dry and wet asphyxiation, electrocution, sexual violence on men and women, positional torture, water, food, sleep or toilet deprivation, isolation, mock executions, prolonged use of handcuffs, hooding, and threats of death or further torture or sexual violence, or harm to family members. In many cases, especially at the initial stages of the conflict, torture or ill-treatment of individual detainees was exacerbated by poor detention conditions, which themselves often amounted to ill-treatment.

...

56. OHCHR estimates that from mid-April 2014 until 30 April 2021, armed groups and other actors of self-proclaimed 'republics' have detained from 4,300 to 4,700 individuals in the context of the armed conflict in eastern Ukraine. Men comprised an estimated 85 per cent of all conflict-related detainees and women 15 per cent. Conflict-related detentions of children were rare, estimated to be in the dozens, mostly during the initial stages of the conflict.

...

67. The methods of torture and ill-treatment described by victims to OHCHR included beatings, dry and wet asphyxiation, electrocution, sexual violence on men and women, positional torture, water, food, sleep or toilet deprivation, isolation, mock executions, prolonged use of handcuffs, hooding, and threats of death or further torture or sexual violence, or harm to family members. In many cases, especially at the initial stages of the conflict, torture or ill-treatment of individual detainees was exacerbated by poor detention conditions, which themselves often amounted to ill-treatment.

...

80. The Government's lack of access to territory controlled by self-proclaimed 'republics' considerably challenges its investigations into human rights violations and abuses perpetrated there, and thus rarely resulted in prosecutions. ...

81. OHCHR also observed a lack of political will and motivation to investigate cases of conflict-related arbitrary detention, torture and ill-treatment allegedly perpetrated by Government actors, as well as misuse of procedure to avoid proper investigation of such cases.

...

83. 'Law enforcement' entities set up in self-proclaimed 'republics' have reportedly investigated some cases of conflict-related arbitrary detention, torture and ill-treatment, including conflict-related sexual violence, which occurred in territory under their control. These investigations appear to have been selective, focusing mostly on acts committed by members of those armed groups which have been disbanded or otherwise re-organized due to alleged lack of discipline or loyalty to the 'republics'. The investigations also lacked due process and fair trial guarantees.

United Nations Human Rights Council – Report of the Independent International Commission of Inquiry on Ukraine – March 15, 2023

87. Since 24 February 2022, the Ukrainian authorities have opened thousands of investigations into allegations of collaboration and treason in the context of the armed conflict. The Commission has collected dozens of accounts from lawyers, former detainees, and detainees' relatives related to detentions under charges of high treason, collaborative activity, and support for the aggressor state. There have been allegations that in detention, Ukrainian authorities committed torture, ill-treatment, violated procedural rights, and detained persons in inhuman conditions.

88. Witnesses reported beatings, mock executions, and threats to harm the detainee or the detainee's family. In some situations, there were reportedly no arrest warrants, and some detainees were held incommunicado, sometime for several days. They reported sleep and food deprivation.

89. The Commission is concerned about these allegations. However, at the time of the writing of this report, it has not been in a position to corroborate these allegations, and it recommends further investigations.

Office of the United Nations Commission for Human Rights – Detention of Civilians in the Context of the Armed Attack by the Russian Federation against Ukraine: 24 February 2022 – 23 May 2023 – June 30, 2023

68. In most documented cases, OHCHR observed a pattern of Russian armed forces and occupying authorities refusing to either acknowledge the fact of detention or to disclose information about the detainees' fate and whereabouts to relatives, lawyers and other persons concerned for prolonged periods of time. ...

69.In cases where relatives were present at the moment of arrest, Russian armed forces either did not provide them with information about the place where they were taking the victim or only stated that the victim would be back soon. Detainees were transferred to places of detention blindfolded, a practice which prevented those subsequently released from providing any information about the location of their place of detention.

70. When victims were held in unofficial places of detention, Russian armed forces rarely confirmed the detention to relatives or friends inquiring about them. ... In rural areas, Russian armed forces usually transferred detainees to places outside of their communities or banned local residents from approaching locations where troops were stationed, which rendered it difficult for families to actively search for victims, particularly in situations of ongoing active hostilities.

71. In cases where detainees were transferred to Russian-occupied Crimea or deported to the Russian Federation, relatives usually received information about their fate after several months of detention, but nothing about their specific whereabouts. On those occasions when detainees were allowed to send letters, the correspondence was monitored to ensure that it did not mention the name of the place of detention. Detainees were also transferred to different detention facilities within the Russian Federation, which made it difficult for relatives to verify information from released detainees and POWs.

...

85. The case examples above illustrate how the practices of the Russian Federation with regard to detention of civilians, combined with the lack of procedural safeguards and preventive measures observed, have created an environment which creates a serious risk of arbitrary detention, and along with other serious human rights violations such as torture, ill-treatment and enforced disappearances.

86. OHCHR has found that many of the documented arbitrary detentions also amounted to enforced disappearances, either due to a refusal to acknowledge the detention or by concealment

of the fate or whereabouts of persons deprived of liberty. Several common elements in the cases documented appeared to facilitate the commission of enforced disappearances, including failure to provide information regarding interned civilians to the national information bureau; denial of access of international monitors (including OHCHR) to places of detention; use of unofficial places of detention; multiple transfers of an individual between locations, creating difficulties for families to trace the detainee's whereabouts; prolonged or complete denial of access to mechanisms to review or to challenge the detention; *incommunicado* detention; and refusal to allow communication with the outside world.

...

115. OHCHR documented 65 cases where Ukrainian State agents held detainees for periods ranging from several hours to 135 days in unofficial places of detention, including apartments, hotels, hostels, basements and premises of local law enforcement offices. Continuing detention in unofficial places is inconsistent with the obligation of States to effectively prevent enforced disappearances. In some of the documented cases, the incommunicado deprivation of liberty in unofficial places of detention may also amount to concealment of the fate of and whereabouts of detainees, thus placing the detainee outside the protection of the law, contrary to the prohibition on enforced disappearances. The deprivation of liberty of individuals in unofficial places of detention is prohibited.

...

130. Civilians were detained within a criminal justice system amended to allow for broad bases of detention with weaker procedural safeguards, increasing risks of arbitrary detention. Safeguards were further diminished by the use of unofficial places of detention, a practice that OHCHR has previously documented in 2014−2021.

131. The cumulative effects of such an environment risked placing detainees outside the effective protection of law. A significant number of cases of arbitrary detention of male civilians documented by OHCHR also amounted to enforced disappearance. In practice, these cases occurred where law enforcement officers, mainly from the SBU, detained individuals without court authorization; held them *incommunicado* for several days, sometimes transferring them to one or several unofficial places of detention; stripped them of the right to legal counsel; and left their loved ones uninformed of their fate or whereabouts.

...

139. OHCHR is not aware of any ongoing investigations by the Russian Federation in relation to arbitrary detentions, enforced disappearances, torture or ill-treatment perpetrated by its own forces in Ukraine. Of serious concern, on 13 December 2022, the Parliament of the Russian Federation approved, in its first reading, a draft federal law which, *inter alia*, potentially provides exemption from criminal liability for offences under international law committed in the Donetsk, Luhansk, Zaporizhzhia and Kherson regions of Ukraine if such offences were committed for the sake of "protecting the interests of the Russian Federation". Such a law would not only provide impunity for serious violations of IHL and IHRL, but may also encourage further commission of such offences. OHCHR also notes that international law prohibits the granting of amnesty in relation to serious violations of IHL or gross violations of IHRL, as this would violate the State's obligation to investigate and, where appropriate, prosecute alleged perpetrators.

140. OHCHR is not aware of any completed criminal investigations launched by Ukrainian authorities into Ukrainian State actors alleged to be involved in arbitrary detentions or enforced disappearances of conflict-related detainees.

141. The Government of Ukraine reportedly launches criminal investigations into each report of detention of civilians perpetrated by the Russian Federation. Some of these proceedings have been initiated as a part of umbrella cases on war crimes and crimes against humanity. Twenty-three individuals have been convicted and sentenced (including 19 *in absentia*) in relation to arbitrary detentions, enforced disappearance and torture of conflict-related detainees. Of these, five members of the Russian armed forces have been convicted to date *in absentia* in relation to the detention of civilians in Yahidne village.

142. The Government of Ukraine also launched a mechanism to compensate victims of conflict-related arbitrary detention and enforced disappearance. ...

143. OHCHR has documented grave and wide-ranging violations of IHRL and IHL against conflict-related civilian detainees. OHCHR identified patterns of conduct which have resulted in arbitrary detention, as well as further human rights violations including torture, ill-treatment and enforced disappearances. While such conduct was found in relation to both parties to the conflict, there was greater prevalence of conduct attributed to forces of the Russian Federation.

United Nations Human Rights Council – Report of the Independent International Commission of Inquiry on Ukraine – March 18, 2024

75. In Ukraine, the Commission continued to gather evidence of torture committed by Russian authorities in areas they controlled. Many of the victims were detained in the context of house searches. Perpetrators were generally looking for persons they suspected of collaborating with or supporting the Ukrainian authorities. In addition to the detention facilities identified previously, the Commission investigated torture committed in the police department in Melitopol city and the district police in Vasylivka town, both in Zaporizhzhia Province; in the temporary detention centre in Kherson city, Kherson Province; and in other places of detention. According to former detainees, perpetrators of torture were Russian armed forces, members of the Federal Security Service and detention facility guards.

76. In detention, torture was committed to extract information about the Ukrainian armed forces and persons cooperating with them. Perpetrators used torture methods which the Commission has described in its previous reports, including beatings using various tools and the administration of electric shocks with tasers and the so-called “tapik”. The Commission has also investigated incidents of rape of women in detention (see, for instance, paras. 86, 87 and 92).

77. The Commission has previously reported that in areas under Russian control for longer periods, victims mentioned that special services from the Russian Federation had operated in some of the detention facilities, and notably that members of the Federal Security Service had led interrogations and inflicted torture. The Commission further confirmed this pattern, for instance in the temporary detention centre in Kherson city. ...

78. According to former detainees, around July 2022, prison guards from the Russian Federation that looked “professional” replaced the Russian armed forces who had initially run the facility and members of the Federal Security Service, referred to as “investigators”, conducted the interrogations. They gave orders to the guards concerning treatment to be inflicted on the detainees, including in preparation for interrogations, which mainly meant beating and administering electric shocks. ...

79. Over the course of its two mandates, the Commission has reported on the widespread and systematic use of torture by Russian authorities, both in Ukraine and in the Russian Federation.

...

80. The consistency of the evidence regarding the torture of both civilians and prisoners of war, throughout its reports, as well as the common elements observed in the documented cases, show the systematic nature of the practice. Practices and techniques used across different detention centres – including commonly used names for certain torture methods and devices – all of which are designed to cause immense pain and degradation, are routinely applied to detainees. Their use in several provinces of Ukraine and of the Russian Federation, mainly in various detention facilities, demonstrates the widespread nature of the torture.

European Court of Human Rights – Case of Ukraine v Russia (*Re* Crimea) – Judgment – June 25, 2024

968. On the basis of the above material, it can be concluded that during the period under consideration (between 27 February 2014 and 26 August 2015, thus falling within the temporal scope of the case), there were approximately thirty instances of disappearances. Furthermore, the Court is aware that, in the subsequent period, but not after 2018, there were further such instances. The total number of documented cases of disappearances between 2014 and 2018 was forty-three.

970. However, the Court does not consider that the overall examination of the complaint about the existence of an administrative practice of enforced disappearances in the present case is to be confined only to these individuals who remain unaccounted for. In the Court's view, the following factors are of particular importance even though the presumption of death applies only to those individuals: the overall context of a large number of instances of irregular deprivation of liberty and the relatively short period during which the abductions took place; based on the available evidence, the abductions were perpetrated either by the CSDF, the Cossacks, Russian Federation armed forces or by agents of the Russian Federal Security Service (FSB) – acts by any of these perpetrators entailed the responsibility of the respondent State irrespective of whether it exercised detailed control over their policies and actions (see *Georgia v. Russia* [GC] (II), cited above, § 200); the fact that the victims were predominantly pro-Ukrainian activists, journalists and Crimean Tatars who were perceived, as their common feature, as opponents to the events that had unfolded in Crimea at the time; the fact that the abductions followed a particular pattern and were used as a means to intimidate and persecute such individuals in the enforcement of a global strategy of the respondent State to suppress the existing opposition in Crimea to the Russian "occupation". Some of these factors were referred to by the applicant Government in their oral pleadings (see paragraph 952 above). Due to their deliberate absence from the oral hearing, the respondent Government did not reply to those arguments (see paragraph 27 above). In the light of the above elements, the Court considers that during the period under consideration there were "sufficiently numerous" instances of abduction to amount to a pattern or system ("repetition of acts"). The phenomenon is to be considered in itself life-threatening so as to engage the applicability of Article 2 of the Convention as regards that administrative practice. This is the case regardless of the fact that most of those abducted were released soon after they had gone missing.

971. The evidential material further shows consistently that the prosecuting authorities of the respondent State did not carry out an effective investigation, if any investigation at all, into the incidents underlying the credible allegations made by relevant international organisations (and the Russian Ombudsperson) of an administrative practice of enforced disappearances. Furthermore, the respondent Government did not provide the Court with any information in this respect or with copies of any relevant case files which are in their exclusive possession.

972. The above-mentioned reluctance of the authorities of the respondent State to

investigate the allegations under this head and to cooperate with the Court in the present proceedings further militate in favour of the existence of the "official tolerance" component of the administrative practice. Furthermore, the Court notes that the impugned "pattern or system" of enforced disappearances continued for several years after the period under consideration.

973. In such circumstances, the existence of an administrative practice under this head, relating to both the substantive and procedural limbs of Article 2, is established beyond reasonable doubt. Furthermore, there is sufficient evidential material to prove beyond reasonable doubt that the responsibility of the responsible State under the Convention is engaged.

974. Accordingly, there has been a violation of Article 2 on account of an administrative practice of enforced disappearances and the lack of an effective investigation into the alleged existence of such an administrative practice.

...

992. In such circumstances, the Court is satisfied that it has sufficient evidence in its possession to enable it to conclude beyond reasonable doubt that there existed an accumulation of identical or analogous breaches of Articles 5 and/or 3 during the period under consideration which are sufficiently numerous and interconnected to amount to a pattern or system of ill-treatment and unlawful detention.

...

995. The Court finds no grounds to deviate from the above approach at the present stage of the proceedings, which, of course, requires a higher standard of proof than the prima facie threshold applicable at the admissibility stage (see paragraph 12 above). Following this approach, the Court considers that the available evidence is sufficient to enable it to establish beyond reasonable doubt that the "official tolerance" element of the administrative practice under this head is satisfied. This conclusion also follows from the failure of the respondent Government to provide convincing arguments, as well as their failure, as noted above, to adequately engage with the complaints under this head. The Court considers it appropriate to draw the necessary inferences from that failure (see paragraph 846 above).

996. Given the Court's findings as to the respondent State's jurisdiction in Crimea under Article 1 of the Convention, that State was also responsible for the actions of any of the perpetrators other than the Russian military personnel, without it being necessary to provide proof of "detailed control" in respect of each of their actions (see *Georgia v. Russia (II)*, cited above, § 248).

997. Having regard to all those factors, the Court concludes that there was an administrative practice contrary to Article 3 of the Convention as regards the treatment to which Ukrainian soldiers, ethnic Ukrainians and Tatars, as well as journalists, were subjected and which caused them undeniable mental and physical suffering.

Commentary

1. While international humanitarian law is the most relevant legal regime (*lex specialis)* in armed conflict, international human rights law continues to apply concurrently (*see* ICJ 1966 ¶ 25; ICJ 2004 ¶¶ 101−106; ICJ 1986 ¶ 168; HRC 2004 ¶ 11). As the Human Rights Council stressed in its Resolution on the Situation of Human Rights in Ukraine, "international human rights law and international humanitarian law are complementary and mutually reinforcing" (prmbl.). In other words, international human rights law, be it based on treaty or customary law, is applicable to the conflict in Ukraine. Ukraine and Russia are parties to *inter alia* the ICCPR and its first Optional Protocol, the Convention against Torture and Other Cruel, Inhuman or

Degrading Treatment or Punishment (UNCAT). Ukraine has also ratified the International Convention for the Protection of all Persons from Enforced Disappearance (ICPPED). At the regional level, both Ukraine and Russia are parties to the ECHR though, following its exclusion from the Council of Europe, Russia is not bound by the ECHR as of September 16, 2022 (¶ 7).

2. However, a State may suspend certain rights temporarily, but only under specific circumstances outlined in the relevant treaty provisions (e.g. Art. 4 of the ICCPR; Art. 15 of the ECHR) and with regard to certain rights. In times of emergency, certain rights, called non-derogable rights, cannot be suspended. These include the right not to be subjected to arbitrary deprivation of life (Art. 3 of the UHDR; Art. 6(1) of the ICCPR; HRC 2019 ¶ 2; Art. 2 of the ECHR), the prohibition of torture or other cruel, inhuman or degrading treatment or punishment (Art. 7 of the ICCPR; Art. 3 of the ECHR), fundamental guarantees of fair trial (Art. 14 of the ICCPR), and obligations to provide adequate access to justice and remedies to victims. The Russian Federation has not issued a declaration of derogation under any human rights law treaties and is thus bound by the full set of human rights obligations (*see* legal framework). In 2015 (and in the following years) Ukraine submitted several notifications – which were updated and extended (Figure 1), and are viewed as valid (¶ 167). In addition, a State's human rights obligations may apply outside of its territory under certain circumstances, such as when the State exercises effective control (for ICCPR, *see* HRC 2004 ¶ 10; for ECHR, *see* ECtHR 2022 ¶ 553). Russia, as such or through separatist entities, is in effective control of Crimea (¶ 873) and the eastern regions of Luhansk and Donetsk (¶¶ 695−697), as well as any other territories it occupies in the process of the ongoing armed conflict. Therefore, it must comply with its human rights obligations in these territories. Furthermore, the European Court of Human Rights (ECtHR) emphasized that the territorial State, in this case, Ukraine, "remains under a residual duty to take all the appropriate measures which it is still able to take, including to re-establish control over the territory in question and to ensure respect for the applicant's individual rights" (¶ 554). In addition, even though non-State actors like the DPR or the LPR are not bound by human rights treaties, it is generally accepted that entities exercising government-like functions and exerting control over a territory must comply with human rights law (at least norms of a *jus cogens* nature). This is especially true when their actions impact the human rights of individuals under their authority (*see* CoI Syria 2012 ¶ 106; UNSG President).
3. States have both positive and negative obligations under human rights law. Negative obligations require States to respect human rights and refrain from interfering with them, except when justified. Positive obligations, on the other hand, entail ensuring that an individual's rights are not violated by the actions or inactions of others. Such types of obligations also include the duty to fulfil human rights, which involves taking positive actions to ensure individuals do enjoy these rights, and the responsibility to investigate violations. It is essential to keep these obligations in mind when examining violations of human rights law in the context of the Russian-Ukrainian conflict.
4. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is enshrined in a vast array of international legal instruments such as the ICCPR (Art. 7), the ECHR (Art. 3), the UNCAT and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. It is of customary nature, is viewed as a *jus cogens* norm (¶ 1) and cannot be derogated from (Arts 1 and 2(2) of the UNCAT; Arts 2 and 7 of the ICCPR; Arts 3 and 15(2) of the ECHR). It is of particular relevance to individuals deprived of their liberty. Torture is defined "any act by which severe pain or suffering, whether

physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity" (Art. 1). In other words, torture is an aggravated and deliberate form of other types of ill-treatment.

5. The excerpts above indicate has been widely and systematically used in detention places varying in terms of type, size, purpose and entities running them and involving actors from Russia, Ukraine and non-state groups in Crimea and the so-called "independent" entities. The bulk of these violations have been perpetrated by Russian agents (e.g. Russian armed forces, FSB and detention facility guards (¶ 75)) and related groups, such as the Crimean self-defence (UNOHCHR/UNHRMMU 2021 p. 6; UNHCR 2021 ¶ 34) and the agents of the self-proclaimed republics (UNHCR 2021 ¶ 67). Torture is prevalent against some categories of individuals, such as current and former members of the Ukrainian armed forces and associated persons, local officials, law enforcement personnel and civilians with pro-Ukrainian views (CoI 2023 ¶ 72; UNHCR 2021 ¶ 57). In Crimea, journalists, supporters of Meijiis and pro-Ukrainian activities were and are targeted (¶ 34). The purpose of torture is to obtain military operations (¶ 76), extract confessions (OSCE/ODIHR 2024 ¶ 44; UNOHCHR/UNHRMMU 2021 p. 6; SRHRRF 2024 ¶ 92) and force victims to testify against others (p. 6), secure cooperation (CoI 2024 ¶ 76; OSCE/ODIHR 2024 ¶ 44), or inflict punishments (¶ 44), all purposes that are listed under the definition of torture. Detainees were subjected to severe physical and mental pain and suffering (CoI 2023 ¶¶ 74−76; OSCE/ODIHR 2024 ¶ 46; UNOHCHR/UNHRMMU 2021 p. 6), sometimes resulting in death (¶ 75). The fact that the same methods of torture were applied across several regions and involved elements of planning and available resources shows that such behavior was widespread and systematic, occurring with the direct authorisation, deliberate policy or official tolerance from the State authorities (CoI 2023 ¶77; CoI 2024 ¶¶ 79−80; *see* also OHCHR 2023 ¶ 143; UNSPT ¶ 50). Specifically regarding Crimea, the European Court of Human Rights stated that there was an administrative practice of torture and ill-treatment (¶¶ 992, 995 and 997). Most references to torture perpetrated by Ukrainian authorities date back to 2014−2015 (¶¶ 37−38), though instances have been reported until 2021 (¶¶ 45−46). More recently, international organizations have raised concerns regarding the treatment of alleged collaborators (CoI 2023 ¶¶ 87−89; CoI 2024 ¶ 82; *see* more nuanced view of UNSPT ¶¶ 71−87). The prohibition of torture also includes the obligation to promptly and impartially investigate allegations of such acts (¶ 27). Furthermore, States have the duty under UNCAT to prosecute or extradite individuals accused of acts of torture and to cooperate with such investigations (Art. 7). Neither Russia (OHCHR 2023 ¶ 139; UNSPT ¶ 104), Ukraine (OHCHR 2023 ¶ 140; UNHCR 2021 ¶ 81), nor the groups (¶ 83) have investigated and prosecuted these violations when committed by their own forces, although Ukraine has actively examined allegations of torture by Russia (OHCHR 2023 ¶ 141; UNSPT ¶ 88).

6. As the Human Rights Committee explained in general terms, "the disappearance of persons is inseparably linked" to treatment that amounts to torture or to cruel, inhuman or degrading treatment or punishment (¶ 5.7). Sadly, this holds true for the conflict in Ukraine, where enforced disappearances are rather widespread. Enforced disappearance describes the situation whereby the authorities detain an individual, and then refuse to acknowledge such deprivation

of liberty or the fate of that individual (Art. 2 of the ICPPED; *see* also ECtHR 2012 ¶ 122). In other words, it is comprised of three elements: 1) an individual is deprived of liberty, 2) such deprivation is attributable to the State (either because it was carried out by State agents, or by persons or groups of persons acting with the authorization, support or acquiescence of the State); and (3) such deprivation is followed by a refusal to acknowledge the detention, or concealment of the person's fate or whereabouts, which place the person outside the protection of the law (Art. 2 of the ICPPED; HRC 2019 ¶ 58; HRC 2021 ¶ 9.5). The European Court of Human Rights presumes death in cases of enforced disappearance (¶ 960). Enforced disappearance is not only a violation in itself, but it also violates several human rights, including the right to recognition as a person before the law (Art. 16 of the ICCPR), the right to liberty and security of the person (Art. 9.1 of the ICCPR) and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (¶ 9.3). Enforced disappearances are considered a continuous human rights violation for as long as the fate of the individual remains unknown (Art. 17(1) of the Declaration on the Protection of All Persons from Enforced Disappearance (DPPED); Working Group 2011 ¶ 39; HRC 2021 ¶ 9.5). Ukraine is bound by the International Convention for the Protection of All Persons from Enforced Disappearance since it ratified it in 2015, but Russia is not. However, as the prohibition on enforced disappearances is of a customary nature (¶ 72), it applies to all states, including Russia. Moreover, since the prohibition violates other human rights and Russia is a party to various international human rights treaties, it is indirectly obligated to uphold this prohibition. The prohibition is also not subject to derogation as enforced disappearances constitute "abductions or unacknowledged detention," the prohibition of which is absolute (HRC 2001 ¶ 13a; Working Group 1996 ¶ 24).

7. Enforced disappearances are rife in this conflict. In Crimea, many cases of enforced disappearances involved abductions and kidnappings, though in some instances individuals were officially arrested (p. 3), and this occurred within a relatively short period of time (¶ 970). The Russian armed forces, the FSB and local groups targeted predominantly pro-Ukrainian activists, journalists and Crimean Tatars, all being perceived as opposed to the changes occurring in 2014−2015 (¶ 970). According to the European Court of Human Rights, "the abductions followed a particular pattern and were used as a means to intimidate and persecute such individuals in the enforcement of a global strategy of the respondent State to suppress the existing opposition in Crimea to the Russian 'occupation'" (¶ 970). In other parts of Ukraine, reports have established a pattern of Russian armed forces and occupying authorities arresting individuals, detaining them in unofficial places, transferring them between locations, and refusing to confirm their whereabouts or allow them to communicate with the outside world (¶¶ 68−70; 85−86). The situation has been particularly acute for detainees transferred to Crimea or deported to Russia (¶ 71). Some reports also mention instances of enforced disappearances by the Ukrainian authorities (¶¶ 115 and 131).
8. Moreover, States are required to take effective measures to prevent the disappearance of individuals (¶ 4), investigate alleged enforced disappearances ("in circumstances which may involve a violation of the right to life" (¶ 4)) (Art. 12 of the ICPPED), and bring perpetrators to justice (HRC 2019 ¶ 58; *see* ECtHR 2012 ¶ 122 and 214). In addition, relatives must have access to relevant information (Art. 18 of the ICPPED) and be informed about the progress and results of investigations whose aim is to establish the fate or whereabouts of disappeared persons, the circumstances of their disappearances, and the identity of the perpetrator(s) (¶ 39). Also, victims of enforced disappearance have the right to full reparation, which includes

compensation, satisfaction, restitution, rehabilitation, and guarantees of non-repetition (Art. 19 of the DPPED). Russia and, to some extent, Ukraine have failed to take preventive measures and investigate complaints. International organisations reporting on human rights violations are unaware of any ongoing investigations by Russia (*see also* ECtHR 2024 ¶ 971; OHCHR 2023 ¶ 139; UNOHCHR/UNHRMMU 2021 p. 12) and completed investigations by Ukraine (¶ 140). In Crimea, relatives were denied access to relevant information and alleged that pro forma investigations were carried out (p. 12).

9. This pattern of torture and forced disappearance displayed by Russian authorities in the conflict in Ukraine reveals a willingness to use any methods to obtain information and suppress dissenting opinions (*see* Chapter 11) in order to win the conflict and establish full control (and obedience) over territories that belong to Ukraine.
10. **For further reading**, *see* (1) Sergio Salinas Alcega, *The Invasion of Ukraine from the Point of View of the European Court of Human Rights: Extraterritorial Responsibility of Russia and (Un)Control of International Humanitarian Law*, QUEBEC JOURNAL OF INTERNATIONAL LAW 293 (2023); (2) Jack Sproson and Tsvetelina van Benthem, "Three Legal Questions Arising from Reported Practices of Enforced Disappearance in Russian-Occupied Ukrainian Territories," EJIL:Talk! (Sep. 1, 2023); (3) Conall Mallory, *Confronting Human Rights Violations in Ukraine* *in* HUMAN RIGHTS IN WAR (INTERNATIONAL HUMAN RIGHTS) 367 (Damien Rogers ed., 2022); (4) Christina Binder, *The Russian War of Aggression against Ukraine: A Classification under International and Human Rights Law* *in* RUSSIA'S WAR OF AGGRESSION AGAINST UKRAINE 223 (Stefan Hansen, Elha Husieva and Kira Frankenthal, eds, 2022).

9.7 State Responsibility for Sexual and Gender-Based Violence

Sexual and gender-based violence in conflict affects women, men, and children. It is often not reported due to various factors, including security concerns, fear of stigma and rejection, and sometimes, a lack of awareness about what constitutes sexual and gender-based violence. Yet, such type of violence has been pervasive in the conflict, most notably but not only (see the first document in this Section that is exclusively focused on conflict-related sexual violence) since the full invasion of February 24, 2022 and in the course of the establishment of (temporary) control or occupation of areas such as Kherson, Zaporizhzhia, Donetsk and Luhansk.

Sexual and gender-based violence can be considered both a crime under international law, falling into the categories of war crimes, crimes against humanity, or genocide (provided the relevant elements are fulfilled), as well as a violation of international human rights or international humanitarian law. This Section focuses on State responsibility and examines the issue as the latter, focusing on three instances: sexual and gender-based violence in people's homes, in detention centres and against prisoners of war. While the reports highlight incidents of sexual and gender-based violence in the years 2014−2015 by Ukraine and armed groups in the eastern region of Ukraine, later reports focus almost exclusively on such type of violence committed by the self-proclaimed republics and Russia (especially since 2022). The documents have been chosen on the basis that they were either thematic reports or the latest reports building upon previous reports.

United Nations Human Rights Council – Conflict-Related Sexual Violence in Ukraine (14 March 2014 to 31 January 2017) – March 16, 2017

59. Based on the cases documented by OHCHR, there are no grounds to believe that sexual violence has been used for strategic or tactical ends by Government forces or the armed groups in the eastern regions of Ukraine, or by the Russian Federation in the Autonomous Republic of Crimea. The majority of cases documented by OHCHR illustrate that sexual violence has been used as a method of torture and ill-treatment in the context of detention related to the armed conflict in eastern Ukraine, as well as in the Autonomous Republic of Crimea. The most frequent forms of sexual violence used in such situations are beatings and electrocution in the genital area, threats of rape, forced nudity and rape.

60. OHCHR found that sexual violence has been perpetrated against both men and women deprived of their liberty on conflict-related charges and, in some cases, against their relatives. The purpose is usually to punish and humiliate them, extract confessions, and/or compel them to relinquish property or perform other actions demanded by the perpetrators, as an explicit condition for their safety and release. The grounds for detention and profile of the victims vary depending on whether the incidents occurred in territory under the control of the Government or of the armed groups.

61. While situations of deprivation of liberty pose the highest risk of sexual violence, OHCHR also identified other factors which increase the danger of conflict-related sexual violence, especially coupled with impunity, collapse of law and order, lack of clear orders and instructions prohibiting sexual violence, and insufficient complaint and reporting mechanisms. Such risk factors include, but are not limited to restrictions on freedom of movement across the contact line through checkpoints and the presence of military and armed group forces in populated areas. Women are particularly vulnerable in such circumstances.

62. Deterioration of economic situation in conflict-affected regions, paired with the destruction of community ties, can expose people or force them to resort to harmful survival strategies and coping mechanisms, which may increase exposure to the risk of sexual violence or trafficking.

63. OHCHR received several allegations that along the contact line, due to lack of income, women and some girls, were resorting to harmful survival practices, for instance engaging in sexual intercourse with members of armed actors in exchange for money or food.

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112. OHCHR has noted prevailing impunity for cases of sexual violence, as well as for other human rights violations and abuses committed in the context of the conflict in Ukraine. This is partly due to the fact that the conflict is ongoing and that a significant part of the territory remains under the control of armed groups, with no oversight by any State authority. The impunity also reflects a systemic decades-old challenge to ensure accountability, as well as the failure to bring those responsible from one's own ranks to account.

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145. While OHCHR noted certain steps taken by all parties to the conflict to improve command structures, prevent and address sexual violence, the prevailing impunity for human rights violations and abuses related to the conflict, unavailable or insufficient complaint and reporting mechanisms still exacerbate the risk of sexual violence.

United Nations Human Rights Council – Report of the Independent International Commission of Inquiry on Ukraine – March 15, 2023

78. The Commission has documented cases of sexual and gender-based violence involving women, men, and girls, aged from 4 to 82, in nine regions of Ukraine, and in the Russian Federation. It has found that Russian authorities have committed sexual violence in two main situations: during house searches and against victims they had confined. In addition, the Commission documented situations in which Russian authorities imposed forced nudity, in detention, at checkpoints, and filtration points.

79. As Russian armed forces took control of localities in Ukraine and undertook house to-house searches to find people who had supported the Ukrainian armed forces (see para. 51), in some instances, soldiers committed rapes and sexual violence as they broke into the victims' houses. The Commission has documented such violations in Chernihiv, Kharkiv, Kherson, and Kyiv regions, with a majority in Kyiv region, mainly during the first two months of the armed conflict. Most victims were women alone at home.

80. Rapes were committed at gunpoint, with extreme brutality and with acts of torture, such as beatings and strangling. Perpetrators at times threatened to kill the victim or her family, if she resisted. In some cases, more than one soldier raped the same victim, or rape of the same victim was committed several times. In one incident, the victim was pregnant and begged, in vain, the soldiers to spare her; she had a miscarriage a few days later. Perpetrators also, in some instances, executed or tortured husbands and other male relatives. Family members, including children, were sometimes forced to watch perpetrators rape their loved ones.

81. The Commission has found numerous instances of sexual and gender-based violence committed by Russian authorities during unlawful confinement in Donetsk, Kharkiv, Kherson, Kyiv, and Luhansk regions, in Ukraine, and in the Russian Federation (see paras. 74 and 75). The cases of sexual and gender-based violence in confinement affected mostly men, both civilians and prisoners of war. The evidence collected shows that sexual violence amounting to torture, and the threat of such, have been important aspects of the torture exercised by Russian authorities, with methods including rape, electric shocks on genitals, traction on the penis using a rope, and emasculation. The Commission also analysed signs of such acts on bodies of deceased victims. According to survivors, perpetrators aimed to extract information or confessions, to force cooperation, to punish, intimidate, or humiliate them, as individuals or as a group.

82. Among the incidents documented by the Commission, two women interviewed separately, who had been detained in facilities maintained by Russian authorities in two different locations of the Kharkiv region, described how soldiers ordered them to undress fully, touched them all over their bodies, and raped them. The Commission also analysed a video showing how Russian armed forces emasculated and then shot a captured Ukrainian soldier.

83. Turning to forced nudity, in a variety of situations, Russian armed forces ordered people to undress and remain naked, including for prolonged periods, which can be a form of sexual violence. Cases were identified in Donetsk, Kharkiv, and Kyiv regions, in Ukraine, and in the Russian Federation. Victims were men, women, and one 17−year-old boy. Such acts were committed during confinement, or filtration points and checkpoints, among other reasons, to humiliate the victims during torture and detention or to verify the presence of tattoos. The forced nudity went beyond what would be acceptable in the framework of a security verification.

84. For instance, the Commission documented instances of forced nudity for hours, performed in a humiliating way, imposed upon new detainees at their arrival to the Olenivka penal colony in Donetsk region and in detention facilities in the Russian Federation. In another situation, Russian armed forces detained a priest, undressed him fully, beat him, and ordered him to parade naked for one hour in the streets of his village.

85. Based on the evidence it has collected, the Commission has concluded that in areas they controlled, some members of Russian armed forces committed the war crime of rape and sexual violence, which can amount to torture. Rape and torture are war crimes, and violations of the corresponding human rights obligations. Acts of forced nudity can be a form of sexual violence and may constitute the war crime of outrages upon personal dignity.

United Nations Human Rights Council - Treatment of Prisoners of War and Persons hors de Combat in the Context of the Armed Attack by the Russian Federation against Ukraine: 24 February 2022 – 23 February 2023 – March 29, 2023

8. Through individual interviews with 24 women POWs, OHCHR found that women POWs in the hands of the Russian Federation were treated differently than men POWs. Women were interned separately from men and generally subjected to less physical violence, especially the most severe forms, and enjoyed better conditions during evacuations and transfers between places of internment. However, in 17 cases, women POWs interned in pre-trial detention and penitentiary facilities in Donetsk or in the Russian Federation were subjected to beatings, electrocution, forced nudity, cavity searches and threats of sexual violence. Women POWs interviewed by OHCHR were also not provided with access to sexual and reproductive health services.

United Nations Human Rights Council – Report of the Independent International Commission of Inquiry on Ukraine – March 18, 2024

67. Former male detainees reported threats of rape, objectionable touching during invasive body searches and torture on the genitals. One victim of beatings and electric shocks to the genitals said that one of the perpetrators told him: "I will beat everything out of you, so you can't make children." A similar statement was made to another detainee. A victim recounted perpetrators' attempts to cut his penis, in order to "prevent him from having more children". Victims reported additional methods of torture used repeatedly and for months in the documented detention facilities.

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85. The Commission has previously documented cases of sexual and gender-based violence by Russian authorities in nine provinces of Ukraine and in the Russian Federation. During the current mandate, it investigated additional cases in Kherson, Kyiv, Mykolaiv and Zaporizhzhia Provinces in Ukraine. Victims were girls and women from 15 to 83 years of age. Consistent with patterns identified previously, members of the Russian authorities committed rapes and other sexual violence during house searches and in detention.

86. In the cases investigated, of which examples are given below, the Commission found that the war crime of rape, and in some cases the war crime of sexual violence, had been committed. Those acts also amounted to torture. Perpetrators committed additional acts of violence against all the victims and a family member, which also amounted to torture. Those acts also constituted human rights violations. ...

87. Russian authorities, mostly in groups, conducted house searches, sometimes on multiple occasions. Some of the soldiers were intoxicated. They threatened and intimidated victims and their family members with weapons, including by shooting near their heads or legs. Perpetrators raped the victims in their homes, or forcibly took them to premises they had occupied

in the vicinity or to locations they used as a temporary base, or raped them during confinement. Russian authorities also voiced threats of rape towards men in detention (see para. 67). Some of the victims were subjected to rape repeatedly, sometimes by the same perpetrator and sometimes by a group of perpetrators. In most cases, in addition to rape and sexual violence, perpetrators beat, kicked or otherwise inflicted severe pain on the victims.

United Nations Secretary-General - Situation of Human Rights in the Temporarily Occupied Territories of Ukraine, including the Autonomous Republic of Crimea and the City of Sevastopol – July 3, 2024

13. According to OHCHR, torture in detention also frequently included conflict-related sexual violence. Thirty-four civilian detainees (21 men, 12 women, 1 boy) were subjected to forms of sexual violence in detention, including rape, threats of rape of detainees or their relatives, beatings and electric shocks to genitals or breasts, forced nudity, unjustified cavity searches, unwanted sexual touching, genital mutilation, attempted castration, and threats of castration. Because of the stigma surrounding sexual violence, the actual number of victims of sexual violence in detention is likely higher.

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17. In addition to conflict-related sexual violence in detention settings, members of the Russian armed forces committed acts of conflict-related sexual violence outside of detention against 16 civilians (14 women, 1 girl, and 1 man). Fourteen cases occurred in residential areas where Russian armed forces were stationed, and two occurred during "filtration," a process of security checks and personal data collection. These cases included rape, gang rape, attempted rape, threat of rape of a family member, sexual assault, forced nudity, and forcing a woman to use a toilet in the presence of men.

OSCE and ODIHR – Fifth Interim Report on Reported Violations of International Humanitarian Law and International Human Rights Law in Ukraine – July 22, 2024

50. Several survivors also reported to ODIHR suffering sexual violence, or threats of sexual violence against themselves and their families. ODIHR also received additional credible allegations of the use of sexual violence as a form of torture in detention.

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74. ODIHR has continued to gather testimonies from witnesses and survivors concerning allegations of CRSV. According to the Ukrainian Prosecutor General's Office, as of 5 June 2024, 298 cases of CRSV have been recorded in Ukraine. In 109 cases, the victims were men (one of them a boy), and in the other 189 cases, the victims were women (14 of them girls).

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77. Witnesses recounted different types of CRSV: alleged incidents of rape, threats of rape and sexual violence, including threats to rape the detainee's family members, electrocution of genitals (and threats of such electrocution), striking of genitals, threats of castration, forced nudity, sexual harassment, coercion to perform sexual acts on detainees, taking explicit photographs and videos of detainees, and others.

Commentary

1. Gender-based violence is an umbrella term that denotes harmful acts directed against a person due to their gender or disproportionately affects individuals of a particular gender. In other words, gender is the basis for violence. While anyone—women, girls, men, and boys—can be victims of gender-based violence, women and girls are particularly at risk. Gender-based violence encompasses physical (including sexual), verbal, psychological and socio-economic violence. It stems from an imbalance of power dynamics between genders and is intended to humiliate and subordinate individuals and groups, as it is often based on a feeling **of superiority** and **an intention to assert that superiority (¶¶ 10 and 19)**. **The** UN Declaration on the Elimination of Violence against Women defines violence against women as "a*ny act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life" (¶ 1). The prohibition of gender-based violence against women is now considered a* principle of customary international law *(¶ 2). Having said that,* men can also be victims of gender-based violence, although such cases are statistically less frequent compared to women. However, these instances should not be overlooked. Sexual violence is, in fact, one type of gender-based violence, referring to a broad range of incidents or patterns of sexual violence that include rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization, and other forms of sexual violence of comparable gravity. Both terms apply to both conflict-affected and non-conflict settings.
2. As the Special Rapporteur on Violence Against Women and Girls avowed, "State and non-State actors alike commonly commit acts of sexual violence during international and non-international armed conflicts" (¶ 52). Sadly, the conflict in Ukraine is no exception. In armed conflict, sexual violence is often "a product of gender stereotypes that are prevalent in societies during peacetime" (¶ 52) and used "as a tactic of war to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group; and that sexual violence perpetrated in this manner may in some instances persist after the cessation of hostilities" (prmbl). A shift in the pattern of sexual violence can be noticed. Reporting in 2017 on sexual violence perpetrated between 2014 and 2017, the U.N. High Commissioner for Human Rights stated that "there are no grounds to believe that sexual violence has been used for strategic or tactical ends by Government forces or the armed groups in the eastern regions of Ukraine, or by the Russian Federation in the Autonomous Republic of Crimea" (¶ 59). Most cases of sexual violence were then confined to the context of detention related to the armed conflict (¶ 59), yet, reports on the period after February 24, 2022 are replete with instances where sexual violence was used to humiliate, dominate and instil fear in a variety of circumstances such as house searches, "filtration" camps processes, etc. Sometimes, these acts were carried in front of relatives (¶ 80) or accompanied by violence against other male members of the family (¶ 80).
3. The law relating to sexual and gender-based violence is located in international human rights law, international humanitarian law and international criminal law. As this Chapter focuses on State responsibility, only the two first regimes are addressed here (*see* Chapter 10 for individual criminal liability). As a violation of physical integrity, sexual violence is prohibited by international human rights instruments, including the ICCPR under Article 7 (freedom from torture and ill-treatment) Article 9 (right to liberty and security) and Article 10 (right to human dignity in detention). It is well established that rape and other forms of sexual violence, as inflictions of severe pain and suffering, can constitute torture – when committed by a public official or another person acting in an official capacity – and ill-treatment (at the international

level, *see* SPR 2008 ¶ 36; UNCCAT ¶ 8.10; UNCCEDAW 2017 ¶ 16; at the regional level, *see* ECtHR 1997 ¶ 86). As explained in Chapter 9.6 there is no derogation from freedom from torture. Likewise, such acts are prohibited by international humanitarian law in both international and non-international armed conflicts as "outrages upon personal dignity", "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture" (Common Art. 3 of the GCS; Arts 17, 87 and 89 of the GC III; Art. 32 of the GC IV; Art. 75 of AP I; Rules 89 and 90 of the ICRC Study). More specifically, Article 75 of the AP I prohibits "humiliating and degrading treatment, enforced prostitution and any form of indecent assault."

4. Under customary international humanitarian law rape and other forms of sexual violence are prohibited. Further, international human rights law stresses the equal rights of men and women (Art. 2 of the ICCPR) and so views gender-based violence as a particular form of discrimination. In its General Recommendation No. 19, the Committee on the Elimination of Discrimination Against Women stated that "the definition of discrimination includes gender-based violence" (¶ 6). Under international humanitarian law, women benefit from special protection under a vast range of legal provisions in the Geneva Conventions and Additional Protocol, some of the more relevant in relation to sexual violence are the obligation to detain women in separate quarters from men and under the immediate supervision of women (Arts 25, 29, 97 and 108 of the GC III; Arts 76, 82, 85 and 124 of the GC IV; Rule 119 of the ICRC Study).
5. Under human rights law, States are obliged to prevent, investigate and punish sexual and gender-based violence (¶ 23). Such an obligation is not limited to acts of State agents but also includes acts carried out by private individuals or entities. In this regard, the State must exercise due diligence to prevent, investigate, punish and ensure redress for such acts (¶ 15). Further, as stated in Chapter 9.6, non-State actors, including armed groups, that exercise government-like functions and control over a territory must respect human rights law. Under international humanitarian law, rape and other forms of sexual violence constitute violations of international humanitarian law irrespective of who the perpetrator is.
6. Most reports indicate that sexual violence was committed in three settings: in houses, in detention and at checkpoints and filtration points. The presence of military forces in residential areas almost inevitably leads to instances of sexual violence. Reports highlight such cases committed overwhelmingly by Russian troops (CoI 2023 ¶¶ 78−79; CoI 2024 ¶ 85; UNSG 2024 ¶ 17) but also by Ukrainian armed forces on Ukrainian territory (¶¶ 82−84) and members of the self-proclaimed entities (¶¶ 82−84) (the latter before the full invasion in 2022). The brutality of the sexual violence committed by Russian armed forces is highlighted in several reports (CoI 2023 ¶ 80; CoI 2024 ¶ 87). In some instances, the victims were taken out of their homes to be brought to a location where they were raped (¶ 87). Undoubtedly, such acts of violence are violations of the prohibition of cruel and inhuman treatment that is enshrined in both human rights law and international humanitarian law and the more specific legal provisions condemning rape under international humanitarian law.
7. As the European Court of Human Rights stated, custodial sexual violence "must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of the victim" (¶ 83). Sexual violence has been extensively used by all parties to the conflict in situations of detention (HRC 2017 ¶ 59; for Ukraine, *see* HRC 2017 ¶¶ 65−77; for members of the self-proclaimed entities, *see* HRC 2017 ¶¶ 85−98; for Russia, *see* HRC 2017 ¶¶ 108−111; CoI 2023 ¶ 81; OSCE/ODIHR

2024 ¶ 50) and the victims have been overwhelmingly men (CoI 2023 ¶ 81; CoI 2024 ¶¶ 67 and 87; UNSPSVC 2024 ¶ 71). As the purpose is to punish, intimidate or humiliate detainees or to extract information or confessions or to force cooperation, such acts of violence are deemed acts of torture (¶ 81). It appears that sexual violence has become a *modus operandi* of Russian authorities in detention centres (¶ 81) and has been used repeatedly against detainees (¶ 87).

8. Women are most at risk when they are in direct contact with armed forces, and this happens when they cross contact lines, checkpoints (CoI 2023 ¶ 78; HRC 2017 ¶ 61), and filtration points (CoI 2023, ¶¶ 78−83; UNSG 2024 ¶ 17) a process of security checks and personal data collection. In the latter case, victims were not only women but also men who were forced to undress and remain naked for prolonged periods on the ground that it was allegedly necessary to verify the presence of tattoos (¶ 83). This also qualifies as a form of sexual violence.
9. The presence of gender-based and sexual violence has been particularly pervasive in this conflict since February 2022, when it appears that Russia has used sexual violence not only in a widespread but also systematic manner, especially in detention centres. Some investigations have been carried out in relation to these victims' testimonies (¶ 72).
10. In 2022 the UN Secretary-General's Special Representative on Sexual Violence in Conflict and Ukraine's Deputy Prime Minister for European and Euro-Atlantic Integration signed a framework for cooperation aimed at supporting the design and implementation of priority interventions. This partnership has led to the UN providing training, support for rehabilitation programs for female survivors of conflict-related sexual violence, and guidance on improving the national criminal justice response to suuch violence (¶¶ 7 and 72−73). Additionally, it is important to note that, in accordance with UN Security Council Resolution 2467, women's protection advisers were deployed for the first time to a non-mission setting, i.e. a State that is not included on the Security Council's list (¶ 95).
11. **For further reading**, *see* (1) Kateryna Busol & Fionnuala Ní Aoláin, "Women Are at the Centre of Ukraine's Path to Justice and Recovery," Just Security (May 17, 2024); (2) Arifur Rahman, "From Ukraine to the Gaza Conflict: Male Victimisation of Sexual Violence and the 'Man Question' in International Law," Cambridge International Law Journal (March 19, 2024); (3) Kateryna Busol, *When the Head of State Makes Rape Jokes, His Troops Rape on the Ground: Conflict-Related Sexual Violence in Russia's Aggression against Ukraine*, 25 JOURNAL OF GENOCIDE RESEARCH 279 (2023); (4) Cynthia M. Horne, *Accountability for Atrocity Crimes in Ukraine: Gendering Transitional Justice*, 96 WOMEN'S STUDIES INTERNATIONAL FORUM e102666 (2023); (5) Erin Farrell Rosenberg and Amal Nassar, "Response to Conflict-Related Sexual Violence in Ukraine: Accountability and Reparations," Opinio Juris (June 21, 2022); (6) Melanie O'Brien and Noëlle Quénivet, "Sexual and Gender-Based Violence against Women in the Russia-Ukraine Conflict," EJIL:Talk! (June 8, 2022).

9.8 State Responsibility for Violence against Children

In all armed conflicts, children are both direct and indirect victims of military operations, and the Russian-Ukrainian war is no exception. Children have faced numerous challenges. First, children are the casualties of military operations. Explosives pose a constant threat to their lives, with the majority of casualties caused by wide-area explosive weapons, such as artillery fire, missiles, and air strikes (*see* Chapter 9.5). Military operations have damaged critical infrastructures, such as homes, educational facilities, hospitals, and energy infrastructures, which

are essential for children's access to education, water, electricity, heating and shelter. Many children have been displaced, sometimes with their families and sometimes alone, putting them at risk of abuse, sexual exploitation, and human trafficking. Some have been forcefully transferred and deported to other parts of Ukrainian and even to Russia.

The wide range of violations of international human rights and international humanitarian law against children cannot be fully described in this Chapter. Instead, this Chapter focuses on two specific situations that have significantly affected children in the Russo-Ukraine war: the imposition of the Russian school curriculum in occupied territories instead of the Ukrainian one, and the unlawful transfer and deportation of children to occupied territories and Russia.

European Court of Human Rights – Ukraine and the Netherlands v. Russia – Judgment – November 30, 2022

64. In addition, Russian citizenship was also forcibly granted to children who were held in orphanages and in boarding schools at the time, persons in psychiatric institutions and persons who were in custody or in places of detention, as well as children born after the "occupation" of Crimea by Russia.

…

875. While there is evidence in the present case-file as to the destruction of schools and other educational facilities and the harassment and detention of teachers (A 1028−47), that evidence does not suggest that such incidents were part of a campaign intended expressly to limit the right to education. The educational nature of destroyed buildings and the teaching occupations of those harassed and killed appear to have been incidental to the alleged violence inflicted.

877. It is true that the evidence in the case-file does not expressly identify any prohibition on teaching in the Ukrainian language in the relevant parts of Donbass. However, it does reveal a significant change to the status of the Ukrainian language in that area and the precedence given to the Russian language. In these circumstances, the Court is prepared to accept that there is sufficiently substantiated prima facie evidence of a prohibition on education in the Ukrainian language demonstrating the necessary element of repetition to support the allegation of an administrative practice.

United Nations Human Rights Council – Report of the Independent International Commission of Inquiry on Ukraine – March 15, 2023

95. Ukrainian and Russian officials have declared that hundreds of thousands of children have been transferred from Ukraine to the Russian Federation since 24 February 2022, with figures that vary greatly. A data collection system maintained by the Government of Ukraine indicated that 16,221 children had been deported to the Russian Federation as of the end of February 2023. The Commission has not been able to verify these figures.

96. According to statements, and media reports, Russian officials have taken legal and policy measures regarding Ukrainian children transferred to the Russian Federation. These include the granting of Russian citizenship and the placement of children in foster families, which appears to create a framework in which some of the children may end up remaining permanently in the Russian Federation. In this regard, in May 2022, President Putin signed a decree facilitating applications for Russian citizenship for some categories of children. In a media interview in July

2022, Ms. Lvova-Belova, Presidential Commissioner for Children's Rights, declared that "now that the children have become Russian citizens, temporary guardianship can become permanent".

97. The Commission has identified three main situations in which Russian authorities have transferred Ukrainian children from one area they controlled in Ukraine to another or to the Russian Federation. Transfers affected children who lost parents or temporarily lost contact with them during hostilities; who were separated following the detention of a parent at a filtration point; and children in institutions. It has reviewed incidents concerning the transfer of 164 children aged from four to 18 years from the Donetsk, Kharkiv and Kherson regions.

98. International humanitarian law prohibits the evacuation of children by a party to the armed conflict, with the exception of a temporary evacuation where compelling reasons relating to the health or medical treatment of the children or, except in occupied territory, their safety, so requires. The written consent of parents or legal guardians is required. In none of the situations which the Commission has examined, transfers of children appear to have satisfied the requirements set forth by international humanitarian law. The transfers were not justified by safety or medical reasons. There seems to be no indication that it was impossible to allow the children to relocate to territory under Ukrainian Government control. It also does not appear that Russian authorities sought to establish contact with the children's relatives or with Ukrainian authorities. While the transfers were supposed to be temporary, due to a variety of reasons, most became prolonged, and parents or legal guardians and children encountered an array of obstacles in establishing contact, achieving family reunification, and returning the children to Ukraine.

99. In a separate situation, large numbers of children from areas that came under Russian Federation control in Kharkiv, Kherson, and Zaporizhzhia regions travelled temporarily with parental consent to vacation camps in Crimea or in the Russian Federation. Parents and children stated that, when these areas returned to Ukrainian Government control, Russian authorities required the parents or the legal guardians to travel in person to pick up their children. This involved long and complicated travel and security risks. Not all parents have therefore been able to do so, which led to prolonged or even indefinite family separations.

100. Parents or children told the Commission that during the children's stay in the Russian Federation or in Russian-controlled areas in Ukraine, on some occasions, social services told the children that they would be placed in institutions, accommodated in foster families, or be adopted. Parents also told the Commission that in some places of transfer children wore dirty clothes, were screamed at, and called names. Meals were poor and some children with disabilities did not receive adequate care and medication. Children expressed a profound fear of being permanently separated from parents, guardians, or relatives.

101. In all the incidents examined by the Commission, the onus to trace and find parents or family members fell primarily on the children. Parents and relatives encountered considerable logistical, financial, and security challenges in retrieving their children. In some cases, it took weeks or months for families to be reunited. Witnesses told the Commission that many of the smaller children transferred have not been able to establish contact with their families and might, as a consequence, lose contact with them indefinitely.

102. The Commission has concluded that the situations it has examined concerning the transfer and deportation of children, within Ukraine and to the Russian Federation respectively, violate international humanitarian law, and amount to a war crime. It has found that Russian authorities violated their obligation under international humanitarian law to facilitate in every possibly way the reunion of families dispersed as a result of the armed conflict. Such conduct may also amount to the war crime of unjustifiable delay in the repatriation of civilians. In addition, the

citizenship and family placement measures which may have a profound implication on a child's identity are in violation of the right of a child to preserve his or her identity, including nationality, name and family relations without unlawful interference, as recognised by international human rights law.

OSCE Office for Democratic Institutions and Human Rights – Report on Violations and Abuses of International Humanitarian and Human Rights Law, War Crimes and Crimes against Humanity, Related to the Forcible Transfer and/or Deportation of Ukrainian Children to the Russian Federation – May 4, 2023

The Mission established that a large number of Ukrainian children have been, since 24 February 2022 and even prior to this date, displaced from the territory of Ukraine to the temporarily occupied territories and to the territory of the Russian Federation. While the exact numbers remain uncertain, the fact of a large-scale displacement of Ukrainian children does not seem disputed by either Ukraine or Russia. In this report, primary focus has been placed on orphans and on unaccompanied children, since those constitute the most vulnerable groups among displaced children. The Mission has found out that the three most commonly indicated grounds for the organized displacement of these children are: the evacuation for security reasons, the transfer for the purpose of adoption or foster care, and temporary stays in the so-called recreation camps. While in the temporarily occupied territories or in the Russian Federation, Ukrainian children are placed in various institutions or in Russian families – the forms of the placement include adoption, which has been applied mainly to children from Crimea (at least since 2015) or custody, guardianship or foster families which seem more common for other Ukrainian children (mainly since 24 February 2022). Whatever the form of placement, Ukrainian children are exposed to pro-Russian information campaigns often amounting to targeted re-education. The Russian Federation does not take any steps to actively promote the return of Ukrainian children. Rather, it creates various obstacles for families seeking to get their children back.

The Mission reviewed the reported evacuations and forced displacements of Ukrainian children at the hands of the Russian occupying power in light of applicable IHL. The Russian Federation is obliged, in her capacity as belligerent and occupying power, to respect the applicable rule of IHL under which children enjoy protections pertaining to the "civilian population", "protected persons", family-members and finally the special protections dedicated to children.

The Mission found that while certain cases of evacuations of children were in line with Russia's obligations under IHL, other practices of non-consensual evacuations, transfers and prolonged displacement of Ukrainian children constitute violations of IHL, and in certain cases amount to grave breaches of GCIV and war crimes, notably violation of the prohibition on forcible transfer or deportation under Article 49 of the GCIV. The Mission also found that non-justified prolonged stay or unfounded logistical hurdles violate the obligation to facilitate reunification and contravene the principles embodied within the GCIV that family unity is to be protected and respected.

Further, the Mission is of the opinion that Russia's relocalization of Ukrainian children to Russia-controlled areas or Russian territory, combined with the belligerent powers, disregard the obligation to establish compulsory mechanisms under the GCIV to track these children, to communicate their whereabouts and facilitate their repatriation or reunification with their families, is a violation of the GCs that exacerbates the gravity of other violations.

Moreover, the Mission concludes that the exposure of unaccompanied children to adoption or similar measures of assimilation is incompatible with the GCIV. Altering nationality of Ukrainian children is a violation of Article 50(2) of the GCIV. It also contravenes the principles embodied within the GCIV that family unity is to be protected and respected. Facilitating reeducation and permanent integration into Russian families serves to confirm that the displaced Ukrainian children are indeed the victims of deportation in the sense of Article 49 of the GCIV.

The Mission has also found that the Russian belligerent currently has no functioning mechanism that facilitates family reunification for Ukrainian children presently in Russia or Russian occupied territories. Rather, the Mission sees traces of a consistent pattern suggesting that efforts by the Russian authorities to allow the movement of children from Ukraine to the Russian Federation do not include steps for further evacuation to third countries or back to safer areas in Ukraine. The present approach by the Russian authorities facilitates permanent stay and potentially unjustified delayed repatriation of these children, in disregard of IHL.

The Mission concluded that numerous and overlapping violations of the rights of the children deported to the Russian Federation have taken place. Not only has the Russian Federation manifestly violated the best interests of these children repeatedly, it has also denied their right to identity, their right to family, their right to unite with their family as well as violated their rights to education, access to information, right to rest, leisure, play, recreation and participation in cultural life and arts as well as right to thought, conscience and religion, right to health, and the right to liberty and security. These are ongoing violations of Articles 3, 8, 9, 10, 12, 14, 17, 20, 21, 24, 28, 29, 31 and 37 (b) of the UNCRC. The cumulative effects of these multiple violations also give rise to very serious concerns that the rights of these children to be free from torture and ill-treatment and other inhuman or degrading treatment or punishment (Article 37 (a) of the UNCRC) have been violated. The Mission moreover concluded that the practice of the forcible transfer and/or deportation of Ukrainian children to the temporarily occupied territories and to the territory of the Russian Federation may amount to a crime against humanity of "deportation or forcible transfer of population".

The Mission recalls that IHL, IHRL and ICL impose various obligations on States. Those encompass the obligation to respect and to ensure respect for IHL; the obligation to respect, protect and fulfil human rights; and the obligation to prevent, repress, investigate and prosecute war crimes and crimes against humanity. Such obligations apply not only to the Parties to the conflict (IHL) or to the territorial State (IHRL, ICL) but also, in one form or another, to third States. It is for the international community as a whole to ensure that IHL, IHRL and ICL are respected.

There are no specific accountability mechanisms under IHL. The International Fact-Finding Commission could be activated and protecting powers could be designated but these institutions have been rarely, if ever, put in use in the recent decades. It is thus largely left to the ICRC, in its role of a substitute to protecting powers as well as in its autonomous role, to take steps, albeit confidential ones, to ensure respect for IHL rules. Under IHRL, conversely, various political as well as quasi-judicial and, even, judicial bodies exist that monitor the compliance by States with their obligations stemming from IHRL and/or consider individual or inter-State complaints alleging violations of IHRL. Such bodies include the HRC, the UN Human Rights Committees, or the ECtHR. Most of these bodies have been already actively seized with the situation of Ukraine and some have even considered, albeit so far with limited outcomes, the forcible transfer and/or deportation of Ukrainian children. Finally, under ICL, both national courts in Ukraine and in other countries and the ICC have started investigating allegations of war crimes

and/or crimes against humanity, including allegations related to the forcible transfer and/or deportation of Ukrainian children.

Comments by Ukraine to the Report of the Mission of Experts, established to address the violations and abuses of international humanitarian and human rights law, war crimes and crimes against humanity, related to the forcible transfer and/or deportation of Ukrainian children to the Russian Federation

In chapter C. Accountability under ICL of the part VII. Accountability for Violations of IHL and IHRL and for Potential War Crimes and Crimes against Humanity and in part VIII. General Conclusions forcible transfer or deportation of Ukrainian children is described as possible war crime and/or crime against humanity. While we support such qualification, we also consider that these parts shall include a notion that this crime of forcible transfer or deportation of Ukrainian children may also constitute genocide. Under Article II of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, 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; (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. Thus, forcible transfer or deportation of Ukrainian children to the Russian national group may constitute genocide. We believe that this shall be reflected in the text of the Report.

NATO Parliamentary Assembly – United and Resolute in Support of Ukraine, Declaration 482 – May 22, 2023

14. Welcoming the historic decision of the International Criminal Court to issue a warrant of arrest for Vladimir Putin, who is allegedly responsible for the war crime of unlawful deportation of population from occupied areas of Ukraine to the Russian Federation, in prejudice of Ukrainian children, and noting that the forcible transfer of children from one group to another group with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group is an act of genocide according to the UN Convention on the Prevention and Punishment of the Crime of Genocide of 1948;

United Nations Secretary General – Children and Armed Conflict – June 3, 2024

334. I am concerned by the levels of the verified cases of abduction of children and by continued reports of transfers of children by the Russian armed forces and affiliated armed groups and Russian authorities located in territories of Ukraine temporarily controlled or occupied by the Russian Federation, and I urge the Russian armed forces and affiliated armed groups and Russian authorities located in territories of Ukraine temporarily controlled or occupied by the Russian Federation to comply with their obligations under international humanitarian law and international human rights law, and to exchange information with the United Nations on all affected children. I am gravely concerned by the introduction in the Russian Federation of a simplified procedure to apply for Russian citizenship for orphaned children and children without parental care. I urge the Russian Federation to ensure that no changes are made to the personal status of Ukrainian children, including their nationality. I urge all parties to uphold the principle of the best interests of the child,

facilitate family tracing and reunification of unaccompanied and/or separated children who find themselves across borders or lines of control without their families and/or guardians, including by giving child protection actors access to facilitate reunification. I strongly urge the Russian Federation to cooperate with the United Nations for the return of Ukrainian children and reunification of such children with their families and/or guardians. I also encourage Ukraine to continue its active cooperation with the United Nations on this important issue.

European Court of Human Rights – Case of Ukraine v Russia (*Re* Crimea) – Judgment – June 25, 2024

1160. The Court notes that the ICJ in its recent judgment in *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, 31 January 2024, considered *inter alia* "the way in which it has implemented its educational system in Crimea after 2014 with regard to school education in the Ukrainian language" and concluded that, in this respect, the Russian Federation had been in violation of its obligation not to engage in an act or practice of racial discrimination under Article 2(1)(a) and 5(e)(v) of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (para. 370). In coming to this conclusion the ICJ noted, *inter alia*, that:

- "the Parties agree, that there was a steep decline in the number of students receiving their school education in the Ukrainian language between 2014 and 2016" (paragraph 358 thereof),
- "There was thus an 80 per cent decline in the number of students receiving an education in the Ukrainian language during the first year after 2014 and a further decline of 50 per cent by the following year. It is undisputed that no such decline has taken place with respect to school education in other languages, including the Crimean Tatar language." (paragraph 359 thereof);
- "The Russian Federation exercises full control over the public school system in Crimea, in particular over the language of instruction and the conditions for its use by parents and children. However, it has not provided a convincing explanation for the sudden and radical changes in the use of Ukrainian as a language of instruction, which produces a disparate adverse effect on the rights of ethnic Ukrainians." (paragraph 360 thereof); and
- "The legislative and other practices of the Russian Federation with regard to school education in the Ukrainian language in Crimea applied to all children of Ukrainian ethnic origin whose parents wished them to be instructed in the Ukrainian language and thus did not merely concern individual cases. As such, it appears that this practice was intended to lead to a structural change in the educational system." (paragraph 369 thereof)

1161. These conclusions are also corroborated by numerous IGO reports which recorded the considerable decline in the number of educational institutions providing education in the Ukrainian language, and in the number of students obtaining such education. In this connection, the 2014 OHCHR report stated that between April and October 2014 "the number of high schools teaching Ukrainian has dropped from 96 to 12." In its 2017 report, also referred to by the ICJ in its judgment (cited above, paragraph 358), the OHCHR noted the decrease in the number of Ukrainian schools (from seven to one) and the number of classes (from 875 to twenty-eight) "between 2013 and 2017". The same report noted that the number of students educated in Ukrainian had "dropped dramatically" during the period under consideration, from 12,694 students in the 2013/14 academic year to 2,154 in the 2014/15 academic year. Furthermore, by the end of 2014, "Ukrainian as a language of instruction had been removed from university-level education

in Crimea". A similar decline in the use of the Ukrainian language in schools in Crimea was reported by the Commissioner for Human Rights (see Commissioner's 2014 Report, A 73) and some NGOs (such as the Crimean Human Rights Group and the IPHR, 2016, A 116 and 136). Those figures were confirmed by the Ukrainian national authorities, which also initiated an investigation related to discontinuation of education in "the Ukrainian-language boarding school no. 7" (see the letter from the Representative of the Commissioner for Human Rights of the *Verkhovna Rada* and the letter from the General Prosecutor's Office of Ukraine, A 168).

1162. Furthermore, the applicant Government's allegations of threats and harassment relating to the use of the Ukrainian language in the context of education were also noted in the 2017 OHCHR Report, as well as in some witness statements (see witness testimonies of Metropolitan Kliment of Simferopol and Crimea and Yaroslav Hontar) and the National Union of Journalists of Ukraine (A 102, 347 and 361). A local NGO (Ukrainian Centre for Independent Political Research, A 139) noted the following:

"Since February 2014, Crimean authorities have created the atmosphere of Ukrainophobia and intolerance to Ukrainian identity, which has influenced the choice of language of instruction...The problem of opposition between parents and school teachers was solved only by means of administrative pressure on teachers and teaching staffs and intimidation of parents through parent committees or individual conversations often attended with threats of violence and physical attack. Parents were pressed to decrease the number of applications for teaching in the native language."

1163. For their part, the respondent Government submitted certain statistics which also confirmed the decline in the number of students educated in Ukrainian during the school year 2014/15 noted above. As the Court has already found at the admissibility stage, such a decline cannot be regarded as "small", an argument expressly relied on by the respondent Government at the present stage of the proceedings. As to the remaining figures regarding the number of educational institutions and classes with instruction in Ukrainian, the respondent Government provided the Court with no information about the source of and methodology applied in the collection of those figures. Nor did they refer to any evidence or material which would allow the Court to assess their veracity and reliability. Similarly, they failed to submit in evidence the written survey (and the results thereof) allegedly carried out by the head teachers of all educational institutions in the city of Sevastopol regarding parents' wishes for their children to study in the Ukrainian language (see paragraph 361 above).

1164. Furthermore, the respondent Government did not provide any counter-arguments regarding the substance of the allegations made under this heading, which, in the Court's view, are supported by multiple concordant pieces of evidence consistently pointing to a significant decline in the number of educational facilities and classes teaching in Ukrainian, as compared with the number previously available in Crimea (prior to the March 2014 events). The failure of the *de facto* authorities in Crimea to make continuing provision for such teaching must be considered in effect to be a denial of the substance of the right at issue (see, *mutatis mutandis*, *Cyprus v. Turkey* (merits), cited above, § 278). This denial is a direct consequence of "the introduction of the Russian Federation's education standards in Crimea" as the respondent State's policy (see paragraph 196 of the 2017 OHCHR Report). The result is that "education in the Ukrainian language had almost disappeared from Crimea" (see paragraph 17 of the 2017 OHCHR Report). In this connection, the Court considers it appropriate to reproduce the following passage from *Catan and Others* (cited above), the essence of which applies to the present case:

"144. There is no evidence before the Court to suggest that the measures taken by the 'MRT' authorities in respect of these schools pursued a legitimate aim. Indeed, it appears that the 'MRT''s

language policy, as applied to these schools, was intended to enforce the Russification of the language and culture of the Moldovan community living in Transdniestria, in accordance with the 'MRT''s overall political objectives of uniting with Russia and separating from Moldova. Given the fundamental importance of primary and secondary education for each child's personal development and future success, it was impermissible to interrupt these children's schooling and force them and their parents to make such difficult choices with the sole purpose of entrenching the separatist ideology."

1165. In view of the foregoing, the Court finds to the requisite standard that during the period under consideration there existed an administrative under this head practice (both the "repetition of acts" and the "official tolerance" elements, the latter stemming from, *inter alia*, the regulatory nature of the measures complained of), which amounted to a denial of the substance of the right to education and a violation of Article 2 of Protocol No. 1.

United Nations Secretary-General - Situation of Human Rights in the Temporarily Occupied Territories of Ukraine, including the Autonomous Republic of Crimea and the City of Sevastopol – July 3, 2024

22. The Russian Federation also imposed its own education system. Already in September 2022, the occupying authorities had replaced the Ukrainian curriculum with the Russian curriculum in many schools and pressured teachers, sometimes with physical violence and threats of violence or termination, to accept the new curriculum and teach classes in Russian language. At the same time, occupying authorities targeted teachers providing online classes following the Ukrainian curriculum. The complete replacement of the educational curriculum may deprive students of the right to "culturally appropriate" education which "respects the child's own cultural identity, language and values".

26. After the beginning of the occupation, authorities in the temporarily occupied areas of Kherson, Zaporizhzhia, Donetsk and Luhansk regions of Ukraine transferred civilians, including children, within the temporarily occupied territories of Ukraine or transferred civilians to the Russian Federation. …

27. While it is difficult to ascertain the exact number, among those transferred were unaccompanied children, many of whom were in institutionalized care, for instance in institutions for children with physical or intellectual disabilities. International humanitarian law obliges the occupying Power to facilitate the identification of unaccompanied children and the registration of their parentage, and return to their families. It also forbids the occupying Power from changing the personal status of children. Russian authorities failed to take steps to return children to Ukraine, instead taking steps to permanently change their status by instituting a simplified adoption procedure and imposing Russian citizenship on some of them. Bureaucratic obstacles delayed or prevented the return of children with identified family members in Ukraine.

OSCE and ODIHR – Fifth Interim Report on Reported Violations of International Humanitarian Law and International Human Rights Law in Ukraine – July 22, 2024

88. Over the course of its monitoring activities, ODHIR has continued to receive reports, including through witness testimonies, of grave and systematic changes related to the provision of education in the occupied territories of Ukraine, including the imposition of the Russian Federation curriculum in schools and military-patriotic education for school-aged children. An occupying

power must respect institutions based on local legislation and may only arrange children's education where local institutions are inadequate. As far as possible, it must further ensure educators are of the same nationality, language and religion as the children. The widespread replacement of the Ukrainian curriculum with that of the Russian Federation, along with the introduction of Russian military-patriotic education for children, appears to violate these principles and fundamentally alter the status quo ante.

Commentary

1. Children, like all individuals, are protected by international human rights law and international humanitarian law (*see* Chapter 9.5 and Chapter 9.6, respectively). However, they also benefit from specific protection. First, both international covenants that Ukraine and Russia have ratified explicitly acknowledge the need for special protection (Art. 24 of the ICCPR and Art. 10.3 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)) Second, an entire human rights convention, the United Nations Convention on the Rights of the Child (UNCRC), which is binding on both Ukraine and the Russian Federation, is dedicated to safeguarding the rights of children, defined as individuals under the age of 18 years (Art. 1 of the UNCRC). Accordingly, all provisions of the UNCRC apply to this age group, with the exception of Article 38 which addresses the recruitment and participation of children in armed conflict. Neither Ukraine nor the Russian Federation has made any derogations regarding the UNCRC (p. 46). Under human rights law, the principle of the best interests of the child, anchored in Article 3(1) UNCRC, is a cornerstone of child protection: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies" (Art. 3 of the UNCRC). This means that decisions, actions, conduct, proposals, services, procedures, and other measures, as well as inaction and failure to act, must uphold the best interests of the child (¶¶ 17−18). The term "concerning" is also so interpreted to include decisions and actions that have a direct or indirect impact on a child or a group of children (¶ 20). This principle sits alongside the principles of non-discrimination (Art. 2 of the UNCRC), survival and development (Art. 6 of the UNCRC), and children's participation (Art. 12 of the UNCRC).
2. International humanitarian law also treats children as a special category of individuals deserving "special respect and protection." (Art. 77(1) of the AP I; Rule 135 of the ICRC Study) However, international humanitarian law does not define "child" as a term; instead, it operates with three different age groups: 12, 15, and 18, "although 15 is the most common" (Commentary to Rule 135 of the ICRC Study). Special protection is granted to each group, depending on the situation. The aim of these rules is to protect children from the ravages of war, shield their families from the pain of loss, and ensure that each party and its populations can safeguard their future generations from the devastating impacts of war. In 1999 the U.N. Security Council strongly condemned "abduction and forced displacement" of children (prmbl.), one of the six grave violations against children.
3. The right to education is established in various international (Art. 13 of the ICESCR; Arts 28−29 of the UNCRC) and regional treaties (Art. 2 of Protocol No. 1 to the ECHR). In armed conflicts, parties involved must ensure that the education of children under fifteen years of age who are orphaned or unaccompanied is upheld in all circumstances (Art. 24 of the GC IV). In situations of occupation, the occupying power is required to facilitate the proper working of educational institutions (Art. 50 of the GC IV). Their involvement is limited to situations when

the local authorities are unable to fulfil their duties (as explained in Chapter 8.5, the occupying power must respect institutions based on local legislation as it is in temporary control of the territory) and when there are no relatives who can provide care and education for the child. This means that Russia, both as an occupying power and as a party to the conflict, must ensure – though to varying degrees of obligation – that children have access to schooling. While Russia has technically complied with this obligation, it has failed to adhere to international humanitarian law and human rights law, which require that children are educated in a manner that is consistent with their cultural identity, language, culture, and values (Art. 78(2) of the AP I in a situation of evacuation; Art. 24 of the GC IV; Art. 29 of the UNCRC; UNCCRC 2001 ¶ 9). This approach is also in the best interests of the child. Reports indicate that Russia has pursued a policy of russification of Ukrainian children. All children who have encountered Russian authorities—whether deported to Russia or to Ukrainian territory unlawfully annexed by Russia (pp. 21 and 55−56), living in occupied territories (ECtHR 2024 ¶ 1164; ECtHR 2022 ¶ 877; ICJ 2024 ¶ 360; OSCE/ODIHR 2024 ¶ 88; UNSG 2024 ¶ 22) and residing in temporarily occupied territories (p. 56)—have been subjected to the Russian curriculum (p. 63). The Ukrainian curriculum has been replaced with the Russian curriculum, and parents have faced incentives and threats to send their children to schools following the Russian educational framework (¶¶ 92−93). Evidence shows that there is a prohibition on education in the Ukrainian language, both in practice and in law (¶ 877). Teachers who attempted to follow the Ukrainian curriculum have been threatened and harassed (ECtHR 2024 ¶ 1162); OSCE/ODIHR 2024 ¶¶ 90−91; UNSG 2024 ¶ 22). This complete replacement of the educational curriculum has deprived children of an education that is culturally appropriate and respectful of their identity, language, and values. Moreover, children appear to have been indoctrinated through exposure to pro-Russian information campaigns (p. 21), with special measures implemented to ensure an education that is "patriotic" towards Russia (OSCE 2023 (p. 63 and Section VI.C.1); OSCE/ODIHR 2024 ¶¶ 88 and 95−96). Clearly, this action violates both international human rights and international humanitarian law.

4. The most concerning violation by Russia regarding Ukrainian children is their unlawful transfer and deportation. Reports show four categories of children who had been removed from Ukraine: 1) children who lost (perhaps temporarily) their parents and were collected by Russian authorities, 2) children separated from their parents following the detention of and thus separation from them at filtration camps, 3) children in institutions who were systematically displaced by the Russian authorities and 4) children in occupied territories sent on vacation in Crimea or Russia but who, after the agreed recreation period, were not returned to their legal guardians (¶¶ 96 and 99).
5. International humanitarian law bans the deportation and forcible transfer of protected persons from occupied territory to the territory of the Occupying Power or another country (Art. 49 of the GC IV; Rule 129 of the ICRC Study). All kinds of transfers or deportations are banned "regardless of their motive" (Art. 45 of the GC IV). Falling outside the scope of Article 49 GIV is consensual transfer or relocation since the act is not forcible. Concerning the situation in Ukraine, it is unlikely that the acts fall outside the purview of the ban on forcible transfer or deportation as both consent and genuine choice must be present (¶ 126). First, it is the parent or the legal guardian who must consent to the transfer and in most cases, no attempt was made to find the parents, relatives, or legal guardians (CoI 2023 ¶ 98; OSCE 2022 ¶ 95) or consent was obtained from persons who were not authorized to do so (p. 33). In contrast, most children in recreation camps were sent with the consent of their parents (p. 34) though not for a

prolonged stay (p. 34). Second, a coercive environment negates the genuineness of such transfers (¶¶ 488−490). Thus, "the vulnerable position of the parents, their desire to protect the children from shelling and the difficulties of life in the occupied territory" (p. 34) must be taken into consideration when assessing the genuineness of the consent. Consent in such cases might not be meaningful and genuine.

6. Article 49 para 2 of the GC IV contains the only exception to the absolute prohibition of forcible transfer and deportation, that of an area's total or partial evacuation. Yet, such evacuations are strictly regulated. In addition, Article 78(1) of the AP I allows for the non-consensual temporary evacuation of children (¶ 3237) for three additional reasons: health, medical treatment, and safety (¶ 160), the last one not being applicable in the situation of children in occupied territories (¶ 3227). Besides being justified under IHL, the evacuation must be temporary to remain lawful (p. 38). Reports show that medical evacuations were unlawful as the children moved to the territory of the Occupying Power stayed there "for reasons unrelated to the medical treatment" (p. 40). Likewise, Ukrainian children from institutions who were evacuated because of impending hostilities were further moved from occupied Crimea to Russia without justification (p. 39) and between camps without the consent of their parents or legal guardians (p. 17). Both Articles 49 of the GC IV and 78 of the AP I also contain a strong presumption against evacuations outside of the occupied territory. Unfortunately, children were moved not only outside of the occupied territory to another occupied territory but also to the territory of the Occupying Power (p. 39). Particular attention is paid to children's educational needs (Art. 78(2) of AP I), a responsibility that lies both in the State carrying out the evacuation, i.e. Russia, and in the receiving country, i.e. Russia and Belarus. Reports indicate that Ukrainian children were not given the opportunity to be educated in the Ukrainian language or follow the Ukrainian school curriculum (OSCE 2023 p. 42; PACE 2023 ¶ 7.4). More generally, the displacement must be carried out so as to facilitate reunification with families (p. 41), and so it is imperative that children, should they be separated from their parents or legal guardians, are properly identified (Art. 24 para 3 of the GC IV; Art. 78 of the AP I). Unfortunately, this has not been carried out (p. 41).
7. In addition to the unlawful transfer and deportation of children, Russia has faced widespread condemnation for failing to return these children and re-establish contact with their families (PACE 2023 ¶ 20.5; OSCE 2023 p. 42). International humanitarian law mandates the return of displaced civilians in the context of evacuations in situations of occupation as soon as hostilities in the area in question have ceased (Art. 49 para 2 of the GC IV; Rule 132 ICRC Study). Denying the possibility of immediate return is seen as an indication of the unlawfulness of the displacement (¶ 526), and, if this displacement becomes permanent, it is considered a violation of international humanitarian law. The delays in repatriating children are unjustified (¶ 6). Rather than returning children to their homes, Russia has moved them to other locations. Furthermore, international humanitarian law requires all parties to facilitate the reunion of families (Art. 74) and ensure that children are properly identified (Art. 78(2) of the API; Art. 50 para 2 of the GC IV). Reports indicate that Russia has failed to do so (p. 44). Instead, it has actively obstructed family reunions, leaving families unaware of their children's whereabouts or how to contact them (OSCE 2023 p. 4; CoI 2023 ¶ 98; UNSG 2024 ¶ 27; PACE 2023 ¶ 7.4). A more concerning issue is that Russia has actively prevented reunification by changing the nationality of Ukrainian children, indoctrinating them, placing them in foster homes, and putting them up for adoption, which makes family reunification nearly impossible (ECtHR 2022 ¶ 64; CoI 2023 ¶ 96; PACE 2023 ¶ 2). As explained in Chapter 9.5, occupation is

temporary and so the Occupying Power is not permitted to change the personal status of children, including their nationality (Art. 50 para 2 of the GC IV). Factors such as a simplified procedure for obtaining Russian citizenship, efforts to "russify" the occupied territories (OSCE 2023 p. 28; CoI 2023 ¶ 96; HRC 2024 ¶ 45(h)), and the benefits associated with Russian nationality (*see* Chapter 9.5.3) have led to many Ukrainians acquiring Russian citizenship—often without their consent. The "re-education" of children and the promotion of Russian culture at the expense of Ukrainian culture further hinder family reunification. Moreover, adoption should only be considered when family reintegration proves impossible or contrary to the child's best interests (Guidelines ¶ 162; Art. 21 of the UNCRC). Many Ukrainian children were placed for adoption by Russia (p. 18). In fact, the permanent integration of Ukrainian children into Russian families or institutions not only violates international humanitarian law but also confirms that these children were victims of deportation (p. 43). Further, from a human rights perspective, it should be noted that the family placement measures and the granting of nationality are violations of the right of a child to preserve their identity (Art. 8 of the UNCRC).

8. The breadth and depth of the issue are revealed by the wide range of officials involved in the operational and political implementation of Russia's child deportation programme (¶ 4). The transfers were coordinated by Russian officials and the local authorities (Khoshnood et al p. 6) and "[t]he system of camps and adoptions […] appears to be authorized and coordinated at the highest levels of Russia's federal government" (p. 17). Moreover, the organized and systematic nature of the conduct and the fact that operations were conducted similarly over time and across different regions tend to show that these acts were "neither random nor unplanned" (¶ 8). In addition, to support its actions, the Russian Federation passed several laws and regulations facilitating the transfer and assimilation of such children in Russia (OSCE 2023 pp 19−20; HRC 2024 ¶¶ 45(c) and (d) and 46(e)). Two reasons for loosening the rules regulating Russian nationality were that the conferral of Russian nationality allowed for temporary custody to become permanent (p. 20) and ensured access to social guarantees (p. 33) in the form of medical insurance, health care, etc, thereby encouraging potential adoptive and foster parents to take these children. Financial incentives were also used to boost the number of adoptive families (p. 20). All this, combined with an active russification of these children, has led to the claim not only by Ukraine (*see* comment attached at the end of the OSCE 2023) but also other States and international organizations that Russia is perpetrating genocide. For example, the U.S. House of Representatives passed a resolution indicating that Russia's facilitation of illegal adoptions is "contrary to Russia's obligations under the Genocide Convention and amounts to genocide" (p. H1202.) In 2023 both the Parliamentary Assembly of the Council of Europe (¶¶ 10, 11, 14 and 18.2) and the NATO Parliamentary Assembly (¶ 14) expressed the view that the deportation and forcible transfer of Ukrainian children to the Russian Federation or territories temporarily under Russian occupation could be considered a violation of the prohibition of genocide as it fell within the act of forcible transfer of children from one group to another group, with the intention to destroy, totally or in part, a national, ethnic, racial or religious group.
9. **For further reading**, *see* (1) Alison Bisset, "The UN Committee on the Rights of the Child and Russia's Deportation of Children From Ukraine," Opinio Juris (Apr. 12, 2024); (2) Hilly Moodrick-Even Khen, *The Forcible Transfer of Children from Ukraine as Genocide: Awakening the Dormant Prohibition of the Genocide Convention*, 32 INTERNATIONAL JOURNAL OF CHILDREN'S RIGHTS 78 (2024); (3) Lily Muelrath, *"Never Again" Yet Another Genocide:*

Russia's Unlawful Forced Transfer and Adoption of Ukrainian Children, 41 WISCONSIN INTERNATIONAL LAW JOURNAL 219 (2024); (4) Yulia Ioffe & Andreas Umland, *Forcible Transfer and Deportation of Ukrainian Children: Responses and Accountability Measures* (Jan. 2024); (5) Yulia Ioffe, *Forcibly Transferring Ukrainian Children to the Russian Federation: A Genocide?*, 25 JOURNAL OF GENOCIDE RESEARCH 315–351 (2023); (6) Hilly Moodrick-Even Khen, *Restoring Children's Right to Education During and After War – The Case of Ukraine*, 31 INTERNATIONAL JOURNAL OF CHILDREN'S RIGHTS 225 (2022); (7) Alison Bisset, "Russia's 'Re-Education' Camps: Grave Violations Against Children in Armed Conflict," Articles of War (Mar. 20, 2023); (8) Volodymyr Pylypenko, "Transferring of the Ukrainian Children to Russia as Genocidal Act," Cambridge Core Blog (Jan. 24, 2023); (9) Maksym Vishchyk, "Occupation of Minds: IHL Response to Russian Education Policies in the Occupied Ukrainian Territories," EJIL:Talk! (Oct. 12, 2022); (10) Alison Bisset, "Russia's Forcible Transfer of Children," Articles of War (Oct. 5, 2022)

9.9 Conclusion

This chapter begins by introducing the concept of state responsibility under international law. It then examines Ukraine's lawsuit against Russia before the ICJ for allegedly funding terrorism. Following this, the chapter discusses Russia's actions in Crimea and eastern Ukraine, highlighting violations of the principles of non-intervention and the prohibition of the use of force whilst covering the international responses and legal proceedings related to these violations, including the annexation of Crimea and territories in eastern Ukraine. The Chapter further addresses allegations of genocide made by both Ukraine and Russia, detailing Ukraine's case at the ICJ to refute Russia's claims of genocide in eastern Ukraine while examining Russia's actions, which Ukraine argues amount to genocide. Next, the chapter outlines the various violations of IHL committed during the conflict, focusing on the conduct of hostilities, protected persons, and issues related to occupation. It also discusses human rights violations committed by both Russia and Ukraine, with a focus on torture, enforced disappearances, and arbitrary detention. The chapter emphasizes the obligations of both States under international human rights law to prevent, investigate, and remedy such violations. Finally, the chapter addresses two specific types of violations that have been notably prevalent in the conflict: sexual and gender-based violence, and violence against children.

The chapter provides a comprehensive examination and analysis of the various forms of state responsibility (under general international law, the law on the use of force, IHL and human rights law) in the context of the Ukrainian-Russian war. This Chapter's length serves as unfortunate evidence of the numerous (alleged) violations of international law, primarily committed by Russia and, to a lesser extent, by Ukraine. Armed conflicts are often marked by breaches of the law that result in State responsibility; however, the breadth and magnitude of these violations are noteworthy, perhaps because it is often forgotten that this conflict started in 2014 and not in February 2022.

Overall, the Chapter underscores the need for accountability and justice for the numerous violations of international law committed during the Russian-Ukrainian war. It calls for continued investigations, prosecutions, and efforts to ensure that the rights of victims are upheld and that perpetrators are held responsible for their actions (*see* Chapter 10).

Chapter 10

Individual Liability

10.1 Introduction

After reading Chapter 9, the reader will not be surprised that many violations that can be attributed to the States of Russia and Ukraine also incur individual criminal liability. In other words, they are crimes of individual responsibility under international law. Scholars agree that, under current international law, there are essentially four international crimes: aggression, genocide, crimes against humanity, and war crimes. Aggression (under the term "crime against peace"), crimes against humanity and war crimes were already prosecuted at the Nuremberg Trials (under the Charter of the International Military Tribunal), the first international criminal tribunal set up after the Second World War to deal with atrocities committed by Germans under the Nazi regime. Genocide became an international crime later, notably because the Convention on the Prevention and Punishment of the Crime of Genocide was adopted in 1949 as a result of the Nazi crimes. The Statute of the International Criminal Court has, subject to specific requirements, jurisdiction over these four international crimes. It should nonetheless be noted that such crimes can not only be prosecuted before the International Criminal Court, the first permanent international court in history, but also before any other *ad hoc* tribunal duly constituted, as well as national criminal courts, provided national legislation permits such prosecutions.

10.2 The International Criminal Court

The International Criminal Court (ICC) was established by the Rome Statute in July 1998. The Court has jurisdiction over crimes committed by nationals of the State parties and crimes committed on the territory of these State parties (Article 12(2) of the ICC Statute). Further, the Security Council, acting under Chapter VII of the United Nations Charter, may refer a situation to the ICC (Article 13(b) of the ICC Statute) despite the States involved not having ratified the Statute. Last, a State that is not party to the Statute may, by way of declaration, accept the jurisdiction of the Court (Article 12(3) of the ICC Statute). Ukraine issued two such declarations, one in 2014 and a second one in 2015.

So far, there have been 32 cases before the Court, many with more than one defendant. The Court has issued 49 arrest warrants, six of them being for Russian nationals, namely 1) Vladimir

Putin, President of the Russian Federation, 2) Maria Lvova-Belova, Commissioner for Children's Rights in the Office of the President of the Russian Federation, 3) Sergei Kobylash, Lieutenant General in the Russian armed forces, 4) Viktor Sokolov, an Admiral in the Russian Navy, 5) Sergei Shoigu, Minister of Defence of the Russian Federation at the time of the alleged conduct and 6) Valery Gerasimov, Chief of the General Staff of the Armed Forces of the Russian Federation and First Deputy Minister of Defence of the Russian Federation at the time of the alleged conduct. The arrest warrants for the first two individuals were issued on March 17, 2023, for the second set of individuals on March 5, 2024 and for the third set on June 25, 2024; yet, the original texts of the warrants were never made public. In the reading below, remember that they are not legal documents but press releases.

Untitled Document (Letter of the Embassy of Ukraine – Declaration of Recognition of the Jurisdiction of the ICC) – April 9, 2014

In conformity with Article 12, paragraph 3 of the Statute of the International Criminal Court, Ukraine hereby recognizes the jurisdiction of the Court for the purpose of identifying, prosecuting and judging the authors and accomplices of acts committed on the territory of Ukraine within the period 21 November 2013 - 22 February 2014.

Ukraine accepts the exercise of jurisdiction by the International Criminal Court on the basis of the Declaration of Verkhovna Rada of Ukraine (the Parliament of Ukraine). The Declaration came in force on 25 February 2014 and is made for an indeterminate duration. The Declaration along with its unofficial translation are annexed herewith.

Untitled Document (Letter of the Minister for Foreign Affairs of Ukraine – Declaration of Recognition of the Jurisdiction of the ICC Statute) – September 8, 2015

On 4 February the Verkhovna Rada of Ukraine (the Parliament of Ukraine) adopted the Resolution "On the Declaration of the Verkhovna Rada of Ukraine "On the recognition of the jurisdiction of the International Criminal Court by Ukraine over crimes against humanity and war crimes committed by senior officials of the Russian Federation and leaders of terrorist organizations "DNR" and "LNR", which led to extremely grave consequences and mass murder of Ukrainian nationals". The Resolution along with its unofficial translation are annexed hereto.

Mindful of this fact, on behalf of the State of Ukraine I have the honour to declare that in conformity with Article 12, paragraph 3, of the Rome Statute of the International Criminal Court Ukraine accepts the jurisdiction of the Court for the purpose of identifying, prosecuting and judging the perpetrators and accomplices of acts committed in the territory of Ukraine since 20 February 2014.

This Declaration is made for an indefinite duration and will enter into force upon its signature.

Situation in Ukraine: ICC Judges Issue Arrest Warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova – March 17, 2023

Today, 17 March 2023, Pre-Trial Chamber II of the International Criminal Court ("ICC" or "the Court") issued warrants of arrest for two individuals in the context of the situation in Ukraine: Mr Vladimir Vladimirovich Putin and Ms Maria Alekseyevna Lvova-Belova.

Mr Vladimir Vladimirovich Putin, born on 7 October 1952, President of the Russian Federation, is allegedly responsible for the war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation (under articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute). The crimes were allegedly committed in Ukrainian occupied territory at least from 24 February 2022. There are reasonable grounds to believe that Mr Putin bears individual criminal responsibility for the aforementioned crimes, (i) for having committed the acts directly, jointly with others and/or through others (article 25(3)(a) of the Rome Statute), and (ii) for his failure to exercise control properly over civilian and military subordinates who committed the acts, or allowed for their commission, and who were under his effective authority and control, pursuant to superior responsibility (article 28(b) of the Rome Statute).

Ms Maria Alekseyevna Lvova-Belova, born on 25 October 1984, Commissioner for Children's Rights in the Office of the President of the Russian Federation, is allegedly responsible for the war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation (under articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute). The crimes were allegedly committed in Ukrainian occupied territory at least from 24 February 2022. There are reasonable grounds to believe that Ms Lvova-Belova bears individual criminal responsibility for the aforementioned crimes, for having committed the acts directly, jointly with others and/or through others (article 25(3)(a) of the Rome Statute).

Pre-Trial Chamber II considered, based on the Prosecution's applications of 22 February 2023, that there are reasonable grounds to believe that each suspect bears responsibility for the war crime of unlawful deportation of population and that of unlawful transfer of population from occupied areas of Ukraine to the Russian Federation, in prejudice of Ukrainian children.

The Chamber considered that the warrants are secret in order to protect victims and witnesses and also to safeguard the investigation. Nevertheless, mindful that the conduct addressed in the present situation is allegedly ongoing, and that the public awareness of the warrants may contribute to the prevention of the further commission of crimes, the Chamber considered that it is in the interests of justice to authorise the Registry to publicly disclose the existence of the warrants, the name of the suspects, the crimes for which the warrants are issued, and the modes of liability as established by the Chamber.

The abovementioned warrants of arrests were issued pursuant to the applications submitted by the Prosecution on 22 February 2023.

Situation in Ukraine: ICC Judges Issue Arrest Warrants Against Sergei Ivanovich Kobylash and Viktor Nikolayevich Sokolov – March 5, 2024

Today, 5 March 2024, Pre-Trial Chamber II of the International Criminal Court, composed of Judge Rosario Salvatore Aitala, Presiding, Judge Tomoko Akane and Judge Sergio Gerardo Ugalde Godinez ("ICC" or "Court") issued warrants of arrest for two individuals, Mr Sergei Ivanovich Kobylash and Mr Viktor Nikolayevich Sokolov, in the context of the situation in Ukraine for alleged crimes committed from at least 10 October 2022 until at least 9 March 2023.

Mr Sergei Ivanovich Kobylash, born on 1 April 1965, a Lieutenant General in the Russian Armed Forces, who at the relevant time was the Commander of the Long-Range Aviation of the Aerospace Force, and Mr Viktor Nikolayevich Sokolov, born 4 April 1962, an Admiral in the Russian Navy, who at the relevant time was the Commander of the Black Sea Fleet, are each

allegedly responsible for the war crime of directing attacks at civilian objects (article 8(2)(b)(ii) of the Rome Statute) and the war crime of causing excessive incidental harm to civilians or damage to civilian objects (article 8(2)(b)(iv) of the Rome Statute), and the crime against humanity of inhumane acts under article 7(1)(k) of the Rome Statute. There are reasonable grounds to believe they bear individual criminal responsibility for the aforementioned crimes for (i) having committed the acts jointly and/or through others (article 25(3)(a) of the Rome Statute), (ii) ordering the commission of the crimes, and/or (iii) for their failure to exercise proper control over the forces under their command (article 28(a) of the Rome Statute).

The two warrants of arrest were issued following applications filed by the Prosecution. Pre-Trial Chamber II considered that there are reasonable grounds to believe that the two suspects bear responsibility for missile strikes carried out by the forces under their command against the Ukrainian electric infrastructure from at least 10 October 2022 until at least 9 March 2023. During this time-frame, there was an alleged campaign of strikes against numerous electric power plants and sub-stations, which were carried out by the Russian armed forces in multiple locations in Ukraine.

Pre-Trial Chamber II found that there are reasonable grounds to believe that the alleged strikes were directed against civilian objects, and for those installations that may have qualified as military objectives at the relevant time, the expected incidental civilian harm and damage would have been clearly excessive to the anticipated military advantage.

Pre-Trial Chamber II also considered that the alleged campaign of strikes qualifies as a course of conduct involving the multiple commission of acts against a civilian population, pursuant to a State policy, in the meaning of Article 7 of the Statute. As such, there are reasonable grounds to believe that the suspects also bear responsibility for the crime against humanity of 'other inhumane acts […] intentionally causing great suffering, or serious injury to body or to mental or physical health', as per article 7(1)(k) of the Rome Statute.

The content of the warrants is issued 'secret' in order to protect witnesses and to safeguard the investigations. However, mindful that conduct similar to that addressed in the present situation, which amounts to violations of international humanitarian law, is alleged to be ongoing, the Chamber considers that public awareness of the warrants may contribute to the prevention of the further commission of crimes. Therefore, Pre-Trial Chamber II considers it to be in the interest of justice to authorise the Registry to publicly disclose the existence of the warrants, the name of the suspects, the crimes for which the warrants are issued, and the modes of liability.

Situation in Ukraine: ICC Judges Issue Arrest Warrants Against Sergei Kuzhugetovich Shoigu and Valery Vasilyevich Gerasimov – June 25, 2024

On 24 June 2024, Pre-Trial Chamber II of the International Criminal Court ("ICC" or "Court"), composed of Judge Rosario Salvatore Aitala, Presiding, Judge Sergio Gerardo Ugalde Godínez and Judge Haykel Ben Mahfoudh, issued warrants of arrest for two individuals, Mr Sergei Kuzhugetovich Shoigu and Mr Valery Vasilyevich Gerasimov, in the context of the situation in Ukraine for alleged international crimes committed from at least 10 October 2022 until at least 9 March 2023.

Mr Sergei Kuzhugetovich Shoigu, born on 21 May 1955, Minister of Defence of the Russian Federation at the time of the alleged conduct, and Mr Valery Vasilyevich Gerasimov, born on 8 September 1955, Chief of the General Staff of the Armed Forces of the Russian Federation and First Deputy Minister of Defence of the Russian Federation at the time of the alleged conduct,

are each allegedly responsible for the war crime of directing attacks at civilian objects (article 8(2)(b)(ii) of the Rome Statute) and the war crime of causing excessive incidental harm to civilians or damage to civilian objects (article 8(2)(b)(iv) of the Rome Statute), and the crime against humanity of inhumane acts under article 7(1)(k) of the Rome Statute. There are reasonable grounds to believe they bear individual criminal responsibility for the aforementioned crimes for (i) having committed the acts jointly and/or through others (article 25(3)(a) of the Rome Statute), (ii) ordering the commission of the crimes (article 25(3)(b) of the Rome Statute), and/or (iii) for their failure to exercise proper control over the forces under their command (article 28 of the Rome Statute).

The two warrants of arrest were issued following applications filed by the Prosecution. Pre-Trial Chamber II considered that there are reasonable grounds to believe that the two suspects bear responsibility for missile strikes carried out by the Russian armed forces against the Ukrainian electric infrastructure from at least 10 October 2022 until at least 9 March 2023. During this time-frame, a large number of strikes against numerous electric power plants and sub-stations were carried out by the Russian armed forces in multiple locations in Ukraine.

Pre-Trial Chamber II found that there are reasonable grounds to believe that the alleged strikes were directed against civilian objects, and for those installations that may have qualified as military objectives at the relevant time, the expected incidental civilian harm and damage would have been clearly excessive to the anticipated military advantage. In this regard, the Chamber observed that one of the core objectives of international humanitarian law is the protection of civilians in armed conflicts. Therefore, the Chamber, when assessing criminal responsibility for the alleged perpetration of war crimes during the conduct of hostilities, must consider whether the alleged conduct abided by the principle of distinction, which prohibits the use of armed force against civilians and other protected persons. As part of its assessment of the actions of those suspected of serious violations of international humanitarian law, insofar as these are codified as crimes under the Rome Statute, the Chamber will always consider the effect of said actions on the safety and security of civilians, including the most vulnerable, such as the elderly, women and children.

Pre-Trial Chamber II also determined that the alleged campaign of strikes constitutes a course of conduct involving the multiple commission of acts against a civilian population, carried out pursuant to a State policy, within the meaning of article 7 of the Statute. Therefore, there are reasonable grounds to believe that the suspects intentionally caused great suffering or serious injury to body or to mental or physical health, thus bearing criminal responsibility for the crime against humanity of other inhumane acts, as defined in article 7(1)(k) of the Rome Statute.

Considering that the key factual allegations are duly supported by evidence and other relevant material submitted at this stage of the proceedings by the Prosecution, the Chamber considered that the statutory requirements are met to issue the sought warrants of arrest.

The content of the warrants is issued 'secret' in order to protect witnesses and to safeguard the investigations. However, mindful that conduct similar to that addressed in the warrants of arrest, which amounts to violations of international humanitarian law, appears to be ongoing, the Chamber considered that public awareness of the warrants may contribute to the prevention of the further commission of crimes pursuant to article 58(1)(b)(iii) of the Rome Statute. Therefore, Pre-Trial Chamber II considered it to be in the interest of justice to authorise the Registry to publicly disclose the existence of the warrants, the name of the suspects, the crimes for which the warrants are issued, and the modes of liability.

Commentary

6. In November 2013, demonstrations and protests took place on Maidan, the main square of Kyiv, following the decision of then President Yanukovych not to sign the European Union-Ukraine Association Agreement (*see* Chapter 1.16). Deadly clashes with the police ensued, Yanukovych fled to Russia and, eventually, an interim government was installed in February 2014. As Ukraine was not a party to the ICC Statute, the events could not be investigated and prosecuted by the ICC unless Ukraine expressly consented to such an investigation. Ukraine sent a letter to the ICC on April 9, 2014, declaring its acceptance of the jurisdiction of the ICC concerning the events in Maidan, thus limiting the effect of this declaration to the period November 21, 2013 – February 22, 2014. It must be stressed that Ukraine did not specify the types of crimes to be prosecuted, i.e. the ICC can prosecute individuals for genocide (Article 6 of the ICC Statute), crimes against humanity (Article 7 of the ICC Statute) and war crimes (Article 8 of the ICC Statute).
7. A second declaration was issued in September 2015 to extend the period and so encompass all acts committed from February 20, 2014, onwards. It is, however, noteworthy that, in the letter, the Minister refers to a resolution of the Verkhovna Rada (parliament) of Ukraine that specifically mentions crimes against humanity and war crimes, the crime of genocide being omitted. Moreover, the declaration is focused on acts perpetrated by senior officials of the Russian Federation and leaders of the Donetsk People's Republic (DPR – DNR in Russian/Ukrainian) and the Luhansk People's Republic (LPR – LNR in Russian/Ukrainian). No reference is made to potential crimes committed by, for example, the members of the armed forces of Ukraine. It is thus unclear whether acts committed by Ukrainian nationals could fall within the jurisdiction of the Court. There is no territorial limitation, thus signifying that crimes committed on the entirety of the territory of Ukraine (occupied and annexed territories included) can be investigated and prosecuted. However, in a statement dated February 25, 2022, the ICC Prosecutor stated that his "Office may exercise its jurisdiction over and investigate any act of genocide, crime against humanity or war crime committed within the territory of Ukraine since February 20, 2014 onwards" thus accepting a much wider jurisdiction in relation to the crimes and the individuals. On April 24, 2014, the ICC Prosecutor opened a preliminary examination of the situation in Ukraine which was concluded in December 2020. The Prosecutor found three clusters of victimization: crimes committed in the context of the conduct of hostilities, crimes committed in detention and crimes committed in Crimea and that it was likely that the cases stemming from the investigation would be admissible. After the full-scale invasion of Ukraine by Russia in February 2022 the ICC Prosecutor announced that he would seek authorization to open an investigation under Article 15(3) of the ICC Statute. However, since 39 States referred the situation to the ICC in the following days, the Prosecutor was able to begin immediately its investigation under Article 14 of the ICC Statute. On August 24, 2024, after approval by Ukraine's Parliament (Ukr.), President Zelensky signed a law that provides for the ratification of the ICC Statute (*see* Chapter 3.3.2). While this step was welcomed by the international community, it was criticized (*see* e.g. Amnesty International and International Federation for Human Rights) because the law invokes the use of Article 124 of the ICC Statute which states that "for a period of seven years after the entry into force of this Statute for the State concerned, [the State] does not accept the jurisdiction of the Court with respect to the category of crimes referred to in article 8 when a crime is alleged to have been committed by its nationals or on its territory." The Ukrainian law, however, only refers to crimes committed by Ukrainian nationals and does not exclude the prosecution of other nationals committing war crimes on Ukraine soil, thus

adopting a selective approach to accountability. In effect, Ukraine accepts ICC jurisdiction over crimes committed by Russians and other nationals on Ukrainian soil, but not crimes committed by fellow Ukrainians. Some legal experts argue that this is trade-off for the ratification of the ICC Statute.

8. According to Article 5 of the ICC Statute, the Court has jurisdiction over four crimes: the crime of genocide, crimes against humanity, war crimes, and the crime of aggression. The arrest warrants for Putin and Lvova-Belova are for war crimes as they are accused of "unlawful deportation of population (children) and […] unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation (under articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute)." The reference to "children" in brackets is important to note. Indeed, none of the aforementioned articles of the ICC Statute refers specifically to children; rather, they mention "protected persons" or the "population of the occupied territory." Yet, although the arrest warrants are not publicly available, the fact that Putin was mentioned alongside Lvova-Belova, the Russian Commissioner for Children's Rights, seems to indicate that the crimes for which they are being sought are those against children. That Ukrainian children have been relocated from Ukrainian territory occupied by Russia to Russia is not only well-established but also uncontested by both States, and, depending on sources, it is estimated that between 150,000 (p. 12) and 740,000 (p. 13) Ukrainian children are in Russia. Such practices of forcible transfer and deportation of children have been widely condemned by the United Nations and other international organisations (*see* Chapter 9.8). Given the extensive nature and systematicity of this conduct, it might be rightfully questioned why the Court did not also file charges for crimes against humanity under Article 7(1)(k) as other inhumane acts. It is difficult to second-guess the prosecution policy without relevant information, yet such a provision lacks the required specificity of the crime and might thus be at odds with the principle of fair labelling in international criminal law. More fundamentally, the Court did not charge this conduct as a crime of genocide, even though it could fall within the purview of Article 6(e) of the ICC Statute as including acts of "forcibly transferring children of the group to another group." It has been reported that Russia has actively prevented the reunification of families, changed the nationality of Ukrainian children, indoctrinated them by subjecting them to propaganda that advances nationalist messaging on the politics, military accomplishments, culture and history of Russia and denigrates the Ukrainian language, culture, and history, placed them in foster homes, and put them up for adoption. All this can lead to the children's loss of their Ukrainian identity and complete and permanent integration into Russian society, thus eventually destroying in part a national/ethnical group (*see* Chapter 9.8). It is unclear whether it was the Court that did not confirm the genocide charges or whether it was the Prosecutor who did not charge the crime of genocide in relation to the unlawful conduct. That being said, three reasons might be adduced to explain the current state of affairs. First, the threshold to prove the "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such" (Article 6 of the ICC Statute) is very high, and so the ICC might have opted for the low-hanging fruit, that is war crimes. Second, in the situation in Darfur regarding Al Bashir, then President of the Republic of Sudan, the Court originally decided not to issue an arrest warrant in respect of the charge of genocide; only after being presented with further information it agreed that there were reasonable grounds to believe him responsible for the crime of genocide. On the one hand, this precedent indicates that perhaps the Prosecutor has learned from this situation and preferred not to charge the crime of genocide. This, however, does not foreclose a later addition of genocide charges to the arrest warrants against Putin and

Lvova-Belova, as the Al Bashir case shows. A third explanation could be that the second declaration issued by Ukraine relating to the jurisdiction of the ICC does not refer to the crime of genocide, thus limiting potential charges to war crimes and crimes against humanity but, as aforementioned, the Prosecutor has interpreted Ukraine's declaration to encompass the crime of genocide.

9. Two sets of warrants were published in March 2024 against two members of the Russian armed forces and then in June 2024 against the Minister of Defence of the Russian Federation and the Chief of the General Staff of the Armed Forces of the Russian Federation at the time of the alleged conduct. This time, arrest warrants were issued for both war crimes and crimes against humanity. The charges are unsurprising. As explained in Chapter 9.5, the Russian armed forces launched attacks on civilian objects and, even if the attacks were deemed to have been directed at military objectives, they often breached the principle of proportionality as they caused excessive incidental harm to civilians and damage to civilian objects. The specific attacks mentioned in the press releases are missile strikes against Ukrainian electric infrastructure, such as power plants and sub-stations. It seems that the Court doubts the military character of such infrastructure (under Article 8(2)(b)(ii) of the ICC Statute), though it does agree to consider such a possibility since the press release refers to "installations that may have qualified as military objectives at the relevant time" and to "harm and damage [that] would have been clearly excessive to the anticipated military advantage" (Article 8(2)(b)(iv) of the ICC Statute), the proportionality test only being applicable in cases where the object of the attack was a military objective. Noteworthy is that in contradistinction to the press release of the arrest warrants against Kobylash and Sokolov, the one concerning Shoigu and Gerasimov contains several sentences stressing not only the core principle of distinction under international humanitarian law but also that the Court is mindful of the effects of these attacks on the safety and security of civilians. The specific reference to "the most vulnerable, such as the elderly, women and children" as examples of civilians whose safety and security have been compromised by the strikes, seems to indicate that the Court is considering adopting a broad(er) definition of the concept of incidental civilian harm. Moreover, according to the Court, there are also reasonable grounds to believe that these attacks qualify as crimes against humanity: first, the strikes were committed against the civilian population; and second, the multiple commission of such attacks pinpoints the existence of a policy supporting such acts. It could also be argued that the systematic and widespread character of such attacks on civilians – the campaign of strikes against electric infrastructure was carried out in multiple locations in Ukraine – is likely to fall within the purview of "inhumane acts" under Article 7(1)(k) of the ICC Statute.
10. All six individuals bear individual criminal responsibility for these acts under Article 25 of the ICC Statute. While all of them are charged with "having committed the acts directly, jointly with others and/or through others" under Article 25(3)(a) of the ICC Statute, some have been charged with additional modes of liability. Article 25(3)(a) of the ICC Statute distinguishes between three forms of perpetration: direct, co-perpetration and perpetration by means. At this stage, it is unclear whether one (and, in such case, which one) or all such forms are charged. In addition, Putin, Shoigu and the three members of the armed forces are charged under Article 28 of the ICC Statute on the responsibility of commanders and other superiors, thus clearly indicating that they were in a situation of command/responsibility when such crimes occurred. The personnel of the armed forces are charged under Article 28(a) of the ICC Statute which reflects the principle of command responsibility known under International Humanitarian Law

(Articles 86(2) and 87 of Additional Protocol I and Rule 152 of the ICRC Study on Customary International Humanitarian Law), while Putin is specifically and Shoigu impliedly (the press release only mentions Article 28 of the ICC Statute without specifying the relevant paragraph) charged under Article 28(b) of the ICC Statute which reflects the principle of superior responsibility, the equivalent (though modified) for individuals who are not military commanders. Under Article 28 of the ICC Statute, there is no need to show that the alleged perpetrator either ordered or committed the act; simply, it must be demonstrated that the individual failed or omitted to prevent or punish the actions of the perpetrators. It should be noted that by bringing charges under Article 28 the ICC Statute believes the crimes to have been accepted or at least tolerated at the highest level of the Russian State.

11. Last but not least, the secrecy of the warrants needs to be examined. As the ICC explains in the press releases, it wishes "to protect witnesses and to safeguard the investigations". It is therefore mindful that evidence that proves the crimes might be destroyed or tampered with, that witnesses might be put under pressure to withdraw their testimonies or, worse, might be killed. Yet, the Court is also aware of its mission to act as a deterrent to further crimes, its Preamble specifying that the State Parties are "[d]etermined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes." Accordingly, it issued press releases to indicate that it was not only investigating the crimes committed in Ukraine but also willing to prosecute those responsible for such crimes, thus putting on notice future perpetrators. The Prosecutor had earlier explained that "the Office remains fully committed to the prevention of atrocity crimes and to ensuring that anyone responsible for such crimes is held accountable." That being said, under the ICC Statute, "the accused shall be present during the trial" (Article 63(1)) which means that unless the suspects are arrested and brought to The Hague, the seat of the ICC, they will not be tried. Trials *in absentia*, like those conducted at Nuremberg against some leading Nazis, are no longer permitted. This certainly raises doubts as to the effectiveness of such arrest warrants beyond signalling that the ICC is actively pursuing investigations into the situation in Ukraine.
12. While the Court has been praised for being proactive in issuing such arrest warrants, some States have pointed out that the Court's attention should also be turned towards those who are supporting the Russian regime. For example, the Foreign Minister of Lithuania "forwarded to the Prosecutor of the International Criminal Court the detailed information on the involvement of Belarusian political elites and state-owned enterprises in the deportation of Ukrainian children to Belarus." It is thus possible that the Court will broaden the scope of its investigation in the future.
13. In its endeavour to investigate and prosecute alleged perpetrators of crimes listed in the ICC Statute, the ICC is supported by a wide range of institutions and bodies such as the Joint Investigation Team coordinated by Eurojust, the European Union (EU) Agency for Criminal Justice Cooperation established in 2002 to improve coordination and cooperation between EU Member States investigations and prosecutions of serious cross-border crimes. Eurojust focuses on tackling complex cases that involve multiple jurisdictions, such as organized crime, terrorism, human trafficking, cybercrime, drug trafficking, money laundering, and environmental crime. Eurojust supports and coordinates Joint Investigation Teams (JITs), where multiple countries work together to gather evidence and prosecute crimes that span borders. The JIT for Ukraine was originally created by a memorandum in March 2022 by Lithuania, Poland and Ukraine which was later signed by Estonia, Latvia, Slovakia, and Romania. Eurojust supported these States with financial, legal, analytical, and logistical

assistance. The Office of the Prosecutor of the ICC and the US Department of Justice then became participants, and eventually, in October 2023, Europol formally joined the 2022 Joint Investigation Team agreement, thus providing its full support and expertise.

14. **For further reading**, *see* (1) Cuno Jacob Tarfusser & Giovanni Chiarini, *Without a Specific Declaration of Jurisdiction and Ratification: Procedural Weaknesses of the International Criminal Court's Investigation into the Russo-Ukrainian War,* 56 TEXAS TECH LAW REVIEW 171–184 (2023−2024); (2) Micaela Frulli, *International Criminal Justice at the Russia-Ukraine Crossroads,* 32 ITALIAN YEARBOOK OF INTERNATIONAL LAW ONLINE 231-247 (2023); (3) Yudan Tan & Suhong Yang, *The Joint Investigation Team in Ukraine: An Opportunity for the International Criminal Court?*, 22 CHINESE JOURNAL OF INTERNATIONAL LAW 103−119 (2023); (4) Sergey Vasiliev, "The International Criminal Court Goes All-in: What Now?," EJIL:Talk! March 20, 2023; (5) Iryna Marchuk, *Ukraine and the International Criminal Court: Implications of the Ad Hoc Jurisdiction Acceptance and Beyond,* 49 VANDERBILT JOURNAL OF TRANSNATIONAL LAW 323−370 (2016); (6) Frédéric Mégret & Camille Marquis Bissonnette, *Heads of State as War Criminals: The Prospects and Challenges of Tracing War Crimes to Senior Political Leaders in Russia,* 25 YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW 175–199 (2022).

10.3 The Special Tribunal for Ukraine on the Crime of Aggression

The blatant violation of a key principle of the United Nations Charter, that of the prohibition of the use of force under Article 2(4), has not only led to the international community condemning Russia in international fora (*see* Chapter 9.2) but also to calls to prosecute Russian officials for the crime of aggression. Faced with the problem that the International Criminal Court does not have jurisdiction over the crime of aggression in relation to the conflict in Ukraine, various groups began calling for the creation of a special tribunal for Ukraine on the crime of aggression. All such initiatives are part of a wider search for accountability for crimes perpetrated by Russian officials.

Declaration on a Special Tribunal for the Punishment of the Crime of Aggression against Ukraine – March 4, 2022

Whereas the International Criminal Court does not at present have jurisdiction to investigate and, as appropriate, prosecute the crime of aggression committed on the territory of Ukraine;

Whereas international solidarity is necessary to uphold the rule of law and the principles of the United Nations Charter, including the prohibition on the use of force, and to protect Ukraine and the fundamental rights of its people, end the violence, and bring the perpetrators to justice;

Recalling the international law prohibiting war crimes, crimes against humanity and the crime of aggression, as well as the Inter-Allied Declaration signed at St James's Palace London on 13 January 1942;

Recalling the developments in international criminal law over the past eighty years;

Recalling that the ICC Statute recognises that "it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes",

[…]

(3) Resolve, in a spirit of international solidarity, to grant jurisdiction arising under national criminal codes and general international law to a dedicated international criminal tribunal that should be established to investigate and prosecute individuals who have committed the crime of aggression in respect of the territory of Ukraine, including those who have materially influenced or shaped the commission of that crime;
(4) Recognise that the exercise of jurisdiction by this tribunal over the crime of aggression shall be complementary to and supportive of the exercise of jurisdiction by the ICC over other international crimes.

Ambassador Van Schaack's Remarks on the U.S. Proposal to Prosecute Russian Crimes of Aggression – March 27, 2023

Again now, at this critical moment in history, I am pleased to announce that the United States supports the development of an internationalized tribunal dedicated to prosecuting the crime of aggression against Ukraine. Although a number of models have been under consideration, and these have been analyzed closely, we believe an internationalized court that is rooted in Ukraine's judicial system, but that also includes international elements, will provide the clearest path to establishing a new Tribunal and maximizing our chances of achieving meaningful accountability. We envision such a court having significant international elements—in the form of substantive law, personnel, information sources, and structure. It might also be located elsewhere in Europe, at least at first, to reinforce Ukraine's desired European orientation, lend gravitas to the initiative, and enable international involvement, including through Eurojust.

This kind of model—an internationalized national court—will facilitate broader cross-regional international support and demonstrate Ukraine's leadership in ensuring accountability for the crime of aggression. It also builds upon the example of other successful hybrid justice mechanisms.

We are committed to working with Ukraine, and peace-loving countries around the world, to stand up, staff, and resource such a tribunal in a way that will achieve comprehensive accountability for the international crimes being committed in Ukraine.

Commentary

1. The crime of aggression is relatively new, at least in its current form. This crime under the heading "crime against peace" appeared for the first time in the 1945 Charter of the International Military Tribunal whose Article 6(A) specified that crimes against peace covered the "planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing." Individuals were found guilty of such a crime in both the trials of Nuremberg, the subsequent trials led by the occupying powers in Germany and the trials held by the International Military Tribunal for the Far East. Principle VI of the Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal adopted by the International Law Commission in 1950 reiterates that crimes against peace are crimes entailing individual liability. In 1974 the United Nations General Assembly adopted a declaration on the Definition of Aggression. Although entirely focused on State responsibility it stressed in Article 5(2) that "[a] war of aggression is a crime against international peace." In 1998 the Rome Statute gave the International Criminal Court jurisdiction over the crime of aggression under Article 5. Yet, it took more than ten years

for the crime to be defined under the Kampala Agreement that amended the Rome Statute, thereby introducing Article 8 *bis* on the crime of aggression. Whereas the first paragraph of Article 8 *bis* states that "'crime of aggression' means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations" the second defines an "act of aggression" relying heavily on the 1974 Declaration on the Definition of Aggression.

2. With regard to jurisdiction, it should be noted that the date of the activation of the ICC jurisdiction for the crime of aggression was July 17, 2018. The ICC has automatic jurisdiction under Article 15 *bis* if the alleged crime arises "from an act of aggression committed by a State Party" (there is however an opt-out clause under Article 15 *bis* 4) and, in case of non-State parties, an *ad hoc* jurisdiction when a situation is referred to it by the United Nations Security Council under Article 15 *ter* of the ICC Statute. As the Prosecutor avowed, "[g]iven that neither Ukraine nor the Russian Federation are State Parties to the Rome Statute, the Court cannot exercise jurisdiction over this alleged crime in this situation." Further, since Russia is a permanent member of the United Nations Security Council with veto power under Article 27(3) of the United Nations Charter, the possibility of a referral by this body is ruled out. In February 2022 Russia vetoed a draft resolution that intended to stop the military offensive by Russia.
3. As the ICC cannot exercise jurisdiction over the crime of aggression alleged to have been committed in the conflict in Ukraine, a group of politicians and experts issued a statement and a declaration calling for the creation of a Special Tribunal for the Punishment of the Crime of Aggression against Ukraine (*see* above), a call supported by Ukraine. The authors of this declaration assert that such a Court would be complementary to other actions undertaken against Russia, including sanctions and financial measures. In particular, the Tribunal would "complement the actions now underway before the ICC, ICJ and ECtHR" as the crime of aggression "cannot be addressed by the three other courts." Subsequently, a range of initiatives were launched to support the establishment of a tribunal. The Core Group on the Establishment of a Special Tribunal for the Crime of Aggression against Ukraine, comprised now of more than 40 States, was created in January 2023 and is actively discussing options.
4. The original proposal did not specify the legal basis for the creation of such a court. Several options (*see* Figure 1) have been discussed, all revealing political, legal and practical challenges: 1) to amend the ICC Statute to enable the United Nations General Assembly to refer situations to the ICC (see Haque and Darcy); 2) to establish a hybrid court with international support; 3) to create an international court established by the UN General Assembly with the agreement of Ukraine; 4) to adopt a treaty between interested States to create a special tribunal; 5) to establish an internationalized tribunal hosted in a third State and 6) to create a tribunal by the Council of Europe through a bilateral agreement with Ukraine. The first option appears unlikely given that a sizeable number of State parties to the ICC have not submitted to its jurisdiction over the crime of aggression and are thus unlikely to agree to open further avenues for prosecution. The second means that Ukraine would have jurisdiction over the crime but would apply international law standards and the staff would be a combination of national and international judges and prosecutors. From the extract above, it seems that this is the approach favored by the US, as Ambassador Van Schaack refers to an "internationalized national court" embedded in Ukraine's judicial system while also containing international elements. Such a solution would violate Article 125 of the Ukrainian Constitution which prohibits the creation of any special or extraordinary court. The third option is inspired

by the Statute of the Special Court for Sierra Leone. The fourth option is likely to face a raft of political and legal issues (*see* para. 5 below). For the fifth option, the Netherlands was asked to be the lead nation on 'Restoring Justice', point seven of President Zelenskyy's Peace Plan and offered to host a special tribunal. The sixth option has been suggested by the Core Group but little is known about its working. So far, the Committee of Ministers of the Council of Europe has authorised the Secretary General of this international organisation to prepare the necessary documents to contribute to consultations within the Core Group.

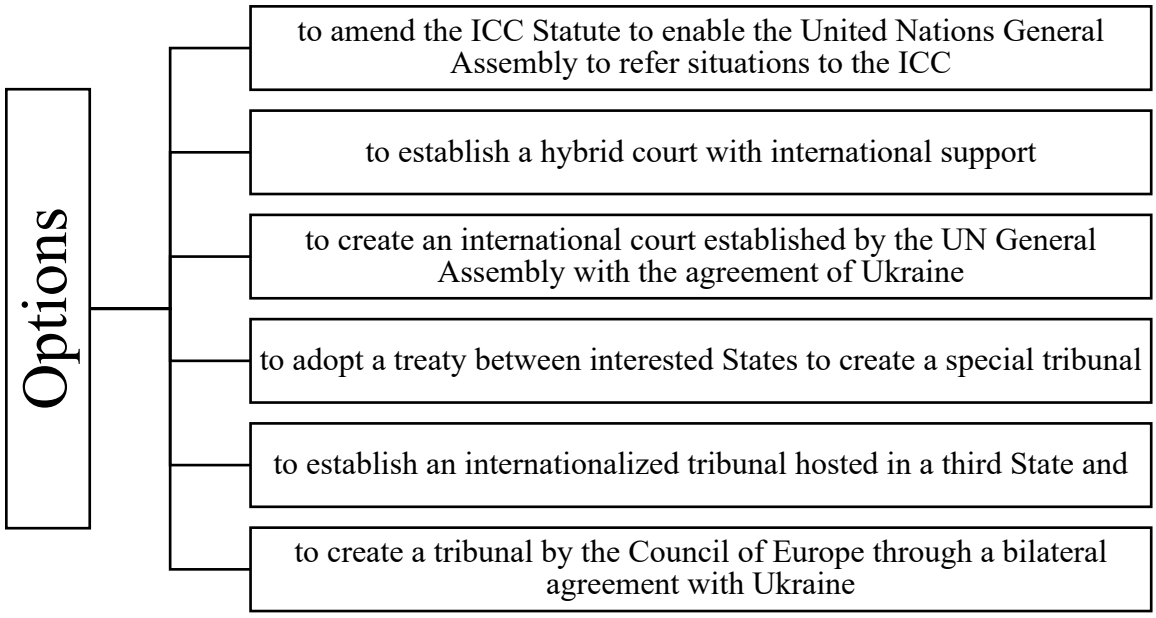


Figure 4: Options for Tribunal for the Crime of Aggression

5. Besides the issue of the legal basis for the jurisdiction of the special tribunal, the creation of such a tribunal is riddled with complex, contentious political and legal issues. First, it has been noted that certain state officials, notably the Head of State (Putin), the Prime Minister (Mishustin) and the Minister of Foreign Affairs (Lavrov), enjoy immunities. While the International Court of Justice in the *Arrest Warrant* Case explained that immunities did not apply to "criminal proceedings before *certain* international criminal courts" (¶ 61) (emphasis added) questions remained as to whether a hybrid, special court, would be classified as such an international criminal court. Second, funding the tribunal remains a thorny concern as it is unclear whether the budget would come from the United Nations, specific States and/or Ukraine. A more political matter is that of selectivity as the crime of aggression has, despite its commission in a wide array of conflicts, not been prosecuted since the trials in Nuremberg and Tokyo. Selective justice could also be questioned by pointing out that several States supporting the creation of a special tribunal do not consent to the jurisdiction of the ICC either generally (such as the US) or concerning the crime of aggression (the United Kingdom).
6. In July 2023, the European Union and Ukraine established the International Centre for the Prosecution of the Crime of Aggression against Ukraine to support the work of a future tribunal. Embedded in a Joint Investigation Team of Eurojust the Centre coordinates the collection of evidence. Its strength lies in the facts that not only does the Office of the Prosecutor of the ICC participate in its work, the Centre benefits from the Core International Crimes Evidence Database, but also a Memorandum of Understanding between the Joint

Investigation Team and the US has led the US to appoint in June 2023 a Special Prosecutor for the Crime of Aggression who supports the activities of the Centre.

7. It should be noted that this endeavour to set up a tribunal to prosecute individuals for the crime of aggression is part of a larger initiative aimed at ensuring accountability for international crimes. In March 2023, the Ministerial Ukraine Accountability Conference, which stressed the importance of investigating and prosecuting all international crimes arising from the war in Ukraine, launched the Dialogue Group on Accountability for Ukraine. The Ministerial Conference on Restoring Justice for Ukraine in April 2024 again stressed that the undersigning States were "committed, in the context of the Core Group in which many of our Governments participate, to work towards the establishment of a special tribunal for the investigation and prosecution of the crime of aggression against Ukraine, that would contribute to accountability of the highest levels of military and political leadership" (¶ 15).
8. **For further reading**, *see* (1) Anton Korynevych, *The Ukrainian Struggle for Internationalization of the Problem of Punishment of the Crime of Aggression* in THE RUSSIAN-UKRAINIAN CONFLICT AND WAR CRIMES (Patrycja Grzebyk and Dominika Uczkiewicz eds, 2025); (2) Patryk I. Labuda, *Countering Imperialism in International Law: Examining the Special Tribunal for Aggression against Ukraine through a Post-Colonial Eastern European Lens,* 49 YALE JOURNAL OF INTERNATIONAL LAW 271–310 (2024); (3) Claus Kreß, *Russia's War of Aggression against Ukraine and the Crime of Aggression, in* THE WAR IN UKRAINE AND INTERNATIONAL LAW 55–78 (Asada, Masahiko & Tamada, Dai eds, 2024); (4) Gaiane Nuridzhanian, *International Enough? A Council of Europe Special Tribunal for the Crime of Aggression,* Just Security (June 3, 2024); Jennifer Trahan, *The Need for an International Tribunal on the Crime of Aggression Regarding the Situation in Ukraine*, 46 FORDHAM INT'L L.J. 671–689 (2023); (5) Carrie McDougall, *The Imperative of Prosecuting Crimes of Aggression Committed against Ukraine,* 28 JOURNAL OF CONFLICT AND SECURITY LAW 203–230 (2023); (6) Kevin Jon Heller, *Options for Prosecuting Russian Aggression against Ukraine: A Critical Analysis,* 26 JOURNAL OF GENOCIDE RESEARCH 1–24 (2022); (7) Carrie McDougall, *Why Ukraine Needs an International – Not Internationalised – Tribunal to Prosecute the Crimes of Aggression Committed Against it,* 12 POLISH REVIEW OF INTERNATIONAL AND EUROPEAN LAW 65–91 (2023); (8) Rosanne Van Alebeek, Larissa van den Herik & Cedric Ryngaert, *Prosecuting Russian Officials for the Crime of Aggression: What about Immunities?,* 4 EUROPEAN CONVENTION ON HUMAN RIGHTS LAW REVIEW 115–132 (2023); (9) Olivier Corten & Vaios Koutroulis, Tribunal for the Crime of Aggression against Ukraine – A Legal Assessment, (In-Depth Analysis Requested by the DROI Subcommittee of the European Parliament) December 2022; (10) Dannenbaum, Tom, *A Special Tribunal for the Crime of Aggression?*, 20 JOURNAL OF INTERNATIONAL CRIMINAL JUSTICE 859–873 (2022).

10.4 Prosecutions in National Courts of Ukraine

While the Ukrainian courts already examined a few international crimes cases committed by Russian soldiers or their proxies on the territory of Ukraine since 2014, Russia's full-scale invasion of Ukraine on February 24, 2024, and the atrocity crimes committed by its agents, resulted in 135,262 investigations in war crimes and aggression cases (Ukr.). To date, 173 verdicts have been issued by trial courts (Ukr.). An interactive map has been developed to track all the verdicts in war crimes cases issued in Ukraine. The majority of these verdicts concern violations of the rules and customs of warfare under Article 438 of the Criminal Code of Ukraine (CCU), as well as the planning, preparation, and waging of an aggressive war under Article 437 of the CCU (*see*

Chapter 2.3.1). In addition, nationals of Ukraine were prosecuted for encroachment on the territorial integrity and inviolability of Ukraine under Article 110 of the CCU, State treason under Article 111 of the CCU, collaborative activities under Article 111-1 of the CCU, assistance to the aggressor state under Article 111-2 of the CCU, and sabotage under Article 113 of the CCU.

The prosecution of Russian soldiers in Ukraine for war crimes demonstrates the Ukrainian legal and judicial systems' commitment to upholding international humanitarian law and ensuring that individuals are held accountable, regardless of their rank or severity of their crimes. The wide array of offenses ―such as murder, torture, looting, the use of banned weapons, and sexual violence― highlights the widespread violations of international humanitarian law and human rights law that have characterized this war (*see* Chapter 9).

At the same time, there has been criticism regarding the issued verdicts and procedural decisions in terms of their adherence to the fair trial standards under international law. This chapter examines the challenges faced by the Ukrainian justice system in prosecuting and adjudicating war crimes cases as well as highlights the gaps that need to be addressed. The excerpts of the first verdict in war crimes cases rendered after Russia's invasion of Ukraine on February 24, 2022, included in the chapter, illustrate the legal challenges and gaps discussed herein.

Verdict – Criminal Proceedings No 1-kp/760/2024/22, Case No 760/5257/22 – Solomianskyi District Court of Kyiv – May 23, 2022 (Ukr.)

…

having considered during the open court hearing the indictment in the criminal proceeding, information regarding this matter has been entered into the Unified Register of Pre-Trial Investigations under No. 22022101110000114 dated 04.05.2022, concerning

Person 10, Information 1, born in Ust-Ilimsk (Russian Federation), citizen of the Russian Federation, residing at the following address: Address 1, not married, without children, with secondary education, service member of military unit 32010 of the RF's army under contract, sergeant, with no previous convictions,

charged with committing a criminal offence set out by Article 438(2) of the Criminal Code of Ukraine,

HAS ESTABLISHED:

Having experience of military service, a citizen of the Russian Federation Person 10 committed a crime against peace, security of mankind, and international legal order on 28 February 2022 under the following circumstances.

…

Declaration of the UN General Assembly No. 36/103 of 09.12.1981 on the Inadmissibility of Intervention and Interference in the Internal Affairs of States and Resolutions No. 2734 (XXV) of 16.12.1970, which contains the Declaration on the Strengthening of International Security and No. 2131 (XX) of 21.12.1965, which contains the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, and No. 3314 (XXIX) of 14.12.1974, which contains the definition of aggression, stipulate that none of the states shall have the right to intervene or interfere in any form and for any reason in internal and external affairs of other states. They enshrine the states' obligation to refrain from armed interventions, subversive activities, and military occupation; facilitation, encouragement, or support of separatist activities; allowing the training, financing, and recruitment of mercenaries on its own territory and sending such mercenaries to the territory of another state.

Besides, Articles 1–5 of the UN General Assembly's Declaration No. 3314 of 14.12.1974 (XXIX), among others, define aggression as the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State; the first use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression.

Any of the following acts, regardless of a declaration of war, shall qualify as an act of aggression:

- The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
- Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
- The blockade of the ports or coasts of a State by the armed forces of another State;
- An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
- The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

…

Pursuant to cl. 1, 2 of the Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons dated 05.12.1994, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America reaffirmed their commitment to Ukraine in accordance with the principles of the CSCE Final Act dated 01.08.1975, to respect the independence and sovereignty and the existing borders of Ukraine, to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine, and that none of their weapons would ever be used against Ukraine except in self-defense or otherwise in accordance with the Charter of the United Nations.

On 31.05.1997, pursuant to the provisions of the UN Charter and commitments under the Final Act of the Conference on Security and Cooperation in Europe, Ukraine and the Russian Federation (hereinafter referred to as the RF) concluded the Treaty on Friendship, Cooperation and Partnership between Ukraine and the Russian Federation (ratified by Law of Ukraine No. 13/98-ВР dated 14.01.1998 and Federal Law of the Russian Federation No. 42 ФЗ dated 02.03.1999). According to Articles 2-3 of this Treaty, the Russian Federation undertook the obligation to respect the territorial integrity of Ukraine, reaffirmed the inviolability of their common borders and building of relations based on the principles of mutual respect, sovereign equality, territorial integrity, the inviolability of borders, the peaceful settlement of disputes, the non-use of force or threat of force, including economic and other means of pressure, the right of peoples to control their own destiny, non-interference in internal affairs, observance of human rights and fundamental freedoms, cooperation among states, and conscientious fulfilment of international obligations and other universally recognized norms of international law.

…

The Geneva Conventions for the Protection of Victims of War dated 12.08.1949 were ratified with the Decree of the Presidium of the Verkhovna Rada of the USSR on 03.07.1954.

A range of violations of the laws and customs of warfare are provided for by additional protocols to the Geneva Conventions dated 12.08.1949:

- Additional Protocol Relating to the Protection of Victims of International Armed Conflicts dated 08.06.1977 (ratified with the declaration by Decree of the Presidium of the Verkhovna Rada of the USSR No. 7960-XI on 18.08.1989);
- Additional Protocol Relating to the Protection of Victims of Non-International Armed Conflicts dated 08.06.1977 (ratified with the declaration by Decree of the Presidium of the Verkhovna Rada of the USSR No. 7960-XI on 18.08.1989);
- Additional Protocol Relating to the Adoption of an Additional Distinctive Emblem in the Form of the Red Cross and Red Crescent dated 08.12.2005 (the protocol was ratified by Law No. 1674-VI on 22.10.2009) and other international treaties.

In violation of the legislation of Ukraine and the aforementioned provisions of international humanitarian law, which set out laws and customs of warfare, Person 10 committed a criminal offence under the following circumstances.

So, the president of the Russian Federation announced the decision to start "a special military operation in Ukraine" at 5 o'clock on 24 February 2022.

Afterwards, the Armed Forces of the RF, which acted pursuant to the order of the leadership of the RF and the RF's armed forces, launched cruise and ballistic missiles targeting airfields, military command, and storage facilities of the armed forces of Ukraine, as well as units of the armed forces and other military formations, and after that, the RF invaded the territory of the sovereign state of Ukraine.

In connection with this, the Decree of the President of Ukraine No. 64/2022 dated 24.02.2022 "On the Introduction of Martial Law of Ukraine" introduced martial law in Ukraine for a period of 30 days from 05:30 on 24 February 2022.

On 24.02.2022, being in command of division "4th tank Kantemyriv division of Moscow region" of military unit 32010 of the RF's armed forces, having personal automatic firearms, together with other persons unidentified by the pre-trial investigation, including service members of the "13th guards tank Shepetivskyi, Krasnoznamennyi, Suvorov's and Kutuzov's orders regiment" of military unit 32010 and leadership of the RF's armed forces, Person 10 left the city of Hraivoron of Belgorod region of the Russian Federation in the direction of the Russian-Ukrainian border and crossed the state border of Ukraine in Sumy region at about 09:00 on the same day, which is why he had the status of a combatant according to Article 43 of the Protocol Additional to the Geneva Conventions as of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) dated 08.06.1977.

A military convoy with service members of the RF, including Person 10, crossed the state border of Ukraine on 24 – 26.02.2022 and continued moving on the territory of Ukraine with a view to fulfilling orders of unidentified commanders of the RF's armed forces.

…

This convoy included, among others, service members of the RF's armed forces, namely: Person 10, Person 11, Person 12, Person 13, and a person with respect to whom materials were assigned into a separate proceeding (hereinafter referred to as Person 1).

At about 08:00 on 28.02.2022, the aforementioned convoy of the RF's armed forces started moving from a location not established by the pre-trial investigation not far from the village of Komyshi of Okhtyrka district of Sumy region in the direction of the state border of Ukraine with

the Russian Federation, having passed through the village of Komyshi and subsequently moving in the direction of village of Chupakhivka of Okhtyrka district of the Sumy region.

…

At about 10:30, on the road between the village of Chupakhivka and the village of Hrinchenkove, these service members noticed a gray vehicle, a Volkswagen Passat (long-roof version), which was moving in their direction from the village of Dovzhyk in the direction of the village of Hrinchenkove.

Subsequently, when this car reached the service members of the RF's armed forces, the latter, intending to seize this car, fired several shots from their automatic firearms in the direction of this vehicle, which resulted in damages to the vehicle body, front windscreen, and front left wheel. At that moment, the driver stopped, left the vehicle, and hid on the right-hand side of the road, trying to preserve his own life and health.

After shelling the car, five service members of the RF Person 10, Person 14, Person 12, Person 13, and Person 1 together with their weapons, namely Kalashnikov assault rifles, got into the car and started moving in the direction of the village of Chupakhivka of Okhtyrka district of the Sumy region.

Driving along Lebedynska Street in the village of Chupakhivka in the direction of the river Tashan, the aforementioned service members of the RF's armed forces saw a civilian – citizen of Ukraine, local resident Person 15, born in 1959, at the roadside in the vicinity of building No. 52, who posed no danger to the service members of the RF, being in civilian clothes, unarmed, who was returning home with a bicycle (Address 3) and was talking on his mobile phone.

Falsely believing that Person 15 intended to report their location, a service member of the RF's armed forces, Person 1, instructed Person 10 to kill this civilian.

…However, in contravention of the laws and customs of warfare set out by the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), dated 8 June 1977, the service member of the RF Person 10 carrying out the criminal instruction of Person 1, with respect to whom materials were allocated in a separate proceeding, sitting on the left rear seat of grey vehicle Volkswagen Passat, Number 1, which continued moving toward Person 15. Then Person 10 made several (3 – 4) shots at point blank range through an open rear left window from his personal automatic rifle, a Kalashnikov assault rifle with 5.45 caliber, in the head of Person 15 at about 10:55 on the same day (28.02.2022), realizing that Person 15 was a civilian, was unarmed, did not pose any danger to him, acting intentionally; as a result of which, Person 15 suffered an injury in the left parietal-temporal part, crushing the calvarial bones, and destroying the cerebrum. The cause of Person 15's death was a gunshot wound to the head, which resulted in the crushing of cranial bones.

…

Defendant Person 10, who was interrogated during the court hearing, partially admitted his guilt of committing the criminal offence he had been charged with. He expressed remorse regarding the committed act and apologized to the victim.

The defendant told the court that he was a service member of the RF with the military specialty of antiaircraft gunner, had the rank of sergeant, and held the position of the commander of the unit. He was enlisted for service and signed a contract 10 months later. He decided to sign a contract in order to help his parents financially, he received a salary amounting to about USD 550. The defendant pointed out that while serving, service members of the RF do not study any international regulations relating to the rules and customs of warfare and that they study only the

fundamentals of the Statute. He knew that Ukraine was an independent state and realized that he was invading its territory.

Person 10 also reported that before the invasion the RF's service members had been located in the city of Belgorod from February 6 to 16 and then moved to the border. They had lived at the border since February 19. On February 26, their commander left the meeting and informed them that they had a few hours to pack necessary items, receive combat rations for 3 days and ammunition, mechanics-drivers built a convoy, before they started moving in the direction of the border at 05:00 and crossed it at about 07:00 – 08:00. When he tried to find out from the commander about their destination, the latter informed them that their task was to reach Sumy, spend 3 days there and did not mention anything about combat actions. The defendant did not know that they would spend more than 3 days on the territory of Ukraine.

Their battalion tactical group arrived in the forest at the deployment site on 27 February 2022. Engineers installed light-noise traps, and one of these traps was activated in the evening and service members of the RF opened fire in the direction of the traps, injuring their comrades.
On the following day, on 28 February, they formed a convoy consisting of 5 vehicles: 2 infantry fighting vehicles (IFVs), 2 fuel tankers, and 1 medical vehicle to transport the injured to Russia, but a few hours later the convoy was defeated: the first IFV and the second vehicle – medical KAMAZ were destroyed, and they started retreating.

Continuing his testimony, the defendant said that during the retreat, he saw how the fire was opened at a grey civilian vehicle, a Volkswagen Passat. The captain ordered him, an unknown service member, and Person 17 to bring the car to them. The defendant sat behind the driver, Person 18 sat to the right of the defendant, and the unknown member took the driver's seat. Having boarded the car, they managed to catch up with the convoy. In the vicinity of the convoy, warrant officer Person 19 and Senior Lieutenant Kalinin came to them. Warrant Officer Person 19 ordered the driver to get out of the car and took the driver's seat. Person 19 was not his immediate commander, he was from another unit, but the defendant knew him. The defendant pointed out that, in the absence of the commander, all obligations of the latter should be delegated to the deputy commander of the formation, he was present in the convoy, yet he was not in the car with them, the warrant officer undertook these obligations and he was obliged to follow his orders, he assessed the situation as one of combat.

When they were driving, warrant officer Person 19 was the first to spot a civilian man talking on his mobile phone and told them that the man would report them as he was calling service members of the AFU so that they would be caught and neutralized, which is why he ordered to shoot him, yet the defendant did not do that. Then, the unknown service member sitting to the right of the driver turned around and started yelling at him and ordering the defendant to shoot the victim with threats as he was the closest to him, justifying it with the statement that unless the latter did not shoot, the entire convoy would be in danger. The defendant said that he took his words seriously. The defendant had not seen this service member before and did not know his military rank. He was not obliged to carry out the order of a person who was not his immediate commander and was not a member of his unit, and none of his immediate commanders were present in the Volkswagen car. This service member was pressuring him morally and was yelling at him, which is why, being under stress, he carried out the order to shoot. The defendant admitted that the service member was not obliged to carry out clearly criminal orders, such as the order to shoot an unarmed, defenseless and elderly civilian who was moving along the street and was not posing any danger to the service members.

He did not see the victim at first; he saw him only when they reached his bicycle, and he fired a short round (3 – 4 shots) from his assault rifle AK74-M with the number 8439778, thereby killing him. After that, they continued moving. When he shot, he did not intend to kill; he did that to be left alone. The unknown man told the defendant not to worry and not to think about this, the main purpose was to save all of those who were retreating.

While testifying, Person 10 pointed out that he felt fear when he killed the man. He feels remorse for what he did, admits his guilt, and understands that the victim [the wife of Person 15] would not be able to forgive him, yet he is apologizing to her. Besides, Person 10 explained that when he saw the victim for the first time, he realized that he was a civilian and that he could have acted differently by, for example, just scaring him. He considers this to be an unacceptable and criminally punishable act, for which the maximum punishment shall be applied.

During his closing remarks, Person 10 pointed out that he sincerely regretted what he had done. He was nervous, but he did not want to kill; it just happened like that.

….

The guilt of defendant Person 10 of committing a criminal offence set out by Article 438(2) of the Criminal Code of Ukraine is confirmed by written and physical evidence provided by the prosecution and studied during the court hearing

…

The court is hereby admitting the evidence provided and examined during the court hearing as admissible and proper. Hence, written and physical evidence provided to the court correspond to each other and complement each other, are deemed to be as such which have been received in line with requirements of the law and prove the defendant's guilt.

The court has excluded the personal data of Person 32 from the charges, whose actions were united with the actions of defendant Person 10 by the common shared intent while committing the crime with which the latter is charged, as his identity was not being established during the court hearing. At the same time, it does not prevent the establishment of objective truth and the adoption of a fair and justified court decision under this criminal proceeding since Person 10 is the one charged.

…

According to Article 17 of the Criminal Procedural Code of Ukraine, a person shall be considered innocent of committing a criminal offence and may not be subject to criminal punishment until his/her guilt is proven following the procedure set out by this Code and established with the court verdict which has come into force. No one shall be obliged to prove one's innocence of committing a criminal offence and shall be acquitted in case the prosecution fails to prove the person's guilt beyond a reasonable doubt.

In accordance with Article 6(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, everyone charged with a criminal offence is presumed innocent until proven guilty according to law.

The court may adopt the indictment only if the defendant's guilt has been proved beyond reasonable doubt.

The court shall strictly follow the requirements of the Constitution of Ukraine, international treaties recognized as binding by the Verkhovna Rada of Ukraine, i.e. taking into consideration decisions of the Constitutional Court of Ukraine and case law of the European Court of Human Rights, Article 62 of the Constitution of Ukraine (presumption of innocence), and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.

The European Court decided in cases "Nechiporuk and Yonkalo v. Ukraine" of 21 April 2011 and "Barbera, Messegue and Jabardo v. Spain" of 6 December 1998 that "in assessing evidence, the Court adopts the standard of proof 'beyond reasonable doubt'. Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact" (cl. 150, cl. 253).

According to the requirements of Article 91 of the Criminal Procedural Code of Ukraine, the following shall be proved in criminal proceedings: occurrence of a criminal offence (when, where, how a criminal offence has been committed and under what circumstances), guilt of the defendant of committing a criminal offence, form of guilt, motivation and purpose of committing a criminal offence.

As established during the court hearing and not objected to by the defense party, the defendant Person 10 actually fired a round of several shots from the automatic rifle at Person 15, while carrying out the order of a person unknown to him. As a result of such actions, one of the bullets hit the victim's head, and the latter died instantly.

Regardless of the defendant's testimony that he allegedly accidentally shot Person 15; the court reached a conclusion that his murder was committed with specific intent.

Hence, during the court hearing, while explaining the circumstances of the event which took place on 28 February 2022, the defendant reported to the court that he had an opportunity to not carry out the unknown person's order and not to shoot at the civilian. The unknown person who gave this order had no insignia that would show his military rank; the defendant did not know him personally; the order was illegal, which is why he was not obliged to carry it out, yet he did that so that he would be left alone.

According to Article 41(4) of the Criminal Code of Ukraine, a person, who obeyed an obviously criminal order or command, shall be criminally liable on general grounds for the acts committed in pursuance of such order or command.

At the same time, the court is convinced that, realizing that the given order was obviously criminal and not wishing to carry it out, the defendant could have refused to follow the order of Person 1, which would not have entailed any negative consequences. Besides, the defendant could not have perceived the unknown man as an officer and, moreover, as his immediate commander as he did not know his surname, military rank, and the commanding tone of the conversation is not a criterion of subordination for service members.

As pointed out by the defendant, he had an opportunity to leave the car and take away Person 15's phone, yet he did not do that. While carrying out the criminal order, the defendant had an opportunity to shoot next to Person 15 and pretend that he had missed the victim. However, he did not do that as well. On the contrary, pointing the automatic assault rifle at the victim, Person 10 made 3-4 shots at point-blank range, and one of these bullets hit him in the head, causing death.

…

The defendant's conduct proves the circumstances given in the indictment, namely, that, while shooting at the victim, Person 10 was aware of the socially dangerous nature of his actions, anticipated their socially dangerous consequences in the form of the victim's death and wished for them to occur. Hence, based on Article 24(2) of the Criminal Code of Ukraine, the defendant acted with the specific intent. This circumstance was proved in court and the court has no doubts about that.

Thus, the court does not trust the defendant's testimony and rejects the defense attorney's arguments that Person 10 had no intention to kill the civilian and carried out the order actually not to deprive the civilian of life but rather formally, hoping that he would miss.

The court also rejects the defense attorney's arguments that the order given to the defendant pursued the purpose of not intentional murder of an innocent civilian person but rather of saving his own life.

As stated by the defendant during the court hearing, the deceased Person 15 was moving at the side of the road, talking on the phone, and did not pose any danger to the service members of the Russian Federation. This fact is also proved by another circumstance reported by witness Person 12. This witness pointed out that the senior lieutenant's response to this event was negative. He asked after the murder why they had done that and ordered all of them to engage safety on their automatic assault rifles in order to prevent similar events from occurring in the future.

Such conduct of the senior lieutenant also shows the absence of the threat to the service members of the RF from the civilian Person 15.

…

However, violating laws and customs of warfare stipulated by the Additional Protocol to the Geneva Conventions of 12 August 1949, while carrying out a criminal instruction of a person unknown to him, realizing that Person 15 was a civilian, was not armed, did not pose any threat to him, acting intentionally, a service member of the RF Person 10 fired several shots (3–4) at point blank range through an open left window of the car from his personal automatic assault rifle, a Kalashnikov automatic rifle, in the head of the victim Person 15, as a result of which the latter suffered an injury in the left parietal-temporal part, crushing the calvarial bones, and destroying the cerebrum. The cause of Person 15's death was a gunshot wound to the head.

In view of the above, the defendant's guilt of committing the crime he had been charged with has been confirmed during the court hearing, and the court has no doubts about that.

This way, it has been established during the court hearing that, while being a service member of the Russian Federation's army, Person 10 committed a violation of laws and customs of warfare set out by Article 51(2) and Article 85(3)(a) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, which was combined with intentional murder, i.e. he committed a crime set out by Article 438(2) of the Criminal Code of Ukraine.

While evaluating the defendant's criminal and legal actions, the court considers that Person 10's crime is an international crime, i.e., a socially dangerous intentional action encroaching upon the international legal order and harming the peaceful cooperation of states.

…

While deciding on the type and degree of punishment for defendant Person 10, the court considers the severity of the committed crime (especially grave crime) and the identity of the guilty person (service member under the contract of the country-aggressor's army, sergeant) who realized that he was invading the territory of the independent and sovereign state as a member of the military formation.

The court is also considering the defendant's age, health condition, marital, and financial situation. The defendant is not married, has no children, and earns income from serving in the military of the RF country-aggressor.

Since the defendant only partially admitted the circumstances of his committed crime, did not repent sincerely of the committed act, and attempted to conceal the real circumstances of the crime from the court, in particular, the specific intent to murder the civilian, the court may not consider his repentance as sincere.

At the same time, as the prosecution pointed out in the indictment, the defendant actively contributed to solving the crime during the pre-trial investigation.

Hence, according to Article 66 of the Criminal Code of Ukraine, the court acknowledges only active contribution to solving the crime as the mitigating circumstance.

According to Article 67 of the Criminal Code of Ukraine, the court acknowledges the following circumstances as the aggravating ones: the crime was committed against an elderly person since at the time of Person 15's death he was 63, as well as by a group of persons in collusion (Article 28(2) of the Criminal Code of Ukraine) since the actions of defendant Person 10 and Person 1 were united by the common shared intent and were aimed at violating the laws and customs of warfare combined with intentional murder.

In view of the above, as well as taking into account that the crime committed by the defendant is a crime against peace, security of mankind and international legal order, the fact that the international community strongly condemns any manifestations of aggressive actions and war by any states and, moreover, violation of the laws and customs of warfare since they constitute a severe danger for the international legal order and peaceful co-existence of the humanity on the planet, the court does not consider it possible to apply to Person 10 punishment in the form of imprisonment for a limited term.

…

In view of the above and guided by Articles 373–376 of the Criminal Code of Ukraine, the court

HAS DECIDED:

To recognize Person 10, Information 1, as guilty of committing a criminal offence set out by Article 438(2) of the Criminal Code of Ukraine and to sentence him to life imprisonment.

Person 10's sentence shall be served from 01.03.2022.

…

The verdict shall come into force within thirty days from its announcement unless it is appealed.

…

Commentary

1. While Ukraine's prosecutions of Russian soldiers for war crimes have been widely praised for their commitment to accountability, justice, and adherence to international law, there has also been some criticism and scepticism surrounding these legal efforts. This criticism mainly concerns due process, and the challenges of pursuing justice during an active conflict.
2. One of the most significant criticisms of Ukraine's prosecutions of Russian soldiers is the potential for due process violations, particularly in trials held during the ongoing conflict. Critics have raised concerns about whether Russian soldiers are receiving fair trials, that include adequate defense representation and impartiality from the courts. Human rights organizations have stressed the importance of ensuring that these trials meet international standards for fairness, especially when in high-profile cases that may carry political implications. The civil society organizations monitoring the respective trials (*see* e.g. here) have often reported (Ukr.) that sometimes cases concerning war crimes are decided in just two or three hearings, which is much shorter than the duration of an average criminal case, while other similar cases lasted for an average of 1 year and 7 months which also may violate the reasonable time standard. It is crucial to uphold the highest standards of the right to a fair trial in international crimes cases, as they will be subject to scrutiny and will serve as a test for Ukraine's commitment to strengthening the rule of law.

3. Another major point of criticism relates to the use of trials *in absentia* for Russian soldiers who have not been captured during the so-called special pre-trial investigation. In several cases, including that of Mikhail Romanov, soldiers have been tried and convicted *in absentia*. Since the illegal occupation of Crimea and Donbas in 2014, Ukraine has initiated prosecutions against both Russian and Ukrainian nationals who have contributed in various ways to the occupation. The first investigations faced a major challenge because many perpetrators were on the territory of Ukraine temporarily occupied by Russia to which Ukrainian law enforcement authorities did not have access. In response, Ukraine amended its Criminal Procedure Code (CPC) in 2014, introducing the possibility of conducting *in absentia* investigations and trials for a limited range of criminal offences, including international crimes (*see* Chapter 2.3.3). According to Article 297-1 of the CPC, *in absentia* investigations can only be authorized by an investigative judge if the suspect is evading investigation bodies and the court, either by hiding in the temporarily occupied territories of Ukraine or on the territory of a State recognized by the Verkhovna Rada of Ukraine as a state-aggressor. Additionally, this article allows for *in absentia* investigations in cases where an international search warrant has been issued for the suspect or if it involves the commission of a crime by a person exchanged as a prisoner of war. While Ukrainian authorities have defended this practice as necessary to ensure accountability, critics raise concerns about the fairness of *in absentia* trials. They argue that such trials deny the accused the opportunity to defend themselves in court, that, in some cases, evidence has not been thoroughly analysed deeply, and the defence counsels' participation has been minimal and largely symbolic (Ukr.). International human rights law typically discourages trials *in absentia* (*see* e.g. Article 14(3)(d) of the International Covenant and Civil and Political Rights), as they are seen as undermining the rights of the accused to a fair trial, including the right to cross-examine witnesses, present evidence, and challenge the charges against them. While Ukraine has sought to ensure that justice is served even when the perpetrators are not in custody, critics warn that these trials could be perceived as lacking legitimacy, particularly if future efforts to apprehend and retry these individuals lead to different legal outcomes.
4. Even trials that were not conducted *in absentia* have faced criticism. The first Russian soldier prosecuted for war crimes in Ukraine was Vadim Shishimarin. He was accused of killing an unarmed person who was wearing civilian clothes and riding a bicycle while talking on a cell phone. Shishimarin mistakenly believed that the civilian would report the location of his convoy to the Armed Forces of Ukraine (*see* above text). This war crime took place on February 28, 2022, in the Sumy region, Ukraine. Shortly after having committed the crime, Shishimarin surrendered as a prisoner of war and faced prosecution. The trial court issued its verdict on May 23, 2022, marking the first judgment on war crimes committed by Russian soldiers during the full-scale aggression that started on February 24, 2022. This trial was notable because the defendant was present during the court hearing, as he was kept in Ukraine as a prisoner of war.
5. Because this was the first verdict regarding international crimes in Ukraine since February 2022, the justice sector was unprepared for the prosecution of such cases, which are particularly complex and require staff with specialized skills. Thus, after the verdict was issued, experts began to analyze it and discuss its shortcomings, notably relating to the scope and nature of the evidence used in the trial, the categorization of the crime, and the defenses of superior orders and duress.

6. First, many experts point out that both the investigators and the defendant argued that the prosecution had not presented enough evidence to prove guilt beyond reasonable doubt (*see* here (Ukr.) and here (Ukr.)). The prosecution built the case primarily on testimonial information, including the interrogation of the defendant and witness statements. According to the legal experts, this approach may not satisfy the fair trial standards used by the ICC. However, it is important to note that the situation in Ukraine is unique as it is one of the few cases where massive violations of International Humanitarian Law are being prosecuted during ongoing aggression, making it difficult to access certain territories and collect evidence that would be typically available in peacetime. In conflict zones, challenges often arise related to the gathering of evidence, the ability of defendants to prepare their defense, and the impartiality of the judiciary.
7. Second, experts such as Chris Jenks, mention that the prosecution did not clearly explain what Shishimarin pled guilty to. He argues that, based on the judgment, it appreas that Shishimarin denied any intent to kill a civilian; therefore, the offence should have been categorized as a domestic crime of murder. In contrast, the prosecution stated that Shishimarin pled guilty to violating the rules of warfare, which constitutes an international crime, in this case – a war crime.
8. Third, the judgment raises important issues concerning the defenses of superior orders and duress. Shishimarin's defense line was built around these two main arguments: a) he was obliged to follow his superior's order to kill the civilian due to psychological pressure, b) he did not intent to kill the civilian; he only aimed to scare him. Consequently, the defense asserted that he was not criminally liable because 1) there was no *mens rea* for committing the alleged war crime, and 2) duress and superior orders were grounds for excluding criminal liability. The court rejected these arguments, and it is fair to say that the verdict lacked adequate reasoning in this part. This, however, does not mean that the conclusion of the court was incorrect. While Shishimarin claimed that his superior was yelling at him and pressuring him, this alone does not satisfy the duress requirements at all. The Court could have applied the ICC jurisprudence set out in the Ongwen Trial Judgment: "duress is unavailable if the accused is threatened with serious bodily harm that is not going to materialize sufficiently soon" (¶ 2582 and reaffirmed in the Ongwen Appeals Judgment ¶ 1423) which would have clearly supported the view that the duress defense was not applicable in the current case. Likewise, under national law, Article 40 of the CCU specifies that coercion can only be a grounds for excluding responsibility if that physical coercion "rendered him or her unable to be in control of his/her actions". According to the facts stated in the judgment, Shishimarin was in control of his actions.
9. The same reasoning gap was identified with regard to the superior order argument. Article 41 of the CCU and Article 33(1) of the Rome Statute identify the following elements of superior order excluding criminal liability: a) legal obligation to obey the order of a superior, b) the alleged offender did not know that the order was manifestly unlawful (pp. 586−590). The first element has not been established by the defense. Shishimarin had not previously seen the superior who ordered him to kill the civilian. He did not know his rank, and, in fact, had not seen any documentation verifying the person's authority and rank. Therefore, it was just Shishimarin's belief that the person giving the order was a superior; however, there was no evidence proving a legal obligation to obey the orders of that person. With regards to the second element – whether the order was manifestly unlawful – the court failed to address this issue and obtain a clear statement from Shishimarin as to whether he

considered the order manifestly unlawful. While his defense seemed to have been that the order was unlawful, his own statements were contradictory. He indicated that he refused to obey the order twice, suggesting that he must have had some basis for refusing to carry out the act. This implies that he might have understood that the order was unlawful.

10. Fourth, the verdict in Shishimarin's case highlights the need for extensive training for judges to ensure that can prepare well-reasoned judgments meeting fair trial standards. First, the verdict consists of a three-page overview of the history of the development of international law and the United Nations, while the specific contextual elements of the case and the relevant (international) criminal legal provisions are missing. Second, the court fails to use the wealth of jurisprudence stemming from the international criminal tribunals and the International Criminal Court. Overall, Ukrainian legal professionals are still struggling with understanding the elements of core international crimes. For instance, in some verdicts regarding genocide (*see* here (Ukr.)), prosecutors and judges agreed that public calls to burn Ukraine or Kyiv amounted to a call for genocide despite the fact that such public calls did not mention the destruction of a "national, ethnic, racial, or religious group" as required under Article 6 of the ICC Statute and Article 442 of the CCU. The courts' decisions are therefore questionable, as not any call for murder can be qualified as genocide (*see* Chapter 9.4). To ensure legal certainty, the elements of the crime should be clearly articulated when both charging individuals as well as issuing verdicts. This lack of engagement with (international) criminal law is not only problematic in relation to the adjudication of the crimes themselves but also to the sentencing. Shishimarin was sentenced to life imprisonment for the killing of one civilian. While all atrocity crimes are egregious from both legal and moral points of view, the proportionality principle shall apply. It is thus welcome that the Kyiv Court of Appeals followed this approach and, on July 27, 2022, reduced the sentence (Ukr.) to 15-year imprisonment.
11. Fifth, the case of Shishimarin unveiled a crucial problem affecting the quality of justice in international crimes cases, that of the exchange of prisoners of war. In this case, two key witnesses who could have provided crucial information regarding the key elements of the crime committed by Shishimarin were missing. Specifically, these witnesses could have clarified the hierarchy within the military unit, including whether Shishimarin was legally obliged to follow the orders of the person he perceived as a superior, what orders were given, and the manner in which they were communicated. This information would have been essential in determining whether the order was manifestly unlawful and Shishimarin knew it was. Unfortunately, the problem of the lack of witnesses persists as Russia is intentionally requesting exchanges of Russian soldiers who are either facing trial or being key witnesses in investigations of international crimes. In additional challenge is the lack of coordination between the Ukrainian justice sector and the Ministry of Defense with regard to these exchanges. As a result, the justice sector does not receive advanced notice of which witnesses will be exchanged and thus does not have the time to ensure that they are interrogated, and their statements can be used as evidence.
12. The prosecutions of Russian soldiers in Ukraine are crucial for achieving justice for international crimes committed during the conflict. However, these efforts are not without their challenges and criticisms. Gathering evidence, securing witnesses, and ensuring the safety of court officials are all difficult in a war zone. As a result, there are concerns that some trials may rely on incomplete or unreliable evidence, especially in cases where forensic investigations cannot be fully conducted due to the ongoing hostilities. Concerns

have also been expressed more generally about due process and the use of trials *in absentia*. Additionally, the focus on low-level soldiers rather than higher-ranking officials, as well as the potential impact on future peace talks, adds complexity to Ukraine's legal efforts. Despite these challenges, Ukraine's commitment to holding perpetrators accountable represents an important step in addressing the atrocities of war, even as the broader conflict continues.

13. **For further reading**, *see* (1) Oktawian Kuc, *Prosecuting International Crimes in Ukraine, in* THE RUSSIAN-UKRAINIAN CONFLICT AND WAR CRIMES (Patrycja Grzebyk and Dominika Uczkiewicz eds, 2025); (2) Gaiane Nuridzhanian, *Ensuring Fairness of War Crimes Trials in Ukraine, in* THE RUSSIAN-UKRAINIAN CONFLICT AND WAR CRIMES (Patrycja Grzebyk and Dominika Uczkiewicz eds, 2025); (3) Rachel E. VanLandingham, *Courtroom as War Crime: Ukraine's Military Justice Struggle,* 84 OHIO STATE LAW JOURNAL 1297−1333 (2023–2024); (4) Kaja Kowalczewska, *War-Torn Justice: Empirical Analysis of the Impact of Armed Conflict on Fair Trial Guarantees in Ukraine,* 9 REVISTA BRASILEIRA DE DIREITO PROCESSUAL PENAL 1061−1107 (2023); (5) Iryna Marchuk, *Domestic Accountability Efforts in Response to the Russia-Ukraine War: An Appraisal of the First War Crimes Trials in Ukraine,* 20 JOURNAL OF INTERNATIONAL CRIMINAL JUSTICE 787–803 (2022); (6) Gaiane Nuridzhanian, "Prosecuting War Crimes: Are Ukrainian Courts Fit to Do it?," EJIL:Talk! (Aug. 11, 2022)

10.5 Prosecution in Other National Courts

Given the scale and the breadth of violations in the conflict in Ukraine, the reader would expect many States to have launched national investigations into alleged international crimes (notably war crimes) and subsequently issued indictments. Whilst the former is true, the latter is not. Many investigations are underway. Already in July 2023, Yuriy Belousov, the Head of the War Crimes Department at the Office of the Prosecutor General of Ukraine, stated that he was aware of 24 countries that had begun investigations. However, as of December 2024, the only State that has issued an indictment is the US. This section thus begins with this indictment and then provides some general comments on the current investigations in other States, highlighting some of the challenges but also some positive signs in the global fight against impunity. It finishes by discussing the only known case of prosecution by the Russian authorities.

Indictment – In the United States District Court for the Eastern District of Virginia (Richmond Division) – United States of America v Suren Seiranovich Mkrtchyan, Dmitry Budnik, Valerii LNU and Nazar LNU – December 5, 2023

5. Defendants Suren Seiranovich MKRTCHYAN, Dmitry BUDNIK, VALERII LAST NAME UNKNOWN (LNU), and NAZAR LNU were foreign nationals. MKRTCHYAN and BUDNIK were commanding officers of the Russian Armed Forces and/or DPR military units. VALERII LNU and NAZAR LNU were lower-ranking members of the Russian Armed Forces and/or DPR military units. MKRTCHYAN, BUDNIK, VALERII LNU, and NAZAR LNU were fighting on behalf of Russia in the international armed conflict between Russia and Ukraine.

6. The victim (V-1) was a national of the United States who, beginning in or around 2021, lived in the village of Mylove. As of April 2, 2022, V-1 was still living in Mylove. V-1 did not fight or otherwise participate in the international armed conflict between Russia and Ukraine. V-1 was a

protected person under the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949.
[…]
10. VALERII LNU, NAZAR LNU, and other co-conspirators took V-1 to a building that they used as a jail. V-1's hands were still restrained behind his back when he was thrown into a closet being used as a jail cell. A co-conspirator used his fists, knees, and gun stock to beat V-1 severely on his legs, back, stomach, and head. V-1 remained in restraints during this beating.
11. Later, on or about April 2, 2022, V-1 was taken to a room in another building, where soldiers from the Russian Armed Forces and/or DPR military units interrogated him. MKRTCHYAN and BUDNIK led and participated in at least two interrogation sessions in which MKRTCHYAN, BUDNIK, VALERII LNU, NAZAR LNU, and other co-conspirators committed acts specifically intended to inflict severe and serious physical and mental pain and suffering upon V-1.
[…]
15. During one interrogation session, a co-conspirator threatened to sexually assault V-1 and touched him in a sexual manner, including by kissing him on the cheek and rubbing his ear.
16. When V-1's answers did not satisfy the defendants, BUDNIK and other co-conspirators threatened V-1 with death and asked for his last words.
17. Shortly after BUDNIK threatened V-1 with death, NAZAR LNU and other co-conspirators conducted a mock execution of V-1. Specifically, NAZAR LNU and other co-conspirators took V-1 outside, forced V-1 to the ground, put a gun to the back of V-1's head, then moved the position of the gun and pulled the trigger, causing the bullet to go past V-1's head and causing V-1 to believe he was about to die.
18. After the mock execution, MKRTCHYAN and other co-conspirators interrogated V-1 further about who he was and asked if he was lying. NAZAR LNU and other co-conspirators beat V-1 more. A co-conspirator, through an interpreter, told V-1 that V-1 was going to sleep. MKRTCHYAN then said goodnight, causing V-1 to believe he was about to be killed. The co-conspirators, however, took V-1 back to the closet being used as a jail cell.
19. MKRTCHYAN and other co-conspirators continued to detain V-1 until on or about April 12; 2022. V-1 was forced to perform manual labor, such as digging trenches, on behalf of the Russian Armed Forces and/or DPR military units.

Ministry of Justice of the Republic of Lithuania – The Ministry of Justice Asks the Prosecutor General's Office to Launch a Pre-trial Investigation against Putin and Lukashenko – March 15, 2022

In reaction to an act of aggression against Ukraine being committed by Russia, Lithuania is taking legal action to ensure that the Russian and Belarusian leadership responsible for this act is held criminally liable.

Those responsible for the crime of aggression shall be tried both before the International Criminal Court and the national courts of states that have established this international crime in their criminal codes.

An obstacle to the International Criminal Court's pursuit of those responsible for the aggression in Ukraine is the fact that nationals of states that have not acceded to the statute of the International Criminal Court, i.e. Russia and Belarus, can only be prosecuted in the event of an appeal submitted to the ICC by the UN Security Council, of which Russia is a permanent member and is able to veto any decision.

It is important to emphasize that this provision applies only to the crime of aggression, but not to crimes against humanity or war crimes, concerning which Lithuania has submitted a referral to the Prosecutor of the International Criminal Court (ICC) who has already opened an investigation.

Taking into account the fact that the Criminal Code of the Republic of Lithuania provides for liability for the crime of aggression thus making it possible to prosecute those responsible for it (based on the principle of universal jurisdiction) and to try them in absentia, the Minister of Justice, Ms. Evelina Dobrovolska has addressed the Prosecutor General's Office of the Republic of Lithuania requesting it to carry out an assessment of the aggression against Ukraine perpetrated by the heads of state or government of the Russian Federation and the Republic of Belarus.

The Russian Federation, in violation of the fundamental principles of international law on the non-use of armed force and the peaceful settlement of disputes, is using unprovoked lethal military force against the sovereign and independent State of Ukraine, its territorial integrity and political independence, its civilian population and civilian infrastructure. Belarus is providing its territory for planning and execution of military attacks against Ukraine, i.e., Belarus is also committing an act of aggression. This act of aggression is in full accordance with the concept of aggression developed in international and national law.

In the words of the Minister, the prosecution of those responsible for the aggression against Ukraine can become a reality if the Prosecutor General's Office assesses all the available information and makes use of the possibility of universal jurisdiction and trial by default provided by the national law of Lithuania.

The International Criminal Court is a permanent institution complementing national criminal jurisdictions; it is authorized to exercise its jurisdiction over individuals who commit very serious international crimes of concern to the international community. The Ministry of Justice points out the fact that Chapter XV "Crimes against Humanity and War Crimes" of the Criminal Code of the Republic of Lithuania criminalizes internationally prohibited treatment of human beings (Article 100 of the Criminal Code) and aggression (Article 110 of the Criminal Code); in addition, the Criminal Code prohibits an act of war (Article 111 of the Criminal Code).

"The Criminal Code of the Republic of Lithuania creates legal conditions to prosecute Putin and Lukashenko irrespective of their citizenship and place of residence or the place where the aggression was carried out. Besides, it is not important whether this kind of aggression is punishable under Russian or Belarusian law," says Ms Dobrovolska.

The Ministry of Justice, in accordance with the Regulations, has no right to interfere with the activities of pre-trial investigation officers, prosecutors or the courts or to issue binding instructions thereto. In this context, the Ministry of Justice emphasizes that the request to launch a pre-trial investigation is not an order of a mandatory nature but rather a request issued by a concerned public authority at a very difficult time calling them to assess all the incoming information of a shocking nature on the actions carried out by the Russian Federation and the Republic of Belarus on the territory of Ukraine; this request is the result of a civic duty to uphold the content of principles of justice and humanity.

Commentary

1. On December 6, 2023, the Office of Public Affairs of the U.S. Department of Justice announced war crime charges against four members of either the Russian armed forces or the unrecognized Donetsk People's Republic. The victim, referred to as V-1, is an American national who is alleged to have been abducted from his home, detained for about 10 days,

and tortured during interrogations. This indictment is significant because it is not only the first action taken by the War Crimes Accountability Team of the Justice Department, which was established to hold accountable those who commit war crimes in the conflict in Ukraine, but it is also the first time individuals have been charged under the U.S. War Crimes Act (Title 18, United States Code, Section 2441 – War Crimes), a law that has been on the books for nearly 30 years. With this indictment, the U.S. sends a clear message that those who commit war crimes in the conflict in Ukraine will be held accountable.

2. The individuals are charged with one count of conspiracy to commit war crimes and three specific war crimes: unlawful confinement, torture, and inhuman treatment. As for the first charge under Title 18, Section 371 of the United States Code, it is based on the logic that the acts were deliberately planned and formed part of "the conspiracy […] to detain, confine, intimidate, punish, weaken, interrogate, threaten, physically abuse, and obtain information from persons, including V-1, and to prevent resistance from the local civilian population" (¶ 12). However, such a charge is rather controversial in international criminal law, as it could lead to guilt by association and may contravene the principle that criminal responsibility is individual. Yet, in this instance, the charge is made not only under the War Crimes Act but under Section 371 of the United States Code.
3. The three other charges are all based on Title 18 Sections 2441 and 2 of the United States Code. Under Section 2441, an American court has jurisdiction over war crimes committed outside of the US (sub-section (a) and b(2)), i.e. Ukraine, and the victim is a national of the United States (sub-section (b)(2)(A)(i)), i.e. V-1. A war crime is defined in Section (c) as *inter alia* "a grave breach in any of the international conventions signed at Geneva 12 August 1949," thus including the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (GC IV). By this Statute, the US is discharging its obligation under Article 146 GCIV "to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts" and under customary international humanitarian law. The GCIV applies to the situation since, as the charges explain, first the conflict is of an international nature (under Common Article 2 of the Geneva Conventions) and, second, since V-1 did not fight or otherwise participate in the conflict and found himself in the hands of a Party to the conflict (Article 4 of the GC IV), he was a protected person under that convention. Amongst the grave breaches mentioned in Article 147 of the GC IV are "torture or inhuman treatment," "wilfully causing great suffering or serious injury to body or health" and "unlawful confinement of a protected person." Undoubtedly the latter three counts fall within the purview of Article 147 of the GC IV. It is noteworthy that while the text of the indictment refers to the alleged victim being forced to engage in "manual labor, such as digging trenches," such activity is not listed in the charges. While such labour could fall under the prohibition of Article 51 of the GC IV to compel protected persons "to undertake any work which would involve them in the obligation of taking part in military operations," it is not enumerated under Article 147 of the GC IV and is thus a violation of international humanitarian law rather than a war crime.
4. The likelihood of this U.S. indictment leading to a trial is extremely slim as the defendants would need not only to be identified (two of the individuals are only known by their first names) but also brought onto American soil. Further, even if they found their way to the court, evidentiary hurdles, such as gathering evidence beyond the testimony of the victim

and during an ongoing armed conflict, would be difficult to overcome, and the defendants could raise due process concerns.

5. Investigations have been initiated in several European countries regarding the Russo-Ukraine war, but so far, no charges have been formally brought against specific individuals. Various factors contribute to the difficulties States face when investigating alleged crimes from this conflict. However, recent years have also revealed some positive developments.
6. First, many States' legal frameworks do not permit investigations into crimes committed abroad unless either the victim or the offender is a national of that country. Additionally, States like France have a more complicated jurisdiction system; it not only depends on the specific crimes being prosecuted but is also quite restrictive concerning war crimes and crimes against humanity (*see* Rémond Tiedrez). That being said, some States can use the principle of universal jurisdiction irrespective of the location of the crime and the nationality of the victim or perpetrator. For example, Germany can use Section 1 of its Code of Crimes against International Law which specifies that the Act "applies to all criminal offences against international law designated herein; for offences under sections 6 to 12 [genocide, crime against humanity and war crimes], it applies even when the offence was committed abroad and bears no relation to Germany." Likewise, Sweden and the Czech Republic have universal jurisdiction for international crimes. In Argentina, a combination of Article 118 of its Constitution and Article 5 of Law 26,200/06 (sp.) which gives effect to the Statute of the ICC, means that its courts can exercise universal jurisdiction.
7. Second, States that have initiated investigations into alleged crimes in Ukraine often gather substantial evidence, usually without concentrating on any particular incident. For example, between February 2022 and April 2023, Germany's Federal Criminal Police Office received 337 pieces of information about possible international crimes and is focusing on mass killings such as the one committed in Bucha. Germany is conducting so-called "structural investigations" to "gather and preserve evidence in preparation of future proceedings." Such investigations were carried out regarding crimes committed in the conflict in Syria and led to the successful prosecution of *inter alia* members of the Syrian national security authorities. Canada is also conducting "structural investigations" into war crimes and crimes against humanity, "with an end goal to prepare for criminal accountability, once an allegation is made or uncovered", an approach also embraced by Sweden. Other countries do not conduct "structural investigations" *per se* but have launched large-scale investigations that are for all intents and purposes evidence-gathering exercises. For example, Lithuania launched 2022 an investigation into war crimes and crimes against humanity and France started investigations into alleged war crimes in Bucha, Mariupol and Chernihiv without naming any suspects. Investigations into specific incidents that may lead to indictments of individuals are likely to occur in the coming years, as gathering evidence and preparing for trial takes time. That being said, it is also claimed that the use of such type of investigations is, as the Ukrainian Legal Advisory Group explains, because "States are reluctant to open individual investigations unless victims or perpetrators are nationals of those states due to their own capacity issues."
8. Third, even if an investigation uncovers credible evidence identifying the alleged victim(s), offender(s) and crime(s), an indictment might not be possible until the alleged offender is within the State's jurisdiction. In some cases, issuing an indictment may serve only as a political gesture, as the likelihood of an actual trial is limited since many States do not

permit trials to be conducted *in absentia*. Very few States, amongst them the Czech Republic and Lithuania, allow for trials *in absentia.* In the case of the attack on a German national in Hostomel, by asserting that "[i]f we apprehend the perpetrators, we will indict them," Germany's federal justice minister, Marco Buschmann, recognises that no such possibility is available at the moment.

9. Fourth, the overwhelming majority of investigations focus on war crimes and crimes against humanity, particularly attacks on the civilian population and infrastructure, the use of cluster bombs, seizure of property, attacks on journalists (France), etc. Very few States (Lithuania and Poland (Pol.)) have initiated investigations into the crime of aggression, primarily due to jurisdictional challenges. Lithuania can, using the principle of universal jurisdiction, prosecute individuals responsible for the crime of aggression under its Criminal Code and try them *in absentia.* Poland has in contrast used protective jurisdiction under Article 110(1) of its Penal Code to open investigations (Pol.) concerning the crime of aggression asserting that the "violation of legal interests of a neighbouring state goes against European and international security, and so it is against the interests of [the] international community, including Poland."
10. Fifth, as explained in Chapter 10.3, certain individuals are immune from prosecution in national courts. While functional immunity (i.e. immunity *ratione materiae*) is still highly debated in international law, immunity *ratione personae,* i.e. immunity covering those who are in office, is not. This means that national authorities cannot issue indictments against the highest echelon of power, e.g. the head of State (President Putin), the head of government (Prime Minister Mishustin) and the Minister of Foreign Affairs (Sergey Lavrov) for as long as they are in office. Some States offer immunity to a wider range of individuals, including ministers (*see* Block). It is important to note that military commanders, members of the armed forces, and individuals working in Russian security agencies are not immune from prosecution. Anyone, from foot soldiers to high-ranking officials, can be held accountable in foreign national courts for international crimes committed in Ukraine.
11. The situation is not entirely negative. In fact, these investigations have produced tangible results. Collaboration between investigative and judicial authorities has resulted in indictments and trials. This extensive collection of information undoubtedly assists other countries, such as Ukraine, and institutions like the International Criminal Court in gathering evidence and, in some cases, prosecuting individuals accused of international crimes. As multiple states investigate the same events, they share information with one another. For example, both Ukrainian and German investigators were separately looking into crimes committed in Hostomel. The Ukrainian authorities were able to obtain the testimony of one of the victims, a German national, and led to the indictment in Ukraine of five Russian nationals who had indiscriminately attacked civilians. It should be noted that although it is reported that these individuals were to be tried *in absentia* in Kyiv, it is difficult to ascertain whether such a trial has taken place as cases are anonymised.
12. Additionally, States are collaborating in a more organized way by forming joint teams. Many states have initiated joint investigations or sought judicial cooperation from each other. For instance, the National Anti-Terrorist Prosecutor's Office of France launched a preliminary investigation in March 2022 in collaboration with officials from Ireland and Ukraine. This investigation culminated in April 2024 when the case was referred to the Dean of the Investigating Judges of the Crimes Against Humanity and War Crimes Unit of

the Paris Judicial Court who then requested the opening of a judicial investigation for war crimes. This judicial cooperation has proven to be effective. Furthermore, investigations are coordinated by EUROJUST, which facilitates the sharing of information on criminal proceedings (*see* Chapter 10.2).

13. States investigating these alleged international crimes are using specialized teams and judicial bodies, which is encouraging as it shows that they are employing their most competent resources. In France, it was the National Anti-Terrorist Prosecutor's Office that led the investigation into the killing of a French Irish journalist working for FoxNews, a case later referred to the Dean of the Investigating Judges of the Crimes against Humanity and War Crimes Unit of the Paris Judicial Court. In Germany, the Federal Criminal Police Office, which is often considered Germany's equivalent of the FBI in the United States, is the body gathering evidence regarding potential international crimes. In Canada, the Royal Canadian Mounted Police is the designated investigative authority within the War Crimes Program. In the Czech Republic, a special team of police officers from the National Centre for Combating Organised Crime is leading the investigations.
14. In addition, NGOs have been actively supporting victims in their fight against impunity. In October 2023, the Clooney Foundation for Justice filed three cases with the German Federal Prosecutor's Office, seeking an investigation into war crimes and crimes against humanity committed in Ukraine. One of these cases was filed in partnership with a Ukrainian NGO called Truth Hounds, which represents 16 survivors and the families of victims, targeting high- and mid-level commanders identified as likely suspects. In a noteworthy development, a Ukrainian national filed a 70-page complaint with the Federal Court in Buenos Aires, Argentina, claiming that he was tortured in a detention center. This complaint emerged from investigations conducted by the Ukraine-based NGO The Reckoning Project, an initiative involving Ukrainian and international journalists and lawyers, who have examined witness testimonies and victims' accounts, providing corroborating evidence for their findings.
15. More fundamentally, the fact that alleged crimes are being investigated as far as in Argentina underscores the universal fight against impunity. If the Argentinian prosecutors accept the complaint (information dated April 16, 2024), it would mark the first time that alleged international crimes committed by Russians in Ukraine are being investigated outside of the U.S., Canada, and Europe. This development carries a significant message: alleged Russian criminals cannot assume they can evade prosecution by hiding in foreign countries. As Yuriy Belousov, the Head of the War Crimes Department at the Office of the Prosecutor General of Ukraine, explains, "the more countries start their own prosecutions, the more the whole [sic] word would see that it's not just a matter of Ukraine. It's not just Ukraine which is blaming Russia. International crimes is not just a word; it means that they are so severe that it matters to the whole world and the world should react."
16. Although it is argued that investigations into alleged crimes committed before February 2024 have been deprioritised, some States are still prosecuting individuals for crimes perpetrated in the early years of the conflict. For example, in 2023, at Ukraine's request, Finland detained a Russian national suspected of co-commanding a group of "Rusich" fighters and committing a war crime in September 2014. The trial of this individual is currently ongoing.
17. The vast majority of reports (*see* Chapter 9) assert that Russia has not investigated or prosecuted its own forces for crimes committed in the Russo-Ukrainian war. In October

2024, it was reported that a Russian military court in Roston-on-Don sentenced two soldiers to life in prison for having killed nine civilians during their sleep in February 2022 because either they had previously refused to vacate their house for them to reside there or because they had been insulted by one of them. It is unclear which crime the two soldiers were sentenced for, although the BBC stated that the State news agency TASS reported that they had been convicted of murder "motivated by political, ideological, racial, national, or religious hatred."

18. **For further reading**, *see* (1) Stefanie Bock, "Prosecuting War Crimes in Ukraine – The German Contribution," *in* THE RUSSIAN-UKRAINIAN CONFLICT AND WAR CRIMES (Patrycja Grzebyk and Dominika Uczkiewicz eds, 2025); (2) Bartlomiej Krzan, "Polish Involvement in Prosecuting International Crimes Committed in Ukraine," in THE RUSSIAN-UKRAINIAN CONFLICT AND WAR CRIMES (Patrycja Grzebyk and Dominika Uczkiewicz eds, 2025); (3) Andrea Furger, *Can they Deliver? The Practice of Joint Investigation Teams (JITS) in Core International Crimes Investigations*, 22 JOURNAL OF INTERNATIONAL CRIMINAL JUSTICE 43−58 (2024); (4) Scott R. Anderson & Natalie K. Orpett, "A Historic War Crimes Prosecution-With More to Come," Lawfare, Dec. 6, 2023; (5) Yvonne M Dutton, *Prosecuting Atrocities Committed in Ukraine: A New Era for Universal Jurisdiction?,* 55 CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW 391−422 (2023); (6) Johannes Block, "Committed in Ukraine, Prosecuted in Germany? War Crimes and Crimes against Humanity in the Russian Invasion of Ukraine," Völkerrechtsblog, April 7, 2022

10.6 Conclusion

The pursuit of accountability for international crimes committed in the Russian-Ukrainian conflict has seen significant developments across various judicial mechanisms. The International Criminal Court has played a pivotal role, issuing arrest warrants for high-ranking Russian officials, including President Putin, and military personnel. However, the ICC's jurisdictional limitations, particularly regarding the crime of aggression, have led to calls for the establishment of a Special Tribunal for Ukraine to prosecute individuals for the crime of aggression.

Despite facing challenges such as ensuring fair trial standards and dealing with the complexities of the ongoing conflict, national courts in Ukraine have been proactive in prosecuting war crimes, demonstrating a commitment to upholding international law. Further challenges remain and it is hoped that, with the support of the international community, Ukraine will be able to deliver justice in compliance with the highest international law standards.

Other national courts, particularly in Europe and North America, have also initiated investigations and prosecutions. The United States has made a landmark move by charging individuals under its War Crimes Act, while countries like Germany and Lithuania have launched extensive investigations, often in collaboration with international bodies like Eurojust.

The global response to the conflict highlights a strong and universal commitment to justice and the fight against impunity. Despite ongoing challenges, such as the difficulty of prosecuting high-ranking officials who enjoy immunity and the practicalities of conducting trials *in absentia*, the collective efforts of both international and national judicial bodies mark a significant step towards accountability.

In conclusion, the multifaceted approach to prosecuting international crimes in the Russian-Ukrainian conflict highlights the importance of international cooperation and the need for robust legal frameworks to address the complexities of modern warfare. The ongoing efforts by

the ICC, national courts, and international organizations reflect a determined pursuit of justice, aiming to ensure that those responsible for atrocities are held accountable, thereby contributing to the broader goal of upholding international law and human rights.

Chapter 11

International Community's Response to Violations of International Law

Under Construction

Chapter 12
National Security

12.1 Introduction

The history of Europe is a history of wars. After World War II nearly destroyed the European continent and the Cold War began, the North Atlantic Treaty Organization (NATO) was formed to protect liberal democracies in Western and Central Europe from becoming "people's republics" in the model formed by the USSR after 1945 in most of Eastern Europe. In 1949, the United States, Canada, and ten European countries signed the founding treaty for the NATO Alliance in Washington D.C. The treaty established a mutual and collective defense pact: an attack on one is an attack on all. The undisputed leader of NATO was the United States, which would now permanently station American troops on military bases throughout the entire territory of Western Europe and eventually in Turkey, which joined NATO in 1952. Eventually more nations joined NATO and secured protection from invasion through the U.S. defense umbrella. If the Cold War had not started in the aftermath of the Second World, there would be no NATO. The military alliance emerged as a bulwark against the encroaching spread of Soviet communism. Rooted in the principles of collective defense, its founding members—twelve nations from North America and Western Europe—signed the Washington Treaty in 1949, pledging mutual protection against external threats. At its core, NATO represented a shared commitment to preserving the liberal democratic order, underscoring the belief that unity among like-minded nations was essential to counteract the influence of the Soviet bloc. The organization quickly became a centerpiece of the broader Cold War strategy, defined not only by military strength but also by ideological resolve. While NATO is primarily a military alliance, its foundational principles tie membership closely to being a liberal democracy. Adherence to democracy and the rule of law ensures the alliance's cohesion and credibility, making these values prerequisites for any aspiring member state.

As NATO evolved, its role shifted to address the complexities of a changing world. Following the collapse of the Soviet Union in 1991, the alliance faced an existential question: could it remain relevant without its original adversary? The answer lay in adaptation. NATO expanded its membership, incorporating former Warsaw Pact nations, and took on new missions such as peacekeeping in the Balkans and counterterrorism efforts after the 9/11 attacks.

The inclusion of Eastern European countries into NATO marked a profound transformation in the geopolitical landscape of post-Cold War Europe. Following the dissolution of the Soviet Union in 1991, nations formerly under the Warsaw Pact began to view NATO membership as a pathway to security, stability, and integration into the Western democratic order. For these countries, NATO symbolized not merely a military alliance but a means to reaffirm their sovereignty and escape the shadow of Russian dominance. In 1999, the first wave of Eastern European entrants—Poland, Hungary, and the Czech Republic—joined the alliance, signaling a historic shift in the balance of power and the promise of a new Europe unbound by Cold War divisions.

The expansion continued in the early 2000s, with NATO embracing seven more Eastern European nations, including Bulgaria, Romania, and the Baltic states of Latvia, Lithuania, and Estonia. These accessions underscored NATO's commitment to an "open door" policy, a principle enshrined in its founding treaty. Yet, the process was far from smooth. The expansion faced criticism, with opponents arguing that it risked antagonizing Russia and undermining regional stability.

The argument that the United States broke its promise of "not one inch" revolves around assurances reportedly given to Soviet leaders during the 1990 negotiations over German reunification. U.S. Secretary of State James Baker and other Western officials are said to have told Soviet leader Mikhail Gorbachev that NATO would not expand "not one inch eastward" if the Soviets allowed a reunified Germany to remain within NATO. These statements were critical in gaining Soviet acquiescence to the withdrawal of its forces from Eastern Europe and the dissolution of the Warsaw Pact. Critics argue that this informal pledge was effectively broken when NATO began its eastward expansion, admitting countries like Poland, Hungary, and the Czech Republic in 1999, and later extending membership to former Soviet republics, including the Baltic states.

Those who claim the promise was broken view NATO's expansion as a betrayal of trust, which has had long-lasting consequences for U.S.-Russia relations. They argue that the phrase "not one inch" symbolized a broader understanding to respect Russia's security concerns in the post-Cold War order. By allowing NATO to move closer to Russia's borders, the United States disregarded these assurances and fueled resentment within Moscow. This perceived breach of trust is often cited as a key factor behind Russia's growing opposition to NATO and its aggressive stance toward neighboring countries like Ukraine, which it views as potential NATO footholds. The expansion is thus seen as a significant factor in destabilizing relations and undermining the cooperative spirit of the early post-Soviet era. See Jonathan Haslam, Hubris.The Origins of Russia's War Against Ukraine (2025) ("The origins of the Russo-Ukrainian War can be traced back through a sequence of events to the early 1990s that lead us not to Russia or Ukraine, but to the other side of the Atlantic. In 1994, the White House, under President Clinton, embarked upon the expansion of NATO, urged on by the new governments of Poland, the Czech Republic and Hungary, who sought the security NATO could offer against Russia. Even at this early stage, the United States was secretly considering Ukraine for membership. When the

likelihood of this emerged, President Putin of Russia made absolutely clear that this was a red line not to be crossed. But few expected the war that eventually came")

For the aspiring members of the former Eastern bloc, NATO membership was a non-negotiable affirmation of their alignment with the West and their rejection of past subjugation. For Eastern Europe, joining NATO was as much about symbolism as it was about security. It represented a historic realignment—a severing of ties with decades of Soviet influence and a new era of integration into Western political, economic, and military structures. The decision to expand NATO into Eastern Europe, while controversial, remains one of the most consequential developments of the post-Cold War era, reshaping alliances and ensuring that the ideals of collective defense and democracy extended to a region once defined by oppression and division.

In hindsight, the decision by Eastern European states to join NATO stands as one of the most strategically sound moves of the post-Cold War era. For nations long subjected to Russian domination, first of the Czarist variety and then Soviet-style vassals states after 1922, NATO membership provided a shield against the resurgence of Russian aggression, a threat that had lingered in their political consciousness even as the Cold War ended.

Russia's invasions of Georgia in 2008 and Ukraine in 2014 validated their fears, exposing Russia's willingness to use military force to maintain its sphere of influence in the post-Soviet space. By aligning with NATO, these nations secured a hoped-for military deterrent that aims to ensure that any attack on their sovereignty would invoke the collective defense commitments of the world's most powerful military alliance. To date, no NATO country has been invaded, and so the guarantee has never been tested. Poland, for example, fully expects the United States not only to always keep a massive contingent of American troops in Polish soil but also for the American president and U.S. Congress to treat any attack on Polish soil as an attack on American soil. If such an event takes place — and Russia remains the only threat to Polish sovereignty— will President Donald Trump and the Trump-controlled Republican majority Congress keep the American promise? Over the years, Trump has made several critical statements regarding NATO, focusing on the failure of its member states to make fair financial contributions (a fair critique) and the alliance's relevance. Notable quotes include:

- In a March 2016 interview, Trump remarked: "NATO is costing us a fortune, and yes, we're protecting Europe with NATO, but we're spending a lot of money."
- During a July 2016 interview, he questioned the automatic defense commitment to NATO allies, saying: "If we cannot be properly reimbursed for the tremendous cost of our military protecting other countries… we have many NATO members that aren't paying their bills."
- In March 2017, Trump claimed: "Germany owes vast sums of money to NATO, and the United States must be paid more for the powerful, and very expensive, defense it provides to Germany."
- At a February 2024 rally, Trump recounted a past conversation with a NATO leader, stating, "I said, 'No, if you don't pay, we're not going to protect you. You can be attacked by Russia and we'll not defend you.'"

In December 2024, asked whether the US could leave NATO, the president-elect answered in the affirmative, though it depended on the Europeans increasing their defense budgets. "So let me just tell you. I was able to get hundreds of billions of dollars put into NATO just by a tough attitude. I told the countries, 'I'm not going to protect you unless you pay,' and they started

paying. That amounted to more than 600 billion dollars. That's a big thing, otherwise they wouldn't be fighting, they wouldn't have any money to fight….If they're paying their bills, and if I think they're treating us fairly, absolutely, I would stay with NATO.

These statements may just be part of Trump's negotiating tactics before returning to the presidency to get the Europeans foot even more of the NATO budget. However, a president cannot simply pull the United States out of a treaty, especially where the US is a founding member. According to NATO's official history, on April 4, 1949, Secretary of State Dean Acheson signed the North Atlantic Treaty on behalf of the US. The Senate ratified the treaty on July 21, 1949, by a vote of 83-13. US President Harry S Truman and Secretary Acheson then signed the Instrument of Accession on July 25, 1949, making the United States a founding member of NATO.

In Trump's view, however, these facts were beside the point; his earlier anti-NATO rhetoric - the first by any American president - was working. Europeans have gradually increased their defense budgets, partly in response to Trump's pressure and partly in response to the growing threat of a more belligerent Russia. Former "people's republics" under the yolk of the USSR have even more to fear from Russia, especially while Putin remains president.

The 2008 Russo-Georgian War offered an ominous warning of Russia's readiness to assert its dominance over former Soviet territories. Georgia's aspirations to join NATO and its Western orientation provoked a harsh response, with Russia framing its actions as a defense of its strategic interests. For Eastern European countries, this conflict reaffirmed the necessity of their NATO membership. Without the alliance's protective umbrella, they could easily become targets of similar aggression, particularly as many shared Georgia's aspirations to distance themselves from Moscow's influence.

The 2014 annexation of Crimea and the ongoing war in eastern Ukraine further underscored the importance of NATO for Eastern Europe. Ukraine, despite its aspirations to join NATO, lacked the protection afforded by Article 5 of the NATO treaty, which guarantees collective defense. Russia exploited this vulnerability, seizing territory and fomenting unrest. Eastern European states, particularly the Baltic nations, saw in Ukraine's plight a stark reminder of their precarious position had they remained outside the alliance. NATO's presence not only deters direct military action but also signals a unified Western commitment to safeguarding the sovereignty of its members.

Beyond military protection, NATO membership offered Eastern European states a platform for economic and political integration with the West. By joining the alliance, these nations solidified their commitment to democratic governance and the rule of law, distancing themselves from the authoritarian tendencies that persist in Russia's orbit. NATO's emphasis on collective security and shared values strengthened their domestic institutions and bolstered their confidence as independent actors on the global stage.

Ultimately, the decision to join NATO was a prescient move, rooted in the historical lessons of subjugation and the geopolitical realities of their proximity to Russia. The invasions of Georgia and Ukraine demonstrated that Russian imperial ambitions had not been extinguished but merely dormant, waiting for moments of perceived weakness. For Eastern European states, NATO membership has proven to be not only a safeguard of their sovereignty but also a bulwark for their futures as free and secure nations within a stable international order.

The Ukraine-NATO relationship has existed long before February 24, 2022. On August 24, 1991, Ukraine declared its independence from the USSR and became a sovereign country. After the collapse of the Soviet Union in 1991, the North Atlantic Cooperation Council (NACC)

was formed with the principal objective of "building a Europe whole and free." The NACC invited former Soviet states to join the Council to strengthen ties with NATO member states. Ukraine's acceptance marked its first formal relationship with NATO. The geographic significance of Ukraine in relation to the former Soviet Union, made the development of the relationship between "NATO and Ukraine an important aspect of the emerging European security architecture." See NATO, "Relationship with Ukraine."

A primary goal of NATO member states in the 1990's was to ensure peace on the European continent and fortify independent free countries without the looming threat of resurgence of a post-Soviet Imperial Russia. Additionally, the sensitive issue of existing nuclear arms within former Soviet states was a central concern. Ukraine held the third largest nuclear arsenal in the world in the immediate aftermath of the fall of the Soviet Union. In 1994, the Budapest Memorandum established Ukraine's membership to the Nuclear Nonproliferation Treaty (NPT) where China, Russia, France, the UK, and the US were members. Ukraine would surrender its nuclear arms in exchange for security assurances from the five states; and joined the NPT. However, the agreement did not explicitly grant the Ukraine the security of member states intervention if a conflict arose; the memorandum only ensured that the states "respect the Independence and Sovereignty and the existing borders of Ukraine." Russia's invasion of Ukraine violated this recognition of Ukraine's sovereignty and therefore violated the Budapest Memorandum.

In 1997, the NATO-Ukraine Charter established the NATO-Ukraine Commission, responsible for developing the Ukraine and NATO relationship, promote stability in Central Europe, and ensuring respect for all sovereign states in Europe. Shortly thereafter, the NATO-Ukraine Commission developed the NATO-Ukraine Action Plan to identify clear objectives and a strategic framework for Ukraine to become fully integrated into NATO. The plan would be reviewed periodically with the aim to evaluate political, economic, and information issues, each with specific guidelines to develop Ukraine to satisfy the requisite qualifications necessary for NATO admission. At the 2008 Bucharest Summit, NATO declared that Ukraine was not yet qualified to be a NATO member. However, Jaap de Hoop, NATO's former Secretary General, said that Ukraine would be a member in the future.

In 2025, Ukraine continues to try to rectify outstanding issues barring its admittance to NATO. However, large obstacles remain. Ukraine is ranked 116 out of 180 most corrupt countries in the world despite years of reform; and other significant roadblocks for NATO membership remain. At the Vilnius Summit in 2023, the NATO-Ukraine Commission was transformed into the NATO-Ukraine Council where "Allies and Ukraine sit as equals to advance political dialogue, engagement, cooperation and Ukraine's aspirations for membership in NATO." While this increased degree of prominence to admit Ukraine into NATO is beneficial for Ukraine, the country must still find a way to satisfy the requisite conditions to gain the status necessary for Ukrainian reformation.

The ongoing war with Ukraine created another major obstacle. If Ukraine becomes a member while Russia and Ukraine are belligerents, then all NATO members must honor its security arrangements and not only provide weapons to fight the war but also send troops ("boots on the ground") to Ukraine to fight the war. None of the current members states, including the United States, Poland, the Baltic states and the newest member Finland, are ready to make this move. In November 2024, President Zelensky offered a work-around: fast-track Ukraine membership but have the NATO security umbrella apply to territory currently under Ukraine's control. An armistice between Russia and Ukraine would follow, with the issue of what to do

with Russian-occupied territories left for another day. The model would be the 1951 armistice that ended the Korean War and which has held for over seventy years and allowed South Korea to become an economic superpower. From a legal point of view, the Korean War has not yet ended; or has not yet ended with a peace treaty where the belligerents and their allies recognize the sovereignty of each state or a unified Korea, still the goal of South Korea. The 1949 move to create two Germanys after the end of the Second World War is yet another model to freeze the status quo and kick the can down the road. Unification of Germany did not take place until the fall of the Berlin War and the signing of the 4+2 Treaty. Formally known as the Treaty on the Final Settlement with Respect to Germany, the international agreement allowed Germany to reunify in 1990. The treaty was signed in Moscow on September 12, 1990.

In the absence of NATO membership, Ukraine must look for alternative security arrangements to ensure present and future peace within the sovereign state. The Budapest Memorandum was executed to guarantee Ukraine with these external security assurances to prevent conflict with neighboring nations in exchange for surrendering their nuclear arsenal. Russia's invasion of Ukraine has evidenced that this assurance was illusory. While securing future protections from external forces, Ukrainian diplomats and military strategists must find a way to enforce the agreements. A country cannot rely on defense if an opposing country can breach the treaty in the way Russia has with the Budapest Memorandum. Ukraine has been successful in obtaining a massive amount of weapons and a massive amount of financial support in the absence of boots on the ground. Western and Central Europe and the US has exercised caution for fear that Russia will take a potential action as a hostile threat leading to the third world war.

Although Ukraine is still hanging on with the military and financial assistance provided so far since 2014, post-Soviet independent Ukraine will need to secure more sustainable ties. In 2016, the United States signed a Ten-Year Memorandum of Understanding between the US and Israel. In this document, the US pledged to provide $38 billon of financial and military support over 10 years from 2019 to 2028 in the effort to ensure Israel's security. Other security guarantees provided by the US both before and after 2014 reflect a multifaceted partnership rooted in shared strategic interests and values. Through financial aid, advanced military technology, and robust political support, the US ensures Israel's ability to defend itself against regional adversaries. This relationship also strengthens American geopolitical influence in the Middle East, underscoring the symbiotic nature of their alliance. While challenges persist, such as differing approaches to regional conflicts, especially Iran and the urgent need to secure peace with Palestine under a Two-State Solution, to which the US at least up to the Biden Administration is still committed, U.S.-Israel security relationship remains a cornerstone of both nations' foreign policies.

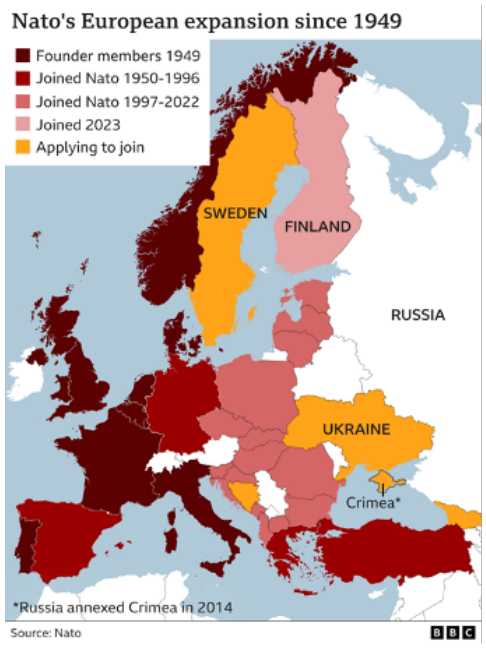
"The Israel Option" for Ukraine, sometimes dubbed "The Porcupine Option" may allow Ukraine to grow and prosper under a US security umbrella just as it has done for Israel. For Ukraine, adopting an "Israel Option" could involve long-term U.S. commitments, such as multi-year military aid agreements, advanced weapons systems tailored to Ukraine's needs, and consistent diplomatic backing. The partnership might emphasize fostering Ukraine's domestic defense production and cyber capabilities, creating a resilient infrastructure capable of deterring aggression from Russia. This approach could also ensure that Ukraine retains its sovereignty and strategic decision-making while signaling a sustained U.S. commitment to its defense, much like it does for Israel.

12.2 Joining NATO

12.2.1 Article 10: Enlargement

The Washington Treaty, signed by the NATO founding members in 1949, established a principal concept of the organization to allow new countries to join if certain criteria are met. In Article 10 of the Washington Treaty, the original drafting parties detailed the member expansion process known as Enlargement. From its conception, NATO has always maintained an "open door" policy that states membership is open to any "European State in a position to further the principles of [the] Treaty and to contribute to the security of the North Atlantic area." Over the course of the last 74 years, NATO has exercised the right of Enlargement granted in Article 10 to expand the organization and further fortify the support and resources of the Alliance. During this time, NATO has successfully grown to a total of 31 countries around Europe through nine rounds of enlargement. The most recent member to successfully gain membership to NATO by meeting the requisite obligations was Finland in April 2023. As described in Article 10, all NATO member countries must unanimously agree to invite a potential country to join. Prior to an invitation to join NATO, a country must satisfy three prerequisites. The country must be geographically within Europe, it must be a democracy, and there must be the capacity and willingness to contribute to the security of the Euro-Atlantic area. When these pre-requisites are met the country can be invited to join with a Membership Action Plan (MAP).

The MAP provides specific advice and support on promoting political, legal and military framework of the potential new member. Each of these plans are tailored to the country while recognizing the unique essence and support that may be required for NATO membership. When evaluating whether an applicant country can meet the political, legal, and military obligations of a NATO member state, the organization looks to elevate the country based on certain circumstances of the specific state. In 1997, NATO published a study on past sessions of Enlargement that outlined considerations of previous accepted members. Although each applicant bears a unique burden specific to the political, legal, and economic framework of their country, this study acts as a benchmark for what the Alliance looks for in developing countries. The study demonstrated that a country must satisfy requirements such as; (1) a functioning democratic political system based on a market economy, (2) the fair treatment of minority populations, (3) a commitment to the peaceful resolution of conflicts, (4) the ability and willingness to make a military contribution to NATO operations, and (5) a commitment to democratic civil-military relations and institutional structures. Although this list is not exhaustive, an applicant state will have to satisfy these basic requirements. After a country has proven to satisfy all of the reformation requirements outlined in the MAP, the country will be formally invited to engage in the accession process into NATO.



Enlargement of European countries since the founding of NATO

The first step of the accession process involves a series of two meetings held at the NATO headquarters in Brussels between the applicant country and a NATO team. These meetings focus on ensuring that the applicant country is willing and able to meet the requisite political, legal, and military obligations of an Ally as described in the Washington Treaty. Additionally, each member state is required to contribute certain economic and security resources to NATO. Considering each country has varied populations and economic statuses, the required resources are on a proportional basis. After the initial accession meetings, the applicant must send letters of intent to NATO with an outlined timeline for completion of the requested reforms. Next, the accession protocols are reviewed, signed, and ratified by NATO countries. After this the Secretary General invites the new members to accede to NATO. Lastly, the new member will accede in accordance with their national procedures and after depositing their instruments of accession with the US State Department, the country is now a NATO member. This extensive process has been a bar for many countries that fail to meet the requirements and obligations of this international organization. However, Ukraine is in a current state of necessary military support from neighboring countries and therefore must adhere to all requests of political and economic reform to ensure NATO membership.

12.2.2 Ukraine's Initial Attempts for NATO Membership

The relationship between Ukraine and NATO has been developing since the early 1990's when Ukraine joined the NACC and Partnership for Peace program with the objective to ensure political stability within Europe after the fall of the Soviet Union. The NATO-Ukraine Commission, formed in 1997, marked the first distinctive partnership created specifically to develop Ukraine's relationship with the Alliance. Over the course of a decade, the commission outlined criteria and objectives in attempt to fully integrate Ukraine into NATO through the Ukraine Action Plan. However, during this time Ukraine struggled to provide convincing evidence that the conditions had been met for NATO membership. Ukraine expressed its

intention to join the international security alliance, but political and economic discrepancies hindered progress.

In 2008, the 20th NATO Summit was held in Romania, which is known as the Bucharest Summit. The Bucharest Summit discussed a variety of pertinent topics involving NATO including the formal invitation for Albania and Croatia to begin accession talks to join the Alliance. NATO's relationship with the Ukraine was also evaluated in great detail. During the Bucharest Summit Declaration on April 3, 2008, NATO formally announced its intention that Ukraine will become members of NATO in the future. Ukraine's ongoing cooperation and contribution to NATO was recognized, although no finite plan or timeline was given to Ukraine. The Summit declared that the MAP will be the next step for Ukraine's process to become a NATO member state which was to be evaluated and produced by foreign ministers. Ukraine patiently waited for fifteen years for the MAP protocol to be delivered after the Bucharest Summit, but never received the plan to initiate accession. Although the plan has not been formalized, NATO maintains its intention and continues to stand by the decision that Ukraine will eventually be admitted into NATO. After Russia invaded and occupied the southern Ukrainian territories of Crimea and portions of Donetsk in 2014, NATO reaffirmed their decision to stand by Ukraine by adopting a "firm position in full support of Ukraine's sovereignty and territorial integrity within its internationally recognized borders." Additionally, NATO has made it clear that they condemn Russia's war of aggression against Ukraine and will never recognize Russia's illegal occupation of Crimea and Donetsk. NATO has provided economic support during this occupation, however, the security assurance that is required to guarantee the protection of Ukrainian national identity still lies in the hands of NATO.

12.2.3 Fast Track to NATO

On February 24, 2022, Russia launched the first full scale attack on Ukraine with the invasion of the Eastern and Southern Ukraine and shelling of the capital, Kyiv. This moment marked the start of the Ukraine War. Ukraine's need for external security assistance was now at the highest point. NATO member states and other neighboring nations demonstrated outstanding support during the first six months since the invasion by providing financial support and weapons. However, to ensure the sovereignty of the Ukrainian boarders, President Volodymyr Zelenskyy knew that direct military assistance from NATO was necessary. If Ukraine is accepted as a member state of NATO, the main principle of the organization - to protect a member state - would ensure defense of their nation. Even through the hostile invasion of Russia, NATO had yet to lay out a plan for Ukraine's acceptance as a member. As September of 2022 came, Zelenskyy called for immediate action in a time of crisis from NATO. The below excerpt is a speech from President Zelenskyy demanding a fast track acceptance to NATO, followed by a response by NATO in Bucharest.

President Volodymyr Zelenskyy, Ukraine's Application for accelerated accession to NATO
September 30, 2022

Ukrainians!
And all our friends and allies!

De facto allies. Today, here in Kyiv, in the heart of our country, we are taking a decisive step for the security of the entire community of free nations.

We see who threatens us. Who is ready to kill and maim. Who in order to expand his zone of control does not stop at any savagery.

On February 24, the first full-scale attack on Ukraine was carried out. The first!
Russia would not have stopped at our borders if we had not stopped it. Other states would have been under attack. The Baltic countries, Poland, Moldova and Georgia, Kazakhstan...

Russia claimed to subjugate various nations of Europe and Asia. Claimed six months ago. This criminal ambition is breaking down in Ukraine. It was broken down in the suburbs of Kyiv and Chernihiv. In "Azovstal". In the Sumy region and Kharkiv region. On Zmiinyi Island. It will be broken down in Donbas and in the south of Ukraine when we liberate them. Definitely - in Crimea, in the free Ukrainian Crimea.

The entire territory of our country will be liberated from this enemy - the enemy not only of Ukraine, but also of life itself, humanity, law and truth.

Russia already knows this. It feels our power. It sees that it is here, in Ukraine, that we prove the strength of our values. And that is why it is in a hurry. Organizes this farce with the attempted annexation. Tries to steal something that does not belong to it. Wants to rewrite history and redraw borders with murders, torture, blackmail and lies.

Ukraine will not allow that.

Today I held a meeting of the Staff of the Supreme Commander-in-Chief. The meeting of the National Security and Defense Council has just ended. We have a decision.

First – it is only the path of strengthening Ukraine and ousting the occupiers from our entire territory that restores peace. We will complete this path.

Second – Ukraine was and remains a leader in negotiation efforts. It was our state that always offered Russia to reach an agreement on coexistence on equal, honest, decent and fair terms. It is obvious that this is impossible with this Russian president. He does not know what dignity and honesty are. Therefore, we are ready for a dialogue with Russia, but already with another president of Russia.

And third – we must de jure record everything we have already achieved de facto. It is in Ukraine that the fate of democracy in the confrontation with tyranny is being decided. It is here, with the firmness of our state borders, that we can secure the firmness of the borders of all European states. We can guarantee that no one else will dare to bring war back to our continent.

It is here, in Ukraine, that the values of our Euro-Atlantic community have obtained real vital energy. The strength of the nation that fights for freedom, and the strength of the nations that help in this fight.

We are de facto allies. This has already been achieved. De facto, we have already completed our path to NATO. De facto, we have already proven interoperability with the Alliance's standards, they are real for Ukraine - real on the battlefield and in all aspects of our interaction.

We trust each other, we help each other and we protect each other. This is what the Alliance is. De facto.

Today, Ukraine is applying to make it de jure. Under a procedure consistent with our significance for the protection of our entire community. Under an accelerated procedure.

We know it's possible. We have seen Finland and Sweden start accession to the Alliance this year without a Membership Action Plan.

This is fair. This is also fair for Ukraine. This is the consolidation at the level of the treaty of what has already been achieved in life and what are our values.

We understand that this requires the consensus of all members of the Alliance. We understand that it is necessary to reach such a consensus. And therefore, while this is happening, we offer to implement our proposals regarding security guarantees for Ukraine and all of Europe in accordance with the Kyiv Security Compact, which was developed and presented to our partners.

Security has no alternatives. But determination is needed to guarantee it.

We are taking our decisive step by signing Ukraine's application for accelerated accession to NATO.

Today, the National Security and Defense Council of Ukraine adopted a decision to impose sanctions on significant individuals and legal entities of Russia who did not have the courage to speak out in defense of humanity and international law, or who in one way or another are involved in aggressive steps against Ukraine and the community of democratic nations.

And at the same time, I am addressing the people's deputies of Ukraine: at the next session of the Verkhovna Rada of Ukraine, a draft law on the nationalization of all Russian assets will be considered, which should significantly simplify this procedure. Please endorse this bill without delay.

We are completing the dismantling of Russian influence on Ukraine, Europe and the world.

Glory to Ukraine!

Statement by NATO Foreign Ministers
Bucharest November 30, 2022

1. We are gathered in Bucharest, close to the shores of the Black Sea, at a time when Russia's ongoing invasion of Ukraine threatens Euro-Atlantic peace, security, and prosperity. Russia bears full responsibility for this war, a blatant violation of international law and the principles of the UN Charter. Russia's aggression, including its persistent and unconscionable attacks on Ukrainian civilian and energy infrastructure is depriving millions of Ukrainians of basic human

services. It has affected global food supplies, and endangered the world's most vulnerable countries and peoples. Russia's unacceptable actions, including hybrid activities, energy blackmail, and reckless nuclear rhetoric, undermine the rules-based international order. We stand in solidarity with Poland following the incident of 15 November that led to the tragic loss of life as a result of Russia's missile attacks against Ukraine. We condemn Russia's cruelty against Ukraine's civilian populations and violations and abuses of human rights, such as forcible deportations, torture, and barbaric treatment of women, children, and persons in vulnerable situations. All those responsible for war crimes, including conflict-related sexual violence, must be held accountable. We also condemn all those, including Belarus, who are actively facilitating Russia's war of aggression against Ukraine.

2. We welcome Foreign Minister Kuleba today, stand in full solidarity with the government and people of Ukraine in their heroic defence of their nation and land, and pay tribute to all those lives lost. We remain steadfast in our commitment to Ukraine's independence, sovereignty, and territorial integrity. We will never recognise Russia's illegal annexations, which blatantly violate the UN Charter. We will continue and further step up political and practical support to Ukraine as it continues to defend its sovereignty and territorial integrity and our shared values against Russian aggression, and will maintain our support for as long as necessary. In this context, NATO will continue to coordinate closely with relevant stakeholders, including international organisations, in particular the EU, as well as like-minded countries. Building on the support provided so far, we will help Ukraine now to strengthen its resilience, protect its people, and counter Russia's disinformation campaigns and lies. Allies will assist Ukraine as it repairs its energy infrastructure and protects its people from missile attacks. We also remain resolute in supporting Ukraine's long-term efforts on its path of post-war reconstruction and reforms, so that Ukraine can secure its free and democratic future, modernise its defence sector, strengthen long-term interoperability and deter future aggression. We will continue to strengthen our partnership with Ukraine as it advances its Euro-Atlantic aspirations.

3. Finland and Sweden are participating today as states invited to join the Alliance. Their accession will make them safer, NATO stronger, and the Euro-Atlantic area more secure. Their security is of direct importance to the Alliance, including during the accession process.

4. Recalling that the Western Balkans and the Black Sea regions are of strategic importance for the Alliance, we welcome our meeting with the Foreign Ministers of NATO partners Bosnia and Herzegovina, Georgia, and the Republic of Moldova, as NATO strengthens its tailored support to building their integrity and resilience, developing capabilities, and upholding their political independence. We firmly stand behind our commitment to the Alliance's Open Door policy. We reaffirm the decisions we took at the 2008 Bucharest Summit and all subsequent decisions with respect to Georgia and Ukraine.

5. NATO is a defensive Alliance. NATO will continue to protect our populations and defend every inch of Allied territory at all times. We will do so in line with our 360-degree approach and against all threats and challenges. We condemn terrorism in all its forms and manifestations and stand in solidarity with Türkiye in grieving the loss of life after the recent horrific terrorist attacks. We face threats and challenges from authoritarian actors and strategic competitors from all strategic directions. In light of the gravest threat to Euro-Atlantic security in decades and in line with the Strategic Concept, we are implementing a new baseline for our deterrence and

defence posture by significantly strengthening it and further developing the full range of robust, combat-ready forces and capabilities. All these steps will substantially strengthen NATO's deterrence and forward defences. We remain committed to prepare for, deter, and defend against hostile attacks on Allies' critical infrastructure. Any attack against Allies will be met with a united and determined response. We stand together in unity and solidarity and reaffirm the enduring transatlantic bond between our nations. We will continue to strive for peace, security and stability in the whole of the Euro-Atlantic area.

12.2.4 Conditions restricting Ukraine-NATO Membership

From the conception of the Ukraine-NATO relationship, Ukraine has demonstrated a strong intention and ability to adhere to requisite obligations in its attempt to join the Alliance. Ukraine has made substantial progress in political reform with the goal of maintaining a model Slavic democracy for neighboring former Soviet Union nations. NATO has recognized this progress over time and especially in the recent years involving Russian invasion. However, with the need for external security assurances at an all-time high for Ukraine, NATO is still hesitant to begin the accession process for Ukraine. There are many concerning factors for why this international treaty has been met with a delayed response, however, a primary reason lies within the delicate nature of the NATO-Ukraine relationship in the context of this war. From the Ukrainian perspective, accession into NATO is essential to ensure the security of their boarders and to preserve the integrity of their nation. However, NATO member states fear that granting Ukraine's membership into the Alliance would escalate the already detrimental war. Additionally, a central condition specific to Ukraine's political framework has appeared to be working against their application into NATO. A NATO member state must have a functioning democratic political system and guarantee a commitment to democratic civil-military relations and institutional structures. Historically, Ukraine has suffered from internal corruption at the head of their political infrastructure. Although anti-corruption movements have been underway for decades, the present existence of corruption in Ukraine makes many NATO member states skeptical about whether Ukraine is sufficiently non-corrupt enough for membership. If Ukraine can assure the end to corruption within the ruling leaders of their country and promote democratic judicial reform, the requisite obligations for a NATO member can be easily achieved. If achieved, the only roadblock remaining would be the external concerns of escalating the war.

The beginning of the Ukraine War marked the first potential threat of a world war since the end of Nazi Germany or the presence of nuclear weapons in the Cold War. NATO member states and similarly interested countries around the world recognize the delicate nature of the Ukraine War. Similar to the Cold War, the existing threat of nuclear arms in Russia represents the precarious nature of the disastrous consequences that may ensue if the wrong military and political strategies are implemented. Many nations currently perceive Russia as a governing body that will not stop until they achieve their desired outcome of reclaiming the nation of Ukraine. In January of 2023, a leading official under Russia President Vladimir Putin's regime stated that the continuous deliveries of weapons to Ukraine by western allies will lead to retaliation with "more powerful weapons." In a later post online, the Russian official specifically indicated the use of nuclear arms. It's this fear, the threat of total destruction of Western Europe, that has prevented and slowed down the progress of NATO's acceptance of Ukraine into the Alliance. Although Secretary General, Jens Stoltenberg, has mentioned on multiple occasions that NATO rejects the illegal occupation of Russia in Ukraine, condemns the actions of Russia's aggression, and will stand by Ukraine throughout this conflict, Stoltenberg recognizes the potential and severe consequences of allowing Ukraine to formally join the Alliance. Every NATO member state must

follow the protocols of new membership and the responsibilities as outlined in articles of the founding Washington Treaty. Article 5, Collective Defense, states "parties agree that an armed attack against one or more [parties] in Europe or North America shall be considered an attack against them all." Article 5 continues to require the obligation that each party "will assist the Party or Parties so attacked … [with action] deemed necessary, including the use of armed force." This inherent concept of NATO has ensured peace within Europe and the North Atlantic for over 70 years. Article 5 is the principle in which NATO is founded and the purpose for its function. The acceptance of Ukraine in NATO would effectively engage each NATO member state in close defense against Russia as if Russia had invaded their nation. This action would immediately create a direct conflict between NATO and Russia, and thus the result of World War III would be almost certain. The hesitant inclination of Jens Stoltenberg and NATO to include Ukraine in the Alliance rests on the fear of nuclear war in Europe. Some scholars say that Russia's existing threat of the use of their nuclear artillery following further NATO involvement makes NATO's restraint reasonable. Although this condition withholding Ukraine's acceptance is out of their hands, Ukraine can engage in great political reform to ensure they are in the best possible position to be invited into the NATO accession process.

The internal conditions specific to Ukraine's political structure have been a major roadblock for Ukraine's acceptance into NATO and for the furtherance of democratic development for the country in general. Chapter 14 will engage in further discourse regarding Ukraine's struggle with ending corruption in their political framework, but it is important to note here as a primary reason and a condition they are currently failing to meet for NATO membership. Ukraine has not been invited to engage in the Membership Action Plan yet because of their ongoing struggle with systemic corruption. In 2015 former president of Ukraine, Petro Poroshenko, signed a decree founding the National Anti-corruption Bureau of Ukraine. Prior to the war, corruption had plagued the Ukrainian political system for decades. Poroshenko's initial awareness of signing this decree was just the beginning of a long uphill battle to fight internal corruption. Although the leaders of Ukraine are currently aware that corruption is limiting external security assistance, multiple accounts of corruption have still occurred during the war from leading officials. This corruption not only limits Ukraine's eligibility to join NATO, but also instills a distrust from foreign nations to provide financial and military support. If the donating countries are skeptical of the improper use of resources at the hands of corrupt officials, then support will likely decrease. Therefore, it is imperative for Ukraine to end systemic corruption in their political system. In addition, the Ukrainian government has been called upon by multiple international organizations to ensure judicial reform to reflect a true democratic system. One of the conditions required to be invited to join NATO is a functioning democratic system. President Zelenskky demanded the reformation of ethical standards within the judiciary and to ensure the democratic election of justices. If the center of the legal system is not acting in direct accordance with the law of Ukraine, and if the justices are not elected according to democratic procedures, then NATO will lose faith that Ukraine maintains a functioning democratic political system. In March of 2020, President Zelenskyy addressed the world to highlight the importance of ending corruption in Ukraine and the need for judicial and governmental reform. These reformation processes are integral to the financial and military support of external nations and for the furtherance of Ukraine's government system. Although the end to systemic corruption and the promotion of judicial reform would not automatically grant Ukraine's bid to join NATO, these conditions are in Ukraine's control to increase their chances of NATO membership.

12.2.5 Ukraine Demands NATO Membership at GLOBSEC

After more than a year after Russia's initial invasion and illegal occupation of Ukraine, the need for security assurances only grew stronger and Ukraine even more desperate to join NATO. The continuation of hostile force and destruction of Ukrainian cities had made the assistance of NATO and other external forces necessary to prevent further harm to the integrity of the nation and their citizens. In April 2023, NATO Secretary-General Jens Stoltenberg stated in an interview that "all NATO Allies have agreed that Ukraine will become a member." Stoltenberg continued: "No one can tell when and how this war ends. But what we do know is that when the war ends, we need to ensure that history does not repeat itself." The unanimous agreement among all NATO members for Ukraine membership is necessary for a country to join the Alliance. However, the Secretary General's statement remains vague as to when Ukraine will be permitted to join NATO. Ukrainians need security assurances to defend their country and although NATO's support is beneficial to Ukraine, the current climate of the conflict remains the pressing issue.

At the end of May 2023, the GLOBSEC convention was held in Bratislava, Slovakia, to discuss three pertinent topics: the continuing support for Ukraine, resilience of Europe in the face of war, and mitigating the global consequences of the conflict.[33] GLOBESEC is a non-government group comprised of officials around the world with the commitment to enhance security, prosperity, and sustainability in Europe and throughout the world. Olha Stefanishyna, the Deputy Prime Minister for European and Euro-Atlantic Integration of Ukraine, highlights the importance of a final and absolute solution to integrate Ukraine as a NATO member during a panel at GLOBSEC. Stefanishyna exemplifies the frustration of the Ukrainian people with the resistance from NATO and other external forces to send military personnel to defend the nation of Ukraine. Many countries have shown their certain support of Ukraine in this conflict but as Stefanishyna demands, without an international treaty in place and by restricting action with the fear of Russia's potential response, Ukraine may be vulnerable to further destruction and loss of territory. The Ukrainian government portal highlights the integral demands and necessitates for Ukrainian security that Stefanishyna covered during an hour long panel at GLOBSEC in May 2023.

Ukraine's Path to NATO Membership is Final and Non-negotiable
Olha Stefanishyna
GLOBSEC Bratislava, Slovakia May 2023
(Ukraine Government Portal)

Leaders of the democratic world should act towards Ukraine's NATO membership without looking back at russia's reaction. This was stated by Olha Stefanishyna, Deputy Prime Minister for European and Euro-Atlantic Integration of Ukraine, during a panel discussion on Ukraine's security at the GLOBSEC international security forum in Bratislava, Slovakia.

[33] GLOBSEC is a prominent global think tank based in Bratislava, Slovakia, that focuses on international security, policy, and global affairs. It is best known for its annual GLOBSEC Bratislava Forum, a major international conference that gathers political leaders, experts, and business figures to discuss key geopolitical challenges, security issues, economic trends, and the future of democracy. The forum facilitates high-level discussions on defense, cybersecurity, energy security, and international cooperation, aiming to shape policies and strategies to address global risks and opportunities. GLOBSEC also conducts research and policy analysis to inform decision-making on critical global issues.

“The lack of decisions and actions by NATO in recent decades has been described as ‘strategic uncertainty’. This approach by NATO since 2008 has brought us to where we are now (in a state of full-scale war – ed.). Today, this uncertainty must be replaced by the principle of ‘acting and learning as we go’. Only by acting have we learnt to be resilient and to fight back. By acting within the Ramstein format, we have learnt how to coordinate military assistance effectively. By demonstrating unity, we have proved that russia is incapable of achieving any of the stated aims of the war it is waging. Similarly, we must begin to act on Ukraine’s NATO membership without looking back at russia’s reaction. We must act for the sake of our security and our future,” the Deputy Prime Minister stressed.

The official pointed out that Ukraine’s experience in repelling Russia’s full-scale aggression allows Europe to formulate a more effective security and defence policy.

“The strengthening of European security mechanisms, the European Peace Facility, joint defence procurement are the changes that Ukraine has brought about. The same is true for NATO. We are ready to share our knowledge and experience gained in unprecedented conditions, which will make NATO stronger. We are not only paying for our choice with our own blood. We are also making the whole of Europe, the whole of the democratic world, stronger, more resilient, more effective. And the world must also pay its price,” Olha Stefanishyna stressed.

The Deputy Prime Minister expressed gratitude to the United States for its leadership in providing military assistance and creating a coalition of more than 40 countries that are working together in the Ramstein format to provide Ukraine with the necessary weapons and equipment:

“This is enough to survive, enough to launch a successful counter-offensive. “The Patriots are saving Ukrainian lives every day. We are alive thanks to your support. But we need more. This is not enough to win.

We are talking about the restoration of Ukraine’s territorial integrity and sovereignty. Anything other than the restoration of Ukraine’s territorial integrity and sovereignty, call it what you will – a ceasefire, political negotiations, rejection of NATO enlargement, etc.; all this means playing by the Russian scenario. It could be Minsk-3, it could be a war of attrition. Anything that does not lead to the restoration of Ukraine’s territorial integrity, security guarantees and NATO membership will mean that we are playing to the russian plan, that we are letting russia go unpunished, and we have to remember that.”

A separate topic in the context of security guarantees was expectations for the upcoming NATO Summit in Vilnius in July this year.

Olha Stefanishyna focused on a number of important elements. Firstly, the main guarantee of security is a developed European defence industry.

“Secondly, NATO membership. We know that if this path is not taken in Vilnius, it will not be taken in Washington next year. The path to Ukraine’s NATO membership is final and non-negotiable. We cannot be decisive on the battlefield and ambiguous in political discussions. This is not the way to go. We are fighting for ourselves, but we know what is at stake. This is the Europe we will live in, and we will defend it. And NATO should also be aware of this,” the Deputy Prime Minister stressed.

For his part, Benjamin Haddad, Member of Parliament of the French Republic, stressed during the discussion that there could be no peaceful and secure Europe without a fully sovereign, free Ukraine. He called for Ukraine to be given everything it needs to succeed in its counter-offensive.

Chair of the Foreign Affairs Committee of the Lithuanian Seimas Žygimantas Pavilionis stressed that it was the non-enlargement of NATO that provoked the russian war, and that the only lasting guarantee of security for Ukraine could be its membership of the Alliance.

12.2.6 Vilnius Summit 2023

NATO holds summit meetings where leading officials from each NATO member state attends to discuss the strategic objectives of security for the Alliance. The summits are planned accordingly to the current climate of the world and as needed when conflicts arise. There have been four NATO summits since Russia's full-scale invasion of Ukraine in February 2022. The most recent summit was held in Vilnius, Lithuania, where the current status of Ukraine's application with NATO and the conditions affecting the conflict were discussed in great detail. The Vilnius Summit was a highly anticipated meeting for Ukraine and members of the Alliance to discuss the ongoing conflict in Ukraine. Many Ukrainians hoped that NATO would finally provide Ukraine with the procedural roadmap and membership acceptance timeline into NATO. Prior to the Vilnius Summit, President Zelenskyy demanded that NATO prepare a roadmap to Ukrainian membership. Some Ukrainian officials claimed that Zelenskyy's attendance would be conditional on this assurance. In a time of desperation from nearly a year and a half of conflict with Russian forces, Zelenskyy attended the Vilnius Summit with the aspiration to officially obtain a logistical framework for Ukraine's path to NATO.

The Ukrainian president was greeted with huge support from NATO member states at the summit. The Vilnius Summit was held over the course of two days where topics centered around Ukraine's application to NATO were discussed. On July 11, the first day of the Summit, President Zelenskyy was informed that NATO did not have a definite timeline for Ukraine's membership into the Alliance. Zelenskyy addressed this with an online post stating, "It is unprecedented and absurd when time frame is not set neither for the invitation nor for Ukraine's membership. While at the same time vague wording about 'conditions' is added even for inviting Ukraine. It seems there is no readiness neither to invite Ukraine to NATO nor to make it a member of the Alliance." Zelenskyy's frustration of the equivocal assurances given by NATO is shared across Ukraine. At the Vilnius Summit, NATO affirmed that all members of the Alliance have agreed that Ukraine will become a member after the war is over. However, Zelenskyy has consistently requested the timeline for when this will occur. Although NATO did not present Ukraine with Zelenskyy's request, the member states effectively removed the hurdle of the MAP requirement for NATO membership. In his closing statement, Jens Stoltenberg affirmed that the removal of the MAP hurdle makes the 2-step process into NATO membership now a one step process. Now, Ukraine will only have to be invited into the accession program of NATO. Stoltenberg assured that Ukraine will be invited into the accession process once the member states have unanimously agreed that all of the conditions have been met. However, the Secretary General did not provide any finite details of what these conditions could be. Again, providing an illusory promise for Ukraine future membership.

On July 12, the second day of the Vilnius Summit, the former NATO-Ukraine Commission was transformed into the NATO-Ukraine Council. In the NATO-Ukraine Council, both NATO and Ukraine will meet to deliberate and make decisions as equals. NATO leaders believe that this newly formed council has deepened the relationship with Ukraine and further demonstrated Ukraine's importance to the Alliance. The newly formed council met during the Vilnius Summit in the function as a crisis consultation mechanism to evaluate Russia's escalation in the Black Sea region. At the Vilnius Summit, Ukraine was additionally granted further financial support from the Alliance. The Allies agreed to increase the Comprehensive Assistance

Package (CAP) into a multi-year program of assistance to promote the rebuilding of Ukraine. Although this was not Zelenskyy's main objective attending the Summit, the increase of CAP is integral for the rebuilding of their nation. If becoming a NATO member is not in the near future for Ukraine, securing financial support from external nations is necessary.

President Volodymyr Zelenskyy and Secretary General Jens Stoltenberg at the Vilnius Summit, July 2023

Joint Press Conference between Volodymyr Zelenskyy and Jens Stoltenberg Vilnius Summit, July 12, 2023

President Zelenskyy, dear Volodymyr,
Welcome to NATO, it is great to see you again.

Always a pleasure to meet with you.
And it is a true honour to have you here at the NATO Summit.

When President Putin invaded Ukraine last year,
he underestimated the bravery of the Ukrainian people, the courage of the Ukrainian forces, and the determination of the Ukrainian political leadership.

But he also underestimated the unity and strength of the NATO Alliance. NATO will continue to stand with you for as long as it takes.

NATO Allies have provided tens of billions of dollars in support over the past year. And now we have agreed a three part package bringing Ukraine closer to NATO.

A multi-year programme of practical assistance establishing a new NATO-Ukraine council, and the reaffirming that Ukraine will become a member of NATO and removing the requirement for the Membership Action Plan.

Our new multi-year programme of assistance for Ukraine will help you transition from Soviet era to NATO equipment and standards. And will make Ukraine's forces fully interoperable within NATO.

The inaugural meeting of the NATO-Ukraine council will start in a few minutes. This is a forum where Ukraine and NATO Allies will meet as equals, hold crisis consultations and jointly take decisions.

Ukraine is now closer to NATO than ever before. Allies reaffirmed that Ukraine will become a member of the Alliance and agreed to remove the requirement for a Membership Action Plan.

This will change Ukraine's membership path from a two-step process to a one-step process. And we will issue an invitation for Ukraine to join NATO when Allies agree that conditions are met.

This is a strong, united message from Allies on your path to NATO membership.

We must ensure that, when this war ends, there are credible arrangements in place for Ukraine's security. So that history does not repeat itself.

I therefore welcome that many Allies will today commit to providing long-term security assistance to Ukraine. This will help deter any future aggression from Russia after this war ends.

And it complements the support provided by NATO.

The decisions made here in Vilnius mark the beginning of a new chapter in the relationship between NATO and Ukraine.

Today we meet as equals, I look forward to the day we meet as Allies.

And again, a very warm welcome to you.

NATO Spokesperson Oana Lungescu
We'll start with the Ukrainian National Broadcaster. Lady over there.

Roksolana Liskovska, Ukrainian National Broadcaster
Thank you. I have a question for both Secretary General and President Zelenskyy. First of all [question in Ukrainian, as interpreted]: Dear Mr. President, how do you evaluate the conditions with regards to assessment of Ukraine and what are you going to talk about today during the Council? [Question to Secretary General]: What's the difference from the Commission?

Ukrainian President Volodymyr Zelenskyy
[Answer in Ukrainian, as interpreted]
Thank you for this question. First and foremost, the assessments. I've already made my assessment in a fairly public manner. What's most important is to have results. We can see some specific points, making us closer to NATO. As I've already said, some of the things, it's difficult to explain to partners, because we are at war. And the partners are truly willing to help us and assist. They are helping us but still, we are living under different conditions, because we are in the conditions where survival matters and partners are willing to support us to live. But before we can live, we need to survive. And that pushes us to some fast processes, the processes that would need to result in the reform of the infrastructure of security in the world. And unfortunately, we pay the ultimate price, the price of our lives. We can see how to fight any aggression. Now, we are an adequate people. We clearly understand that partners are helping us

with weapons and this is a moment of survival. This is something that we need. We understand that someone is afraid of talking about our membership now, because nobody is willing to have a world war, which is logical and understandable. I want everyone to understand that we are civilized and adequate people. Ukraine is fighting and it truly understands that Ukraine cannot be a member nation to NATO as long as the war continues in our territory. This is absolutely clear. But those signals are important, those signals that were mentioned in bilateral meetings with Secretary General, with partners, and I had a number of meetings already. Those statements about Ukraine of becoming a member nation of NATO. And already, we can hear some confident statements - when the conditions will be met. My understanding is that when it will be secure on our land on our territory.

NATO Secretary General Jens Stoltenberg
The establishment of the NATO Ukraine Council is one of the three elements in the package we agreed today to ensure that Ukraine comes even closer to NATO and to NATO membership. And the purpose of that decision is to strengthen the political ties. It's to strengthen the political interaction between NATO and Ukraine.

The Council is different from the previous Commission. First and foremost, because this is a body that can make decisions and we meet as equals. It is not 31 Allies meeting a partner, it's a Council that actually make decisions where we meet as equals. We can meet at the level of Heads of State and Government, as we will do today; at the Ministerial level, Defence, Foreign Ministers, Ambassadorial level. We can also meet at the military level, with our Chief of Defence and other experts groups can be established. So this is a much stronger, much more important political entity than to just have a partnership. This is something we do together as equals. But again, this is one of the steps we are taking to move towards a membership.

Today we meet as equals. I look forward to the day we meet as Allies. But this is an important step and an important contribution to that process.

NATO Spokesperson Oana Lungescu
Sky, first row here.

Deborah Haynes, Sky News
Thank you. I'm Deborah Hayes from Sky News. President Zelenskyy, you came here wanting a timeframe for membership. You'll be leaving with warm words, as well as more weapons and new security guarantees. Have the Allies done enough to show their support? Or do you still think that their position on Ukraine joining NATO is absurd? And most crucially, might this lack of an invitation undermine the morale of your forces fighting right now on the front line? And Mr. Secretary General, the Kremlin has just said it would be - the Kremlin has just said it's a dangerous mistake for the West to give security guarantees to Ukraine. Are you worried that the Allies are taking a step closer towards direct war with Russia?

Ukrainian President Volodymyr Zelenskyy
[Answer in Ukrainian, as interpreted]
Thank you for the question. As for the invitation, I truly understand that this is a technical signal. But if we're not only dealing with techniques and bureaucracy, but should we look at that as a serious factor to contribute to the motivation, to the Ukrainian society, then for me, as a

President, that was an important moment. I kind of compare this fact with the candidacy for the membership in the European Union and with the dialogue with other countries. I give the following example: I told that EU candidacy was just this signal. The candidacy means no membership, but it brings a significant mobilization for Ukraine and a powerful signal for Russia that Ukraine is not a member of any type of Alliance, but Ukraine is willing to become a member of the European Union and will be an independent state.

As for the invitation to NATO, this is just the same. It's a signal. But today I can see another important signal that I've already mentioned, and we can have some specifics about this. The specifics, now, if today, they, G7 will agree to the first declaration on security guarantees, that would be a very specific fact. Because the security guarantees says that these guarantees will be valid on our way to NATO. This is very important. This is going to be a very specific signal. As for the rest of the points the Secretary General has already mentioned, as referred to (inaudible) the Alliance. Thank you.

NATO Secretary General Jens Stoltenberg
There's a full-fledged war going on in Europe, and there is no risk free option, no risk free option for NATO Allies either. But the biggest risk is if President Putin wins. Because then the message is that when he uses military force, when he violates international law, when invades a neighbour, then he gets what he wants. And that's exactly why it is so important for NATO Allies to support Ukraine.

Because it will be a tragedy for Ukraine if President Putin wins, but it will be dangerous for us. It will make us more vulnerable. And that's also the reason why we have been so very clear on the following: that Ukraine, of course has the right to choose its own path and what kind of security arrangements it wants to be part of. That's the first line in the paragraph we agreed today on membership for Ukraine and the path forward.

And this is a fundamental right for every nation. And therefore we can never allow that Moscow starts to decide who can or who cannot be a member of NATO. Russia has been against every enlargement of NATO. It’s for NATO Allies and for Ukraine to decide when to become a member. Moscow doesn't have a veto on that.

So we are moving Ukraine closer to membership. We make all the decisions today which is the strongest and most united message on the path towards membership NATO has ever issued to Ukraine.

And of course we do that knowing that Moscow will protest, as they did when Finland joined or when Sweden is joining or North Macedonia or all new Allies. So Ukraine has the right to choose its own path, Allies will decide, it's not for Moscow to decide.

Ukrainian President Volodymyr Zelenskyy
Just to add one sentence to the words of the Secretary General. That what is very important about the Council, that it’s not an instrument of participation, that is written there. That is an instrument of integration. And that should also give us should also give us such spirit that we’ll be in NATO.

NATO Spokesperson Oana Lungescu
ICTV Ukraine.

Volodymyr Runets, ICTV Ukraine
I have two questions, Volodymyr Runets, ICTV. I have two questions, one for the President of Ukraine and one for the Secretary General of NATO.

[Question in Ukrainian, as interpreted]
Mr. President, what do you expect of today's meeting of the G7? What guarantees do you think might be additionally granted to Ukraine?
[In English]
And Mr. Secretary General, this new Council NATO-Ukraine, how is it going to be different from the Commission of NATO-Ukraine that could be blocked by, say, Hungary or any other members, and had issues functioning? How technically can be… how this can be technically achieved? Thank you.

Ukrainian President Volodymyr Zelenskyy
[Answer in Ukrainian, as interpreted]
As for today's meeting, as well as the security guarantees. First, I would like to tell you that these are not auxiliary aspects. We don't have real security guarantees from our partners. I mean, legally, we have actual security guarantees. There is financial, there is guarantees in the form of sanctions, there is assistance and defensive support. And that could be the first legal document that symbolizes the fact that we have a sort of a security umbrella, a first document. And later on Ukraine will have bilateral documents with every security guarantor for Ukraine. And it will cover all those aspects that we already have, or those aspects that we're lacking now. Like air defence, like aircrafts, like military aircrafts; now all those aspects will be considered on a bilateral level. Besides this document, the security umbrella will allow the other countries in addition to the G7 countries to join. So this is, would be, an opportunity for other partners to join as well. And we've already started to have conversations with other partners. They're already friends with us, but they're not part of the G7. Then (inaudible) will join, I think that's a very important next step.

NATO Secretary General Jens Stoltenberg
Well, the Council will be chaired by me, the Secretary General of NATO. And I can convene the Council. So that cannot be blocked by individual Allies, or members of the Council. It can also be convened by individual member states for crisis consultations. So if President Zelenskyy wants to convene a meeting of the NATO-Ukraine Council, he can do so, it cannot be blocked. Because we are meeting as equals. We have decided what we are going to address, including crisis consultations; can be a call by any member of this Council.

So this is something new, it's something different, it's a strong political tool for further political integration, and also for decision-making. So this is one of the elements in the decision we are taking today to move Ukraine closer to NATO and NATO membership, and we should all appreciate that.

NATO Spokesperson Oana Lungescu
CNBC. Just behind.

Steve Sedgwick, CNBC
Steve Sedgwick from CNBC. President Zelenskyy, can I just follow on, on the security guarantees issue, because security guarantees have been in place for the best part of the last 30 years. They didn't prevent 2014, Crimea, they didn't prevent 2022. What is it about security guarantees that will make a difference this time, firstly to yourself, so in your country, but also to the attitude of the Russians and to Vladimir Putin. He's looked at previous security guarantees and he's ignored them, and he's invaded anyway.

Ukrainian President Volodymyr Zelenskyy
[Answer in Ukrainian, as interpreted]
Thank you for the question. I'm not willing to reiterate, but I can tell you one thing, I don't believe the Budapest Memorandum as security guarantee, because I don't understand any responsibility provided under the memorandum. There were no specifics, except for the fact that Ukraine had this document and was left alone with it. We don't see the consequences for violating this document.

As for the new document - now, it should remain valid as long as Ukraine is not in NATO. And we understand that the best guarantees for Ukraine and for Ukrainians is to be in NATO. This is clear because there's already the examples. And I would like to underline once again: we don't see any member nations of NATO that are at war now, that are dying, that are suffering, that are defending their own country. That is why we understand that the best guarantees for Ukraine is to be in NATO. On our way to NATO, we would like to have the security guarantees. And to have them permanently, so that they would make our relationship to other countries even more powerful. We would like to have a document so that the assistance wouldn't be based only on our personal relationship, but to have it written in the document. And today's framework declaration and security guarantees will open up the possibilities for the strong bilateral documents.

NATO Spokesperson Oana Lungescu
We'll take one last question. USA Today, lady here in second row.

USA Today
President Zelenskyy, later this afternoon you'll meet with President Biden. What are you hoping to accomplish in the meeting? And how do you plan to convince him that Ukraine is ready for NATO membership? When you meet with President Biden, also, beyond the cluster munitions that the US has said it will provide Ukraine, what other military assistance are you seeking from the Biden administration that you have not yet received? And for Secretary General Stoltenberg, how quickly do you expect NATO nations to be able to provide the F16s that President Zelenskyy has been requesting?

Ukrainian President Volodymyr Zelenskyy
About F16… or is it also to me? You address to me the question, or…? No, no, no, no, no, answer please. [Laughs] Okay, okay. You can also, Jens, answer on all these three questions about NATO, when it will be… Okay.

[Answer in Ukrainian, as interpreted]
Thank you. First, I am grateful to President Biden and to the Congress, and to the people of the United States that are truly the leaders in support and assistance to Ukraine. We highly appreciate

this. I am not planning to find any arguments for making sure that President Biden would see us in the NATO.

I believe that those arguments, they should be mutual. Because it is all about the security in the East, the European continent, the Eastern flank of NATO. And I believe that NATO needs us just as we need NATO. And I believe that this is absolutely fair. I am confident that after the war Ukraine will be in NATO, we will be doing everything possible to make it happen, so that we would, with the United States, we would have the same understanding and the same vision.

As for the cluster munitions as you call it: look, there are moments when we have slight disagreements in small details with our US partners. But I would like to extend words of gratitude to the President. I know it was a challenge in the United States. It was a challenge in the US Congress, and there are people who are not sharing the support with regards to the cluster munitions.

But I want us to look at this from a different perspective, from a perspective of fairness. Russia is constantly using cluster munitions on our territory. They're fighting only on our land, they are killing our people, they are using long range missiles, cluster munitions on a regular basis. The assistance that we can receive from the United States with regards to the decision on the cluster munitions, we are talking about the use of those munitions only against military targets, only against the occupied territory of Ukraine. So this is something that is under control, and it is not going to be used anywhere else.

There has to be fairness. And it is not fair that the aggressor has occupied us, has been occupying parts of our territory for nine years and killing our people. How can we defend? It is all about fairness. We are defending ourselves; we are defending ourselves by not using weapons against the territory of other states. As for the other support and assistance, we do need long-range weapons. This deficit remains, and I will raise this issue.

NATO Secretary General Jens Stoltenberg
Yesterday, a group of NATO Allies established a coalition to provide training for F-16 fighter pilots from Ukraine. This is an initiative originally initiated by the Netherlands and Denmark. I welcome that several other Allies have now joined in. Some preparations have already taken place. And training will start as soon as possible. What Allies have informed us is that training will actually start this summer. So this is something which is now happening. Last time I saw at least, I think it was 10 or perhaps even a bit more Allies, which are now part of this coalition, and they are eager to start as soon as possible. And of course, this will then enable a later decision also to provide F-16s. So training starts as soon as possible and based on that, decisions will be made on providing fighter jets.

Let me just add that of course, guarantees, documents, councils, meetings are important. But the most urgent task now is to ensure enough weapons to Ukraine, to President Zelenskyy and his armed forces. And, therefore, it has been extremely important that under this meeting, we have seen new announcements from NATO Allies. France has decided to deliver long-range cruise missiles. Germany just announced yesterday a new big package of more air defense systems, more armored vehicles. The United States announced a big new package of ammunition, of weapons – and many other Allies have also made new announcements.

So the most urgent task is, of course, to ensure that Ukraine prevails. Because unless Ukraine prevails, then there is no membership issue to be discussed at all. So, the message is that we stand by Ukraine for as long as it takes, and the urgent need is to provide the weapons they need.

12.2.7 Potential Consequences of Ukraine War without NATO

With the MAP requirement removed from Ukraine's application into NATO, the process to become a member state is seemingly clearer. However, NATO has still not provided Ukraine with any specific details of when the Alliance will determine that Ukraine has satisfied all of the requisite conditions to be formally invited to engage in the NATO accession process. Ukraine still faces a hostile conflict each day with their neighboring aggressor. NATO has made it clear that there is no way Ukraine will be able to become a member of the Alliance while still engaged in the war due to concerns of escalation with the unpredictable president in the east. In the meantime, Ukraine must ensure that they have the sufficient financial and military support to win the war against Russia. NATO has guaranteed a multi-year program of assistance to promote the rebuilding of Ukraine. However, if Ukraine cannot achieve victory over Russia, there will be no Ukraine to rebuild and there will be no Ukraine to accede into NATO. It is imperative that Ukraine can ensure the safety of their sovereignty through use of their internal facilities and by securing additional security assurances and support from neighboring nations.

During a press conference on October 11, 2023 in Berlin, Jens Stoltenberg stated that he is "confident that North America and Europe, together, will continue to support Ukraine… allies have [continued to] deliver unprecedented support including advanced air defense systems, battle tanks, F16s, and cruise missiles." Even if NATO membership is not imminent during the war, Ukraine must strengthen their ties with NATO and neighboring European nations. Since the fall of the Soviet Union, Ukraine has sought to maintain their own national identity, form a functioning democratic nation, and engage in the free market of Europe. Ukraine must now lean on the Western European nations for assistance to achieve the goal of leaving the oppressive ways of the Soviet Union states behind. In the same press conference, Jens Stoltenberg also expressed a great fear of Ukraine losing the war. Stoltenberg stated, "if President Put wins in Ukraine, it is a tragedy for the Ukrainians but it's also dangerous for us because then the message to President Putin and all the 'authoritarian leaders' will be when they use military force, when they violate international law, when they invade another country, they get what they want and that makes us more vulnerable." Stoltenberg's fear is based in realism and this reality will likely strengthen the support of the Ukraine without NATO. If Ukraine begins to fall during this war, the neighboring nations will need to support Ukraine with more than financial assistance and weaponry. As history shows, when an oppressive ruler begins to overtake territory through force and threat of identity, there is no limit to how far the destruction may go. If NATO membership is not foreseeable in the near future, Ukraine will have to look to alternative security arrangements.

Commentary

1. Vladimir Putin and Russian officials have made accusations to NATO regarding their betrayals of assurances after the dissolution of the Warsaw Pact. Russia has put partial blame on NATO for the invasion of the Ukraine because the Western Alliance allegedly went against their word made to Russia in 1990. Putin claims that an agreement was made that NATO would not expand "one inch eastward" during a discussion of the reunification of Germany. Additionally, the Russian leader demanded that Kyiv would

never be included in the security Alliance. However, NATO has continuously insisted that they maintain an "open door policy" to any European State in a position to further the principles of the Treaty and to contribute to the security of the North Atlantic area. Ukraine has been persistent of their intention and willingness to contribute to NATO. Does Putin's concern for betrayal hold any ground? Should NATO remain in the West? Why would Putin think that the violation of this agreement is a justified basis for the invasion of Ukraine? Ken Moskowitz, *Did NATO Expansion Really Cause Putin's Invasion?*, American Foreign Service Association (2023).

2. Another agreement to consider is the Budapest Memorandum. After the collapse of the Soviet Union, the Budapest Memorandum established Ukraine's membership to the Nuclear Nonproliferation Treaty (NPT). China, Russia, France, the UK, and the US were previous members of the NPT. Under this agreement Ukraine would surrender its nuclear arms in exchange for security assurances from the five states signed onto the NPT. The memorandum explicitly stated that all members to the NPT "respect the independence and sovereignty and the existing borders of Ukraine." Russia's invasion of Ukraine violated the recognition of Ukraine's sovereignty and identity. In addition, Putin continuously makes the assertion that Ukraine does not have a history or a national identity. He claims that everything Ukraine has is the product of Russia. This appears to be in direct violation with "respecting the sovereignty and existing borders of Ukraine." Should Russia and Putin be punished for violating this Nuclear Arms pact? Is the violation of the Budapest Memorandum stronger than the claimed violation of NATO's promise not to expand east? How can international treaties be enforceable if they can be so easily violated without punishment?
3. Article 5 of the Washington Treaty, the founding treaty of NATO, establishes the Collective Defense obligation. In Article 5, parties agree that an armed attack against one or more parties in Europe or North America shall be considered an attack against them all. Article 5 continues to require the obligation that each party "will assist the Party or Parties so attacked with action deemed necessary, including the use of armed force. The key language to Article 5 in the context of the Ukraine conflict is "with action deemed necessary." Article 5 does not require the immediate use of armed force in defense of the country, but rather an obligation to assist the country with armed force as an option. Article 5 was invoked by NATO for the first time in history after the terrorist attacks of September 11, 2001 in the United States. Orest Zakydalsky, a senior political advisor for the Ukrainian Canadian Congress, claims that a world war is not a guaranteed consequence if Ukraine joins NATO. Zakydalsky stated "Ukraine has no desire to drag the rest of NATO into a war with Russia by invoking Article 5. Ukraine has said that they want to join NATO because they don't want a war after this one." Zakydalsky also mentioned that the odds of Putin escalating the war are the same if Ukraine joins NATO or not. Is it possible for Ukraine to join NATO during the Ukraine War without escalating the conflict into a third world war? Would Putin take Ukraine's accession into NATO as a direct threat? Should NATO accept Ukraine into the Alliance only after the war? Which arguments appear the strongest or most reasonable for Ukraine's membership into NATO? Megan DeLaire, *Why is it taking so long for Ukraine to join NATO?*, CTV News (December 4, 2022)
4. Andrey Kortunov from the Russian International Affairs Council, claimed that "Catherine the Great is credited with saying that the only way to secure the borders of the Russian

> Empire is to expand them continuously. This logic is to some degree applicable to the North Atlantic Treaty Organization (NATO), which embarked on a path of geographical enlargement quite literally from the very first days of its existence." As evidenced by the formation of the Soviet Union, Russia has used the concept of Catherine the Great, Empress of Russia during the 18th century, to further the geographic boundaries of its nation.

The Group of Seven (G7) is an intergovernmental political and economic forum comprised of Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States. The European Union is also involved in G7. At the Vilnius Summit G7 released an international framework for the long-term security of Ukraine to promote their defense against Russia and prevent future invasion. The G7 made the following statement:

> We, the Leaders of the Group of Seven (G7), reaffirm our unwavering commitment to the strategic objective of a free, independent, democratic, and sovereign Ukraine, within its internationally recognized borders, capable of defending itself and deterring future aggression.
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> We affirm that the security of Ukraine is integral to the security of the Euro-Atlantic region.
>
> We consider Russia's illegal and unprovoked invasion of Ukraine to be a threat to international peace and security, a flagrant violation of international law, including the UN Charter, and incompatible with our security interests. We will stand with Ukraine as it defends itself against Russian aggression, for as long as it takes.
>
> We stand united in our enduring support for Ukraine, rooted in our shared democratic values and interests, above all, respect for the UN Charter and the principles of territorial integrity and sovereignty.
>
> Today we are launching negotiations with Ukraine to formalize — through bilateral security commitments and arrangements aligned with this multilateral framework, in accordance with our respective legal and constitutional requirements — our enduring support to Ukraine as it defends its sovereignty and territorial integrity, rebuilds its economy, protects its citizens, and pursues integration into the Euro-Atlantic community. We will direct our teams to begin these discussions immediately.

The statement continues on to provide specific details of how G7 will (a) ensure a sustainable force capable of defending Ukraine, (b) strengthen Ukraine's economic stability, and (c) provide technical and financial support for Ukraine's immediate needs stemming from Russia's aggression. Although President Zelenskyy was hoping NATO would deliver a finite timeline for Ukraine's accession process, the G7 multi-year security assurance is a substantial benefit for the further defense and economic rebuilding of Ukraine. How will Russia respond to leading nations supporting Ukraine in their fight against Russia? Putin claimed that if NATO assisted Ukraine further, the war may escalate into the use of nuclear arms. Although G7 is not NATO, many NATO member

states make up the group? Will Putin consider this a threat to Russia? If these NATO member states are providing assistance under the guise of G7, what is the difference than NATO providing this support? What would the difference be if Ukraine was accepted into NATO?

5. In a press conference with Jens Stoltenberg, he stated "no one can tell when and how this war ends. But what we do know is that when the war ends, we need to ensure that history doesn't repeat itself." Some scholars have said that NATO has taken a stance of caution when engaging in pre-existing conflicts. Here, the Ukrainians are a European nation that are currently being threatened by an aggressive political power in the east. NATO's principal objective is to maintain peace and stability in Europe and the North Atlantic area. Jens also mentioned that if Ukraine loses the war, it is "also dangerous for us because then the message to President Putin and all the 'authoritarian leaders' will be when they use military force, when they violate international law, when they invade another country, they get what they want and that makes us more vulnerable." If Europe's peace and stability has the potential to be threatened, at what point will NATO be required to step in? The caution exercised by NATO is based on the fear of escalating the war to a third world war. However, if Ukraine falls to the Russian regime, will this be the end of Russia's desire to conquer more land? Will the occupation of Ukraine increase the reality of the fear of WWIII? Is there a way for NATO to become directly involved without the war being escalated to the use of nuclear arms? Dan Sabbagh & Jennifer Rankin, *All NATO members have agreed Ukraine will eventually join, says Stoltenberg*, The Guardian (April 21, 2023), Oliver Towfigh Nia, *NATO chief vows continuing military support for Ukraine*, Anadolu Ajansi (October 11, 2023).

6. In June, 2023, one month prior to the Vilnius Summit, Great Britain called for NATO to consider removing the MAP hurdle for Ukrainian membership of NATO. British Defense Minister Ben Wallace, claimed that he "thinks [NATO] should absolutely look at skipping the Membership Action Plan." He continued by asserting "but of course, we have to put some realism in this space that there are 31 members to NATO now and, we have to all move together." At the Vilnius Summit NATO affirmed the suggestion of Wallace and accepted to remove the MAP requirement from Ukraine's application process. Wallace makes an important point here, the main requirement is that each of the member states move as one and agree upon decisions unanimously. There are clear supporters of Ukraine's effort in their fight against Russia. Although all of NATO agreed to remove the MAP hurdle, some of the nations showed greater support to make this happen, such as Wallace and Great Britain. Should President Zelenskyy and Ukraine look to the powerful nations who can lend this support? If NATO is not in the foreseeable future, should Ukraine secure further security alliances with NATO member states? How can this process work without angering Russia? William James, *Britain says NATO should consider removing MAP hurdle to Ukraine's membership*, Reuters (June 29, 2023).

12.3 Non-NATO Alternative Security Arrangements

12.3.1 G7 Long Term Security Arrangement

At the Vilnius Summit in July 2023, the Group of Seven (G7) released a long-term security arrangement for the security of Ukraine to promote their defense against Russia and prevent attempts of invasion from Russia or Russian allies. The Group of Seven is an intergovernmental political and economic forum that is made up of Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States. The European Union is also associated with G7. NATO was unable to guarantee a timeline for Zelenskyy and Ukraine but member states of NATO, including Japan, declared a multi-year military and financial support program to assist Ukraine in their efforts against Russia. Japan is not an official member state of NATO, however, Japan is one of NATO allies in the efforts to protect the Northern Atlantic. Considering Ukraine cannot rely on the Alliance for direct support during the Ukraine conflict, the G7 long term security arrangement will in part further promote the success in Ukraine's defense. For Ukraine, theses security arrangements from powerful nations in the West are necessary for the ongoing effort to defend their sovereignty. Putin continues to assert his intention that Ukraine belongs to Russia and rejects their national identity. Ukraine must now rely on the support of the G7 security arrangement to prevent Putin's success.

The intergovernmental group presented the G7 security arrangement at Vilnius while asserting their unwavering support of Ukraine during the conflict. This was an effort to lend the much needed support Zelenskyy called for without officially engaging Ukraine as a NATO member and further angering the oppressive force in the east. The official agreement of the G7 joint declaration security arrangement will follow, but there are a few important aspects to note. The Group of Seven has pledged this agreement will persist through multiple years during the conflict to defend Ukraine and deter Russian aggression in the future. As Jens Stoltenberg has said, NATO and allied forces together with Ukraine must ensure that history does not repeat itself. Ukrainian intention to join NATO is to rebuild their great nation with the objective of deterring the hostile threat of any powerful nation through alliance. Therefore, Ukrainian compliance with the Joint Declaration of the G7 is essential to strengthen the relationship with NATO and to ensure that victory is achievable against Russia. The G7 has promised to strengthen Ukrainian forces through the further development of Ukrainian defense industrial base, the training of Ukrainian forces, intelligence sharing and cooperation, and additional defense mechanisms. If Ukraine has the military resources and the trained personnel to engage in advanced warfare or even to appear to have the capability to engage in advanced warfare like a NATO member state, then this fear will likely deter Russia and future nations who wish to challenge Ukrainian sovereignty.

Ukrainian efforts to join NATO during this war and following the conflict are based on military necessities but also primarily based in the economic efforts. Russia looks to Ukraine as their former counterpart of the Soviet Union. However, Ukraine is unlike any former Soviet Union state. Ukraine has had great success in economic growth and development through industrialization and advanced technological growth since the collapse of the Soviet Union in 1991. These resources and advanced civilization threaten Russia and generates a baseless claim of ownership. However, through any war time, Ukraine has suffered great economic loss and vast destruction of their infrastructure. The G7 joint declaration pledges to strengthen the stability of Ukraine's economy through reconstruction and recovery efforts. It is imperative that Ukraine engages in the G7 security arrangement to ensure the restructuring of their once thriving economy. The arrangement also calls for providing the technical and financial support to assist Ukraine with political and governmental reform to further their efforts in gaining NATO membership. Although currently Ukraine has failed to accede into NATO, the G7 security

assurance is a primary security alternative to the Alliance. It is imperative that President Zelenskyy and Ukraine follow the obligations and agreed commitments of Ukraine in this joint declaration.

G7: Joint Declaration of Support for Ukraine

Vilnius Summit, July 12, 2023
(European Council)

We, the Leaders of the Group of Seven (G7), reaffirm our unwavering commitment to the strategic objective of a free, independent, democratic, and sovereign Ukraine, within its internationally recognized borders, capable of defending itself and deterring future aggression. We affirm that the security of Ukraine is integral to the security of the Euro-Atlantic region. We consider Russia's illegal and unprovoked invasion of Ukraine to be a threat to international peace and security, a flagrant violation of international law, including the UN Charter, and incompatible with our security interests. We will stand with Ukraine as it defends itself against Russian aggression, for as long as it takes.

We stand united in our enduring support for Ukraine, rooted in our shared democratic values and interests, above all, respect for the UN Charter and the principles of territorial integrity and sovereignty.

Today we are launching negotiations with Ukraine to formalize — through bilateral security commitments and arrangements aligned with this multilateral framework, in accordance with our respective legal and constitutional requirements — our enduring support to Ukraine as it defends its sovereignty and territorial integrity, rebuilds its economy, protects its citizens, and pursues integration into the Euro-Atlantic community. We will direct our teams to begin these discussions immediately.

We will each work with Ukraine on specific, bilateral, long-term security commitments and arrangements towards:

a) Ensuring a sustainable force capable of defending Ukraine now and deterring Russian aggression in the future, through the continued provision of:

- security assistance and modern military equipment, across land, air, and sea domains – prioritizing air defense, artillery and long-range fires, armored vehicles, and other key capabilities, such as combat air, and by promoting increased interoperability with Euro-Atlantic partners;
- support to further develop Ukraine's defense industrial base;
- training and training exercises for Ukrainian forces;
- intelligence sharing and cooperation;
- support for cyber defense, security, and resilience initiatives, including to address hybrid threats.

b) Strengthening Ukraine's economic stability and resilience, including through reconstruction and recovery efforts, to create the conditions conducive to promoting Ukraine's economic prosperity, including its energy security.

c) Providing technical and financial support for Ukraine's immediate needs stemming from Russia's war as well as to enable Ukraine to continue implementing the effective reform agenda that will support the good governance necessary to advance towards its Euro-Atlantic aspirations.

In the event of future Russian armed attack, we intend to immediately consult with Ukraine to determine appropriate next steps. We intend, in accordance with our respective legal and constitutional requirements, to provide Ukraine with swift and sustained security assistance,

modern military equipment across land, sea and air domains, and economic assistance, to impose economic and other costs on Russia, and to consult with Ukraine on its needs as it exercises its right of self-defense enshrined in Article 51 of the UN Charter. To this end, we will work with Ukraine on an enhanced package of security commitments and arrangements in case of future aggression to enable Ukraine to defend its territory and sovereignty.
In addition to the elements articulated above, we remain committed to supporting Ukraine by holding Russia accountable. This includes working to ensure that the costs to Russia of its aggression continue to rise, including through sanctions and export controls, as well as supporting efforts to hold to account those responsible for war crimes and other international crimes committed in and against Ukraine, including those involving attacks on critical civilian infrastructure. There must be no impunity for war crimes and other atrocities. In this context, we reiterate our commitment to holding those responsible to account, consistent with international law, including by supporting the efforts of international mechanisms, such as the International Criminal Court (ICC).
We reaffirm that, consistent with our respective legal systems, Russia's sovereign assets in our jurisdictions will remain immobilized until Russia pays for the damage it has caused to Ukraine. We recognize the need for the establishment of an international mechanism for reparation of damages, loss or injury caused by Russian aggression and express our readiness to explore options for the development of appropriate mechanisms.
For its part, Ukraine is committed to:
a) Contributing positively to partner security and to strengthen transparency and accountability measures with regard to partner assistance;
b) Continuing implementation of the law enforcement, judiciary, anti-corruption, corporate governance, economic, security sector, and state management reforms that underscore its commitments to democracy, the rule of law, respect for human rights and media freedoms, and put its economy on a sustainable path;
c) Advancing defense reforms and modernization including by strengthening democratic civilian control of the military and improving efficiency and transparency across Ukraine's defense institutions and industry.
The EU and its Member States stand ready to contribute to this effort and will swiftly consider the modalities of such contribution.
This effort will be taken forward while Ukraine pursues a pathway toward future membership in the Euro-Atlantic community.
Other countries that wish to contribute to this effort to ensure a free, strong, independent, and sovereign Ukraine may join this Joint Declaration at any time.

12.3.2 The "Israel Option"

Ukraine must now look for external security arrangements with powerful forces in the west. When Ukrainian NATO membership did not seem imminent, many legal and political professionals suggested that Ukraine look to long term security relationships with close international partners, without being official treaty allies. One applicable example of this is the Ten-Year Memorandum of Understanding between the United States and Israel. On October 1, 2018, the United States and Israel engaged in a ten-year security relationship while excluding the explicit international obligations of a treaty alliance. The United States has pledged to provide Israel $38 billion to support the nation's military and economic efforts in defense and to deter any future threat of from an oppressive nation. This memorandum does not ensure a formal security guarantee from the United States. There is no condition such as Article 5 of the

Washington Treaty where the United States would have to use force as deemed necessary in the efforts to protect Israel. Rather the financial and security relationship is based on the assurance that the United States will provide advanced weaponry to Israel and train the nation's military with advanced modern techniques as applied by the United States. In addition, the United States will share international intelligence with Israel in an effort to further promote defense.

The United States has already given $46 billion to Ukraine in their effort to be victorious over Russia. However, Ukraine must ensure future stability of their nation and must attempt to exercise a long-term understanding with the United States under a similar structure of the Ten-Year Memorandum of Understanding between the United States and Israel. This has been known to be called "The Israel Option."

President Zelenskyy and Ukraine have already established a powerful relationship with the United States. The United States, as one of the world's superpowers, has a certain responsibility to maintain security of the sovereignty of nations from oppressive powers. On November 20, 2023, the United States Department of State published an extensive declaration to support Ukraine including the history of what the U.S. has already contributed to Ukraine in the efforts to defend against Russia. The declaration included contributions of air defense, firepower, ground resources, unmanned aerial systems, anti-armor, maritime defenses, and other military support. However, the purpose of this declaration was to further the United States' intention of support with Ukraine without guaranteeing additional resources. In addition the declaration demonstrated all that the United States has done in the effort to defend the country. Zelenskyy must now look to engage in negotiations with the United States to attempt to form a long-term security alliance to ensure the future support of their sovereignty. If the Ukraine is similar situated as Israel, the nation will be able to promote their military defense in a way to deter future threats. The United States has already proven their intent to support Ukraine in this conflict so this long-term memorandum is not inconceivable for Zelenskyy.

Ukrainian efforts must be focused on securing a long-term memorandum from a powerful nation like the United States. The Israel Option provides substantial support and a realistic lasting security assurance for Ukraine. President Zelenskyy has mentioned his intention to engage in such an agreement. Eric Ciaramella is a senior fellow in the Russia and Eurasia program at the Carnegie Endowment for International Peace. His work has primarily focused on the Ukraine conflict. Ciaramella shares the impression with many scholars and political figures that the Israel Option is a genuine option for the future security assurance of Ukraine. Here, the United States would pledge financial and military support to Ukraine while providing them with the necessary training and militant expertise to defend their nation. Ukraine in turn would cooperate with the intelligence requests of the United States and ensure the common goal of Ukrainian defense. Ciaramella points to the suggestions of Ukrainian officials to replicate Israel's security model with "a capable army, dynamic industrial base, a skillful intelligence apparatus, a strategic culture centered on self-defense, and a multifaceted relationship with the United States." Through negotiations, Ukraine can achieve this multi-year security arrangement with the United States. With NATO not in the realm of current possibility, the Israel Option may be the best alternative for the present and future defense of the Ukrainian sovereignty.

Envisioning a Long-Term Security Arrangement for Ukraine

Eric Ciaramella

Zelensky and numerous Ukrainian officials have suggested that Ukraine could replicate Israel's security model with a capable army, a dynamic industrial base, a skillful intelligence

apparatus, a strategic culture centered on self-defense, and a multifaceted relationship with the United States. A multilateral security arrangement for Ukraine based on this model is not a far-fetched idea, although there are important differences, not least of which is the fact that Israel, unlike Ukraine, has nuclear weapons and does not face aggression by a nuclear superpower.

The right formula for such a future security arrangement, as one European diplomat has said, "needs to be less than Article 5 but more than the Budapest Memorandum." This might seem like a tough needle to thread, but the Kyiv Security Compact (KSC) that Ukraine's government issued in September 2022 provides a helpful point of departure for discussions. It envisions a core group of partners committing to a "multi-decade effort" to support Ukraine's development of a "robust territorial defense posture," including by training and equipping its forces, investing in its defense industry, and enhancing its intelligence capabilities. The KSC is a change from previous Ukrainian requests that partners commit to sending troops or imposing a no-fly zone, both of which were nonstarters in the United States and Europe.

The United States and Europe must further develop this framework, incorporating lessons from the former's relationship with Israel and other countries that are not its treaty allies. A credible arrangement should be based on the following five principles:

- Strong political and legal codification that ensures the arrangement will endure regardless of electoral cycles and leadership changes in the United States and Europe
- A predictable, multiyear pipeline for military supplies that enables Ukraine to plan and sustain a future force structure capable of deterring Russian aggression
- Support for Ukraine's defense industry, as well as targeted defense industrial investments in the United States and Europe to prepare for a long war and an extended period of Ukrainian military reconstitution
- Mechanisms for political consultations, information sharing, and coordination to ensure that Ukraine's military needs are met in a timely fashion
- Clear linkage to Ukraine's EU accession process and postwar reconstruction

POLITICAL AND LEGAL CODIFICATION

Mindful of the Budapest Memorandum's failure to prevent Russia's aggression, Ukraine's leaders insist that any new security arrangement be built on more solid political and legal footing. Thus, the KSC proposes that signatories make interlocking commitments to Ukraine, through a "joint strategic document" and a series of bilateral "legal and political commitments…both at the executive level of government and by the respective legislatures." This structure may seem convoluted, but there is a logic to it. A "minilateral" framework document signed by Ukraine and a core group of its partners should assert the overarching goals and parameters of a security arrangement, much like formal defense treaties do.[31] Signatories would then enumerate their specific commitments to Ukraine in separate bilateral documents. A framework text is not only symbolically important; it would also be a clear reference point for all subsequent defense cooperation activities and agreements between Ukraine and its partners.[32] It would have a diplomatic multiplier effect as well, giving greater heft to the commitments than the sum of their parts.

The legal codification of these commitments is a thornier question, but it is necessary to ensure that they are enduring. A formal treaty would be the ideal outcome, but the KSC avoids setting the bar so high after Ukraine's partners, especially the United States, expressed skepticism about the idea. Existing U.S. partnerships with non-treaty allies show that there is a wide range of other models to draw inspiration from. For example, there is no formal defense treaty between the United States and Israel but the U.S. commitment to Israeli security is governed by law. This includes the requirement to maintain Israel's "qualitative military edge" (QME): the technological and tactical advantage to deter and, if necessary, defeat, a numerically superior adversary.

The concept of QME dates from the Cold War, when NATO allies in Europe had to maintain a qualitative edge in their training and weapons systems in order to offset the Warsaw Pact's quantitative advantages. It has been the framing for U.S. military aid to Israel since the 1973 Yom Kippur War. In 2008, Congress codified a definition for QME and required the executive branch to certify that any arms sales to Israel's neighbors do not damage its QME. Successive administrations have described QME as the cornerstone of U.S. policy toward Israel and have used it to govern arms sales, training, and exercises.

Israel's QME does not offer a perfect parallel to Ukraine's case. True QME for Ukraine is impossible because, unlike Israel, it does not have nuclear weapons and its only relevant adversary is a nuclear superpower. Moreover, Washington does not sell weapons to any of Kyiv's potential adversaries, and so the regional balancing effect of QME in Israel's case is irrelevant to Ukraine's. But Ukraine is a far larger country than Israel and can field a substantial, well-equipped, high-readiness deterrent force. The Ukrainian military is already demonstrating on the battlefield that it is capable of inflicting serious losses on an invading force.

If QME proves inapt, Ukraine and its partners might consider adopting a new term—for example, "qualitative deterrent balance"—as a guiding star for long-term security assistance. Framework nations would commit to helping Ukraine match or offset Russian battlefield advantages with a mixture of superior equipment, training, and intelligence, as well as public-private solutions such as cooperation with Western technology firms. The exact term matters less than setting out a clear strategic vision with which Kyiv and its partners can align their activities over time and to remove any lingering doubts about the durability of the arrangement.

Critically, the strong bipartisan support for Israel's QME provides continuity across administrations and largely insulates the relationship from changes in political leadership or party control in Washington. The dialogue between the executive and legislative branches on issues related to Israel's security is not always smooth, and it probably would not be in Ukraine's case either. But QME has gained a talismanic quality over time, ensuring stability and predictability regardless of which party controls the White House and Congress.

The United States' commitment to Taiwan's security offers another model of a legal framework that has survived political changes in Washington. It is codified in the Taiwan Relations Act (TRA), which was adopted in 1979 to preserve unofficial relations with the island in the wake of the U.S. recognition of the People's Republic of China. The TRA stipulates that Washington will provide Taipei with "defense articles and defense services in such quantity as may be necessary to enable Taiwan to maintain a sufficient self-defense capability." The TRA is not a mutual defense treaty—in fact, it was adopted in part to offset the United States' decision to abrogate the one dating from 1954 and to withdraw its forces from the island, two of Beijing's conditions for establishing diplomatic relations with Washington.

Aspects of the Taiwan case are not applicable to Ukraine, such as the United States' policy of "strategic ambiguity" as to whether it would intervene if the island were attacked. And, as with Israel's case, the executive branch and Congress do not always see eye to eye on the details of this defense relationship. But the fact that the TRA has enjoyed strong bipartisan support for more than four decades and is a central pillar of U.S. policy shows the important role Congress can play in making a security commitment more credible and enduring.

The Israel and Taiwan examples underscore the importance of a strong legal and political foundation. For Ukraine's arrangement, each signatory must find its own way to signal domestic cross-party support and codify its commitments into law. This is an especially critical step for the United States to take ahead of the 2024 presidential election. Clarifying that U.S. support for Ukraine will continue no matter who wins the election would reduce Putin's confidence that he can wait out the Biden administration, assure Ukraine that it will not be cast aside, and persuade Europe to increase its commitments. This will require the Biden administration to share ideas with, and solicit views from, leaders in Congress in order to build the broadest possible bipartisan coalition.

12.3.3 Enforcement of Security Arrangements

As Ukraine pursues non-NATO security assurances, President Zelenskyy must ensure that the international agreements are legally enforceable. The current conflict is the product of a nation disregarding the obligations detailed in the Budapest Memorandum of 1994. The Budapest Memorandum effectively joined Ukraine with the Nuclear Nonproliferation Treaty (NPT) as a non-nuclear state. The NPT recognizes China, France, Russia, the United Kingdom, and the United States as the only states to legally hold nuclear arms. In exchange for Ukraine's surrender of their nuclear arsenal, these powerful nations pledged to respect the sovereignty of Ukraine's identity and their borders. Russia violated this agreement with the invasion and occupation of Crimea in 2014. Putin's continued denial of Ukraine's identity lead the full-scale invasion of Ukraine in February 2022, the second violation to the Budapest Memorandum. For any future or present external security assurance to be valid, Ukraine must ensure that these international agreements are legally enforceable through codification and application. Some suggestions imply that joint strategic documents and a series of bilateral legal and political commitments from each party would achieve this goal. The legal enforcement of these agreements is critical for security assurances to take effect. If a procedure of application or eKnforceability is not in place, Ukraine could again fall victim to the violation of the Budapest Memorandum.

The long-term security arrangement for the security of Ukraine presented by G7 appears to be a promising defense mechanism for Ukraine's nation. Additionally, Ukraine's potential of striking an international agreement with the United States in the likeness of the Ten-Year Memorandum of Understanding between the US and Israel would further lend long-term and necessary military support for Ukraine. With the continued financial and political support from other NATO member states and nations around Europe, Ukraine may additionally have the possibility to engage in alternative security assurances. President Zelenskyy must continue to seek any security assurance possible to guarantee the protection of Ukraine's sovereignty. The critical aspect of these international agreements is long-term enforceability. With constant national political change, these agreements must have the legal enforceability to withstand the ever-changing climate of elections, governmental reform, and restructuring of international politics. Ukraine can ensure this enforceability in part from their perspective. Although Ukraine is not currently applying to NATO, they must continue to engage in governmental and political

reform as requested by the Alliance. This will not only put Ukraine in a position to be accepted into NATO when the war is over, but it will also ensure the enforceability of alternative security arrangements. Many of the joint declarations required Ukraine to adhere to certain conditions. These involve an open communication between political systems to achieve the common goal of Ukrainian defense. If Ukraine can abolish corruption and promote judicial reform, foreign nations will gain trust that their resources are being used for the purpose in which they were intended. While the war continues and Ukraine's NATO application is pending, Ukraine must execute external security assurance agreements with foreign nations. It is imperative to guarantee the protection of Ukraine during this conflict to ensure the sovereignty of the nation after the war is over.

Commentary

1. The G7's international framework for the long-term security of Ukraine provides multi-year assurances for the defense of Ukraine during the Russian conflict. The Israel Option, presents the possibility for Ukraine to engage in negotiations with the United States or a governing body with similar resources for a long-term security assurance agreement. Both agreements share similarities in which Ukraine will be provided financial and military support in an effort to defeat Russia and for following years to ensure Ukraine sovereignty. Additionally, both are agreements that provide Ukraine with these resources without a direct obligation for parties to intervene in direct defense.
2. Putin and Russia have continuously claimed that Ukraine will grow weak the longer the war persists. Kremlin spokesman, Dmitry Peskov, stated that "fatigue from the completely absurd sponsorship of the Kyiv regime will grow in various countries, including the U.S." This statement followed an October 2023 decision from the United States to reduce Ukrainian aid on a short-term funding package. The Russia perspective has appeared to consist of a superiority of their former counterpart Ukraine. Although NATO member states, including the United States, have reassured their support of Ukraine's efforts over the past two years. Is Russia's belief of Ukrainian fatigue warranted?
3. In the G7 joint declaration on Ukraine multilateral framework, the Group of Seven has guaranteed an ongoing support of Ukraine in their defense against Russia. These security assurances also extend past the hopeful defeat of Russia to prevent a future threat from an oppressive force. However, the joint declaration also includes responsibilities of the Ukraine. For example, the most integral aspect of Ukraine's obligation is continuing democratic reform. Ukraine must "[Continue] implementation of the law enforcement, judiciary, anti-corruption, corporate governance, economic, security sector, and state management reforms that underscore its commitments to democracy, the rule of law, respect for human rights and media freedoms, and put its economy on a sustainable path." President Zelenskyy and Ukraine have taken extreme measures regarding judicial reform, anti-corruption campaigns, and the promotion of a functioning democratic system. This obligation Ukraine has in the G7 agreement is essential for its enforceability.

12.4 Conclusion

As we write these words in December 2024, the facts on the ground in the war zone, political developments in the US and Europe, and appearances of new conflicts and new alliances worldwide make the situation about the fate of the war in Ukraine even more fluid. Will

Russia's decision not to send troops to Syria to save the Assad regime change the thinking of diplomats and decision-makers in Washington DC, Moscow, Kyiv and other European capitals with how to deal with Ukraine? How does NATO and /or the EU achieve unanimity and invite Ukraine to join liberal Europe under the NATO umbrella? Or will Ukraine be forced to renounce membership in these bodies, delete the NATO and EU aspirational articles in its constitution, and declare itself a neutral country?

Neutrality was the official stance of Finland during the Cold War. Earlier in its history, Finland was part of the Russian Czarist Empire. In 1939, Stalin's Soviet Union invaded Finland. The conflict ended in 1940 with Finland ceding territory to the USSR but allowed to retain its independence. During the Cold War, Finland did not become a people's republic but had to remain officially neutral. It was also not part of NATO and not part of the Soviet Warsaw Pact military alliance. But as the saying went: "When the Soviet Union/Russia sneezes, Finland gets the cold."

After the Cold War ended, Finland did not ask to join NATO. It retained its official neutrality – until Russia invaded Ukraine in February 2022. Less than three months later, in May 2022, Finland applied for NATO membership alongside neighboring Sweden. By April 2023, it was fast-tracked into NATO membership. Finland has a 1,340-kilometer (830 miles) border with Russia, which upon accession more than doubled NATO's border with Russia. Does Cold War-era Finland provide a model for Ukraine after the guns are silenced? Or will NATO-member Poland be a model for post-war Ukraine? A Russian saying goes: "Chicken is not a bird and Poland is not abroad [a foreign country]." (It rhymes in Russian: *Kuritsa nie ptitza, i Pol'sha nie zagranitza).* In NATO or out of NATO, Slavic-majority Poland will view Russia as a threat. So will Ukraine.

Chapter 13

Rule of Law and Governance

13.1 Introduction

The success of great nations throughout history has been attributed to the inherent ability to establish a legal system and governance of its polity founded on the principles of efficiency and integrity. For a government to experience longevity and sustainability, it is imperative to ensure the functionality of a just and fair rule of law. Ukraine (1991-) has been to accomplish this. Mired in inefficiency, corruption and undue influence of the power elite (dubbed in post-Soviet space with the term "oligarchs"), it now has to quickly gets its house in order while the house is being attacked by its much larger and stronger neighbor that wants to make Ukraine House part of it Russia House – and is using part of the captured bedrooms to attack and capture the rest of Ukraine House.

In the effort to rebuild Ukraine after the war, the nation must undergo substantial legal and political reform. A successful buildup of the rule of law and democratic governance will also ensure necessary external assistance needed to reconstruct Ukraine after the war.

Ukraine's acceptance into the North Atlantic Treaty Organization (NATO) is conditioned on specific criteria that each ally member must meet and adhere to in order to obtain the protection and association of the NATO Alliance. NATO is not just a military alliance of

disparate states with disparate legal and political systems. To be member of NATO, the state must be a liberal democracy and all that this entails. Article 10 of the NATO Treaty specifies that membership is open to "European states in a position to further the principles of this Treaty and to contribute to the security of the North Atlantic area." These principles explicitly include democracy, individual liberty, and the rule of law. Countries aspiring to join NATO are evaluated on their commitment to democratic governance, including holding free and fair elections. Countries like Poland, Hungary, and the Czech Republic undertook substantial democratic reforms before joining NATO in 1999. These reforms included improving judicial independence, reducing corruption, and ensuring media freedom. Montenegro (joined in 2017) and North Macedonia (joined in 2020) had to implement significant democratic reforms to meet NATO's standards. These included addressing issues like government transparency, judicial reform, and ensuring free elections. When member states experience democratic backsliding (e.g., Turkey, Hungary, Poland), they often face criticism within NATO, demonstrating the alliance's expectation that liberal democracy remains a standard for continued membership.

EU membership likewise carries the same requirements and ongoing obligations. The EU is built on core values enshrined in its treaties, which highlight the importance of democracy and the rule of law. Article 2 of the Treaty on European Union states: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities." Member states are required to uphold these values both during the accession process and after becoming members. To join the EU, a candidate country must meet the Copenhagen Criteria which include: stable institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities; a functioning market economy capable of handling competitive pressures; and ability to adopt and implement the EU's body of laws (the *acquis communautaire*). The Charter of Fundamental Rights of the EU reinforces the EU's commitment to democratic governance and justice. European Commission President Ursula von der Leyen **f**requently emphasizes that the EU's identity is rooted in democracy, the rule of law, and human rights. The EU Justice Scoreboard monitors judicial independence, efficiency, and quality across member states. Article 7 of EU Treaty contemplates suspension of certain membership rights (e.g., voting rights in the Council) if a member state is found to breach fundamental values, including democracy and the rule of law. Links EU funds to respect for the rule of law. If a member state violates these principles, its access to EU funds can be restricted.

Poland, under the previous government, had funds withheld because of its rule of law backsliding. Romania and Bulgaria, at the time of accession, had to establish independent judicial councils and combat corruption to meet EU standards. Likewise, Poland reformed its electoral and judicial systems to align with EU values before it was admitted. Nations such as Serbia, Montenegro, and North Macedonia are still pursuing accession. Their progress is contingent on implementing judicial reforms, curbing corruption, and ensuring free elections. Turkey's long-sought candidacy has stalled due to concerns over democratic backsliding, including restrictions on press freedom, judicial independence, and human rights violations.

Systemic corruption has plagued the development and Western integration of Ukraine since the country gained independence after the collapse of the Soviet Union. Many attribute the existence of corruption to previous practices of the Soviet Union's government carried over in the development of the governance and rule of law in Ukraine. Regardless of the source, Ukrainians have experienced corrupt governmental practices involving fixed political elections,

misappropriation of government funds, inadequate taxing systems, and a non-effective judiciary enforcing decisions for personal interests. In addition, substantial evidence of bribery of government officials has been recorded over the course of the last thirty years.

In 2014, the Council on Judicial Reform was created to act as an advisory board to the President of Ukraine to effectively implement the required reforms. The Council subsequently developed the Strategy for Reforming the Justice Sector 2015-2020, which established a plan of reform to ensure progress of the implementation of required legislation.

Over the past decade, Ukraine has taken substantial steps of judicial reform that has brought their legal system closer to the requirements of Western states. In the face of war, President Zelenskyy has demonstrated his ongoing intent to continue the implementation of necessary legislation and enforcement of anti-corruption methods to ensure the Ukrainian government is never controlled by corruptive governmental measures again. It is inherent for Zelenskyy and Ukraine to guarantee the continuation of reformation methods of the judiciary for an effective and successful legal system.

Progress has not been linear. In May 2023, Ukraine's anti-corruption agencies detained Vsevolod Kniaziev, then President (Chief Justice) of the Supreme Court, on allegations of accepting a substantial bribe. The National Anti-Corruption Bureau of Ukraine (NABU) and the Specialized Anti-Corruption Prosecutor's Office (SAPO) accused Kniaziev of receiving approximately $2.7 million to influence a court decision favoring Ukrainian billionaire Kostyantyn Zhevago. The alleged bribe was reportedly intended to secure a favorable ruling concerning the ownership of a significant stake in the Poltava Mining and Processing Plant, part of Zhevago's Ferrexpo group. Investigations revealed that the bribe was funneled through a law firm acting as an intermediary, with $1.8 million designated for Supreme Court justices and $900,000 allocated to the intermediaries. A raid of his home found substantial amounts of cash.

(US cash found by anti-corruption detectives during their investigation. Image: National Anti-Corruption Bureau Of Ukraine)

On January 31, 2024, Kniaziev was released from detention after posting a bail of approximately Hr 18 million ($450,000). Following Kniaziev's detention, a plenary session of the Supreme Court was convened, during which 140 out of 142 judges voted to dismiss him from his position as President. Initially, despite his dismissal as court chairman, he retained the status of an ordinary judge. However, on February 6, 2024, the Supreme Court formally suspended him from judicial duties until at least April 6, 2024. In August 2024, the High Council of Justice dismissed Kniaziev from his position as a judge of the Supreme Court's Cassation Administrative Court. This decision was based on a prior court ruling that found he had illegally accepted a gift by renting a Kyiv apartment in an elite neighborhood for a nominal fee, significantly below market value. As of early 2025, Kniaziev's legal proceedings are ongoing. The High Anti-Corruption Court continues to deliberate on the bribery charges, with no final verdict announced. The case remains a focal point in Ukraine's broader anti-corruption efforts, highlighting the challenges of judicial reform.

13.2 Curbing Corruption

> *Corruption' is an inadequate word to describe the condition of Ukraine. Since the country achieved independence in 1991, the problem is not that a well-functioning state has been corrupted by certain illegal practices; rather, those corrupt practices have constituted the rules by which the state has been run. Ukraine's political system is best described as state capture.*
>
> Thomas de Waal. "Fighting a Culture of Corruption in Ukraine," Carnegie Europe (2016).

13.2.1 Introduction

We begin by examining the landscape of corruption in Ukraine, with an original essay by American attorney Jilian Wolf.

Landscape of Corruption in Ukraine

Jilian Wolf

Goodwin, Santa Monica office

The issue of corruption in Ukraine is not relegated to a microcosm of political commentators. The populous at large remains concerned about the country's reform efforts. Many cite corruption as the one of the most imminent threats, second only to the Russian invasion. It occurs in various forms and fronts within the political arena both on the national and municipal level, in the judicial system, throughout the education system, in social security and healthcare, and throughout economic and business sectors. Reform within the judicial system, especially, requires a level of urgency as the administration of justice should theoretically provide a check on corrupt actors.

There are several causes for Ukraine's systemic corruption, highlighted by The Center for Strategic and International Studies. To start, the country is perceived as more corrupt compared to other European counterparts, preventing foreign investment and economic growth. There is also a level of vulnerability to the influence of oligarchs, an additional hindrance to monetary growth. Further, the judicial system is notorious for bias. Despite Ukraine's efforts to establish preventative bodies, many of these institutions have oligarchic and political ties. When the Soviet Union fell, oligarchs seized on the opportunity of rushed privatization. The transfer to a free-market economy relied on bribes and criminal activity, leaving the economy vulnerable to corrupt outside influence. Vladimir Putin, as well as Russia writ large, continue to influence the Ukrainian economy, supplementing monetary incentives to keep these corrupt actors under Russian control.

Urgent Need to Curb Corruption

The urgency to implement large-scale reform efforts continues to grow given the Russian invasion and need for democratic allyship. Ukraine's ability to join the European Union predicates itself on reform efforts to comply with EU requirements. While recently promoted to membership candidacy status, further economic freedom and growth in the domestic marketplace are necessary corollaries, despite continued harm by corrupt actors. Ukraine needs the security and monetary assurances provided by the EU.

Moreover, present efforts at reform have been successful, despite the need for further change. Past examples of prospering economies demonstrate the importance of attracting foreign investment — as seen with Germany after World War II. Most political theorists cite decentralization and mobilization as key components to the success of anti-corruption efforts. In 2022, Transparency International's Corruption Perception Index ranked Ukraine 116th out of 180 countries. Then in 2023, the ranking improved slightly to 104th which highlighted continued improvement despite the Russian invasion. In the latter half of 2022 alone, there were more anti-corruption enforcement actions than all of 2020 or 2021.

Yet, despite these improvements corruption remains ever-present. According to the Global Corruption Barometer by Transparency.org, 23% of public service users in Ukraine paid a bribe within the previous 12 months. The international magnification of corruption has never been higher.

Ukraine's Anti-Corruption Infrastructure

To understand corruption in Ukraine first requires knowledge of the present bodies in place aimed at preventing such. The following table provides an overview of the organizational bodies tasked with analyzing, prosecuting, and reforming corruption.

Organizational Body	Jurisdiction
National Anti-Corruption Bureau of Ukraine (NABU)	NABU was the byproduct of Ukraine's hope to lessen visa restrictions to the European Union. Brought about by the IMF and European Commission, Ukraine held a competition for the director, selecting Artem Sytnyk. In 2015, President Poroshenko signed the founding decree and the decree officially appointing Sytnyk.

	NABU maintains an internal Civil Oversight Council, where yearly votes are taken to determine the following year's members. The Bureau's mission: "Cleansing government of corruption in order to enable formation and development of successful society and efficient state."
High Anti-Corruption Court (HACC)	After public outcry against judicial corruption, Ukraine passed legislation creating the Court. HACC judges are chosen based on their integrity, knowledge, and skill, but are also provided with a rigorous training program tailored to the skills required of an anti-corruption justice. The court is a relatively new addition to the anti-corruption scheme, but data shows positive trends in corruption monitoring.
Specialized Anti-Corruption Prosecutor's Office (SAPO)	SAPO exists within NABU, and the Criminal Procedure Code of Ukraine gives the Office the jurisdiction of pre-trial monitorization power and the ability to represent the prosecuting power. SAPO supervises NABU detectives in their inquiries but remains independent through open competition appointments.
National Agency for Corruption Prevention (NACP)	NACP is an executive agency that focuses on the monitorization of corruption among public officials. The agency focuses on the following: 1. Creating anti-corruption policies 2. Governing financial transactions of public officials and ensuring access to their public property records 3. Monitoring conflicts of interest 4. Preventing political corruption 5. Siphoning through whistleblower allegations
National Agency (ARMA)	ARMA is an investigative agency that locates and seizes corrupt assets. Created out of the same visa restriction desire as NABU, the Agency seeks to improve the efficiency and accuracy of finding corrupt assets, while also ensuring that they are properly handled during court proceedings. ARMA also directs and develops state policy around tracing assets and asset management. This includes the maintenance of Unified State Register of Assets Seized in Criminal Proceedings which chronicles the details of every asset investigation and result.

Legal framework for Corruption

Ukraine's anti-corruption legal scheme relies on four documents: 1) The Law of Ukraine "On the National Anti-corruption Bureau of Ukraine"; 2) The Law of Ukraine "On Public Service"; 3) The Law of Ukraine "On State Secret" and; 4) The Law of Ukraine "On Preventing Corruption." These documents set forth the framework for the above agencies and provide a legal basis for legislative efforts. The table below provides a brief overview of the statutory language targeting corruption.

Corruption under The Criminal Code of Ukraine

Crime	Definition
Article 190: Fraud	*1. Taking possession of somebody else's property or obtaining the property title by deceit or breach of confidence (fraud), - shall be punishable by a fine up to 50 tax-free minimum incomes, or correctional labor for a term up to two years, or restraint of liberty for a term up to three years.* *2. Fraud, if repeated, or committed by a group of persons upon their prior conspiracy, or where it caused a significant damages to the victim, - shall be punishable by a fine of 50 to 100 tax-free minimum incomes, or correctional labor for a term of one to two years, or restraint of liberty for a term up to five years, or imprisonment for a term up to three years.* *3. Fraud committed in respect of a gross amount or by unlawful operations involving computerized equipment, - shall be punishable by imprisonment for a term of three to eight years.* *4. Fraud committed in respect of an especially gross amount, or by an organized group, - shall be punishable by imprisonment for a term of eight to fifteen years and forfeiture of property. Ukraine Criminal Code, art 190 (2001).*
Article 191: Misappropriation, embezzlement or conversion of property by malversation	*1. Misappropriation or embezzlement of somebody else's property by a person to whom it was entrusted shall be punishable by a fine up to 50 tax-free minimum incomes, or correctional labor for a term up to two years, or restraint of liberty for a term up to four years, or imprisonment for a term up to four years, with or without the deprivation of the*

	right to occupy certain positions or engage in certain activities for a term up to three years. *2. Misappropriation, embezzlement or conversion of property by malversation - shall be punishable by restraint of liberty for a term up to five years, or imprisonment for the same term, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.* *3. Any such actions as provided for by paragraph 1 or 2 of this Article, if repeated or committed by a group of person upon their prior conspiracy, - shall be punishable by restraint of liberty for a term of three to five years, or imprisonment for a term of three to eight years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.* *4. Any such actions as provided for by paragraphs 1, 2 or 3 of this Article, if committed in respect of a gross amount, - shall be punishable by imprisonment for a term of five to eight years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.* *5. Any such actions as provided for by paragraphs 1, 2, 3 or 4 of this Article, if committed in respect of an especially gross amount, or by an organized group, - shall be punishable by imprisonment for a term of seven to twelve years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years and forfeiture of property. Ukraine Criminal Code, art 191 (2001).*
Article 199: Making, storage, purchase, transportation, mailing, or bringing into Ukraine for selling purposes, or sale of counterfeit money, government securities or state lottery tickets	*1. Making, storage, purchase, transportation, mailing, or bringing into Ukraine for selling purposes, or sale of counterfeit money, public securities or state lottery tickets of counterfeit Ukrainian currency in the form of soft or hard money, or foreign currency, or government securities, or state lottery tickets, - shall be punishable by imprisonment for a term of three to seven years.* *2. The same actions, if repeated or committed by a group of persons upon their prior conspiracy, or in respect of large amount, - shall be punishable by imprisonment for a term of five to ten years.* *3. Any such actions as provided for by paragraph 1 or 2 of this Article, if committed by an organized group or in respect of especially large amount, - shall be punishable by imprisonment of eight to twelve years with forfeiture of*

	property. Ukraine Criminal Code, art 199 (2001).
Article 201: Smuggling	*1. Smuggling, that is the movement of goods across the customs border of Ukraine bypassing the customs control or by concealing from the customs control, if committed in respect of large amounts, and also illegal movement of historic and cultural values, poisonous, strong, radioactive or explosive substances, weapons and ammunition (except smoothbore hunting guns and ammunition thereto), and also smuggling of strategically important basic commodities, export of which outside Ukraine is regulated by appropriate rules established by law, - shall be punishable by imprisonment for a term of three to seven years with the forfeiture of smuggled items.* *2. The same actions committed by a group of persons upon their prior collusion, or by a person previously convicted of the criminal offense under this Article, - shall be punishable by imprisonment for a term of five to twelve years with the forfeiture of smuggled items and forfeiture of property. Ukraine Criminal Code, art 201 (2001).*
Article 202. Violation of business operation and banking procedures	*1. Carrying out any activities which comprise elements of business, without state registration of a business entity, or performance of any business operations subject to licensing pursuant to the law without having procured such licenses, or performance of any such business in violation of licensing conditions, where it involved the making of significant profits, - shall be punishable by a fine of 100 to 200 tax-free minimum incomes, or correctional labor for a term up to two years, or restraint of liberty for the same term.* *2. Carrying out banking activities or banking transactions, and also professional activities in the securities market or transactions in non-banking financial institutions, without state registration or special permit (license) as prescribed by law, or doing the same in violation of licensing conditions, where it involved the making of significant profits, - shall be punishable by a fine of 200 to 500 tax-free minimum incomes, or restraint of liberty for a term up to three years. Ukraine Criminal Code, art 202 (2001).*
Article 203: Engagement in prohibited business activities	*1. Carrying out business activities specifically prohibited by law, except as otherwise provided for by other articles of this Code, - shall be punishable by a fine of 50 to 100 tax-free minimum incomes with the deprivation of the right to occupy certain positions or engage in certain activities for a*

	term up to three years and with or without the forfeiture of property. *2. The same actions where they involved making of significant profits or were committed by a person previously convicted for engagement in prohibited business activities, - shall be punishable by restraint of liberty for a term up to five years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years. Ukraine Criminal Code, art 203 (2001).*
Article 205: Sham business	*1. Sham business, that is the establishment or acquisition of businesses entities (legal entities) to cover illegal activities or engage in prohibited types of business, - shall be punishable by a fine of 300 to 500 tax-free minimum incomes, or restraint of liberty for a term up to three years.* *2. The same acts, if repeated or where they caused a significant pecuniary damage to the State, a bank, lending institution, other legal entities or citizens, - shall be punishable by imprisonment for a term of three to five years. Ukraine Criminal Code, art 205 (2001).*
Article 206: Obstruction of legitimate business activity	*1. Obstruction of legitimate business activity, that is unlawful demand to discontinue or restrain business operations, make a contract or fail to fulfil a concluded contract, if the fulfillment (or failure to fulfil) of such contract may cause pecuniary damages or derogate legitimate rights or interests of the person involved in business, and where it involves a threat of violence in regard of the victim or his close relatives, or a threat to damage or destroy their property, but is not associated with elements of extortion, - shall be punishable by correctional labor for a term up to two years, or restraint of liberty for a term up to three years.* *2. The same actions, if repeated, or committed by a group of persons upon their prior conspiracy, or combined with a threat of murder or grievous bodily injury, or with violence not dangerous to life and health, or endamagement or destruction of property, - shall be punishable by imprisonment for a term of three to five years.* *3. Obstruction of legitimate business activity, if committed by an organized group or by an official through taking advantage of his/her office, or combined with violence*

	dangerous to life or health, or where it caused a significant damage or any other grave consequences, - shall be punishable by imprisonment for a term of five to ten years. Ukraine Criminal Code, art 206 (2001).
Article 209: Legalization (laundering) of criminally obtained money and other property	*1. Effecting financial transactions and other deals involving money or other property known to be proceeds from crime, and also use of such money and other property in business or other economic activities, and creation of organized groups in or outside Ukraine for the purpose of legalization (laundering) of money and other property known to be proceeds from crime, - shall be punishable by fine of 500 to 3,000 tax-free minimum incomes, or restraint of liberty for a term of three to five years, or imprisonment for a term up to three years, with the forfeiture of criminally obtained money and other property.* *2. The same actions, if repeated, or committed by a group of persons upon their prior conspiracy, - shall be punishable by imprisonment of five to twelve years with the forfeiture of criminally obtained money and other property and forfeiture of property. Ukraine Criminal Code, art 209 (2001).*
Article 212: Evasion of taxes, fees or other compulsory payments	*1. Willful evasion of taxes, fees or other compulsory payments which are part of the taxation system established by law, by an official of an enterprise, institution or organization of any ownership status, or by any unincorporated entrepreneur, or by any other person liable to pay such taxes, fees or other compulsory payments, where such actions resulted in actual non-receipt of significant amounts of funds by budgets or special state funds, - shall be punishable by a fine of 300 to 500 tax-free minimum incomes, or deprivation of the right to occupy certain positions or engage in certain activities for a term up to 5 years.* *2. The same actions, if committed by a group of persons upon their prior conspiracy, or where they resulted in actual nonreceipt of large amounts of funds by budgets or special state funds, - shall be punishable by a fine of 500 to 2,000 tax-free minimum incomes, or correctional labor for a term of two years, or restraint of liberty for a term of five years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.*

	3. Any such actions as provided for by paragraph 1 or 2 of this Article, if committed by a person previously convicted of evasion of taxes, fees, or other compulsory payments, or where they resulted in actual non-receipt of especially large amounts of funds by budgets or special state funds, - shall be punishable by imprisonment of five to ten years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years and with the forfeiture of property. A person who committed an act provided for by paragraph 1 of this Article for the first time shall be discharged from criminal liability if he/she paid taxes, fees (compulsory payments) and indemnified the State for the damage caused by late payment (fiscal penalties, fines) prior to the institution of a criminal case against him/her. Ukraine Criminal Code, art 212 (2001).
Article 222: Financial fraud	*1. Filing knowingly false information by a private entrepreneur or a founder, owner or official of a business entity to government agencies, authorities of the Autonomous Republic of Crimea or local government authorities, banks or other creditors in order to obtain subsidies, subventions, grants, loans or tax credits, where no elements of criminal offense against property are involved, - shall be punishable by a fine of 500 to 1,000 tax-free minimum incomes, or restraint of liberty for a term up to three years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.* *2. The same actions, if repeated, or where they caused significant pecuniary damage, - shall be punishable by imprisonment for a term of two to five years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years. Ukraine Criminal Code, art 222 (2001).*
Article 228: Conspiracy or coercion to change or fix prices	*1. Conspiracy to artificially raise or maintain monopoly prices (tariffs), discounts, extra payments or charges in order to eliminate competition among businesses in contravention of antimonopoly law, - shall be punishable by a fine of 100 to 300 tax-free minimum incomes, or restraint of liberty for a term up to three years.* *2. Violence or infliction of damage, or threats of violence or damage made in order to artificially change or fix prices, -*

	shall be punishable by a fine of 40 to 100 tax-free minimum incomes, or imprisonment for a term up to three years. *3. Any such acts as provided for by paragraph 2 of this Article, if committed by an organized group or a person previously convicted for criminal offenses under this Article, - shall be punishable by imprisonment for a term of two to five years. Ukraine Criminal Code, art 228 (2001).*

Criminal Procedure Code of Ukraine

Article 32: Territorial Jurisdiction	*"If criminal offence, pre-trial investigation of which was conducted by the territorial branches of the National Anti-Corruption Bureau of Ukraine, has been committed within territorial jurisdiction of local court, where appropriate territorial branch of the National AntiCorruption Bureau of Ukraine is located, then criminal proceedings shall be conducted by the court, that is territorially the closest to the court where appropriate territorial branch of the National Anti-Corruption Bureau of Ukraine is located, of another political unit (Autonomous Republic of Crimea, oblast, the city of Kyiv or Sevastopol). { added to Article 32 by Law № 1698-VII of 14.10.2014} Criminal Procedure Code of Ukraine, art 32.*
Article 38: Pretrial Investigation Agency	*1. Pre-trial investigation agencies (inquiry and pre-trial investigation agencies) shall be investigation units of– 1) the bodies of internal affairs;* *2) the security agencies;* *3) the agencies supervising compliance with the tax legislation;* *4) the National Anti-Corruption Bureau of Ukraine . {Subparagraph 4 of Paragraph 1 of Article 38 as amended by Law № 1698-VII of 14.10.2014} 5) units of the State Bureau of Investigation {Subparagraph 5 of Paragraph 1 is added to Article 38 by Law № 1698-VII of 14.10.2014}* *2. Pre-trial investigation shall be conducted by investigators of pre-trial investigation agency, individually or by investigation group.*

	3. In pre-trial investigation of criminal misdemeanors, in cases specified by law, powers of pre-trial investigation agency may be discharged by employees of other units of bodies of internal affairs, security agencies, and agencies supervising compliance with the tax legislation. *4. Pre-trial investigation agency shall be required to take all legal measures to ensure the effective pre-trial investigation Criminal Procedure Code of Ukraine, art 38.*
Article 41: Operational Units	*1. Operational units of the bodies of internal affairs, security agencies, those of the National Anti-Corruption Bureau of Ukraine, a Ukrainian State Bureau of Investigations, agencies supervising compliance with the tax and customs legislation, and those of the State Penitentiary Service of Ukraine, State Border Guard Service of Ukraine shall conduct investigative (search) actions and covert investigative (search) actions in criminal proceedings upon written assignment of the investigator, public prosecutor. { Paragraph 1 of Article 41 as amended by Law № 1698-VII of 14.10.2014}* *2. In the course of executing assignments of an investigator or a public prosecutor, an officer of the operational unit shall exercise the investigator's powers. Officers of operational units shall not have the right to perform procedural action in criminal proceedings proprio motu, file motions to a investigating judge or a public prosecutor.* *3. Assignments of investigator, public prosecutor in respect of conducting investigative (detective) actions and covert investigative (detective) actions shall be binding on operational unit. Criminal Procedure Code of Ukraine, art 41.*
Article 143: Enforcement of compelled appearance	*Article 143. Enforcement of compelled appearance 1. Enforcement of compelled appearance may be assigned to the appropriate units of internal affairs bodies, bodies of security, agencies supervising compliance with the tax legislation, units of the National Anti-Corruption Bureau of Ukraine or units of the State Bureau of Investigations. { Paragraph 1 of Article 143 as amended by Law № 1698-VII of 14.10.2014}* *2. Executor of the ruling shall read out the ruling compelling appearance to the individual in whose respect compelled appearance is enforced.* *3. A person who is subject to compelled appearance by decision of an investigating judge or court shall be required to appear where and when he is directed in the ruling on enforcement of*

	compelled appearance (writ of attachment). If a person subject to compelled appearance fails to comply with the lawful requirements as respects enforcement of the ruling on compelled appearance he may be subject to measures of physical coercion capable of ensuring his escorting to the place indicated in the summons Application of physical coercion is subject to notice of the intent to apply such. Where physical coercion cannot be avoided, they may not exceed the measure necessary for enforcement of the ruling on compelled appearance and shall be limited to the least possible impact on the person. It shall be prohibited to apply measures of physical coercion capable of causing harm to the person's health as well as to compel the person to remain in the conditions of restrained freedom of movement longer than it is required for his prompt reconduction to the place indicated in the summons. Excess of powers when applying measures of physical coercion shall entail a liability by law. 4. If enforcement of compelled appearance appears to be impossible, the executor of the ruling on compelled appearance shall return the process to the court with written explanations of the reasons of non-execution. Criminal Procedure Code of Ukraine, art 143.
Article 154: General Provisions Related to Suspension from Office	*1. Suspension from office may be applied to a person who is suspected of or charged with committing a medium-gravity, grave or especially grave crime or, irrespective of the gravity, to a person who is an officer of a law enforcement body.* *2. Suspension from office shall be effected on the grounds of the decision passed by the investigating judge in the course of pre-trial investigation or by the court in the course of judicial proceedings for a term not exceeding two months. The term of suspension from office may be extended in accordance with the requirements stipulated in Article 158 of this Code.* *3. The matter of suspension from office of the persons appointed by the President of Ukraine shall be decided by the President of Ukraine on the grounds of the public prosecutor's motion in accordance with the procedure set forth by law. Suspension of a judge from his office shall be carried out by the Higher Qualification Commission of Judges of Ukraine on the grounds of a reasoned motion of the Prosecutor General of Ukraine in accordance with the procedure set forth by law. Suspension of a Director of the National Anti-Corruption Bureau of Ukraine from his office shall be carried out by the investigative judge on the grounds of a reasoned motion of the Prosecutor General of Ukraine in accordance with the*

	procedure set forth by law.{ Paragraph 3 of Article 154 as amended by Law № 1698-VII of 14.10.2014} *Criminal Procedure Code of Ukraine, art 154.*
Article 170: Grounds for Attachment of Property	*2. Investigating judge or court during trial orders to attach the property if there are sufficient grounds to believe that they meet the criteria specified in paragraph two of Article 167 of this Code. Furthermore, where a civil action is granted, the court on a motion of the public prosecutor or civil plaintiff may decide on attachment of property for the purpose of securing the civil claim pending validity date of the decision, unless such measures have not been taken before. In urgent circumstances in view of preservation of exhibits or in view of possible subsequent confiscation or special confiscation of funds and other assets, in criminal proceedings related to criminal offences referred to the investigative jurisdiction of the National Anti Corruption Bureau of Ukraine, seizure of property or of funds on accounts of individuals and entities in financial institutions may be imposed under the written decision of the Director of the National Anti-Corruption Bureau of Ukraine upon approval of the public prosecutor. Such measures shall be enforced for the period of up to 72 hours. The Director of the National AntiCorruption Bureau of Ukraine shall file a motion for attachment of property to the investigating judge, court within 24 hours after the decision was taken. {Subparagraph 2 of Paragraph 2 is added to Article 170 by Law № 1698-VII of 14.10.2014}.* *Criminal Procedure Code of Ukraine, art 170.*
Article 214: Initiating pre-trial investigation	*Pre-trial investigation shall start from the moment the information concerned has been entered in the Integrated Register of Pre-Trial Investigations. Regulations of the Integrated Register of Pre-Trial Investigations, the procedure of its creation and maintaining shall be subject to approval of the Prosecutor General's Office of Ukraine with consent of the Ministry of Internal Affairs of Ukraine, the Security Service of Ukraine, the National Anti-Corruption Bureau, and the authority supervising compliance with the tax legislation. {Paragraph 2 of Article 214 as amended by Law № 1698-VII of 14.10.2014}* *Criminal Procedure Code of Ukraine, art 214.*
Article 216: Investigative jurisdiction (competence)	*Investigators of bodies of security shall conduct pre-trial investigation of crimes specified in Articles 109, 110, 111, 112, 113, 114, 201, , 265-1, 305, 328, 329, 330, 332, 332-1, 333, 334, 359, 422, 436, 437, 438, 439, 440, 441, 442, 443, 444, 446, 447 of the Criminal Code of Ukraine; {The first sentence of Article 216 Para. 2 as amended by Law #1207-VII of 15.04.2014} If in the course of investigation of crimes specified*

	in Articles 328, 329, 422 of the Criminal Code of Ukraine, crimes are established specified in Articles 364, 365, 366, 367, 425, 426 of the Criminal Code of Ukraine, committed by a person in respect of whom pre-trial investigation is conducted, or by other person, if they are related to crimes committed by a person in respect of whom pre-trial investigation is conducted, such crimes shall be investigated by investigators of bodies of security, except cases, when such crimes are referred according to this Article to investigative jurisdiction of investigators of the National Anti-Corruption Bureau of Ukraine{The second sentence of Article 216 Para. 2 as amended. *Criminal Procedure Code of Ukraine, art 216.*
Article 232. Conducting interrogation or identification in the mode of video conference during pre-trial investigation	*If a person who is to be taking part in the pre-trial investigation distantly– pursuant to a decision of the investigator or public prosecutor– stays on the premises located in the territory under the jurisdiction of the body of pre-trial investigation or in the territory of the city where the it is located, an official of such body of pre-trial investigation shall be under the obligation to hand over a leaflet on his procedural rights to such the person, to check on his ID, and to stay near until the end of the investigative (detective) action. 6. If a person who is to be taking part in the pre-trial investigation distantly– pursuant to a decision of the investigator or public prosecutor stays on premises located outside the territory under the jurisdiction of the body of pre-trial investigation or outside the territory of the city where it is located, the investigator, public prosecutor assigns by his resolution and within his competence body of security, body supervising compliance with the tax legislation, unit of the National Anti-Corruption Bureau of Ukraine or unit of the State Bureau of Investigations of Ukraine, in whose territorial jurisdiction such person stays, to carry out the actions specified in the fifth paragraph of this Article. A copy of this resolution may be sent by e-mail, fax or via other means of communication. The official of the requested body, in agreement with the investigator, public prosecutor, who gave the assignment, shall be required to organize the execution of such assignment as soon as possible.* *Criminal Procedure Code of Ukraine, art 232.*
Article 246. Grounds for covert investigative (detective) actions	*The right to conduct covert investigative (detective) actions is vested in the investigator who conducts pre-trial investigation of a crime, or on his assignment, in the competent operative units of bodies of internal affairs, bodies of security, of the National Anti-Corruption Bureau of Ukraine, the State Bureau of Investigations, bodies supervising compliance with the tax and customs legislation, bodies of the State Penitentiary Service of Ukraine, and bodies of the State Border Guard Service of*

	Ukraine . Upon investigator's or public prosecutor's decision, other persons may also be engaged in the conducting of covert investigative (detective) actions.{Paragraph 6 of Article 246 as amended by Law # 406-VII of 04.07.2013 and by Law № 1698-VII of 14.10.2014} *Criminal Procedure Code of Ukraine, art 246.*
Article 480. Individuals subject to special procedure of criminal proceedings	*1. A special procedure for criminal proceedings shall apply with regard to: 1) people's deputy of Ukraine;* *2) judge of the Constitutional Court of Ukraine, professional judge, as well as juror, and people's assessor at the time when they administer justice;* *3) candidate for the office of the President of Ukraine;* *4) Commissioner of the Verkhovna Rada of Ukraine for human rights;* *5) Head of the Chamber of Accounts, his first deputy, deputy, Chief Comptroller and secretary of the Chamber of Accounts;* *6) deputy of local council;* *7) defense attorney;* *8) Prosecutor-General of Ukraine, his deputy;* *9) Director and officials of the National Anti-Corruption Bureau of Ukraine. {Subparagraph 9 is added to Article 480 by Law № 1698-VII of 14.10.2014}* *Criminal Procedure Code of Ukraine, art 480.*
Article 481. Notification of suspicion	*1. A written notice of suspicion shall be sent:* *1) to defense counsels, members of local councils, members of the Verkhovna Rada of the Autonomous Republic of Crimea, heads of villages or townships, or town mayors by the Prosecutor General of Ukraine, the Deputy Prosecutor General, public prosecutors of the Autonomous Republic of Crimea, oblasts, the cities of Kyiv or Sevastopol, within their competence;* *2) to members of the Parliament of Ukraine, candidates for the President of Ukraine, the Human Rights Commissioner of the Verkhovna Rada, the Chairman of the Accounting Chamber of Ukraine, the First Deputy Chairman, the Deputy Chairman, Inspector General, the Secretary of the Accounting Chamber, the Director of the National Anti-Corruption Bureau of Ukraine or deputies of the Prosecutor General of Ukraine, by the Prosecutor General of Ukraine (acting Prosecutor General of Ukraine);{Subparagraph 2 of Paragraph 1 of Article 481 as amended by Law #1235-VII of 06.05.2014 and by Law № 1698-VII of 14.10.2014}* *3) to judges of the Constitutional Court of Ukraine, professional judges, and jurors and people's assessors during court proceedings, to officials of the National Anti-Corruption Bureau of Ukraine by the Prosecutor General of Ukraine or the*

	Deputy Prosecutor General; {Subparagraph 3 of Paragraph 1 of Article 481 as amended by Law № 1698-VII of 14.10.2014} 4) to the Prosecutor General of Ukraine by the Deputy Prosecutor General. *Criminal Procedure Code of Ukraine, art 481.*
Article 545. Central authority of Ukraine	*1. The Prosecutor-General's Office of Ukraine shall make requests for international legal assistance in criminal proceedings during a pre-trial investigation and consider similar requests from foreign competent authorities, except pre-trial investigation of criminal offences referred to investigative jurisdiction of Anti-Corruption Bureau of Ukraine that in such cases performs functions of central authority of Ukraine.{Paragraph 1 of Article 545 as amended by Law № 1698-VII of 14.10.2014}* *2. The Ministry of Justice of Ukraine shall refer requests from courts for international legal assistance in criminal proceedings during a court trial and consider similar requests from courts in foreign states.* *3. Where this Code or an effective international treaty of Ukraine prescribes a different procedure for relations, powers specified in paragraphs one and two of this Article shall extend to the body specified in those legislative acts.* *Criminal Procedure Code of Ukraine, art 545.*

Ukraine under the OECD

Turning to outside efforts targeting corruption, Ukraine is a member of the OECD (Organization for Economic Co-operation and Development) Anti-corruption Network for Eastern Europe and Central Asia — a forum focusing on the promotion of schematic anti-corruption practices and the implementation of mechanisms to comply with international standards like those under the UN Convention Against Corruption. Established in 2003, this forum aims to apply peer review examination on the progress and challenges of regional corruption. Between 2014-2015, in conjunction with the OECD, Ukraine signed the Memorandum of Understanding for Strengthening Co-operation and Action Plan to curb systemic corruption nationwide. These efforts have been successful at enhancing domestic efforts through international accountability.

The Istanbul Anti-Corruption Action Plan

The Istanbul Anti-corruption Action Plan is the core of OECD's Anti-corruption Network for Eastern Europe and Central Asia. It is a framework that supports member countries by monitoring corruption. The plan sets forth recommendations for anti-corruption reforms and conducts rounds of review culminating in a summary report.

The following table provides some of the highlights from each round of review:

Round	Highlights
1: Conducted between 2004-2007	● During this period, Ukraine considered establishing an anti-corruption enforcement body. ● Ukraine established a Financial Intelligence Unit tasked with fighting money laundering and detecting corrupt financial transactions. ● As of the first round of review, Ukraine had an Interdepartmental Commission for Comprehensive Solutions in the Area of Prevention and Fight against Corruption under the National Security and Defense Council, a division of supervision, and an Organized Crime Department. ● Ukraine drafted legislation to add foreign bribery of foreign public officials, and as of Round 1, it had been submitted to parliament. ● Punishment for active bribery: imprisonment of 2-5 years. ● Punishment for passive bribery: imprisonment of 2-5 years; aggravated cases 3-8 years.
2: Conducted between 2008-2012	• In 2010, Ukraine joined the Council of Europe Criminal Law Convention on Corruption and its Additional Protocol. ● Then President Viktor Yanukovych expressly discussed corruption in his address to parliament. ● The ACN implemented peer learning plans of review for participating countries, one of which was specifically tailored to Ukraine. ● Law on the Judiciary in Ukraine passed a comprehensive selection program for judges. ● Introduction of "illicit enrichment" as an offense in Article 368-2 of the Ukrainian Criminal Code in 2011.
3: Conducted between 2013-2015	● "Ukraine is an example where the lack of political will to tackle widespread corruption triggered a change of the Government in 2014." ● Creation of the 2014-2017Anti-Corruption Strategy as a form of law.[34]

[34] *"Measures: Inviting non-governmental organisations to contribute to: Adopting, in cooperation with civil society, the legal framework to set up the body responsible for development and implementation of anti-corruption policy. This body shall have sufficient assurances of its independent operation. Representatives from civil society shall be eligible to contribute to the operation of this body Engaging civil society in the development, implementation and*

	● Survey in 2015 on public perception on corruption. • Criminalization of undue advantage and the request of such.
4: Conducted between 2016-2019	● The National Agency for Corruption established new research mechanisms to evaluate anti-corruption reforms. • The National Agency for Corruption Prevention focused on anti-corruption education. ● Implementation of civil service reform strategies that created policies focused on merit-based recruitment. ● The National Agency for Corruption Prevention created phone-lines and forms online for anonymous reporting. ● Report acknowledges Ukraine's implementation of a legal framework centered around conflict-of-interest corruption mechanisms.
5: In progress *Monitorization for this period has been done under an EU Framework for the Integrity Action for the Eastern Partnership	● The National Agency for Corruption Prevention created a new anti-corruption strategy in 2020 with focus areas in: ○ Conflict of interest legal framework ○ Asset and interest disclosure ○ Protection for whistleblowers ○ Judicial independence ○ Business integrity ○ Public procurement ○ Prosecution services ○ Enforcement and liability ○ Asset Recovery and Management ○ High-level corruption ○ Specialized investigative and prosecutorial bodies

These monitoring periods are outside inquiries to ensure reform, intentionally creating international accountability. Nonetheless, as corruption continues to permeate under the present framework, analyzing present controversies lends itself to reform proposals.

Examples of Large-Scale Corruption in Ukraine

Corruption in Ukraine is ever-present and it infiltrates various legal, political, and financial spheres.

Political Corruption

monitoring of anti-corruption policy; Carrying out (in partnership with civil society) an annual survey on corruption perception Running pilot projects on "integrity pacts" in infrastructure projects or other projects entailing significant budget expenses through the creation of a trilateral (government – business – civil society) control mechanism over planning and implementation of such projects, including efficient cost delivery." Id, at 54.

Corrupt actors within the political sphere continue to plague Ukraine. A few examples will be sufficient to grasp the pervasiveness of the issue. Oleh Maiboroda, an executive of one of Ukraine's most prominent construction firms, used cash payments to bribe politicians to expedite construction approval. Sources name Oleh Tatarov, a senior aide to President Zelenskyy, as one of the corrupt actors within this scheme. These bribes lasted from 2014 to 2019. Many speculate Taratov solved all issues with law enforcement officials for Maiboroda, who has, himself, affirmed Taratov's involvement. Taratov remains steadfast in his asserting his innocence, and no charges have been brought against him thus far.

In October of 2023, Kyrylo Tymoshenko, former deputy head of President Volodymyr Zelenskyy's office, drove a new SUV supposedly donated for humanitarian aid. While Tymoshenko dismissed these allegations, he resigned from his post along with several other members of Zelenskyy's staff. No official charges have been brought.

These two examples alone highlight the reality plaguing Ukrainian politics. Political corruption often entails some level of monetary shuffling, benefitting oligarchs who evade the anti-corruption bodies in place. While political corruption often makes headlines as international organizations focus on big-name actors, judicial corruption is the more significant threshold holding back reform efforts.

Judicial Corruption

Ukraine's judicial system requires reform, and efforts to put anti-corruption mechanisms in place continue with each new iteration of government. The Constitutional Court of Ukraine is key to curbing corruption as effective judicial oversight can help eradicate the systemic problems. There are significant issues plaguing the current administration of justice, including the lack of justices capable of filling vital judiciary roles. As Victoria Matola reports, the current system lacks more than 2,000 necessary judges leading to an enormous workload and efficiency concerns. Presently, there is no external oversight body of the Constitutional Court of Ukraine to ensure the impartiality and performance of justices. In fact, four judges on the Kyiv Court of Appeals were caught accepting bribes in exchange for favorable rulings.

The Revolution of Dignity brought significant efforts to reform the judicial system as state actors treated protestors unjustly. Public outcry against the judicial system is common within Ukraine, and while judges often rule within the confines of the law, the broader issue reflects leftover Soviet-era policies that do not comport with Ukraine's democratization.

The Supreme Court is the highest court in the Ukrainian judicial system, and the Grand Chamber rules on commercial, administrative, civil, and criminal issues. The judicial system is divided into local courts with specialized appellate courts. Additionally, the Constitutional Court of Ukraine is not part of this general system and instead decides on interpretive Constitutional matters.

After the Revolution of Dignity, President Petro Poroshenko attempted to enact a progressive reform wave. Under Poroshenko, the judicial system was reduced to local and district courts, appeals courts, and the Supreme Court. Prior to this, specialized courts acted as additional buffers between the respective appellate courts and Supreme Court. Reform efforts included various initiatives to transform legal education, adding the High Anti-Corruption Court.

President Volodymyr Zelenskyy has appointed new members to the High Council of Justice and High Qualification Commission of Judges. Within the Constitutional Court, he sought the reduction of judges and their salaries. In 2023, Ukraine held a press conference calling for an open competition to fill over 500 vacant positions for appellate justices. These reform efforts have continued throughout every administration, but there are still key elements necessary to dismantle the current pervasiveness.

Three steps are necessary for achieving judicial reform: 1) the essentialization of involvement by the public and international community, 2) the access of readily available information about candidates to the general public, and 3) the need for transparency surrounding the competition for appointment procedures.

The importance of these three steps can be seen in other countries vying for EU candidacy, providing a roadmap for Ukraine's admittance. On December 7, 2023, the U.S. Department of State released its "Anti-Corruption" champions — highlighting various leaders that have taken affirmative measures to curtail corruption within their respective countries. One of these champions included Moldovan Justice Minister Veronica Mihailov-Moraru, who passed various transparency measures in an attempt to combat corrupt actors within Moldova's judiciary system. Moldova occupies a similar corruption landscape to Ukraine — with both countries contending for EU admittance, foregoing their Soviet histories. As an EU candidate, Mihailov-Moraru stated her efforts have the goal of "mak[ing] progress in reforming the justice system, fighting corruption, strengthening human rights protection mechanisms, and improving citizens' access to justice." Both Moldova and Ukraine have steps remaining in pursuit of the complete eradication of systemic corruption.

13.3 Justice Sector Reform

13.3.1 The Judicial Structure Crisis in Ukraine

In 2014, when Ukrainians first called for major Judicial Reform, the concerns on which these demands were based go further than systemic corruption in the political system. Corruption is a parasite for all governmental bodies in Ukraine, stunting the growth of the young nation's democratic system and casting doubt on the verity of the governance of Ukraine for neighboring Western states. However, central concerns involving the efficiency and general structure of the Ukrainian judiciary are the reason for judicial reform in Ukraine. The alignment to European legal norms is an essential requirement for Ukraine's integration into Western society. In an effort to join international military alliances and to engage in the EU single market, Ukraine must adhere to all external policies to successfully reform their judiciary to function effectively. One these essential aspects is to ensure a legal system of public visibility. The EU and NATO require judicial systems that are open and void of internal corruption. In turn, a visible judiciary will greatly benefit the citizens of Ukraine to instill a sense of reliability and trust of the nation's rule of law and governance. The legal system of a nation is the backbone of governmental structure and efficiency. Although it is essential for Ukraine to accede into NATO and the EU, the implementation of a highly functional legal system that aligns with Western practices will be of even greater importance to the success of the Ukrainian nation. Ukraine's geographic location is predisposed to exert influence over other former Soviet Union nations. If Ukraine can demonstrate their ability to establish a model Slavic democracy, these other nations will understand that they, too, can develop from an oppressive Soviet-style government structure to a functioning democracy.

In 2016, Volodymr Kashporov, an attorney with thirteen years of judicial practice in Ukraine, described the foundational issues with the structure and effectiveness of the Ukrainian judiciary. Kashporov had seen the slow development of judicial reform in Ukraine following the Revolution of Dignity in 2014. The following excerpt provides an illustrative perspective of the conception of judicial reform and the issues that initiated it. Kashporov presents the systemic issues of corruption in the legal system of Ukraine along with the issue with disproportionate case allocation to judges that prevents efficiency in the courts. Speaking from a personal level, he also identifies the fundamental problems involving legal counsel in Ukraine which has prevented lawyers from acting in their professional capacity and decreased the value of lawyer's services from the perspective of society. With inadequate regulations and rights provided to lawyers from the nation's bar, a lawyer cannot protect the legal interests of a citizen who furnishes an opportunity for an overbearing governmental application of law. Additionally, with a judiciary that applies only a small fraction of court rulings, the legal system is rendered ineffective. The reconstruction of the judiciary in Ukraine will rely on two major legal instruments: (1) the amendment of the Ukrainian Constitution involving judicial structure, and (2) the implementation of legislation to rectify discrepancies of legal flaws and procedures in the system. This illustration of the judicial system in Ukraine during the early stages of reform will provide the context for the next steps in the legal system reform and to demonstrate Ukraine's progress.

Judiciary System and Reform

Volodymyr Kashporov

Ukraine's Justice System

The judicial system of Ukraine consists of general jurisdiction courts and the Constitutional Court of Ukraine. The courts of general jurisdiction form a single system, which consists of both general and specialized courts. The Supreme Court of Ukraine is the highest judicial body of general jurisdiction in Ukraine, ensuring the consistency of jurisprudence, although the Supreme Court may review the decisions of the high specialized courts only in circumstances specified by law.

According to the Ministry of Justice, only 20% of judgments are actually carried out.

Today, the justice system does not perform its responsibilities properly. The primary reasons behind this include a low level of "legal culture" and legal consciousness in the society, the prevalence of corruption in the field of justice, as well as the continuing dependence of judges on Ukraine's executive and legislative branches.

In addition, imperfect procedural tools, including an undeveloped system of alternative methods to dispute resolutions like mediation, are an impediment to protecting people's rights and interests and the efficient functioning of the justice system. The system also suffers from imperfect methods of determining the workload of judges, leading to a disproportionate and highly variable caseload among judges. There is also insufficient use of modern information systems (e.g., e-justice). All of this leads to low public visibility of the justice system and low public confidence in the effectiveness and impartiality of judges.

Second, the current system of legal counsel is also dysfunctional. The professional rights and guarantees of the bar enshrined in law are not provided with adequate mechanisms for their implementation. As a result, lawyers are ignored, there is disrespect to the profession, and the role of lawyers in society is

diminished. The system of professional self-regulation of lawyers by means of associations or other professional organizations is flawed, and lawyers receive insufficient professional training. The legal counsel system also lacks a balanced and comprehensive approach to the distribution of power and responsibility regarding pro bono work.

Third, there are significant problems in the execution of court rulings. Very few judgments are actually executed (according to the Ministry of Justice, only 20% of judgments are actually carried out) See, for example, "Ministry of Justice: Only 20% of Adjudications Are Executed in Ukraine," International Center of Reforms. There is no effective incentive structure for bailiffs, and the interaction of bailiffs with other government and non-government agencies is highly inefficient. Parties that win lawsuits sometimes often wait years for the judgments to be executed. Ironically, in order to get state-guaranteed execution of judgments, people resort to bribing government contractors.

Ukraine's criminal justice system is plagued with structural flaws. The impunity of prosecutors, for example, is not in keeping with European norms, and internal tools to fight corruption remain underdeveloped. There are significant structural obstacles to the autonomy of criminal investigators. The entire system suffers from inadequate IT infrastructure, preventing efficient electronic administration. On a practical level, there is a lack of respect for the adversarial principle in criminal proceedings. There is also no individualized, evidence-based approach to crime prevention, rehabilitation, or resocialization, with limited use of non-incarceratory punishment. There are also differences between the procedural responsibilities and actual institutional functions of criminal justice bodies. For example, between 2012-2014 Ukraine conducted substantial reform in the criminal justice process, and the powers granted by the reforms far exceeded the institutional functions specified in Ukraine's Constitution and other laws. As a result, there were significant issues in the implementation of the provisions of the new Code of Criminal Procedure.

Many of these systemic problems stem from poor strategic planning in the legislative process. Policymakers focus on short-term solutions, leading to the lack of a systemic vision for democratizing the justice sector. There is insufficient coordination and consultation among the political parties, groups responsible for executing the reforms, and civil society.

13.3.2 Timeline of Judicial Reform

The Revolution of Dignity in February of 2014 sparked the initial call for judicial reform and grabbed the international legal community's attention for Ukraine's desire of Western integration. However, the implementation measures and progress sparked by the reformation period did not occur until 2016. To reconstruct a nation's judicial structure requires in-depth analysis of the political structure and effective methods of application of law. Prior to 2016, the attempts of reform implemented by Ukraine had failed to promote progress in an effective judiciary. The Ukrainian government looked for external advisory during the period following the revolution for a better chance of success of aligning their legal system with model democracies in the West. The Council of Europe, an international organization that is set up to promote democracy in Europe, established a joint project with the EU called the "Consolidation of Justice Sector Policy Reform in Ukraine." Together, the two international organizations work in unison with the presidential administration in Ukraine, the Ministry of Justice of Ukraine, and the Ukrainian National Bar Association to provide much needed judicial reform. Ukraine's ability to establish a strong relationship with these two organizations will grant them the ability to stay aligned with the democratic requirements of a Western legal system for future accession. The overall objective of the project is "further consolidating the efforts of Ukraine in pursuing

justice sector reforms. The Project will also help to measure impact of reforms, as well as the Council of Europe's and other international stakeholders' interventions in this area in Ukraine." The objective of the Consolidation of Justice Sector Policy Reform in Ukraine project demonstrates the intent and aspiration of other Western cultures to support democracy in Ukraine. It is apparent that the promotion of an effective rule of law and democracy in Ukraine is beneficial for the young Slavic nation, however the result of this would also be advantageous to the nations of the West. If the more Eastern nations can learn from the promotion of democracy in Ukraine, Europe would have a better chance of guaranteeing a sustainable economy and peace across the continent. It is therefore integral for the collaboration of these nations to join Ukraine in their fight to resolve the inherent legal flaws of their judicial system.

The Council on Judicial Reform in Ukraine was created from Presidential Decree No. 826 in October of 2014, following the demands of the Revolution. The Council acts as an advisory body to the President of Ukraine and representatives from the Council of Europe, the OSCE, and the EU. Petro Poroshenko signed and approved a 2015-2020 strategy for judicial reform in Ukraine on May 20, 2015. This initial attempt to reform the judiciary in Ukraine established a 5-year action plan that laid out essential benchmarks over the designated period. The action plan functions in a two-step method of reformation. The first step is to implement critical legislation that was previously absent from the Ukrainian legal system. This is to instill confidence in the court system and demonstrate the government's intent of reform. The second stage involves a more complex legal analysis and political restricting of Ukraine's government. During the second stage the Council on Judicial Reform will work closely with allied partners to amend the Ukrainian Constitution to adhere to required improvements of judicial structure, legal effectiveness, and additional transformations of legal procedure. The plan required implementing legislation in the following areas: right to a fair trial, amendments to the Constitution of Ukraine regarding justice and related legal institutions, implementation of provisions laid out in legislation, enforcement of court decisions, procedural law, the bar, and pro bono legal counsel. These essential areas of law were previously restricted by corruption and the inadequate legal systems in place. The promotion of legislation to rectify these areas will put Ukraine closer in line with the necessary aspects of judicial reform.

The implementation of legislation under the Council on Judicial Reform in Ukraine was beneficial to the conception of the reformation movement. However, the court system still faced an uphill battle to achieve a democratic, open, and fair judiciary. Ukrainians called for a complete restructure and purging of judicial officials to prevent the potential infiltration of corrupt practices. Although the Ukrainian government had claimed to promote anti-corruption measures within the judiciary, the success of this claim did not follow. Following the Revolution, the judiciary continued to highlight practices of fraudulent government conduct. "In elections to the posts of court presidents by benches of judges in 2014, up to 80% of the incumbents were re-elected, and inertia and the sabotage of the regional judicial bodies thwarted the verification of the candidates' qualifications and integrity." The first election following the Revolution failed to implement change within the judiciary which in turn furthered Ukrainian citizens' trust in their governing body. After the elections, "in 2015 only 1% of respondents declared their full trust in the courts, 9% partial trust, and 45% expressed a total lack of trust (in a survey by the Razumkov Center.)" Ukraine's inability to prevent corruption in the judiciary further divided the governance of the nation with the citizens it sought to protect. However, on June 2, 2016, the Ukrainian government implemented the first substantive change to promote the reformation of

the judiciary. The Ukrainian parliament adopted an amendment to the constitution on the structure of the judicial system and later implemented legislation regarding the legal status of judges. This monumental piece of legislation initiated the true reformation process of the judicial system in Ukraine. Further analysis of this amendment will follow in the subsequent section. It is important to note this landmark constitutional change as the beginning of a long period of the judicial reform in Ukraine. The reformation process of the Ukrainian judiciary involves a myriad of constitutional changes, the creation of supervising organizations, and implementation of legislation across many years. The judiciary in Ukraine today remains imperfect and further reform is necessary. An illustrative example of the timeline of major reform in Ukraine, as prescribed by the constitutional amendments, will provide context to evaluate the progress and perspective of improvements to follow.

Timeline of the Judicial Reform

Reanimation Package of Reforms

September, 30 2016

Law of Ukraine "On amendments to the Constitution regarding justice" of June 2, 2016, No.1401-VIII comes into force. Law of Ukraine "On the judiciary and the status of judges" of June 2, 2016, No.1401-VIII comes into force.

From September 30, 2016

The powers of the Minister of Justice and the Prosecutor General of Ukraine as members of the High Council of Justice are terminated.

October 5, 2016

Law of Ukraine "On agencies and persons in charge of enforcement of court rulings and decisions of other agencies" of June 2, 2016, No.1403-VIII comes into force. Law of Ukraine "On executive proceedings" of June 2, 2016, No.1404-VIII comes into force.

By October 30, 2016

Judges submit e-declarations on their assets.

November 11, 2016

The Public Integrity Council is formed. This body, consisting of representatives of the public sector, should provide public monitoring of the judges' lifestyle and assist the High Qualification Commission of Judges in the assessment of professional ethics and integrity of judges and candidates for judges.

By November 29, 2016

The judges of the Supreme Court of Ukraine and the judges of high specialized courts submit declarations on family relations and fair practice to the High Qualification Commission of Judges of Ukraine.

By December 1, 2016

Competitive selection of judges to the new Supreme Court starts. The High Qualification Commission of Judges of Ukraine ensures launch of the automated system for creating and keeping judges' files (files of the candidates to the offices of judges).

By December 29, 2016

The judges of appeal courts submit declarations on family relations and fair practice to the High Qualification Commission of Judges of Ukraine.

In the course of 2016 and early 2017, A number of laws and amendments to procedural codes should be adopted:

1. **Law "On the High Council of Justice"**
2. **Law "On the Constitutional Court of Ukraine**": a proper competition to fill the offices of judges of the Constitutional Court within a single competition commission should be introduced;
3. **Law "On anticorruption courts"**: a fair competition should be introduced.
4. Amendments to the procedural codes.
5. **Law "On access to legal profession".**
6. **Law "On public defender's office and activity"**: the powers of the incumbent attorneys' self-government bodies should be terminated.
7. Amendments to the **Law "On prosecution"**: a competition to fill the office of the Prosecutor General should be introduced; need to prevent restoring the Soviet system of prosecution.

January 1, 2017

Six members of the High Council of Justice are elected at the judges' congress.

From January 1, 2017

Only prosecutors (representing the state interests in court) or attorneys (with the exceptions established by law, acting as representatives in industrial disputes, social rights disputes, disputes regarding election and referendum, insignificant disputes, as well as representatives of minors or under-age persons and the persons declared incapable by court or those with limited capability) can act as representatives at the Supreme Court and the courts of cassation.

By January 6, 2017

The Ministry of Justice of Ukraine forms an interim qualification commission of private executors including seven persons, as well as an interim disciplinary commission of private executors including seven persons. The interim qualification commission and the interim disciplinary commission exercise the powers of the qualification commission and the disciplinary commission before the Congress of private executors of Ukraine convenes.

From January 6, 2017

A unified register of debtors (a systematized database of debtors, which is part of the automated system of enforcement proceedings and is maintained to publish the information about unfulfilled property obligations of debtors in real time and to prevent the debtors from alienating property) is launched. The information about the debtors included into the unified register of debtors is open and published on the website of the Ministry of Justice of Ukraine. Regulations of the law on activity of private executors come into force.

By April 1, 2017

A new Supreme Court is established and its judges being selected on a competitive basis, as determined by the Plenum of the Supreme Court by the ruling published on the website of the judiciary and in the newspaper "Voice of Ukraine." The Supreme Court is launched provided that at least 65 judges of the Supreme Court are appointed. The High Qualification Commission of Judges of Ukraine takes organizational and technical measures to ensure that the judges (candidates to the offices of judges) fill out declarations on family relations and fair practices and that these declarations are published on the official website.The judges of local courts submit declarations on family relations and fair practices to the High Qualification Commission of Judges of Ukraine.

By October 1, 2017

A High Court on intellectual property is established and a competition to fill the vacancies of judges in this court is called.

By October 6, 2017

The Ministry of Justice conducts constituent meetings of private enforcers in the regions and determines the procedure of their organization. Not later than in one month after the eight constituent meetings of private enforcers are conducted in the regions, the Ministry of Justice conducts the constituent meeting of private enforcers of Ukraine. The first constituent meeting of private enforcers of Ukraine establishes the Association of private enforcers of Ukraine, approves its statute, sets up the Council of private enforcers of Ukraine and the auditing committee, adopts the regulations on these agencies, and appoints the members of the Qualification commission and the Disciplinary commission.

From January 1 to December 31, 2017

The amount of wages (except for those who has not passed the qualification assessment yet) for the judges working at local courts is equal to 15 minimum wages, at the courts of appeal and higher specialized court – 25, the Supreme Court – 75.

From December 31, 2017 or earlier (if a new administrative and territorial division of Ukraine is introduced in line with the Amendments to the Constitution of Ukraine regarding power decentralization) The Parliament (instead of the President) is empowered to set up, reorganize, and liquidate courts.

By January 1, 2018

The Court Protection Service is launched.

From January 1, 2018

Only prosecutors (representing the state interests in court) or attorneys (with the exceptions established by law, acting as representatives in industrial disputes, social rights disputes, disputes regarding election and referendum, insignificant disputes, as well as representatives of minors or under-age persons and the persons declared incapable by court or those with limited capability) can act as representatives at the courts of appeal.

From September 30, 2018

The High Council of Justice (instead of the President on recommendation of the High Council of Justice) is empowered to transfer judges from one court to another.

From January 1 to December 31, 2018

The amount of wages (except for those who has not passed the qualification assessment yet) totals for the judges working at local courts – 20, at the courts of appeal and higher specialized court – 30, the Supreme Court – 75 minimum wages.

From January 1, 2019

Only prosecutors (representing the interests of state in court) or attorneys (with the exceptions established by law, acting as representatives in industrial disputes, social rights disputes, disputes regarding election and referendum, insignificant disputes, as well as representatives of minors or under-age persons and the persons declared incapable by court or those with limited capability) can act as representatives at the courts of first instance.

By April 30, 2019

New members of the High Council of Justice, mostly elected by judges, are selected (appointed).

From June 30, 2019

Ukraine might recognize the jurisdiction of the International Criminal Court on the basis of the Rome Statute of the International Criminal Court.

From January 1 to December 31, 2019

The amount of wages (except for those who has not passed the qualification assessment yet) for the judges working at local courts is equal to 25 minimum wages, at the courts of appeal and higher specialized court – 40, the Supreme Court – 75.

From January 1, 2020

Only prosecutors or attorneys can act as representatives of public authorities and local self-government in courts. The amount of wages (except for those who has not passed the qualification assessment yet) for the judges working at local courts is equal to 30 minimum wages, at the courts of appeal and higher specialized court – 50, the Supreme Court – 75.

During an indefinite period of time:

Should some of the courts established by September 30, 2016, be reorganized or liquidated, the judges of such courts have the right to file in a resignation or apply for another vacancy of a judge under the legally established procedure.

The High Anticorruption Court is established within 12 months after the law setting special requirements for the judges of the High Anticorruption Court comes into force and the competition to fill the vacancies of judges in this court is called.

The State Court Administration of Ukraine provides for the development of the **Integrated Judicial (Automated) Information System** to ensure automated document flow in courts, between courts, between courts and judicial self-government bodies, and the **State Court Administration of Ukraine**, as well as secure storage and automated analytical procession of statistical information about the activity of judges and courts of relevant levels and jurisdictions, the data included to the judges' portfolios, etc.

13.3.3 Law of Ukraine: On the Judiciary and Status of Judges

The June 2, 2016, constitutional amendments to the Ukrainian constitution concerned major reform in the political structure of the judiciary. As prescribed by these amendments, the Ukrainian government sought to implement a series of statutes to support the revised constitution. The Law of Ukraine: On the Judiciary and Status of Judges is the first law to effectively restructure the judicial system in Ukraine to promote better alignment with successful democratic systems in the west. On June 2, 2016, Petro Poroshenko signed the Law of Ukraine: On the Judiciary and Status of Judges which initiated the reform of the Ukrainian judiciary. The implementation of this law was directed at legally codifying the provisions of the constitutional amendments on the same day. "[The] law defines the organization of judicial power and the administration of justice in Ukraine, which operates based on the rule of law according to European standards and ensures the right of everyone to fair trial." At this time in 2016, Poroshenko and the Ukrainian government were aware of the critical concerns involving their

eligibility for Western international alliances. This law was aimed at Ukraine's intent to remedy the discrepancies with their judiciary. Prior to the initiative of the Law of Ukraine: On the Judiciary and Status of Judges, the physical structure and effectiveness of the legal system fell well below European standards of a democratic court system. The prevalence of corruption and internal government control prevented Ukraine's rule of law from demonstrating any legitimate influence. The inconsistency of the application of court holdings due to corrupt practices, or simply due to the inefficiency of the legal system impeded progress of accession into the EU and NATO. The Law of Ukraine: On the Judiciary and Status of Judges was implemented to remedy this inherent issue plaguing Ukrainian progress.

The legislation of June 2 provided substantial progress in judicial reform in Ukraine. One of the central issues of the legal system in Ukraine involved the inefficiency of court proceedings due to a complex and inadequate court structure. The Law of Ukraine: On the Judiciary and Status of Judges effectively consolidated the previous 4 tier court system into a 3-tiered system. Under the new court system of Ukraine, there are local courts, courts of appeals, and the Supreme Court. The reconstruction of the court system now created compliance with the rule of law in Ukraine flowing from the Supreme Court to the appeals and to the local courts. This revised structure adheres to the judicial framework of model democratic systems in the West. With a well-established court structure, the subsequent powers of the court will be able to be effective in carrying out required duties. The law also successfully replaced the High Specialized courts of Ukraine, which were previously the Supreme Administrative Court, the Economic and Civil Court, and the Criminal Court. These specialized courts proved to be ineffective in governing the Law in Ukraine and additionally complicated the judiciary. The Law of Ukraine: On the Judiciary and Status of Judges replaced these court systems with: (1) The High Court for Intellectual Property Matters and (2) the High Anti-Corruption Court. The High Anti-Corruption court now acts as the judicial body responsible for surveillance and adjudication of matters involving corruption in the judiciary or involving corrupt practices in any government conduct. This law established the creation of the Anti-Corruption court but failed to identify key characteristics or specific terms for the adoption of the court. The analysis of the High Anti-Corruption court will follow, but the recognition that laws effectively formed this court is imperative to highlight the importance of the statute.

In addition to the restructuring of the judicial system, the Law also established revised requirements of the eligibility of Supreme Court members. As the Supreme Court is the main authority of the legal system, it is essential to implement strict conditions to hold a position in that court. The law dictated that Supreme Court members include judges, lawyers, and legal academics with at least ten years of experience of Ukraine law. Extensive legal experience on the rule of law in Ukraine as a prerequisite to adjudicate the law at the highest level demonstrates the government's motivation for ensuring an anti-corrupt and efficient judiciary. The High Qualification Commission of Judges (HQCJ) is responsible for the selection and appointment of qualified judges under the revised judiciary in Ukraine. The HQCJ applies the principle of the eligibility requirements of judicial actors under the June 2nd Law to preventthe infiltration of corrupt governmental practices. The Public Council of Integrity was also created under this Law to further support the efforts of the HQCJ. The section to follows focuses on the importance of the Public Council of Integrity emphasizes the dual system to ensure only eligible judges can adjudicate the rule of law in Ukraine. Another key aspect of the Law restricts further

restructuring of the court system through unilateral action of the President, judiciary, or cabinet. The only way the Supreme court or lesser court systems can be altered is through further legislation. This effectively creates a system of checks and balances in the Ukraine government by requiring legislation to be implemented for major judicial restructuring. The executive branch and judicial branch can no longer act independently to change the rule of law in a manner that benefits their interests. This also prevents the politicization of the Supreme Court and restricts oppressive rule through corruption. The following excerpt highlights the actual text of the Law of Ukraine: On the Judiciary and Status of Judges to highlight integral provisions that established key principles for judicial reform in Ukraine.

Law of Ukraine: On the Judiciary and Status of Judges

June 2, 2016

This Law defines the organization of judicial power and the administration of justice in Ukraine, which operates based on the rule of law according to European standards and ensures the right of everyone to fair trial.

Section I
PRINCIPLES OF ORGANISATION OF JUDICIAL POWER

Article 1. Judicial Power

1. In accordance with the constitutional principles of separation of powers, judicial power in Ukraine is exercised by independent and impartial courts established by law.

2. Judicial power is exercised by judges and, in cases determined by law, jurors, through administering justice under the respective court procedures.

Article 2. Purposes of a Court

1. A court, in the course of exercising justice based on the rule of law, ensures the right of any person to a fair trial and respect for other rights and freedoms guaranteed by the Constitution and laws of Ukraine and international treaties ratified by the Verkhovna Rada of Ukraine.

Article 3. System of the Judiciary of Ukraine

1. Courts of Ukraine constitute a single system.
2. Creation of extraordinary and special courts is prohibited.

Article 4. Legislation on the Judiciary and the Status of Judges

1. The judiciary and status of judges in Ukraine shall be defined by the Constitution of Ukraine and law.

2. Changes to this Law may be introduced exclusively by laws on amending the Law of Ukraine “On the Judiciary and Status of Judges”.

Article 5. Administering Justice

1. Justice in Ukraine is administered exclusively by courts and according to stipulated by law judicial procedures.

2. The delegation of courts' functions, as well as appropriation\usurpation of those functions by other bodies or officials is not permitted. Any persons that assumed\usurped functions of a court shall be answerable as stipulated by law.

3. The people are involved in the administration of justice through jurors.

Article 6. Independence of Courts

1. In administering justice, courts are independent of any improper influence. Courts are administering justice based on the Constitution and laws of Ukraine and principles of the rule of law.

2. Applications to court from citizens, organizations or officials who, under the law, are not court process participants, regarding consideration of specific cases, shall not be considered by the court, unless otherwise stipulated by law.

3. Interference with the administration of justice, influence on a court or judges in any manner, contempt of court or judges, collection, storage, use and dissemination of information orally, in writing or otherwise with the purpose to discredit court or influence the impartiality of the court, calls to non-enforcement of court decisions are prohibited and entail liability as stipulated by the law.

4. Bodies of state power and local self-government bodies, their officials must refrain from statements and actions which may undermine the independence of the judiciary.

5. In order to protect professional interests of judges and address issues of internal operation of courts in line with this Law, the judicial self-government shall operate.

Article 7. The Right to a Fair Trial

1. Everyone is guaranteed the protection of his\her rights, freedoms and interests within reasonable time frame by an independent, impartial and fair court established by law.

2. Foreigners, stateless persons and foreign legal entities shall be entitled to judicial protection in Ukraine on equal basis with the citizens and legal entities of Ukraine.

3. Accessibility of justice for every person is ensured according to the Constitution and in the manner established by laws of Ukraine.

Section II
JUDICIARY

Chapter 1. Organizational foundation\principals of the judiciary Article 17. The System of Courts

1. The court system is built based on the principles of territoriality, specialization and instance hierarchy.

2. The highest court in the court system is the Supreme Court. 3. The court system is comprised of:
1) local courts;
2) courts of appeal; and

3) Supreme Court;

To consider some categories of cases in line with this Law high specialized courts shall operate in the court system.

4. The unity of the court system is ensured by:

1) the unified principles of organization and operation of the courts;
2) the unified status of judges;
3) established by law rules of court proceedings, mandatory for all courts;
4) unity (unified nature) of case law;
5) mandatory nature of enforcement of judgments on the territory of Ukraine;
6) the unified procedure for organizational support of the courts' operation;
7) financing of courts exclusively from the State Budget of Ukraine;
8) resolving the matters of internal functioning of courts by bodies of judicial self-government.

Chapter 4. High specialized courts

Article 31. Types and Composition of High Specialized Courts

1. Within the court system, high specialized courts shall function as courts of first instance for consideration of certain categories of cases.

2. The high specialized courts are:
1) the High Court for Intellectual Property Matters; and

2) the High Anti-Corruption Court.

Chapter 2. Judge

Article 52. Status of a Judge

1. A judge is a citizen of Ukraine who, according to the Constitution of Ukraine and this Law, has been appointed as a judge, holds a full-time judicial position in one of the courts of Ukraine and administers justice on the professional basis.

2. Judges in Ukraine shall have the uniform status regardless of the place that the court occupies in the court system or the administrative position that the judge occupies in the court.

Article 53. The Irremovability of Judges

1. The judges shall be guaranteed irremovability until they reach the age of sixty- five, except for dismissal or termination of his/her powers pursuant to the Constitution of Ukraine and this Law.

2. A judge may not be transferred to another court without their consent, except a transfer:

1) following reorganization, liquidation or termination of the court;
2) as a disciplinary measure.

13.3.4 Public Integrity Council Formed

The High Qualification of the Commission of Judges in Ukraine (HQCJ) was first created when Ukraine gained independence from the Soviet Union. It was established in an effort to build a functioning judiciary through legal regulation, formation, and development. However, as the decades leading up to the Revolution of Dignity have demonstrated, the HQCJ failed to prevent systemic corruption in the rule of law in Ukraine. This led to an inefficiency of legal proceedings and unreliable judicial system in the public eye. In Article 87 of the Law of Ukraine: On the Judiciary and Status of Judges, the Public Council of Integrity was founded for the sole purpose of establishing a successful system to assist the "High Qualification Commission of Judges of Ukraine in determining the eligibility of a judge (a judicial candidate) in terms of the criteria of professional ethics and integrity with the view of qualification evaluation." Considering the HQCJ failed to adequately vet potential judicial candidates as evidenced from the abundant presence of systemic corruption, the implementation of this dual system of evaluation will further support Ukraine's interests in judicial reform. The Public Council of Integrity performs their responsibilities across four panels that consist of five council members. Each council member has the right to complete access to open state registers to evaluate potential judges. The Public Integrity Council also has access to the new requirement that judges, and candidate judges, declare personal and familial assets. Judges are now required to demonstrate transparency of their assets and income streams for governmental supervision to restrict the opportunity for judicial bribes. The Public Integrity Council oversees these assets to ensure that misappropriation of funds is not occurring in the judicial body in Ukraine. Thus, the Public Integrity Council acts as a final barrier of acceptance into a judicial position to guarantee the previous mistakes of HQCJ do not repeat themselves. The Council of Europe and other Western international organizations have worked closely with Ukraine to ensure the successful implementation of the Public Integrity Council. The following passage presents the opening remarks of the Council of Europe on the effectiveness and application of the Public Council of Integrity in their opinion on the Rules of Procedure of the Public Council of Integrity of Ukraine.

Opinion on the Rules of Procedure of the Public Council of Integrity of Ukraine
Diana Kovatcheva,
Council of Europe
April 2017

The Public Council of Integrity (PCI) is established with the purpose to assist the High Qualification Commission of Judges of Ukraine (art. 87) and its status and functions are further developed in the Rules of Procedure of the Public Council of Integrity.

The current document aims to provide an opinion on the compliance of the Rules of Procedure of the PCI and the European standards on independence, evaluation and appointment of the judges and judicial candidates. In addition it takes into account the compliance of the Rules of Procedure with the Law On Judiciary and Status of Judges (the Law), as the Law has significant relevance to the status and functions of the PCI. The Rules of Procedure of the PCI should be in full compliance with the Law.

The PCI is established as a public body, facilitating the work of the High Qualification Commission of Judges of Ukraine which has the main responsibility to verify the information and the delivery of the final conclusions for the evaluation of judges and candidates for judges. The PCI is taking part in the process of individual evaluation of judges and judicial candidates, therefore its work should aim at improving the judiciary while ensuring the highest quality possible. According to the Council of Europe standards the evaluation of judges must be done in the interest of the public as a whole.

The mandate and the competences of the PCI are regulated both in the Law and the Rules of Procedure. The legal basis of the status and powers of the PCI can be found in art. 87 of the Law On the Judiciary and the Status of Judges. The competences of the PCI are based on the regulations on the ethics and integrity of the judges and judicial candidates as provided in the Law. The obligation of the judges to comply with the rules of judicial ethics and to ensure public trust in judicial integrity and incorruptibility is regulated in art. 56 para. 7 p. 2 of the Law. P. 3 of the same article is about the obligation to submit a declaration of judicial integrity and family ties. These obligations are further developed in art. 61 and 62 of the Law. Art. 61 is dealing with the declarations of family ties and their verification is the competence of the High Qualification Commission of Judges of Ukraine. Art. 62 is dealing with the declaration of Judicial Integrity and the High Qualification Commission of Judges of Ukraine is responsible for the verification of th information contained in this declaration.

A number of European bodies, such as the Venice Commission, the Consultative Council of European Judges (CCJE), the European Commission for the Efficiency of Justice (CEPEJ), and the Committee of Ministers of the Council of Europe have provided their opinions on issues on the independence of judges, their evaluation and appointment. However these opinions and recommendations are more focused on the work of judicial bodies and do not refer directly to bodies similar to the PCI of Ukraine and their status and functions. This is why the opinion on the compliance of the Rules of Procedure of the PCI with the European standards will be based on the generally accepted European standards and principles for the protection of the independence of the judiciary which should be respected in the evaluation and appointment of judges and judicial candidates. The main argument for this approach is that the protection of the independence of judges is a principle which should be respected at all times by any body in charge of the evaluation or involved in this process.

In general terms it could be said that the Rules of Procedure of the PCI take account of European standards for independence of judiciary. The recommendations and comments listed below aim to bring the Rules to closer compliance with the standards for independence, evaluation of judges and appointment of judicial candidates.

The current opinion is based on the study of the Law on the Judiciary and the Status of Judges and the Rules of Procedure of the PCI. The opinion takes account of the opinions and recommendations of the Venice Commission, the CCJE, the Committee of Ministers of the Council of Europe, CEPEJ, the Bangalore principles, all related to the independence of judges, their evaluation and appointment and the role of the Judicial Councils. It also takes into account the information received during the meetings with the PCI, the High Qualification Commission of Judges of Ukraine and the High Council of Justice.

The opinion will focus on the following issues:

I. Independence of judges and judicial candidates and their accountability;

II. Mandate composition and conclusions of the Public Council of Integrity

III. The evaluation procedure of the Public Council of Integrity.

13.3.5 High Anti-Corruption Court Established

The High Anti-Corruption Court is one of two High Specialized courts that the Law of Ukraine: On the Judiciary and Status of Judges established replacing the former specialized courts. However, the Law omitted specific terms and procedures of the actual implementation of the Anti-Corruption Court. This left the government in a state of limbo, garnishing opposing views among Ukrainian citizens and legal professionals as to establish the High court or not. After much internal deliberation, the High Anti-Corruption Court was officially founded on June 7, 2018. The High Anti-Corruption Court was created with the objective for a "greater sense of judicial efficiency, integrity, and independence addressing corruption cases, especially involving political elites, and the apparent inability of the regular courts to deliver swift and impartial justice in such cases." The new ability for the Anti-Corruption court to focus on corruption cases individually, without interference of other court systems in Ukraine, creates a more definite perspective and motivation for successful results. The singular objective of prosecuting cases on corruption will allow the Anti-Corruption court to function more effectively than the lower courts that previously adjudicated the matter. The Anti-Corruption court is another legal weapon in Ukraine's arsenal against the war on systemic corruption of their governmental system.

The High Anti-Corruption Court introduced innovative characteristics to the prosecution of corruption that were not previously present in the former legal system. Prior to the Anti-Corruption Court, lower courts would hear all criminal cases involving corruption in the jurisdiction in which the alleged incident occurred. The judgement would then be appealed to the appellate court of the same jurisdiction. These lower criminal courts and criminal courts of appeals heard cases involving every subject matter. The non-specialization of these courts resulted in an inadequate preparation of the courts to successfully adjudicate corruption. This is evidenced by the continuing prevalence of systemic corruption in Ukraine over the two decades of the nation's independence. The High Anti-Corruption court now replaces the lower court and court of appeals, hearing cases that specifically involve corruption in important instances.

Corruption on a minor scale will still be adjudicated by the lower courts, however, the government ensured that high profile cases and cases exceeding a certain amount of controversy will be handled by the specialized trained court on corruption. The High Anti-Corruption Court has jurisdiction to "cases brought by NABU and SAPO against high-level officials for a specified set of corruption-related crimes that entail damage in excess of a monetary threshold (currently $39,500)." Granting jurisdiction to the Anti-Corruption Court over cases involving high-level officials is an integral step for the prevention of systemic corruption in Ukraine's judiciary. This highly specialized court will now have the resources to identify and restrict corrupt activities at the highest level without interference of inefficient judicial proceedings which allowed corruption to slip through the cracks in the lower courts. Another key aspect of the Anti-Corruption Court is the introduction of foreign experts in the judicial selection process. Allowing for the legal guidance of foreign advisors will promote the objective of Ukrainian's judicial reform efforts to align with Western democracy. If legal professionals of Western states provide counsel on the selection and structure of the judiciary, the likelihood of successful judicial reform fortifies. The selection process for applicants of the High Anti-Corruption Court is founded on legal principles of integrity and ethics. A community of likeminded and ethical legal judges sharing the objective of the fight against systemic corruption provides Ukraine with the necessary tools for judicial reform.

13.3.6 Venice Commission Report of Ukrainian Judicial Reform 2019

Over the course of four years following the Revolution of Dignity, Ukraine successfully amended the constitution and implemented substantial legislation directed at the reformation of their judiciary. The legislative intent for judicial reform is increasingly more prevalent to Ukrainian citizens and the proper judicial systems are now in place to prevent systemic corruption and inefficiency in the court system. Although there has been significant progress since the call for reform was first initiated, it is imperative for the legal actors who hold the vital positions of the judiciary to continue to implement the procedures and anti-corruption methods as described in the legislation. Ukraine has worked closely with Western international alliances to properly reform the Ukrainian judiciary to align with the values and practices of Western democracies. The Council of Europe is an international organization with the goal of upholding human rights, democracy, and the rule of law in Europe. Democracy and the rule of law in Ukraine are the foundational aspects involving the issues of Ukraine's judiciary. Ukraine has collaborated with the Council of Europe during the reformation process by including representatives on major judicial reform organizations such as the Council on Judicial Reform. The Council of Europe has continued to provide legal advice to Ukraine with the goal of shaping their governmental system into a modern functioning democracy with the appropriate application of the rule of law. It is imperative for Ukraine to continue to strengthen their relationship with Western international organizations, such as the Council of Europe, because these model Western democracies know the requisite judicial reforms that must be implemented for Ukraine to accede into EU and NATO by demonstrating an adequate rule of law and governance. According to the Council of Europe, their main objective for Ukraine is "support for the judicial authorities of Ukraine and promotion of the processes in order to ensure effective access to justice in line with the standards and recommendations of the Council of Europe." In addition to advising Ukraine on implementing mandatory reform legislation, the Council of Europe also creates periodic assessments on Ukraine's judicial reform progress to provide Ukraine with evidence of successful reforms and suggestions of measures that still need to be enacted. The 2019 Report

from the Council of Europe on the "Assessment of the 2014-2018 Judicial Reform in Ukraine and its compliance with the standards and recommendations of the Council of Europe," the international democracy organization lays out in detail the progress of Ukraine's judicial reform in the first years of implementation and additional practices Ukraine must implement in their judiciary. The Council of Europe's 2019 report is an illustrative summary and assessment of the substantial progress Ukraine accomplished in the first 4 years of reform. The following excerpt will provide context to the state of Ukraine's judiciary up until 2019 prior to the election of Volodymyr Zelensky. The Council of Europe continues to draft these assessments to support the efforts of Ukraine's judicial reform.

Assessment of the 2014-2018 Judicial Reform in Ukraine and Its Compliance with the Standards and Recommendations of the Council of Europe

Lorena Bachmaier
Council of Europe
April 2019

EXECUTIVE SUMMARY

1. The Ukrainian authorities have undertaken a comprehensive legislative reform, adopting unprecedented and exceptional measures. These impressive efforts in carrying out the legislative amendments as foreseen in the 2015-2020 Justice Sector Reform Strategy adopted in May 2015 (hereinafter "the Strategy, Justice Reform Strategy") are to be praised. It can be affirmed that the Strategy correctly identified the needs of the justice sector. At the legislative level and to a large extent at the institutional level the goals set out in the Strategy have been achieved.

2. The long awaited re-structuring of the judiciary from a four-tier system to a three-tier system has been finally introduced, dissolving the former system where the High Specialised Courts exercised the cassation functions. This re-organisation of the judiciary merits a positive assessment. It is positive in terms of efficiency and in ensuring coherence and uniformity of the legal system.

3. The new Supreme Court, whose case-law shall be binding, should help increase legal certainty and compliance with the law.

4. Though the whole structure and design of the Supreme Court are rather complex, they seem to work well with the new procedural legislation to ensure the role of the Supreme Court as the highest court instance securing the unity of case law.

5. The process for the re-structuring of the system has not been without debate; however, it should be assessed within the framework of specific circumstances in Ukraine. All judges of the previous Supreme Court of Ukraine were dismissed, and a new transparent competition process was carried out, and only those who have successfully passed the new competition, have been appointed. This procedure is based on the transitional constitutional provisions stating that in cases of reorganization or dissolution of particular courts, established before the Law of Ukraine "On Amending the Constitution of Ukraine (as to justice)" taking effect, judges concerned shall

have the right to retire or apply for a new position through a competition according to the procedure prescribed by law.

6. The re-qualification procedure undertaken in Ukraine also has to be assessed within the exceptional circumstances of Ukraine. Such an unusual measure of re-examining all sitting judges was accepted by the Venice Commission within the Ukrainian context, as long as strict procedural safeguards were observed.

7. While the process of re-structuring of the judiciary shows a trend towards greater efficiency and transparency, together with the adoption of measures for the cleansing of the judiciary and preventing corruption, it also has raised some doubts as to the delays in the re-qualification of judges who applied for it. However, these delays may be seen as understandable given the scale of the reforms carried out in Ukraine and the volume of work necessary to complete it, involving more than 6 000 sitting judges to be evaluated against criteria of competence, integrity, and professional ethics.

8. With regard to the accountability of judges while respecting judicial independence, there is a clear improvement in the legal regulation of the disciplinary proceedings following the Council of Europe (CoE) standards and recommendations.

9. The description of the disciplinary offences and the procedural safeguards are in compliance with European standards. Pending concerns regarding the composition of the disciplinary chambers within the High Council of Justice (HCJ) shall be overcome in practice. The system of filtering manifestly unfounded complaints might need to be reviewed in the future for efficiency reasons. The legal framework is now aligned almost completely with the CoE standards.

10. The cleansing procedure and the measures to restore the trust in the judiciary seem to be reversing the situation of widespread corruption within the judiciary. CoE recommendations were followed in this field, and therefore despite the almost “revolutionary” situation, the legal framework, being exceptional, can be considered to be aligned with the CoE standards.

11. In sum, the CoE standards have been generally followed, and most parts of the opinions and recommendations of CoE institutions have been taken into account in the course of the re-structuring of the judiciary, reforming judicial accountability and restoring trust in the judiciary. Therefore, the Justice Reform Strategy and its implementation in 2014-2018 merit a positive appraisal. It is visible that the authorities have made an enormous effort in adopting decisive steps towards greater transparency, integrity, efficiency and professionalism of the judiciary.

12. From the legislative point of view, the implementation of the Justice Reform Strategy has contributed to bringing the Ukrainian justice system closer to the European standards. Compliance with CoE standards is generally achieved at the legislative level. Minor issues will need further adjusting and fine-tuning.

13. The next challenge is to ensure the full and correct implementation of the adopted legal framework so that the trust in the judiciary really increases and judges become more

independent. At present the whole process is still in a transitional stage, and its development in the future is to be followed.

14.The judicial reforms, if correctly implemented, show the path towards the strengthening of the rule of law and the democratic principles in Ukraine.

15. On the question of how far the implementation of the Strategy has led to effective changes in practice, it is too early to firm draw conclusions.

16. Despite the advancement in the fight against corruption and the drastic cleansing process that has been put in place, there are, however, certain remaining gaps, as well as uncertainties as has been expressed above. Therefore, it is recommended:

> To follow the development of the institutional resetting of the judiciary, including new competitions, structural optimization, evaluation of all judges based on competence, ethics and integrity criteria and ensuring a transparent, balanced and professional approach to those procedures.
>
> To follow the process of execution of ECtHR judgments regarding the applications related to the dismissal of judges, as there are a number of applications pending at present.

17. As the whole process of cleansing and re-examination has faced some delays, it is recommended to further streamline and optimize the procedures to finalize them as early as possible. In any case, it is important to maintain and improve the existing safeguards to keep the whole procedure transparent so that judges are recruited and evaluated taking into account only their merits, skills and integrity.

18. To follow the appeals of former judges of the Supreme Court of Ukraine who were not re-appointed to the new Supreme Court, and to ensure that the examination of their individual applications is in compliance with all the fair trial guarantees provided by Article 6 of the European Convention on Human Rights. The objective of all these measures is to sanction those who have breached their duties as judges and prosecute those judges who have committed criminal offences, all with the aim of achieving the ultimate aim of restoring trust in the judiciary. This objective seems not to have been fulfilled yet. It is recommended to analyse not only the perception indicators, but to make a follow-up of the investigations into corruption, and the verification of the assets of judges and their relatives.

13.3.7 Zelensky's Pledge to Combat Corruption in Ukraine's Judiciary

On April 21, 2019, Volodymyr Zelensky was elected the President of Ukraine with a 75 per cent vote over former president Petro Poroshenko's 25 per cent. Zelenskyy's rise to Presidency was seen as a saving grace to many Ukrainian civilians. The progress on anti-corruption measures and judicial reform had seen substantial progress since in the inception in 2014, however, evidence of systemic corruption in the Ukrainian judiciary still prevailed during this time. Zelensky, a former actor in Ukraine, shared the perspective of a common Ukrainian citizen; the need for a government that could effectively apply the rule of law of Ukraine without interference of corruption. Zelensky pledged his intent to abolish any form of corrupt practices in the Ukrainian government and highlighted his main objective to integrate Ukraine within Western society. Ukrainians found Zelensky's campaign to be particularly attractive due to years

of oppressive and non-visible governmental rule. In a March 1, 2021, speech President Zelensky demonstrated this intent by stating “we are set to break this vicious circle. An honest and fair court is exactly the part of my presidential program on which the implementation of many other parts largely depends.” Citizens of Ukraine share this view of Zelenskyy’s regarding the vicious circle of corruption. For years many politicians have claimed to engage in the necessary judicial reform, but subsequently after evidence of corruption and efficiency of the judiciary is still present. Zelensky connects with the citizens of Ukraine on a personal level by identifying this phenomenon and pledging to prevent the circle for occurring again at all costs. In the same speech Zelensky also highlighted a central justification for the need of judicial reform by claiming “at the legislative level, we can introduce the best conditions for attracting investment, but it will not work if the investor is not able to protect his investment right here in the Ukrainian court.” This principle is the vital principle in which the judicial reform process is founded. If Ukrainian courts cannot demonstrate their ability to effectively protect foreign investment absent corruption, investments will not be given to support the rebuilding of post War Ukraine. Not only is an ethical judiciary essential to the promotion of the democratic state of Ukraine, but additionally judicial reform is necessary for the physical support Ukraine will need after the war. During the All Ukrainian Forum “Ukraine 30. Development of Justice,” Zelensky further identified judicial reform measures that will be implemented during his presidency.

President Volodymyr Zelensky, Development of Justice Forum

Kyiv, Ukraine
March 1, 2021

Ukraine will implement effective judicial reform that will guarantee the right of every citizen to a honest, independent and fair trial. This was stated by President Volodymyr Zelenskyy during the All-Ukrainian Forum "Ukraine 30. Development of Justice" in Kyiv.

The Head of State reminded that every government in Ukraine had promised to carry out judicial reform, but as a result the courts remained unreformed, corrupt and inefficient.

"We are set to break this vicious circle. An honest and fair court is exactly the part of my presidential program on which the implementation of many other parts largely depends," Volodymyr Zelenskyy said.

He stressed that the best anticorruption bodies lose their meaning if corrupt officials avoid fair punishment in the courts.

"At the legislative level, we can introduce the best conditions for attracting investment, but it will not work if the investor is not able to protect his investment right here in the Ukrainian court. In addition, successful judicial reform in Ukraine is a catalyst for our integration into the EU and NATO," the President added.

The President noted that ensuring the right to a fair and independent court is a basic principle of any democratic state.

"This is trust. This is a feeling of security and justice - those things that, unfortunately, have been in short supply for Ukrainians for a long time," Volodymyr Zelenskyy stressed.
The President also singled out the main problems of the judicial system. One of them is the lack of new judges, which leads to an excessive burden on the system and problems with access to justice.

"Due to the absence of almost a third of judges, citizens are forced to wait for months and sometimes years for their case to be heard," he said.

In this context, the Head of State stressed the importance of resuming the work of the High Qualification Commission of Judges of Ukraine and improving the procedure for selecting candidates for the High Council of Justice.

"The system should be filled with professional and decent judges who will be able to change the stable, negative attitude of people to this profession and restore the confidence of Ukrainians in the judiciary," the President emphasized.

According to Volodymyr Zelenskyy, another problem is the lack of honest and independent judges.

"These are global, so to speak, chronic diseases that have existed for years and need structural, profound changes. In particular - legislative changes," the Head of State stressed.
The President noted that it is important to eliminate abuses and ensure the transparency of the court.

"IT solutions can be an effective step in this direction. Similar to public services in a smartphone, we seek - and will certainly do - “a court in a smartphone". Most bureaucratic procedures will go online, which will speed up the legal proceedings, minimize corruption and opportunities for abuse," Volodymyr Zelenskyy noted.

He also added that citizens should be directly involved in the administration of justice.
"We are introducing democracy in the country, and this is not just local and all-Ukrainian referendums. One of its tools is a jury trial. Currently, two bills are ready to launch its work," the Head of State stressed.
Volodymyr Zelenskyy stated that the model and format of the jury trial in Ukraine would be discussed in detail.

Also, according to the President, the reform of the Constitutional Court of Ukraine is relevant.

"Unfortunately, this body has become synonymous with distrust, and today we are talking not about restoring it, but about actually building this trust from scratch. The format in which the CCU should work is transparent selection of judges, integrity, ethics, clear procedures and decision-making order,” the President said.

The Head of State reminded that he had set up a Commission on Legal Reform to find ways to resolve the above mentioned issues.

"This is an expert, non-politicized platform for preparing a strategic vision - a set of legislative changes that will eliminate shortcomings and answer the question of what kind of judicial system Ukraine will have in a few years and under what conditions we will achieve international standards of justice," Volodymyr Zelenskyy said.

Judicial Corruption in Ukraine

Viktoria Matola, November 2024

The war is undoubtedly the biggest problem facing Ukraine and Ukrainians. However, when asked what other problems Ukrainians were most concerned about, 63% said corruption. According to a study published by the Kyiv International Institute of Sociology at the end of 2023, the judicial system is not among the top three structures that should tackle this problem.

According to a population survey, instead of a study by the National Agency for the Prevention of Corruption, corruption is most widespread in the judiciary. Businesses do not name the judiciary among the top five areas where corruption is most prevalent. Other surveys show that most ordinary Ukrainians get information about the judiciary from the media.

Is it true that judicial corruption is the highest in Ukraine? Why do judges take bribes, and why is the tradition of giving bribes worse than the problem of taking them? In this essay, I will answer these questions.

The highest corruption

In August 2019, the Ukrainian public was shocked by the news of the National Anti-Corruption Bureau of Ukraine, established four years earlier. Investigators published an hour-long recording of conversations, allegedly between judges of one of the central courts of the Ukrainian capital. The interlocutors discussed issues related to the judicial system, which needed to be clarified to the general public. Their explanation was even more shocking. The judges were discussing the impact of the ongoing judicial reform, personal decisions, and even the effect on the work of the parliament by passing judgments favorable to them (*The case was opened on the facts of conspiracy to seize state power, obstruction of the work of the High Qualification Commission of Judges, as well as participation in a criminal organization and abuse of influence by the chairman and judges of the Kyiv District Administrative Court in collusion with some other persons*). At that time, all judges had to undergo a qualification evaluation of their competence and integrity. According to the investigation, the judges of this court, especially its head, Pavlo Vovk, tried to avoid this and block the work of the High Qualification Commission and the High Council of Justice. The recordings of the conversations were called the Vovk tapes.

The High Anti-Corruption Court is currently considering the case. It is still far from being resolved.

In December 2022, the Parliament liquidated the Kyiv District Administrative Court, but the judges still have this status. The High Council of Justice was supposed to decide whether to discipline them, including dismissal, but it did not do so.

This case vividly characterizes one of the problems in the judicial system — the feeling that judges are immune and unpunished. Anti-corruption bodies in Ukraine partially refute this thesis.

The second case that undermined confidence in the judicial system was the case of Vsevolod Kniaziev, the Supreme Court president, suspected of receiving a bribe of $2,7 million. Kniaziev allegedly received this money via a bribery scheme that NABU investigators claim benefited numerous Supreme Court judges. An association of lawyers reportedly acted as a mediator between the Supreme Court's leadership and people willing to give money to settle court cases in their favor.

The pre-trial investigation continues in the case of Supreme Court head Vsevolod Kniaziev, essentially the fourth most powerful person in the country and the highest-ranking Ukrainian official ever to be accused of bribery.

Kniaziev became a Supreme Court judge due to the reform and selection of new judges. The bribery scandal effectively leveled the efforts of many activists and those interested in launching the Supreme Court with qualitatively selected judges.

However, Kniaziev's example shows that no competition or reform can guarantee 100% that individuals will not be tempted to corrupt.

At the same time, Pavlo Vovk, the former head of the Kyiv District Administrative Court, still needs to pass the qualification evaluation, one of the stages of judicial reform, to test all judges for competence and integrity. According to the investigation, he and other judges of the same court tried to influence the High Qualification Commission and the High Council of Justice by deciding to appoint ‘their’ people to the central judicial bodies.

These two cases differ entirely, and the motives for these alleged crimes differ. In the first case, the judges, according to the investigation, tried to influence decisions within the judicial system, individual appointments, or dismissals, including through the adoption of court decisions. The second example is more of a characteristic of the individual. However, both the first and second cases occurred for the first time in the history of Ukraine. We will follow the outcome of this story. In this case, the professionalism of all anti-corruption bodies is essential – a high-quality investigation and an impartial trial.

When it became apparent in 2016-2017 that about 40% of the cases investigated by the NABU were stuck in ordinary courts, the public and international partners began to demand the creation of a separate court to hear high-level corruption cases.

In September 2019, the High Anti-Corruption Court was launched in Ukraine. It began hearing corruption cases of top officials and grand corruption. Even after these cases, judges were detained on suspicion of taking bribes.

In five years, the High Anti-Corruption Court has delivered 205 verdicts — forty-six of them concern judges. Ten have been canceled, 24 have entered into force, and the rest are being appealed.

According to the National Anti-Corruption Bureau, in 2023, the anti-corruption authorities exposed 16 judges for abuse of power and sent cases against 9 to court.

The NABU does not investigate all corruption crimes. Still, only those committed with the participation of top officials or where the value of the object of the crime or the damage caused exceeds a certain amount. Regarding the judiciary, the NABU investigates cases against all judges except judges of the High Anti-Corruption Court, judges of the Constitutional Court of Ukraine, jurors, members of the High Council of Justice, and the High Qualification Commission of Judges of Ukraine.

The State Bureau of Investigation and the National Police investigate corruption crimes other officials and employees commit.

According to the State Bureau of Investigation, in 2023, it filed 353 indictments against 468 people, including 331 law enforcement officials [6]. The National Police reported no criminal proceedings for corruption in the same year.

In 2019, Ukraine launched a register of people who have committed corruption or corruption-related offenses. To date, it includes more than 48,000 people [7]. This statistic contains persons referred to criminal, administrative, and disciplinary authorities.

So, Ukraine is taking decisive steps to overcome corruption. This is particularly important in using macro-financial assistance to rebuild the country after the war and its accession to the EU.

Anti-corruption in Ukraine

After Ukraine gained independence in 1991, anti-corruption provisions were gradually introduced into national legislation. However, they could have been more effective or imperfect. The most significant breakthrough occurred after the Revolution of Dignity when the creation of anti-corruption bodies was accelerated, and legislation improved.

For the most part, corruption is seen as a moral problem of someone who acts dishonestly. However, in Ukraine, after the collapse of the Soviet Union, a social system was formed that restricted access to essential resources (economic, political, natural) to a limited number of individuals. As a rule, these are people who have the potential to take away resources by force. At some point, they decide it is not profitable to fight among themselves, so they agree and create specific rules that apply only within their circle, which is closed to other members of society. In Ukraine, this is identified with the influence of oligarchs and politicians who run their businesses on the borderline of business and are interested in personal enrichment rather than impartial distribution of resources for society.

Civil society activists and journalists who published investigations or information about possible corruption became the driving force in the fight. In addition, they often bring these problems to international organizations, as the government is interested in maintaining the status quo and only sometimes responds to civil society complaints. At the same time, the European Union wants a strong and peaceful country among its neighbors with which to build sustainable economic ties. Corruption stands in the way of this. Therefore, donor organizations from these

countries set a requirement for the Ukrainian authorities to fight corruption in exchange for financial assistance. Since the Ukrainian authorities are interested in a stable economic situation and re-election in the next elections, they comply with donors' demands.

According to a survey by the National Agency for the Prevention of Corruption in Ukraine [2], the judiciary and customs are Ukraine's first and second most corrupt sectors, respectively. Border control was ranked third. Among the business representatives surveyed, permitting mining and customs are the most corrupt areas.

Let's look at the survey of those who have encountered corruption. The top positions among the population are services in the Ministry of Internal Affairs service centers, construction and land relations, and medicine. Judicial corruption is not even in the top ten. The situation differs for businesses: most respondents have encountered corruption in customs, law enforcement, construction, and land relations. Judicial corruption among business representatives ranks sixth.

However, systematic evidence of the extent of corruption is difficult to find. Experience-based surveys may reveal whether respondents have paid a bribe within the last year or so, but they do not tell who asked for the bribe and who benefited from it. Was it the lawyer, the court clerk, the judge? A specific instance of bribery may involve a few low-level clerks supplementing their meager salaries or a vast network of corrupt, highly placed officials.

In addition, such surveys are usually confined to straightforward bribery; they do not assess trading of influence, conflict of interest, nepotism, extortion, and other forms of corruption. These crimes are more challenging to observe. Occasionally, a scandal emerges, allowing a glimpse of these more insidious forms of corruption. While such revelations do not provide a complete picture of the corruption within a jurisdiction and offer no systematic data on changes over time, they may point to systemic weaknesses and corruption risks.

So, is the judicial system in Ukraine entirely corrupt? No. Of course, the large sums of bribes and the cynicism with which some judges decide to organize a corruption scheme, especially during a full-scale war in Ukraine, are shocking and outrageous. But it is hardly worth blaming the entire system. It would be the same as accusing all journalists of being unprofessional or paid for. Of course, not all of them are.

Then why do most Ukrainians think that judges are the most corrupt?

The problem is that every government in Ukraine, using hostile rhetoric, blames the judiciary for fighting corruption. As a result, the judicial system is portrayed in a negative light in the media. Because half of Ukrainians get information about the courts from the media, they form the same opinion.

Court decisions also are the tip of the iceberg. Investigations end up in court, where the court assesses the evidence. And often, the general public needs to follow the details - why doesn't this seemingly most extensive corrupt official, according to the investigation, be put behind bars? Because the investigation also makes mistakes, the procedural law also has gaps preventing the court from conducting a trial quickly. For example, the defense and prosecution delays are often evident. And judges can be swayed to one side or the other. However, all of this

needs to be monitored in detail to make an assessment. And not immediately blame it on the court.

Another problem is that judges often need to communicate more with the public about their decisions. According to the Code of Judicial Ethics, a judge may not make public statements, comment in the media on pending cases, or question court decisions that have entered into force. A judge is not entitled to disclose information they have become aware of concerning a case. However, judges may comment on the case within these restrictions, but only if they show the public they have nothing to hide or be ashamed of their decision.

Fortunately, recent reforms in the judicial system have given those who have not previously worked in the system the opportunity to become judges. The judiciary is gradually being renewed, and progressive judges are coming to this profession with their open-minded attitude and understanding of the problems that the closed nature of the judicial system can cause.

Incomplete reform

To fight corruption, the judicial system needs to be stable. There must also be a precise balance between the broad discretion given to judges to act independently and the need for oversight mechanisms to hold them accountable. In the context of the Ukrainian issue, we are talking, among other things, about the bodies that oversee the judicial system - the High Council of Justice and the High Qualification Commission of Judges. Unfortunately, the political authorities often resort to populism to reform them, which leads to a long pause in their work and, as a result – the suspension of all competitive procedures, disciplinary proceedings against judges, and so on.

The biggest problem that Ukrainian courts face today is the staff shortage. The system has a shortage of about two thousand judges, and, as recent competitions show, there are fewer and fewer potential candidates, including due to the high requirements for them. There is also a shortage of personnel due to serious migration due to the war in Ukraine.

Nearly 300 such judges also still need more authority to administer justice. Under the previous legislation, these judges were appointed for five years, but to be appointed for life, they must pass a qualification evaluation [8].

A judge without powers is working: he has to come to court like other judges but cannot consider cases. This also affected the workload of all judges.

According to the High Qualification Commission of Judges, courts are 70% full.

The main problems of the judicial system still are pressure — both political and within — from higher-level judges, corruption, and, very importantly, the imperfection of the work of investigative bodies. I'll say more about the last — we can read court decisions but often need to know why the court makes them. Even in corruption cases, violating procedural rules frequently leads to the court declaring specific evidence inadmissible and failing to convict. However, only some people delve into the details of the investigation, blaming the court. And the public is again talking about the need to reform it.

In addition, the competition to the Constitutional Court of Ukraine, whose judges are now appointed under a new procedure, is taking place for the second time.

Building a new court map in Ukraine requires relocating many courts from temporarily uncontrolled territories and the country's outdated administrative and territorial division. Ukraine has introduced a new procedure that is quite successful regarding Ukrainian realities — the participation of public representatives and international experts in competition procedures. However, the new format revealed some problems related to unresolved legislation and the irresponsibility of public representatives with access to confidential information about judges. Nevertheless, this is still the only way to make the process transparent and to increase the level of confidence both in the sensitive treatments and the judicial system in general.

To summarize, the competitive procedures in the Ukrainian judicial system are becoming increasingly complicated. Despite the transparency, it is difficult for an ordinary citizen to understand what is happening and how. Some reforms have had positive effects, but the overall situation is complicated. There is a severe shortage of judges in the system, and ordinary citizens suffer from this as they wait for years for a court decision. Sometimes, they even die earlier than decisions have been made.

The active aggression of the Russian Federation further complicates the situation. Judges are forced to work under challenging conditions, postpone hearings due to shelling and air raids, and are themselves forced to flee from dangerous regions.

Overcoming high-level corruption will be difficult and unlikely to be eliminated. Unfortunately, many democratic countries cannot demonstrate this. For example, Lithuanian law enforcement authorities arrested eight judges on suspicion of bribery, corruption, and abuse of power in 2019.

However, let's talk about so-called domestic bribery. I believe we can get rid of it by leading by example — someone who is not looking for ways to negotiate will find a legal way to obtain a particular service or document.

If the state has anti-corruption mechanisms, it is everyone's choice to pay a bribe or participate in a corruption scheme. I studied at four universities in Ukraine, graduated with a gold medal at school, got different jobs, and received multiple documents. And I have never given a bribe.

13.3.8 Venice Commission Report of Ukrainian Judicial Reform

“Despite Russia’s full-scale invasion in February 2022 and its brutal war of aggression, Ukraine has continued to progress on democratic and rule of law reforms. The granting of candidate status for Eu accession to Ukraine in June 2022 has further accelerated reform efforts.” This statement led the summary of the European Commission’s 2023 report on the Communication on EU Enlargement policy. Russia’s hostile invasion has plagued Ukraine with inhumane acts of aggression and a multitude of violations of international criminal law involving conduct in war. Zelenskyy and the Ukrainian government however have demonstrated the upmost resilience and integrity in the face of this brutal war. Although working to improve internal governmental structures is near impossible when being physically attacked by a

neighboring nation, Ukraine has continued to accomplish necessary judiciary reform. The need for accession into the EU and NATO has now reached the highest importance in Ukrainian history. The external assistance of international bodies of military alliances and world markets will substantially benefit Ukraine's post war rebuilding efforts. In addition, forming these relationships through law will better protect Ukraine to prevent future invasion of any kind. Throughout the years in which Zelenskyy has endured his role as President of Ukraine, he has collaborated closely with these Western organizations to ensure the continuing progress of judicial reform and other requisites for Ukrainian accession. Some of these organizations include the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions. These four international organizations prepared a report analyzing the progress of reforming Ukraine's judiciary to conform with Western democracies. Persisting through the war, Ukraine and Zelenskyy must rely on the advice and direction of these organizations to continue to successful reform the judiciary. Since, the Revolution of Dignity, Ukraine has seen substantial progress in the reformation of the court system and demonstrated their ability to continue to establish measures to eliminate systemic corruption in Ukraine. The most recent report from the European Commission highlights considerable advancement in the reformation efforts of Ukraine and additionally identifies further reforms to bring Ukraine closer to their goal of accession. Zelenskyy must continue to accomplish his pledge to stop systemic corruption in the Ukrainian government and persist with the objective of successful judicial reform from the perspective of Western democracy.

Ukraine 2023 Report; Communication on EU Enlargement policy: 2.2 Rule of Law and Fundamental Rights

European Commission
November, 2023

2.2. RULE OF LAW AND FUNDAMENTAL RIGHTS

2.2.1. Chapter 23: Judiciary and fundamental rights

The EU's founding values include the rule of law and respect for human rights. An effective (independent, high-quality and efficient) judicial system and an effective fight against corruption are of paramount importance, as is the respect for fundamental rights in law and in practice.

Ukraine has **some level of preparation** in implementing the EU *acquis* and European standards in the area of the judiciary, fight against corruption and fundamental rights. Despite Russia's war of aggression, **good progress** was made in this area and the relevant institutions continued operations, the delivery of vital services to citizens and reform efforts, demonstrating remarkable resilience. The efforts in the area of the judiciary, anti-corruption and fundamental rights need to continue and be further consolidated.

Ukraine has **some level of preparation** in the functioning of the judiciary. Despite the Russian war of aggression, **good progress** was made with the implementation of the 2021 reform of the judicial governance bodies during the reporting period. The High Council of Justice (HCJ) and the High Qualification Commission of Judges (HQCJ) were re-established following a transparent and meritocratic process with the meaningful involvement of independent experts. It

enables the government to start filling more than 2 000 judicial vacancies and to resume the qualification evaluation (vetting) of sitting judges. Ukraine also adopted the law on a transparent and merit-based preselection of judges of the Constitutional Court, in line with the Venice Commission recommendations, and started implementing it. Legislation was adopted to establish a strong service of disciplinary inspectors and to resume disciplinary proceedings against judges. The new administrative court to handle cases involving the central government bodies and staffed by properly-vetted judges needs to be established following the abolition of the Kyiv District Administrative Court.

Functioning of the judiciary

In the coming year, Ukraine should in particular:

- fill the open vacancies in the Constitutional Court of Ukraine in line with the adopted legislation; relaunch the selection of ordinary judges on the basis of the improved legal framework, including clear integrity and professionalism criteria and the strong role of the Public Integrity Council; resume the evaluation of the qualification of judges (vetting), which was suspended in 2019; introduce a transparent and merit-based selection of management-level prosecutors by amending the legal framework and taking the necessary institutional measures;
- establish the service of disciplinary inspectors following a transparent and meritocratic selection process and resume the handling of disciplinary proceedings against judges prioritising high-profile cases and cases nearing the statute of limitation; take effective measures to address corruption risks in the Supreme Court; strengthen the disciplinary system for prosecutors by improving the existing legal and institutional framework;
- complete a comprehensive IT audit, including the existing IT systems, business processes and organisational structure, and based on the audit results, adopt and start implementing a roadmap to modernise IT in the judiciary, including the development of the new case management system.

Russia's military aggression against Ukraine has posed major challenges to Ukraine's judicial system. By the end of April 2023, 12 members of its judicial staff were killed, 114 court buildings (15% of the total) were either destroyed or damaged by the hostilities, and a large number of case files were lost. The material losses suffered by the courts are estimated at EUR 47 million. The Prosecution Service has also suffered severe damage. 6 staff members were killed, 64 buildings of the prosecutor's offices were either fully or partially destroyed, while 173 buildings remain in the temporarily occupied territories of Ukraine. The material damage exceeds EUR 22 million. The administration of justice has been affected by air strikes, air raid alerts and frequent power outages. Parties to court proceedings were displaced internally or abroad, which disrupted the handling of cases. More than 80 000 cases related to war crimes, crimes against humanity and other war-related offences were opened, thereby shifting the work priorities and placing an additional burden on the criminal justice system. Administering justice in areas of active hostilities and temporarily occupied territories has become impossible. Despite these significant challenges, the Ukrainian judicial, prosecution and other justice institutions showed remarkable resilience by continuing to provide justice

services to citizens and companies, while also implementing reforms. The necessary legislative, organisational and technical measures were taken to allow courts to swiftly adapt their work to the new martial law realities and protect court users, while providing continuous access to justice. In particular, legislation was adopted that allowed the territorial jurisdiction of courts to be changed and court cases to be relocated to other parts of the country if it became impossible to administer justice in a certain territory, along with the secondment of judges to other courts.

The **reform of the two key judicial governance bodies** – the HCJ and the HQCJ – was completed. This reform was triggered by insufficient independence of the judiciary from the executive and legislative branches, low public trust in the judiciary, high levels of corruption and the strong influence of vested interests in the work of courts. The reform started in July 2021 with the adoption of ambitious legislation that introduced robust integrity vetting for the HCJ sitting and candidate members, as well as integrity and professionalism checks of HQCJ candidates. The legislation envisaged a temporary yet decisive role for independent experts nominated by international donors, including the EU, in the respective selection and vetting bodies. The reform was fully aligned with the relevant Venice Commission recommendations, focusing on strengthening integrity and public trust in the judiciary. By law, the HCJ is composed of 21 members. At the start of the reform, the HCJ had 15 members and 10 of them stepped down, leaving the HCJ with only five members, including the Head of the Supreme Court as the ex officio member. The Ethics Council, composed of three national and three international experts, completed the integrity check of four appointed HCJ members in May 2022, declaring one HCJ member as non-compliant. It then proceeded with the integrity check of the HCJ candidates. By January 2023, 11 new HCJ members – duly vetted by the Ethics Council – were appointed by the relevant appointing bodies. With these appointments, the renewed HCJ reached 15 members and became operational again. By June 2023, two more duly vetted HCJ members were appointed, increasing the HCJ's composition to 17 members.

The integrity and professionalism check of 301 HQCJ candidates by the Selection Commission, composed of three national and three international experts, was completed in March 2023. The competition included a thorough background check of candidates and an interview with the 64 best candidates. Based on the results of this second stage of the competition, the Selection Commission formed a shortlist of 32 candidates for further consideration by the HCJ. In June 2023, the HCJ appointed 16 new HQCJ members proposed by the Selection Commission, following a transparent interview and individual voting procedure, making the HQCJ fully operational.

The reform of the judicial governance bodies was finalised against the backdrop of a high-level corruption case involving the Head of the Supreme Court. This case became public in mid- May, when the National Anti-Corruption Bureau claimed to have uncovered an organised crime group that allegedly received a bribe equivalent to EUR 2 500 000 to influence Supreme Court decisions favouring a particular oligarch. The Head of the Supreme Court was dismissed and put into custody while the investigation was ongoing.

This corruption case highlighted on the one hand the robustness of the specialised anti-corruption institutions established with strong EU support after the 2014 Revolution of Dignity, and on the other the need to pursue reforms in the justice, law enforcement and wider public sector to address the existing corruption challenges and irreversibly consolidate integrity, efficiency and professionalism, while striking the right balance between independence and

accountability. Effective integrity tools should be used to address corruption in the Supreme Court and other courts, including through the verification of integrity and asset declarations of judges, disciplinary framework and improved selection procedures with a strong focus on integrity and professional ethics. These measures should help in building public trust in the judiciary, which remains very low. Based on opinion surveys, public trust has been growing in recent years (in 2021, 15.5% of respondents trusted the judiciary, while in 2023 it was 24.8%). Foreign business associations continue to cite problems with the judiciary and the prevalence of corruption as some of the main obstacles to doing business in Ukraine.

Good progress was achieved with the reform of the Constitutional Court of Ukraine (CCU). In December 2022, Ukraine adopted a law to reform the selection procedure for future CCU judges. It was not fully compliant with the Venice Commission recommendations issued in December 2022. The internationally nominated members of the CCU pre-selection body – the Advisory Group of Experts – were not provided a temporary yet decisive role in the pre-selection procedure. This was recommended by the Venice Commission to restore trust in the CCU, whose reputation was damaged by corruption allegations against its judges and several controversial CCU decisions. In July 2023, Ukraine adopted amendments to the CCU Law, which implemented the outstanding Venice Commission recommendations contained in its Opinions on CCU reform from December 2022 and June 2023. Following the adoption of these amendments, the CCU selection reform has started to be implemented. The Parliament and theCouncil of Judges announced competitions to fill the available vacancies in the Constitutional Court. The President and the Council of Judges appointed their members and substitutes to the Advisory Group of Experts, while the Parliament is continuing the appointment procedure. In September, upon the formal request of the Government, the Venice Commission and the international donors, including the EU, submitted their nominations of members and substitutes of the Advisory Group of Experts. In October, the Cabinet of Ministers formally appointed them. With five appointed members and five substitutes, the Advisory Group of Experts became operational and can proceed with the pre-selection of candidates to the position of the Constitutional Court. The reform of the CCU should continue with the adoption of a law on the constitutional procedure, in line with Venice Commission recommendations, to improve transparency and accountability in the work of the CCU and make the constitutional procedure more efficient**.**

In December 2022, the Parliament adopted a law abolishing the Kyiv district administrative court (KDAC), which handled disputes involving the central government bodies. Some KDAC judges were subject to numerous controversies and corruption investigations. Under the adopted law, KDAC was abolished and obliged to transfer its cases to the Kyiv region administrative court until a new Kyiv city administrative court is established. Delays in the transfer of cases and in the establishment of the new court, along with limited capacities of the Kyiv region administrative court to assume new obligations, undermined access to justice. The law did not regulate the status of former KDAC judges. Under the general rules, KDAC judges may be transferred to a court of the same level without the need for a competition. Before any such transfer, KDAC judges should complete the qualification evaluation procedure, including integrity vetting. The renewed HQCJ and HCJ must launch the establishment of a new administrative court to handle cases involving the central government bodies ensuring that this court is staffed with duly vetted judges. This will enable an efficient and fair handling of administrative disputes involving central government.

Strategic documents

The 2021-2023 strategy for the development of the justice system and constitutional judiciary identified the main reform areas in the justice sector, including the reorganisation of local courts, reform of the key judicial governance bodies, consolidation of the Supreme Court key function to guarantee uniformity of jurisprudence, development of alternative dispute resolution, selection of new judges, prosecutorial reform, as well as the reform of the Constitutional Court. Part of the reform measures contained in the strategy were duly implemented, in particular the reform of judicial governance bodies and the selection of CCU judges. No formal assessment of the implementation of the strategy was carried out. A new strategy for the reform of the justice system to respond to the challenges of wartime still needs to be developed, in a transparent and inclusive manner, and adopted.

In May 2023, the President of Ukraine approved a comprehensive strategic plan for the reform of law enforcement bodies for 2023-2027. Among other measures, it provides broad reform guidance for the prosecution service, including the strengthening of its coordination role over the law enforcement agencies and raising legal certainty and uniformity of practice in criminal procedures. An action plan, that will define the expected results, tasks and performance indicators for the strategic plan, is being finalised by the inter-agency working group and with the involvement of the EU experts. Its speedy adoption and steady and consequent implementation should lead to concluding the reform process in the area.

Commentary

1. Razom, an organization devoted to humanitarian support and governmental reform in Ukraine, proposed a potential strategy to aid the ongoing efforts of judicial reform in Ukraine. Razom stated that "the U.S. should encourage Ukraine to create public forums and establish a public comment period for draft laws on judicial reform." Additionally, "the U.S. should ensure the participation of foreign experts in public debate monitoring, as well as public coverage of these discussions." NATO and the EU presented the concept that Ukraine must establish an open and visible judiciary while restricting any opportunity of internal corruption. One of the main principles of this revolves around a public untrust of nation's court system. Implementing a public forum that gives citizens the opportunity to express growing or declining trust in the reform judiciary may present Ukraine with the necessary feedback to successfully progress reform efforts. In addition, Razom's suggestion of including foreign experts in these public forums could ensure that Ukraine is continuing to align their judicial system with Western values. Would establishing a public forum for comment periods of newly implemented legislation benefit judicial reform efforts? Will this be a productive use of resources?
2. In 2016, the Law on the Judiciary and Status of judges established the Public Integrity Council (PIC) to assist the High Qualification Commission of Judges (HQCJ), the commission originally appointed to prevent corrupt judicial elections in Ukraine. Additionally, the law also established the High Anti-Corruption Court (HACC) which was later implemented, creating a replacement for the PIC, the Public Council of International Experts (PCIE) to work in harmony with assisting the HQCJ in the election process of Ukrainian judges. It is clear by the consistent adoption of new organizations that Ukraine has been struggling to prevent corrupt judicial elections in Ukraine. The HQCJ has apparently failed to prevent corruption in the judiciary as evidenced by

reinstated officials. However, the HACC's initiative to bring in international experts under the PCIE could present substantial progress in the fight against corruption. Will implementing a new organization, the HACC, to surveil the already existing surveillance organization (HQCJ) be effective this time around? How can the Ukrainian government ensure the prevention of judicial corruption or inefficiency under this new system?

3. In December 2022, President Volodymyr Zelenskyy signed a bill into law involving a change of power dynamic regarding the Constitutional Court of Ukraine. When judicial reform was officially initiated of the Revolution of Dignity in 2014, one central concern from Western nations was the president's inherent power to unilaterally elect and terminate judges at will. Based on this concern Ukraine had previously redirected this power to other branches of government to create a system of checks and balances and to prevent opportunity of executive corruption. The G7 ambassadors highlighted the importance that "foreign experts should have a crucial role in the selection of Constitutional judges." The Kyiv Independent also recognizes that the "law may also hinder Ukraine's negotiations on joining the European Union. The Reform of the Constitutional Court is the first of the seven recommendations outlined by the European Commission as conditions for Ukraine's accession to the EU." It is imperative for Ukraine to follow the advisory opinions of the Venice Commission and other international organizations to ensure accession into the EU and NATO. The Venice Commission "criticized the bill, saying that there must be four foreign members and three Ukrainian ones on the panel." Retaining unilateral power to elect judges in the executive branch appears to be taking a step back in judicial reform and a step away in the progress into accession in the EU and NATO. Is Zelenskyy signing this bill a strategic method during a time of adversity and war? He has established his ongoing intent to support judicial reform in Ukraine, so is it likely that his has greater intentions for this action? Or must Ukrainians be concerned of future legislation that will block European integration?
4. In May of 2023, the head of the Ukrainian Supreme Court was arrested for allegedly taking bribes in connection with the judicial responsibilities. One year into the Russian invasion, Ukraine is at an all time need for external support and Western integration for hopes of post war rebuilding efforts. President Zelensky and the Ukrainian government has worked endless on the fight against corruption to demonstrate to the Western nations that they have a functioning and efficient rule of law and governance. However, the Prosecutor's Office "exposed large-scale corruption in the Supreme Court, namely a scheme for the leadership and judges of the Supreme Court to receive bribes." "Chief Justice Vsevolod Kniaziev has been detained in connection with a $3 million bribe." If the highest form of the judiciary in Ukraine is caught engaging in a massive scheme of corruption through bribes, how can the Western international communities believe that Ukraine has made any progress in reforming their judiciary. Zelenskyy has pledged to end judicial corruption in Ukraine, but how can his leading member of the Supreme Court be solely responsible for a major reversion in judicial reform progress? The Prosecutor's Office initiative to identify and prosecute this official is indeed a step forward from previous practices in Ukraine. However, Ukraine must ensure and work together to prevent any instance of corruption in the judiciary, especially from the controlling members. How can Ukraine rectify this tremendous instance of judicial corruption? Will prosecuting and removing this official be enough? What additional measure must be implemented to ensure this never happens again?

5. In an April 2024 conference on "A Decade of Transformation Towards a Fair Future: Implementation of Anti-Corruption and Rule of Law Reforms in Ukraine with the Support of the EU," the Deputy Head of the Office of the President of Ukraine, Iryna Mudra, spoke about the progress of judicial reform in Ukraine. Ukraine has come a long way over the past decade since the Revolution of Dignity in 2014 that sparked the initial call for judicial reform. Through the implementation of legislation that transformed the previously inefficient and corrupt judicial system, Ukraine and their citizens have seen remarkable progress in their efforts against systemic corruption. Iryna Mudra stated: "Despite the war and the daily pain and losses, we continue to implement the reforms initiated by the President of Ukraine Volodymyr Zelenskyy in 2019. The main bodies of judicial governance — the High Council of Justice and the High Qualification Commission of Judges — were formed on a completely new competitive basis. All candidates were tested for integrity and compliance with the professional ethics criteria. Recognized international experts were involved in the selection process." President Zelensky has led Ukraine through great adversity against corruption and inefficient judicial processes all in the face of the Russian invasion. There have been some minor setbacks of judicial reform, but Mudra is confident in the presidency for continuing to align Ukraine's judiciary with Western values. The inclusion of foreign experts in the selection process of judges has seemed to eliminate opportunity for internal corruption and the Anti-corruption commissions in place have verified this objective. How can President Zelensky and the Ukrainian government ensure that judicial reform is not derailed in the future? What further reformation processes or legislation is required to meet the EU standards of a functioning court system?

13.4 Human Rights

13.4.1 Women's rights in Ukraine

Implementing legislation to conform with the requirements of Western rule of law, including human rights, is necessary for Ukraine's efforts in establishing a successful democratic society after the war. In order to Ukraine to accede into NATO and the EU, the establishment of a functioning government affording all citizens equal rights and treatment is required. Russia's hostile invasion has evidently prevented progress in this field and concurrently has exhibited an array of heinous human rights violations on Ukrainians. However, in the face of extreme conflict, Ukraine works in harmony with international human rights organizations to refine the rule of law in Ukraine to reflect equal rights for all citizens. The UN Women in Ukraine organization has worked closely with the Ukrainian government and civil societies "to further advance laws and policies that support gender equality and women's empowerment." Since the beginning of the conflict "women in Ukraine face increased challenges in accessing security, justice, social services, mental, sexual, and reproductive heal services, employment, and other essential services." The UN Women have adapted to the horrific conditions brought upon by the Russian invasion to provide extensive humanitarian support to women while continuing their objective of supporting Ukrainian women through the rule of law. In 2005, Ukraine first implemented the Law of Ukraine On Ensuring Equal Rights and Equal Opportunities of Women and Men. The young Slavic nation has continued to make progress over the years with the

support of international organizations such as the UN Women in Ukraine. Similar to Ukraine's other governmental reforms, ensuring equal rights for women will not only better pave the way for Western integration, but more importantly further fortify the nation of Ukraine and benefit a functioning society. The UN Women in Ukraine mentioned that despite challenges arising from the Russian invasion of Ukraine, Ukrainian Parliament continued to demonstrate a consistent commitment to the gender equality agenda as part of EU integration, including developing and approving legislative and policy framework. A few of these monumental legislative instruments for the promotion of women's rights in Ukraine include: (1) the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence, (2) the adoption of the State Strategy on Equal Rights and Opportunities of Women and Men by 2030 and the operational action plan on its implementation in 2022-2024, and (3) the revision of the National Action Plan on UNSCR 1325 on Women, Peace, and Security. The recognition of the importance by the Ukraine government to implement these measures promoting equal rights of Women in Ukraine will further align Ukrainian democracy with Western values, and at the same time present Women in Ukraine with the human rights they deserve. The following excerpt exemplifies the UN Women in Ukraine's objective and progress for supporting equal rights for women in Ukraine with the rule of law.

UN Women: Ukraine

UN Women

The State Statistics Service of Ukraine estimated the total population of the country (excluding Crimea and some areas beyond the control of the Government of Ukraine) on 1 January 2022 at around 41 million[1]. Due to the full-scale Russian invasion in 2022, more than 8 million Ukrainians fled the country, creating a widescale refugee crisis.

Signatory to several international agreements, Ukraine has joined and adopted most of the key international and regional gender equality and women's empowerment (GEWE) and human rights treaties and has integrated these commitments into several national laws and policies. This commitment is notably enshrined in its adoption or ratification of: The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979); The Beijing Declaration and Platform for Action (BPfA) (1995); United Nations Security Council resolution 1325 (2000) on Women, Peace and Security (UNSCR 1325); and The Sustainable Development Goals (SDGs) (2015). In addition, Ukraine recently joined G7 Biarritz Partnership for Gender Equality initiative (2020); the Equal Pay International Coalition (EPIC), led by UN Women, the International Labour Organization (ILO) and the Organisation for Economic Co-operation and Development (OECD); and joined the Generation Equality Actions Coalitions.

The Global Gender Gap reports for 2020–2022[2] show that, despite legislative advancement and international commitments, there is a lot of room to improve in terms of advancing gender equality in Ukraine: In 2020 Ukraine was ranked in 59th place on this global report, but by 2022 it was ranked 81st out of 146 countries. The 2021 Gender Inequality Index ranks Ukraine 103rd out of 156 countries on women's political participation, with a slight improvement in 2022 (to position 100).

Despite the dire circumstances of wartime, women's rights and gender equality remain a priority for the Ukrainian Government. In 2022, Ukraine ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) and with broad participation of women and of women's organizations updated the National Action Plan on UNSCR 1325 to reflect new wartime challenges, including conflict-related sexual violence and trafficking; and the new State Strategy for ensuring equal rights and opportunities for women and men by 2030, and developed the strategy to eliminate the gender pay gap in Ukraine.

The ongoing full-scale Russian invasion continues to brutally disrupt each sphere of life in Ukraine. According to the second Ukraine Rapid Damage and Needs Assessment (RDNA2) for the period from 24 February 2022 to 24 February 2023 – which was jointly prepared by the World Bank Group, the Government of Ukraine, the European Union, and the United Nations in coordination with humanitarian and development partners, academia, civil society organizations (CSOs), and the private sector – direct damage in Ukraine has reached over USD $135 billion, with housing, transport, energy, and commerce and industry being the most affected sectors.

Disruptions to economic flows and production, as well as additional expenses associated with the war, are collectively measured as losses and amount to some USD $290 billion. Ukraine's gross domestic product (GDP) shrank by 29.2 per cent in 2022, and poverty increased from 5.5 to 24.1 per cent in 2022 (based on the poverty line of USD $6.85 per person per day). Reconstruction and recovery needs are estimated at about USD $411 billion, as of 24 February 2023.

The impacts of war are uneven, with the greatest effects on women, children and people with disabilities. At the beginning of 2023, the UN had verified the killing of at least 2,296 women and girls since the start of Russia's full-scale invasion of Ukraine. The actual numbers are likely significantly higher. Women and their children represent 90 per cent of the 7.9 million people who have been forced to move to other countries. Of those displaced inside Ukraine, 68 per cent are women. Many have lost their homes and jobs and lack access to basic social services and protection. Twelve months into the conflict, 7.8 million women and 2 million girls in the country needed assistance.

As reported in RDNA2, there have been dramatic setbacks on many of the SDGs, especially those related to poverty, health, education, energy, industry, peace and justice. Assessed female-headed households were more likely to report "extreme" or "extreme+" needs (46 per cent), compared to male-headed households (38 per cent). Pregnant and breastfeeding women, young single women and women from minority groups (such as Roma and stateless women) are particularly vulnerable to protection risks, gender-based violence and security risks during displacement. Among those with the status of unemployed who were receiving State Employment Service support, the majority were women (68 per cent in January 2023). Only 25 per cent of internally displaced women rely on regular wages as their main source of income.

Massive and protracted displacement and conscription into military service have also caused gendered impacts, led to the separation of families and increased the size of Ukrainian households. Many women have become the sole breadwinners and caregivers in their families, putting them in a vulnerable financial and social position. The war has also led to worsening

inequalities and discrimination, increased gender-based violence, including domestic violence, conflict-related sexual violence and human trafficking.[3]

Women-led organizations have become first responders on the front lines of Russia's war on Ukraine, providing fundamental services to vulnerable groups. They also are well-placed to influence and inform decision-making on responses across the humanitarian-development spectrum. CSOs and volunteer groups led by women quickly mobilized at the onset of the war, pivoting from their core roles to instead support increased access to critical services and humanitarian aid.

UN Women has worked in Ukraine since 1999 to help the country meet its gender equality commitments and unlock progress for both women and men. Since 2015, UN Women has been scaling-up its presence and programme. Despite the volatility and war in Ukraine, UN Women remains committed to delivering results across strategic priorities, exercising its triple mandate and building key partnerships. With the war in Ukraine having dramatically shifted the immediate priorities, it is more essential than ever that the rights of women and girls remain at the centre of the humanitarian response.

UN Women has long been actively supporting local priority areas in Ukraine – from increased political participation to gender mainstreaming in public policy and economic development – to facilitate the work of local women-led CSOs. Aligning with UN priorities, UN Women's future operations in the country focus on amplifying localization, strengthening local women-led gender-responsive humanitarian response, and ensuring that the experiences of displaced, at-risk, and vulnerable women and girls remain front-and-centre during the recovery process. In 2023, the UN Women Ukraine Country Office is focusing on the following approaches:

1. Strengthening partnerships with women CSOs, the national women's machinery and UN entities to effectively respond to the needs of women and girls across the Humanitarian-Development-Peace (HDP) nexus.
2. Providing thought leadership through knowledge and analyses.
3. Leveraging UN Women's coordination mandate and partnerships in Ukraine.
4. Establishing and scaling-up its field presence to be closer to affected populations.

13.4.2 Venice Commission reformation suggestions for Rights for Minorities

In April of 2023, the Ukrainian government adopted the "Law On National Minorites of Ukraine" consistent with the suggestions and guidance of the European Commission for Democracy Through Law, also known as the Venice Commission. The law was established to fortify the rule of law in Ukraine to afford national minorities of Ukraine, or a "stable group of citizens of Ukraine who are not ethic Ukrainians," equal protection in accordance with Western democracy. Throughout the Russian conflict, the Ukrainian government has continued to adhere to the provisions of the law with the objective to provide basic human rights that minorities living in Ukraine deserve. The law states "regardless of ethic origin, belonging to national minorities, are guaranteed equal civil, political, social economic, cultural, and linguistic rights and freedoms as defined by the Constitution of Ukraine." Ensuring the equal protection of

minorities and Ukrainian civilians will promote the unification of the nation and fortification of the democratic structure as required. In August of 2023, the Venice Commission published an advisory opinion on the Law On National Minorites in Ukraine to provide further insight and direction on how to sufficiently implement the legal principles of the statute in accordance with Western democracy. The advisory opinion highlights the importance and central concern to ensure linguistic rights for national minorities in Ukraine. Although Ukraine has established Ukrainian as the national state language, the "freedom to use the language of one's choice and non-discrimination" must be recognized. The Venice Commission identifies the need for accessibility for minority nationals living in Ukraine to be able to contribute to a functioning society with the use of the native language. The commission describes the requirement to establish these conforming systems in the areas of mass media, publications, emergency assistance, official inscriptions, general information, election campaigns, communication with authorities, and the right for minority groups to "education in the languages of Ukraine's minorities." The Ukrainian government will continue to work in accordance with the Venice Commission to establish. Rule of law that reflects equal protection for national minorities living in Ukraine. The Venice Commission's advisory opinion on the Law On National Minorites of Ukraine is illustrative of the commission's intent to continue to aid Ukraine in their efforts of conformity with Western democracy regarding minorities in Ukraine.

Opinion On the Law On National Minorities in Ukraine

Venice Commission
June 2023

Linguistic rights and right to education

Linguistic rights of national minorities (including in education) have been the focus of the recent discussions on the legislation concerning minorities in Ukraine, as shown by the previous opinions of the Venice Commission as well as the analysis of the United Nations Human Rights Monitoring Mission.

Article 10(1): freedom to use the language of one's choice and non-discrimination

Article 10(1) of the Law recognises to every person belonging to a national minority the right to free and unimpeded use of the language of his/her national minority. This right is however only recognised *"to the extent not contradicting the law"*. While such a formulation appears acceptable as such, it should not be interpreted as only allowing those restrictions by legislation as are in conformity with the Constitution and international treaties.

The Venice Commission is not in a position to examine all restrictions to the right to freely use the language of national minorities, that are covered by the condition "to the extent not contradicting the law". The Commission has however already examined some of these restrictions, namely those contained in the provisions of the Law on the Ukrainian language as the State Language. These provisions have been in force since 16 July 2019. They have not been amended by the Law on National Minorities (Communities), rather, they seem to be implicitly confirmed by Article 10(1) of this Law. Therefore, the Venice Commission finds it appropriate to repeat the criticism on these provisions it expressed in its Opinion on the Law on

the Ukrainian language as the State Language, whose main findings may be summarised as follows: [29]

- *Art. 22 (2) of the Law on State language provides "scientific publications shall be made public in the State language, English and/or other official languages of the European Union". The Venice Commission stated in its Opinion that this provision constitutes a breach of the freedom of expression and academic freedoms of the persons who want to make scientific publication in on EU-languages. It was moreover of the opinion that this differential treatment between languages does not seem justified. (para. 82)*
- *Art. 23 (6) of the Law on the State language provides that the language of domestic film distribution and screening must be Ukrainian with the dialogue component of a soundtrack performed in Ukrainian, "including by dubbing or voice-over". This provision further provides that domestic films may be screened in the Crimean Tatar language or other languages of indigenous people. The Venice Commission stated in its Opinion that such a provision imposes "additional work and costs" and in order for it to be proportionate to the legitimate aim it pursues, the government "should provide funding to support translation, as the financial burden may otherwise cause "substantial disruption and could have a chilling effect on the organisation of cultural events in minority languages." (para. 88) The Commission moreover stated that the principle of non-discrimination was violated as the exception for the Crimean Tatar Language or other languages of indigenous people did not apply to national minorities. (para. 87).*

  Article 23(8) of the Law on the State language provides that the "language of tourist and sightseeing services shall be the State language. Tourist and sightseeing services may be provided to foreigners or stateless persons in other languages". The Venice Commission stated in its Opinion that "this provision is a violation of freedom of expression as enshrined in Article 10 ECHR [European Convention on Human Rights] as this does not seem to serve any legitimate aim". It further noted that "[t]his provision is difficult to implement. These services are usually provided to groups of tourists where there may be citizens and non-citizens together. It would be unrealistic to expect a provider of such services to check each time if his or her clients are citizens or not and not to answer a question in another language asked by a client who is a citizen. A person should not be punished for doing so". (paras 91-92).

- *Article 32(1) of the Law on State language provides that the language of advertising shall be Ukrainian. Pursuant to Article 32(2) an exception is made for advertisements in one of the European Union official languages in print media. Article 32(3) establishes that the use of minority and indigenous languages in advertising should be regulated by the Law on Minorities. The Venice Commission stated in its Opinion: "As commercial expression is also guaranteed by the provisions on the freedom of expression the principle should be the freedom of the advertiser to choose the language in which he wants to advertise, including minority languages. The exercise of this freedom can only be limited "by law", in the pursuance of a legitimate aim, such as the protection of health or the right of the consumers to*

receive information on the goods and services in the market, and in so far as the limitation is "necessary in a democratic society" which implies that it has to be proportionate to the legitimate aim it pursues. Furthermore, the Law on Minorities should not provide a lesser guarantee to the languages which are not the official EU [European Union] languages." (para. 111). The Venice Commission moreover finds that the Law on National Minorities does not contain any provisions on the use of minority languages in advertising, as announced in article 32 (3) of the Law on State language.

- *Article 34 of the Law on the State Language provides that "information and other announcements during a sporting event", and "admission tickets to a sporting event and other information products about sporting events" shall be in Ukrainian, except for international sporting events for which, in addition to Ukrainian, other languages can be used. The Venice Commission stated in its Opinion: "The fact that the use of other languages is not allowed under any circumstances as regards national or local sporting events constitutes a breach of the right to freedom of expression. Furthermore, as no exception is provided for minority languages, this provision is not in line with the obligations incumbent on Ukraine under the Framework Convention [on the Protection of Minority Languages] (Article 11.2) and the Language Charter [European Charter for Regional or Minority Languages] (Article 12)." (para. 92)*

- *Article 37 of the Law on State Language imposes the obligation on political parties and other legal entities (non-governmental organisations) to adopt "their constituent documents and decisions" in Ukrainian and use Ukrainian in their dealings with the public authorities. The Venice Commission stated in its Opinion: "This obligation constitutes a limitation of freedom of association, which entails the right to self- organisation. The interference in the exercise of this freedom serves a legitimate aim of public order, as it makes possible supervision by State bodies of political parties, associations and other legal entities, in the interest not only of the State but also of the members of those entities. However, the term "constituent documents and decisions" is not clear. In order to be proportionate to that legitimate aim, the obligation to adopt documents and decisions in Ukrainian should be limited to those documents and decisions which are necessary in order to exercise legitimate public functions." (para. 115).*

Article 10(2-3): public events

Article 10(2) provides that "persons belonging to national minorities" may organise public events in minority languages. "Public associations of a national minority" may organise cultural, and similar events in minority languages. This seems to limit the right to freedom of association by preventing persons not belonging to a minority, respectively to a public association of a national minority, from organising such events.[33] Even if the authorities recalled in their written contribution that Article 29 of the Law on the State Language does not provide for such a limitation, the Law on National Minorities (Communities), as *lex posterior*, could be understood as having introduced it. The Venice Commission recommends amending the Law on National Minorities (Communities) to make clear that there is no such

limitation.

Article 10 (4): mass media

The use of minority languages in mass media is dealt with by Article 10(4), which allows it *"in accordance with the law".* This makes the use of minority languages dependent on other pieces of legislation. In practice, this refers to Article 40 of the Law of Ukraine on the Media, adopted by the Verkhovna Rada of Ukraine on 13 December 2022 and to Article 24, Article 25 and Section IX, point 7(24)I of the final and transitional provisions of the Law on State Language, which increased the proportion of the Ukrainian language content for national and regional broadcasters from 75 to 90 per cent and, for local broadcasters, from 60 to 80 per cent.[37] The Venice Commission already criticised these transitional provisions to the extent that they apply to private broadcasting companies as limiting freedom of expression guaranteed by Article 10 ECHR, as well as the right of minorities to enjoy their own culture or to use their own language enshrined in Article 27 ICCPR. The Commission stated: *"Although these limitations serve a legitimate aim, it can be questioned whether they are proportionate to this aim, as they leave very little room for the use of minority languages. It should be recalled that Ukraine, by ratifying the Framework Convention, undertook to ensure, in the legal framework of sound radio and television broadcasting, as far as possible, that persons belonging to national minorities are granted the possibility of creating and using their own media (Article 9.3.)".* [38] As stated in the written contribution of the authorities, these rules will apply from 1 January 2024 on. The Commission cannot therefore but repeat its previous criticism.

Article 11(1) reform of the education system

Concerning the right to education, Article 11(1) of the Law refers to the Law "on Education". In its Opinion of 5 September 2017, the Venice Commission thoroughly examined Article 7 of this law. While emphasising that improving the knowledge of and the competence in the Ukrainian language of all pupils of Ukraine is a legitimate purpose, the Venice Commission also stressed that measures taken to achieve this purpose have to be adequately balanced with guarantees and measures for education in and/or of the languages of Ukraine's minorities (para. 77). More specifically they must be in compliance with the principle of proportionality, implying that the policy option chosen "*should be the one with the least degree possible of adverse impact on the legitimate interests of those concerned.*" (para. 95). Additionally, the Venice Commission recommended that Article 11(1) of the Law on Minorities guarantee the right of the persons that belong to national minorities to be educated in their own language as well as their linguistic rights in the whole educational process, when it is reasonably required by the applicable international standards, *i.e.* in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers and if there is sufficient demand.

14.4.3 Accessibility Aid and Rights for Disabled Citizens of Ukraine

When Russia suddenly invaded Ukraine in February 2022, the necessary systems to protect the civilians of Ukraine were not in place. Although the Ukrainian government quickly

adapted to the hostile invasion by implementing mechanisms of defense, shelters, and evacuation procedures, some groups were not completely considered during the chaotic events. The International Disability Alliance (IDA), representing over 1100 organizations of persons with disabilities around the world, has identified grave humanitarian violations in Ukraine since the beginning of the conflict. The IDA is calling on Ukraine to "respect their obligations under international humanitarian law and international human rights law to ensure protection and safety for person with disabilities in Ukraine." Ukraine ratified the United Nations Convention on the Rights of Persons with Disabilities, which instills an obligation to ensure equal protection and safety for citizens with disabilities and to provide humanitarian aid where necessary. Although Ukraine is currently facing a war against their rightful independence against the oppressive state of Russia, implementing legislation and measures to guarantee protection of disabled citizens is essential for the promotion of Ukraine's democracy. Ukraine has made substantial progress in promoting human rights through the rule of law during the war. However, the IDA reiterates that "any international decision, resolution or measures adopted to address the situation in Ukraine must be inclusive of persons with disabilities facilitating their participation in decision that affect them." It is imperative that when implementing human rights legislation, Ukraine must consider the portion of the population that represents disabled citizens. The IDA identified that out of the total number of Ukrainian citizens that needed humanitarian assistance, "13 per cent had a disability." In reference to the total Ukrainian population, the number of disabled citizens of Ukraine that needed humanitarian assistance neared 5 million people. This substantial number of civilians implicates the drastic need for the promotion of disability rights in Ukraine. In addition, disabled Ukrainians have identified that "shelters in Kyiv are inaccessible, so people with disabilities are forced to stay at home, not knowing where they can go." These issues have also recognized in the inaccessible systems of evacuation, preventing disabled citizens with the ability to flee the conflict. In addition, important emergency notices and evacuation plans have not been adapted in an accessible format for those with need for hearing or visual aids. The Ukrainian government must ensure the protection of their disabled citizen through the implementation of legislation and accessibility procedures. The IDA account of the ongoing issues involving disabled civilians in Ukraine calls for necessary reform involving the human rights of persons with disabilities in Ukraine.

Through this Conflict in Ukraine, What Happens to Persons with Disabilities

International Disability Alliance

"War undermines the lives, health and safety of all human beings, but for approximately three million persons with disabilities and their families living in Ukraine, the situation is much worse. As a person with disability advocating for rights of refugees with disabilities for many years, I am deeply concerned about my sisters and brothers in Ukraine who are facing multiple barriers to access safe evacuation and humanitarian assistance," said Yannis Vardakastanis, President of the International Disability Alliance (IDA) and the European Disability Forum (EDF). "War can be the cause of violations of human rights including the rights of persons with disabilities and must end immediately. In the meanwhile, all involved parties must fully respect their international obligations to ensure protection and safety for persons with disabilities."

IDA, representing over 1100 organizations of persons with disabilities around the world, is calling on all engaged parties to respect their obligations under international humanitarian law and international human rights law to ensure protection and safety for persons with disabilities in Ukraine. In particular, Article 11 of the United Nations Convention on the Rights of Persons with Disabilities ratified by both Russia and Ukraine, and the United Nations Security Council Resolution 2475, which creates clear non-derogable obligations to ensure equal protection and safety for all persons with disabilities as well as timely and unimpeded access to humanitarian assistance.

The International Disability Alliance also calls on all humanitarian actors, including state actors and the European Union (EU) who are actively involved in providing aid to Ukraine, to ensure fulfilment of international humanitarian standards – including the IASC Guidelines on Inclusion of Persons with Disabilities in Humanitarian Action. Any international decisions, resolutions or measures adopted to address the situation in Ukraine must be inclusive of persons with disabilities facilitating their participation in decisions that affect them.

Ukraine, in particular the eastern areas, has been experiencing a humanitarian emergency since 2014. Even before the recent escalation of the situation, many persons with disabilities experienced challenges accessing humanitarian aid and safety. A 2021 OCHA report estimated that out of the total number of people in need of humanitarian assistance, at that time in Ukraine, 13 per cent had a disability. Now, with the escalation of the conflict and Russian troops in the country, all persons with disabilities are facing a high risk of losing their lives and not accessing safe evacuation, shelter and humanitarian assistance.

According to persons with disabilities and their representative organizations in Ukraine, the situation for them “is appalling. For example, shelters in Kyiv are inaccessible, so people with disabilities are forced to stay at home, not knowing where they can go.”

When conflict hits, everyone rushes to move to safe areas ensuring the security and health for themselves and their family members. But for many persons with disabilities this is not possible. Evacuation plans are often not designed in accessible ways. Persons with disabilities cannot reach metro stations and bunkers. In many cases, shelters are inaccessible for persons who use wheelchairs to enter and navigate. Information on emergency evacuation, location of shelters and how to seek assistance are not provided in accessible formats. Consequently, many people with a sensory impairment such as blind persons and those who are partially sighted, deaf and hard of hearing persons, and those with deafblindness do not understand how to access the limited safety and assistance available. The level of stigma and ignorance against persons with intellectual disabilities and persons with psychosocial disabilities increases during conflict, putting them at higher risk of being left behind in evacuations and experiencing violence and abuse.

There are groups who face additional risk. Women and girls, children, and older persons with disabilities, and those internally displaced before recent incidents each face multiple challenges

aggravated during conflict. Thousands of children and adults with disabilities are also trapped in institutions facing the risk of being abandoned or of serious negligence.

The invasion has triggered swift international condemnation and pledges of support and aid to Ukraine. In particular, the conflict has led to unprecedented transformation in the region with the EU and its Member States taking action, both individually and in unison, to address the crisis. It is vital that the rights and needs of persons with disabilities are incorporated into these actions. That all relevant parties involved in providing aid and support to civilians in conflict zones understand and address the needs of persons with disabilities. A strong European response to the invasion must also be one which reflects the values of Europe of advancing human rights.

"We have strong international standards. As the representative voice of over a billion persons with disabilities worldwide, I want to remind all actors that any measures taken to address the situation and assist affected people must fully guarantee the rights, inclusion and participation of all groups of persons with disabilities according to international norms," said Vladimir Cuk, Executive Director of the International Disability Alliance.

13.4.4 Reports on Human Rights Practices in Ukraine

After the first year of the Ukraine War had elapsed, the United States Bureau of Democracy, Human Rights, and Labor published a report on the human rights practices in Ukraine. The US report identifies a long list of horrific violations of international humanitarian laws committed by Russia on Ukrainian civilians. Including the illegal torture, murder, rape, and use of prohibited explosive devices on Ukrainian civilians resulting in thousands of lives lost and even more injured. The report also identifies human rights violations committed by the Ukrainian government during the conflict in the attempt to defend their nation against the oppressive invasion of Russia. Although many of these accounts reported to the United States are unfortunate, yet common products of government action during war, the Ukrainian government must ensure their position as a developing democracy align with Western values. When the invasion commenced, President Zelenskyy implemented martial law which restricted the freedom of movement of Ukrainian civilians. "Under martial law, men aged 18 to 60 were prohibited from leaving the country." Although the majority of these Ukrainian men aspired to remain in Ukraine to protect the independence of their country, the report identifies that the Ukrainian constitution provides every citizen with the right of internal and foreign movement. A more severe violation of human rights in Ukraine involved the deprivation of due process of law. "The OHCHR claimed the Security Service of Ukraine may have violated the due process rights of many of the more than 1,000 individuals it reportedly arrested between February 24 and May 15 on suspicion of supporting Russia's forces." Despite the inherent need for the Ukrainian government to obtain useful information of the Russia offense during the war, it is imperative for the government to avoid the deprivation of human rights and due process of individuals. Although the brutal conditions of war present abnormal circumstances, Ukraine must fortify their rule of law by strict adherence to international humanitarian principles. Additionally, the report recognizes that the Ukrainian constitution provides for freedom of expression, including the press and media. However, the Ukrainian government "banned, blocked, or sanctioned media

outlets and individual journalists deemed a threat to national security." The freedom of expression is a basic human right under modern democracies; thus, the government of Ukraine must afford each civilian the right to media without restriction. The benefit of restricting harmful Russian propaganda is likely outweighed by demonstrating the inability to promote this human right to the perspective of Western nations. Lastly, multiple reports of the "mistreatment of members of the minority groups and harassment of foreigners of non-Slavic appearance remained a problem." The Roma minority group experience the most severe instances of societal violence and discrimination. "Roma continued to face governmental and societal discrimination and significant barriers accessing education, health care, social services, and employment." Consistent with the advisory opinion of the Venice Commission, it is imperative for the Ukrainian government and Ukrainian citizens to work in harmony to implement a safe and equal opportunistic environment for members of every race or minority in order to promote a unified society. Many of these human rights violations documented in the US report reflect the horrendous consequences of war in a nation. However, Ukraine must ensure to continue to implement legislation and mechanisms to support equal protection of human rights to achieve the objective of a functioning and a Western acclimated rule of law.

2022 Country Reports on Human Rights Practices: Ukraine

U.S. Department of State 2022

ARBITRARY ARREST OR DETENTION

The constitution and law prohibit arbitrary arrest and detention and provide for the right of any person to challenge the lawfulness of his or her arrest or detention in court, but the government did not always observe these requirements. The OHCHR claimed the Security Service of Ukraine may have violated the due process rights of many of the more than 1,000 individuals it reportedly arrested between February 24 and May 15 on suspicion of supporting Russia's forces. HRMMU's update on December 2, covering the period of August 1 to October 31, documented that Ukrainian armed forces and law enforcement bodies committed 53 cases of arbitrary detention.

Arrest Procedures and Treatment of Detainees

By law authorities may detain a suspect for 72 hours before a judge must authorize continued detention. Authorities in some cases detained persons for longer than three days without a warrant. In accordance with martial law introduced in February, the period of lawful detention without a warrant was extended from 72 hours to 260 hours and stayed in effect until August 25, when it reverted to 72 hours. Article 177 of the Criminal Procedure Code establishes a bail system. A court may, in lieu of detention, order house arrest; release on personal recognizance; release on the guarantee of a high official; or limit liberty (house arrest, travel ban) pending trial.

Arbitrary Arrest: The OHCHR documented that the country's law enforcement agencies and armed forces were responsible for arbitrary detentions and enforced disappearances on government-controlled territory. Seven unofficial places of detention were reported, including private apartments, basements, and abandoned buildings.

Physical Abuse, Punishment, and Torture: There were reports Ukrainian security forces and Russia's forces abused civilians and captured fighters, with the vast majority of abuses perpetrated by the Russian side. Observers noted the active hostilities and insecurity in conflict-affected territories compounded the situation and made it difficult to document abuses. Monitors noted they were able to conduct observations and had access to detention facilities, including for prisoners of war, on Ukrainian government-controlled territory.

OHCHR monitors expressed concerns regarding Ukraine's recurring human rights and international humanitarian law violations in trials against members of Russia's armed forces and affiliated armed groups. The OHCHR documented 27 cases of unjust detention, disappearance, torture, ill-treatment of defendants and suspects in order to compel them to testify, procedural violations for house searches or arrests, and lack of access to legal counsel during the initial period of detention and interrogation. The organization documented violations of the right not to be compelled to testify against oneself or confess one's guilt, and the right to prepare a defense. The OHCHR reported Ukrainian prosecutors and investigators offered defendants the choice of either confessing in court, and thereby possibly being released during an exchange of prisoners, or serving long prison terms.

Prior to July, there was no procedure to offer a defendant to be exchanged, and even after the procedure was formally established, there was no guarantee a particular defendant would be included in any exchange. Those defendants who committed a grave crime were afforded an opportunity to evade standing trial and any punishment in return for a confession, depriving victims of justice and the ability to seek compensation.

The OHCHR noted defendants from Russia-affiliated armed groups captured after February 24 were sentenced to prison terms of 11 to 15 years on charges of violating territorial integrity, state treason, membership in a terrorist organization, membership in unlawful armed formations, and unlawful possession of firearms. The OHCHR noted the prosecution for state treason of persons serving in Russia-affiliated armed groups was inconsistent with the principle of combatant immunity and jeopardized eventual accountability for proceedings of those individuals.

As of July 31, the OHCHR conducted confidential interviews with 142 prisoners of war in seven facilities run by the Ukrainian government with full and unimpeded access. As of the same date, despite requests, the OHCHR had no access to prisoners of war interned by the Russian Federation and affiliated armed groups.

FREEDOM OF EXPRESSION, INCLUDING FOR MEMBERS OF THE PRESS AND OTHER MEDIA

The constitution and law provide for freedom of expression, including for the press and other media, but authorities did not always respect these rights. President Zelenskyy signed a decree imposing martial law on February 24 following Russia's full-scale invasion of Ukraine, which permits further restrictions on the media.

The government banned, blocked, or sanctioned media outlets and individual journalists deemed a threat to national security or who expressed positions authorities believed undermined the country's sovereignty and territorial integrity. Other practices continued to affect media freedom, including self-censorship.

Government failure to investigate or prosecute attacks on human rights defenders and peaceful protesters also led to de facto restrictions on freedom of assembly and association.

FREEDOM OF MOVEMENT AND THE RIGHT TO LEAVE THE COUNTRY

The constitution and civil code provide citizens with freedom of internal movement, foreign travel, emigration, and repatriation. The government, however, restricted these rights, particularly in the eastern part of the country near the zone of conflict. Under martial law, men aged 18 to 60 were prohibited from leaving the country.

In-country Movement: The government and Russia's forces strictly controlled movement between government-controlled areas and Russia-occupied areas. Crossing the line of contact remained arduous, with Russia's forces at times indiscriminately firing on civilian vehicles.

FREEDOMS OF PEACEFUL ASSEMBLY AND ASSOCIATION

The constitution provides for the freedoms of peaceful assembly and association, and the government generally respected these rights. Martial law restricted movement, peaceful assembly, and media, and introduced curfews. In war time, the country derogated from a number of its international human rights law obligations including those relating to peaceful assembly.

Freedom of Peaceful Assembly

The constitution provides for the freedom of peaceful assembly. Mass gatherings, however, were restricted during the year due to the imposition of martial law. Even prior to the introduction of martial law in February, authorities had wide discretion under a Soviet-era directive to grant or refuse permission for assemblies on grounds of protecting public order and safety. Organizers were required to inform authorities in advance of demonstrations.

There were reports of police restricting and failing to protect freedom of peaceful assembly. For example, on January 25, more than 20 persons, including police officers, were injured in Kyiv during clashes between protesters and law enforcement officers during a SaveFOP rally. Police launched a criminal investigation into the incident. The SaveFOP movement insists on the implementation of a presidential decree to introduce a moratorium on inspections of micro businesses and the creation of a separate body for the development of micro business.

SYSTEMIC RACIAL OR ETHNIC VIOLENCE AND DISCRIMINATION

The constitution prohibits any restriction of rights based on race, skin color, religious beliefs, language, and other characteristics, while the law criminalizes intentional acts provoking hatred and hostility based on nationality, religion, or race. The law also provides for designating racial, national,

or religious enmity as aggravating circumstances to criminal offenses. Laws protecting members of racial or ethnic minorities from violence and discrimination were not effectively enforced. Human rights groups reported police often failed to properly apply these laws when investigating attacks on members of minority groups.

Mistreatment of members of minority groups and harassment of foreigners of non-Slavic appearance remained a problem. Human rights organizations stated the requirement to prove actual intent, including proof of premeditation, to secure a conviction made it difficult to apply the laws against offenses motivated by racial, national, or religious hatred. Police and prosecutors continued to prosecute racially motivated crimes under laws against hooliganism or related offenses.

In July, a provision of a 2019 law promoting the use of the Ukrainian language went into effect. All entities registered in the country must use Ukrainian language on their social media or websites or face a fine.

The most frequent reports of societal violence against national, racial, and ethnic minorities were against Roma. Human rights activists remained concerned regarding the lack of accountability in cases of attacks on Roma and the government's failure to address societal violence and harassment against them.

Roma continued to face governmental and societal discrimination and significant barriers accessing education, health care, social services, and employment. According to Council of Europe experts, 60 percent of Roma were unemployed, 40 percent had no documents, and only 1 percent had a university degree.

According to the Romani women's foundation, Chirikli, local authorities erected barriers to prevent issuing national identification documents to Roma. Authorities hampered access to education for persons who lacked documents and segregated Romani children into special schools or lower-quality classrooms. Officials also expressed anti-Roma sentiments and encouraged discrimination. Chirikli reported that since February, approximately 100,000 Roma fled war to another European country. Reportedly Roma fleeing the country were refused access to transport and resources offered by volunteers welcoming refugees at the border. Roma often faced discrimination from other refugees. Many Roma fled settlements in areas controlled by Russia-led forces and moved elsewhere in the country. According to Chirikli, Roma were among the most vulnerable members of the country's IDP population. Many Romani IDPs lacked documents, and obtaining IDP assistance, medical care, and education was especially difficult. Romani IDPs from Odesa and Zaporizhzhya Oblasts complained about biases against them or their children based on ethnicity. A Chirikli survey revealed that local authorities, social services, medical and educational facilities representatives were prejudiced toward Roma. According to the HRMMU, Roma women faced specific hardships in gaining access to economic and social opportunities, housing, and medical care. During evacuation and settlement in host communities they faced hardships as they often have large families and care for elderly family members with disabilities.

The ombudsperson cooperated with NGOs to draft policies and legislation to protect members of racial and ethnic minorities from discrimination.

Commentary

1. The Romani, colloquially known as "Roma" and also "gypsy" is an ethic group of Indo-Aryan origin that lives a semi-nomadic lifestyle rendering them stateless them in most areas. A considerable population of Roma individuals reside in Ukraine. As previously mentioned, Roma have been the victims to widespread discrimination and hate from Ukrainians prior to and during the war as they are considered outcasts. In the effort to refine Ukrainian human rights law affording equal protection for all residing in the nation, Ukraine must make an effort to establish a safe environment for the Roma. This will take both the effort of the Ukrainian government and the Ukrainian citizens to welcome outside minorities, as advised by the Venice Commission. Although Ukraine has a multitude of issues to deal with in respect to the ongoing conflict, they must ensure that the passing of human rights legislation offers equal protection to the people of Roma as well as other groups in Ukraine. Can Ukraine demonstrate a functioning democracy in human rights by accounting for minorities? Will Ukrainian citizens take responsibility in their treatment to the Roma people and provide them with equal opportunities or at least basic human rights? How can Zelenskyy ensure the Ukrainian population adheres to these requests?
2. In 2005, Ukraine first enacted the Law of Ukraine On Ensuring Equal Rights and Equal Opportunities of Women and Men in the effort to promote women's rights in Ukraine. The equal protection of men and women human rights is essential pillar in a functioning democratic system that shares western values. On August 15, 2023, the "Working Group on preparation of amendments of the Law of Ukraine On ensuring equal rights and opportunities for women and men began its work under the chair of Government Commissioner for Gender Policy Kateryna Levchenko and with the support of UN Women Ukraine." The UN Women Ukraine has demonstrated remarkable progress for implementing legal instruments and mechanisms to afford equal opportunities for women in occupational fields, heath care, and basic human rights. The August 2023 meeting "discussed the need for possible amendments to the law, determines the forms and methods of further work, and set provisional deadlines for the development of the draft." How can the Working Group and the UN Women Ukraine make further progress in their effort for equality in Ukraine? In the face of adversity, these Ukrainian and international organizations have worked together to refine women's human rights in Ukraine to better align with Western values. Will the Ukrainian government be able to continue this success in reforming human rights? What other strategies could Ukraine implement to ensure this objective?
3. After the fall of the Soviet Union, homophobia and negative treatment towards LGBTQ+ individuals in Ukraine and Russia commonly remained in society. The European Convention on Human rights prohibits the failure to provide equal protection for LGBTQ+ couples as a nation provides for heterosexual couples. LGBTQ+ citizens of Ukraine have demanded equal protection of human rights and the right for same sex marriage in Ukraine. In 2022, President Zelenskyy responded to this demand by noting that "the constitution's definition of marriage could not be changed during war time, but also that each citizen is an indivisible part of civil society, to whom all rights and freedoms fixed in the Constitution of Ukraine extend." Zelenskyy demonstrated an intent to adhere to the request of implementing legislation to support same sex couples' human rights and concurrently aligning with Western human rights practices. Although, in the

time of war, a full amendment of the Constitution of Ukraine is not possible, Zelenskyy recognizes that all rights extend to each citizen of Ukraine. In March of 2023, a "bill was introduced in the Ukrainian parliament to legalize same-sex civil unions" and later in October of 2023, the "Ukrainian Justice Ministry approved a bill that would establish voluntary family unions for couples regardless of their gender." This substantial progress of human rights reformation in Ukraine not only brings the nation closer to accession into Western international organizations, but it additionally takes a stand away from Russian values. After the war, will Ukraine be able to successfully amend the constitution and implement human rights reflecting equal protection of LGBTQ+ citizens? What other mechanisms can Ukraine enact to provide a safe and equal environment for LGBTQ+ Ukrainians?

13.5 Conclusion

President Zelensky's efforts to reform the rule of law and governance in Ukraine has seen substantial progress since his election in 2019. The fight against systemic corruption and the inefficiency of the judiciary is an effort that not only the Ukrainian government is tasked to overcome, but instead a goal that each Ukrainian citizen must work together in harmony. Refining the rule of law and governance in Ukraine is essential for further alignment with Western democracies and a requisite for accession into the EU. Under Zelensky, Ukraine successfully established legislation to combat the war on corruption including the Law on Prevention of Corruption and the Law on National Anti-Corruption Bureau of Ukraine. Ukraine has worked in harmony with international organizations to enact legislation with the objective to conform to Western judicial systems. The Law of Ukraine: On the Judiciary and Status of Judges completely reconstructed the judicial system of Ukraine by revised judiciary responsibilities, establishing anti-corruption measures in the court system, and improved the election process of judges. The UN Women in Ukraine have continued their mission to afford equal protection and opportunities for women in Ukraine by providing humanitarian support and working with the government to refine human rights laws. This chapter will continue to develop parallel to the ongoing conflict in Ukraine. Zelensky and the Ukrainian government must continue to amend and revise the rule of law and governance in Ukraine to align with Western governments and to establish a model Slavic democracy for surrounding nations.

Chapter 14
Economic Recovery

14.1 Introduction

Postwar reconstruction efforts in Ukraine will demand the assistance of nations and will require international organizations to lend financial support to restore the nation to its prewar condition. The goal is to rebuild an economically strong Ukraine, even stronger than the Ukraine that existed before Russia invaded. Under international law, Ukraine can make a claim for reparations. A general principle of international law establishes an obligation to make adequate reparations for any breach of an international obligation. Traditionally, any individual that has violated an obligation of international law, such as when one commits war crimes or genocide, owed a duty of remedy to the victims of the wrongdoing. Victims of human rights violations have the right to make a claim for reparations with the objective of remedying the injustice committed against them. For example, Germany paid reparations after the First and Second World Wars. In 1999, the International Court of Justice held that Uganda was required to pay to reparations to the Republic of Congo for war crimes committed during the invasion of Congo. Individual victims may also seek damages. Questions involving the procedure and method of payment for Ukrainian reparations remains open.

In response to Russia's invasion of Ukraine, nations imposed sanctions on Russian businesses and froze Russian government funds. These sanctions froze Russian assets in banks around the world. Western nations have proposed a strategy to distribute the frozen Russian assets as restitution for the damage done to Ukraine's physical infrastructure and for losses suffered by Ukrainian citizens. However, the details of these programs are still being worked out.

In May 2024, the Group of Seven (G7) nations, which includes the U.S., deliberated on a financial plan to provide Ukraine with up to 50 billion dollars. This plan proposed using the investment returns, primarily interest payments, from approximately $300 billion in frozen Russian sovereign assets. The principal assets would remain untouched, while the generated income would fund the loan to Ukraine. By October 2024, U.S. Treasury Secretary Janet Yellen indicated that the G7 and the European Union were nearing the finalization of this $50 billion loan to Ukraine, backed by the frozen Russian assets. Yellen emphasized that U.S. taxpayers would not be responsible for repaying the loan, since it would be serviced through the income generated from the frozen assets. In a December 4, 2024 briefing, U.S. Secretary of State Anthony Blinken indicated that $50 billion should be unfrozen shortly. "Making sure that [Ukraine] has the money, the resources it needs to sustain its economy and to sustain its defense, we've now managed on the basis of the frozen sovereign assets, the Russian assets that are

frozen, to get $50 billion to Ukraine that will be going out the door in the next – in the coming weeks, both from the United States and Europe," Blinken said. The Secretary confirmed that the U.S. has provided $102 billion in assistance to Ukraine since 2022, while "the allies and partners contributed $158 billion." Two days earlier, Blinken announced that the U.S. will deliver a $725 million weapons package to Ukraine. The package includes Stinger missiles, ammunition for High Mobility Artillery Rocket Systems (HIMARS), artillery ammunition, drones, and landmines and other equipment.

14.2 Joining the EU

On April 10, 2024, at the Kyiv School of Economics, American economist Daleep Singh, serving as U.S. Deputy National Security Advisor for International Economics, in a speech titled Why We Can Still Imagine a Positive Vision for Ukraine's Future, laid out the challenges Ukraine is facing.

> [T]o look ahead we must first see what's right in front of us: the colossal suffering this war has inflicted on Ukraine and its people. Tens of thousands of Ukrainian lives have been lost – a loss that will never be recovered. Over ten million people, more than a quarter of the pre-invasion population, have been forced to flee their homes . . . Thousands of homes, schools, roads, hospitals, power stations, and critical infrastructure must be rebuilt. Hundreds of thousands of hectares must be de-mined to restore the productive capacity of Ukraine's farmland. . . . So amid all the death and destruction, how can [we] dare ask [the people of Ukraine] to imagine that flowers can bloom from the ashes? Most notably, it is because of their incredible strength and ingenuity. The people of Ukraine have continued to grow their economy despite Russia's attempts to strangle it, by restoring shipping routes, creating new pathways for exports, and rebuilding infrastructure to be stronger than before….Amidst Russia's ongoing war of aggression, [we are] seeing in Ukraine a society being pushed to the existential brink and now forcing its government to reform, pushing against the weight of inertia and history. [We are] witnessing an economy–long stifled by an oligarchic stranglehold–breathing new life into a grassroots culture of improvisation, experimentation, and disruption. [We are seeing] radical change, and radical change is the essence of innovation.

What needs to be done? Singh claims that:

> "It's not an easy road, but it is a proven one. Countries that have reduced corruption within the institutional framework of the EU have moved up the income scale in parallel. And the countries that have done best are those whose leaders see civil society as a partner, where governments and citizens have banded together to stay the course on reform."

The former Polish People's Republic is an excellent model for Ukraine.

> An especially compelling example is Poland – a country not dissimilar to Ukraine in its size, population, and the economic challenges it faced at the end of the Cold War. A country that also changed the course of history when it freed itself from Moscow's grip. Since it started on the path to EU membership, Poland's economic transformation has been remarkable. Its GDP has tripled. It moved from middle to high-income status in less than a generation. Poland has been successful thanks to a combination of sustained leadership, sound economic policy, rapid institution building, foreign debt restructuring, investments in human capital, and the development of a vibrant private sector that avoided capture by oligarchs and corrupt interests. Underpinning it all was a social compact of sorts, as a cynical and exploitative authoritarianism was replaced by genuine democratic statehood in which citizens pay taxes to, defend, and choose a government that upholds their rights and works toward the common good. The feedback loop between Poland's democratic governance and the robustness of its civil society was essential to its success. There were difficult periods and adjustments. The restructuring of inefficient,

> uncompetitive, and monopolistic industries was painful and resisted by many. And the process isn't linear – like some other recent EU members, Poland has seen democratic backsliding that its citizens are now working to reverse. But thanks to sustained focus on building institutions that protect the rule of law, enforce property rights, nurture private industry, integrate Poland in the global economy, and ensure democratic accountability – Poland has now enjoyed 30 years of sustained growth while generating broadly shared prosperity for its people. Ukraine now has the same opportunity.

The key to Ukraine's economic success is obvious: fast-track membership into the European Union (EU). The EU is an economic alliance of 27 European member states that facilitates economic integration between its members and the political integration of liberal democracies that goes along with it. Like any international body, it has its share of problems, both at the central level with the charges laid at the feet of the "bureaucrats in Brussels" (the EU capital) for exercising undue central control and at individual states who over time went through, or are going through difficult times, and appear to be backsliding on EU principles (Greece in the past, recently Poland, and still Hungary). The withdrawal of the UK from the EU damaged the credibility and strength of the body, but it seemed to have weathered through, and even the UK populace is now exhibiting remorse for Brexit. Overall, the EU has achieved remarkable success in its initial goal of a peaceful and prosperous Europe founded on shared values of democracy, human rights, and the rule of law.

The origins of the EU can be traced back to post World War II; the intentions and goals of the EU were a direct response to the traumatic and catastrophic destruction that resulted from the extreme nationalism that caused the war. The tens of millions of deaths, severe economic losses and widespread destruction to infrastructure led European leaders to recognize the urgent need for economic and political cooperation between European countries to promote peace, stability, and prosperity in Europe, and thus prevent similar cataclysmic events from happening again. This desire to create a safer and more war-free Europe was the catalyst that ultimately led to the creation of the EU, which fully embraced political and economic integration among its member states.

Origins of the EU began in 1951, six years after the end of World War II, when the European Coal and Steel Community (ECSC) was formed by six countries – France, West Germany, Belgium, Luxembourg, Italy, and the Netherlands – under the Treaty of Paris. While the primary purpose of the ECSC was to facilitate economic integration of the all-important steel and coal industries among the six countries, it also functioned indirectly to inhibit possibility of war between these countries by pooling the production of resources necessary to manufacture arms.

In 1957, the same founding six countries signed the Treaties of Rome. The first Treaty established the European Economic Community (EEC), the so-called common market. The establishment of a common market created a customs union that eliminated trade barriers between member states and implemented policies to facilitate political and economic integration in the areas of transportation, agriculture, and economics. A second treaty established the European Atomic Energy Community (EURATOM), to promote the burgeoning nuclear power industry in the six states.

In 1972, under the European Communities Act, the United Kingdom became the seventh member of the EEC in 1973. Ireland and Denmark joined as the eighth and ninth members shortly thereafter; the accession of new member states grew this community of countries throughout Europe.

In 1981, Greece joined the EEC followed by Spain and Portugal in 1986. That same year, the twelve members of the EEC – France, the Federal Republic of Germany, Belgium, Luxembourg, Italy, the Netherlands, the United Kingdom, Ireland, Denmark, Greece, Spain, and Portugal – signed the Single European Act (SEA) which amended the 1957 Treaty of Rome by instituting the objective of creating a single market by 1992 to secure free-flowing trade across the borders of EEC members.

In 1992, the renamed EU was formally established when the Treaty of Maastricht was signed and the EEC, ECSC, and EURATOM were incorporated under the newly established EU. The EU was created based on three pillars: the European Communities (EC), the Common Foreign and Security Policy (CFSP), and cooperation in the realm of justice and home affairs (JHI). These three pillars are viewed as the *raison d'etre* of the EU.

The first pillar, the European Communities, primarily focuses on economic integration, including the establishment of a single market and common policies among the member states. The first pillar also established institutions that are tasked with legislating and adjudicating in the areas within its jurisdiction. These institutions include the European Commission, the Council of the European Union (formerly, the Council of Ministers), the European Court of Justice, and the European Parliament.

The second pillar, the Common Foreign and Security Policy, is coordinated and implemented through the Secretary-General of the Council of the European Union and aims to facilitate cooperation in the areas of foreign policy, security, defense, and crisis management among the Member States.

The third pillar, Cooperation in Justice and Home Affairs, aims to facilitate cooperation among the member states in regulating criminal law, immigration, and civil law. In regulating criminal law, the EU aims to combat terrorism, drug and human trafficking, and organized crime by maintaining a cohesive set of criminal laws and criminal procedures, enhancing cooperation among law enforcement, and encouraging law enforcement agencies to exchange information. In regulating immigration, the EU addresses issues related to border controls, asylum procedures, and migration with the goal of creating and maintaining shared policies among the member states that manage migration.

In addition to establishing the EU, the Maastricht Treaty set forth several other measures, including the formation of a Central European Bank and, ultimately, the adoption of a common currency, the Euro, among most of the member states.[35] (The UK kept its pound and did not join the common currency regime). By 1993, the single market that was once an aspiration in the SEA, was fully operative and centered around the free movement of goods, services, people, and capital. The creation of the EU was followed by a series of subsequent treaties that amended and advanced its framework, and additional member states joined through accession, including Austria, Finland, and Sweden, all of whom joined in 1995.

In 1997, the Treaty of Amsterdam conferred power upon the EU to create policy on a range of matters including immigration and civil law, if such legislation was necessary for facilitating free movement of persons within the EU. The Treaty of Amsterdam also incorporated the Schengen Treaties and thus made their terms laws under the EU. The Schengen Treaties, signed in 1985, established the Schengen Area, a territory encompassing several European countries where internal border checks have largely been eliminated to facilitate the unrestricted

[35] The symbol for the Euro is **€** to represent the official currency of the Eurozone, which is made up of 20 of the 27 European Union member states. The design is inspired by the Greek letter epsilon (ε), reflecting Europe's historical and cultural heritage, and the two horizontal lines signify stability.

movement of people. Thus, incorporation of the Schengen Treaties enabled the Schengen area to operate as a single entity devoid of internal border controls such as passport checks among its member countries.

Growth and economic success lead to other European countries wanting to join the club. Some have, while others, like Turkey (a member of NATO but not the EU) still knocking at the door. The rapid enlargement of the EU posed challenges to its institutional framework, which led to further reforms. In 2001, the Treaty of Nice introduced notable reforms to the institutional architecture of the EU to maintain its continuity and efficacy amidst the challenges that accompanied enlargement. These included changes to member states' voting procedures in an effort to streamline decision-making processes within a larger EU. Additionally, the composition and adjudication processes of the Council of the EU were modified to accommodate the accession of new member states. Moreover, the Treaty introduced structural changes to the judicial branch of the EU, the European Court of Justice, to maximize efficiency and efficacy in legal proceedings within a growing EU.

Following the Treaty of Nice, significant structural adaptations continued to reshape and modernize the EU. In particular, the Treaty of Lisbon, which was signed in 2007 and entered into force in 2009, had a profound influence on the EU and is the most recent treaty of the EU. The Treaty implemented institutional changes such as broadening the use of qualified majority voting in the Council of the European Union, established a permanent sitting President of the European Council, and strengthened the influence of the European Parliament in the legislative process. The Treaty also enhanced the rights of EU citizens by implementing the European Citizens' Initiative, allowing citizens to petition the European Commission to create and adopt new policies. The Treaty also influenced the EU's efficacy in foreign affairs by creating the position of High Representative of the Union for Foreign Affairs and Security Policy, who also serves as Vice-President of the European Commission. This simultaneous leadership position was intended to strengthen the EU's global presence. Notably, the Treaty integrated the EU's legal framework by eliminating the three-pillar structure that the EU was founded on and merging the three areas into a more cohesive and harmonious legal system falling under the jurisdiction of the legal arm of the EU, the European Court of Justice. These various reforms laid a foundation for further EU enlargement and displayed the EU's ongoing commitment to facilitating unification across Europe.

Enlargement occurs when new countries join the EU as member states. Since the six founding members first formed the antecedent to the EU, seven enlargements have taken place. The most recent enlargement occurred in July 2013 when Croatia joined the EU. Today, the EU has twenty-seven member states: Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.

The most notable member transformation of the EU occurred when the former people's republics (also called socialist republics) applied for and were given membership. The integration of former Communist states into the EU was a significant part of post-Cold War European history. To join, the applicant countries had to meet the EU's political, economic, and legal criteria established in 1993, called the Copenhagen Criteria. These criteria included the creation of stable institutions guaranteeing democracy, rule of law, human rights, and minority protection and functioning market economies. In 2004, eight former Communist states joined: Poland, Hungary, Czech Republic, Slovakia, Estonia, Latvia, Lithuania, and Slovenia. Cyprus

and Malta also joined that year. In 2007, Bulgaria and Romania joined after further reforms. In 2013, Croatia, a former Yugoslav socialist republic, became a member after addressing post-war challenges and implementing reforms.

Several former Communist countries remain outside the EU but aspire to membership. Current candidates are Serbia, Montenegro, North Macedonia and Albania, with Bosnia and Herzegovina granted candidate status granted in 2022 and Kosovo as a potential candidate but not fully recognized by all EU members. The successors of the former USSR republics of Ukraine, Moldova, and Georgia have expressed strong EU aspirations. Ukraine and Moldova were granted candidate status in 2022, partly in response to Russia's invasion of Ukraine. Georgia is still working toward candidate status. Out in the cold -- for now -- are Belarus and Russia. Although it is geographically European, and is a former Communist state, Belarus under President Lukashenko, who currently appears to be a lifetime president, has not pursued EU membership due to its authoritarian government and close ties to Russia. The same with Russia under lifetime President Putin.

Map of 27 EU Member States

A country seeking accession, or approval to join the EU must undergo EU's comprehensive approval procedures and meet EU eligibility requirements set forth in the Maastricht Treaty. Article 49 provides the legal basis for any European state to join the EU and Article 2 states the values that the EU is based upon.

Article 49

(ex Article 49 TEU)

Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its

application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be considered. The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.

Article 2

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 49 of the Maastricht Treaty provides that any European Country that respects the EU's democratic values – freedom, democracy, equality, the rule of law, and respect for human dignity and human rights, including those belonging to minorities – and is dedicated to promoting them can apply for EU membership. As noted, the applicant country must also satisfy the Copenhagen Criteria, whose eligibility requirements were outlined in the European Council's conclusions in their June 1993 meeting in Copenhagen. These criteria expand on the Article 49 policies in more detail and provide that applicant countries must have: (1) stable institutions that can guarantee democracy, the rule of law, human rights and the protection of minorities; (2) a functioning market economy and the ability to cope with the competitive pressure of the EU market; and (3) the ability to take on the obligations of EU membership, including the capacity to implement all EU law and adhere to the aims of the Union. The Madrid European Council in 1995 created an additional requirement that applicant countries must have administrative and judicial structures conducive to implementing uniform EU legislation.

The procedural process of becoming an EU member state, also referred to as accession, is characterized by three steps set out in Article 49 of the Maastricht Treaty: candidacy, membership negotiations, and accession. A country seeking EU membership must first submit a membership application to the Council of the EU. Once the application is submitted, the European Commission screens the applicant country by assessing its ability to fulfill the Copenhagen Criteria and adopt EU policy. The European Council then decides whether to formally accept the country's application and thus grant candidacy status to the applicant country based upon the European Commission's recommendations.

The last step is critical: all current members must agree to admit a new candidate into the club. An applicant country is only granted candidacy status by the unanimous decision of the European Council; all EU member states must agree on the decision. Once the European Council formally accepts the country's application, the country receives candidate status and begins the process of formal negotiations for its accession to the EU.

During the negotiation period, the candidate country reforms its national policy to conform with the *acquis communautaire* (*acquis*), which refers to the EU laws and standards focusing on areas of taxation, defense policy, internal market regulations, environmental standards, consumer protection, and human rights. The European Commission monitors the progress of the reforms and informs both the European Council and European Parliament of updates on the progress. Accession negotiations formally conclude when the EU member states

unanimously agree that the negotiation process for all thirty-five chapters of the *acquis* have been successfully implemented.

After negotiations have been concluded, the European Commission provides its opinion on whether the candidate country is prepared to receive EU membership. If the European Commission advises that the candidate country is ready to become a member state, an accession treaty is prepared that details the terms and conditions of the country's EU membership. The accession treaty must be approved by the European Commission, the European Council, and the European Parliament before it is signed. Once it receives approval, the treaty is signed by the member states and the acceding country and becomes binding once it is ratified by the member states and the acceding country. The treaty enters into force following its ratification on the date specified in the accession treaty. This signifies the country's official entrance into the EU.

EU membership has been a long-time aspiration for Ukraine. It has been the underlying incentive for democratic reforms that have taken shape over the past decade and a particular motive for several key reforms based on European values. In 2013, Ukraine deviated from its path toward European integration when its then-President, Viktor Yanukovych, withdrew from signing the EU-Ukraine Association Agreement (EUAA). The EUAA is a treaty between the EU, its Member States, and Ukraine – a non-EU member – that creates a political and economic association between the parties that is committed to cooperate and converge economic policy, legislation, and regulation. The EUAA commits Ukraine to gradually reforming its technical and consumer standards to conform to those of the EU and commits the EU to providing Ukraine with political and financial support and access to EU markets–a highly attractive offer in light of the poor economic conditions Ukraine was facing at the time. The EUAA also commits both parties to gradually conform their policies to the EU's Common Security and Defense Policy and European Defense Agency policies.

The EUAA resulted from the desire of both parties to create and maintain a symbiotic relationship. The EU aims to safeguard imports of grain and natural gas from Ukraine, and exports of goods to Ukraine, from the threat of instability in the region, which the EU believes can be reduced by economic reforms in Ukraine. Ukraine aims to increase exports through access to free trade within the EU and attract external investments that will strengthen its economic position. Although the promise of European integration was within Ukraine's grasp, national security concerns and increasing economic pressure from Russia ultimately led Yanukovych to forego a highly valuable deal for Ukraine by declining to sign the EUAA.

In August 2013, the Federal Customs Service of Russia imposed restrictions on Ukrainian imports, which effectively served as, and was understood to be, a warning to Ukraine not to join the EU. "A Russian presidential aide, Sergei Glaziev, explicitly described that decision as a foretaste of economic relations should Ukraine take the "suicidal step" of signing a free-trade deal with the EU." With Russia being Ukraine's second largest trading partner, the force of these threats were great in light of the Ukraine's crumbling economy. With the 2014 Ukrainian presidential elections on the horizon, and with victory as a priority for the ruling elite, maintaining his incumbency meant that Yanukovych was tasked with stabilizing Ukraine's volatile economic climate. To achieve this end, Yanukovych determined it was imperative to guarantee that Ukrainian goods had continued access to the Russian market and to ensure external financial support.

This decision proved to be futile for Yanukovych, who was ousted by a popular revolt, the so-called Revolution of Dignity, due to his last-minute refusal to sign the EUAA. The postponement of signing the EUAA resulted in the largest protests in Ukraine since the Orange Revolution, and these protests eventually evolved into a larger movement against government corruption and Russian influence that plagued Ukraine's politics. Russia's military intervened in Ukraine in late February 2014. Russian military forces began occupying Crimea by seizing government buildings and key infrastructure. By March 2014, Crimea was annexed by Russia, a move not recognized by most of the international community.

To counter Russia's creeping encroachment into Ukraine, Yanukovych's successor, President Petro Poroshenko sought support from the Western world, particularly the United States and NATO and the European Union. In June 2014, Poroshenko finished what Yanukovych could not by signing the economic portion of the EUAA, describing the act as Ukraine's "first but most decisive step" toward obtaining EU membership. While losing control over part of its territory and suffering human and economic losses because of the conflict in the eastern part of the country, Ukraine continues to moving closer to the European Union and gradually aligning with the *acquis*.

On February 24, 2022, Russia brought war back to Europe when it launched a full-scale "unprovoked and unjustified" war of aggression against Ukraine, beginning its lasting infliction of "unspeakable suffering on the Ukrainian population," in the words of the Versailles Declaration issued less than a month after the invasion. Russia's military invasion of its neighbor Ukraine both "grossly violates international law and the principles of the UN Charter and underline European global security and stability."

On February 28, 2022, four days after Russia initiated its invasion, Ukraine presented its application for EU membership. On March 7, 2022, the Council of the European Union requested the European Commission to provide its opinion about the application. At the informal leaders meeting in Versailles on March 10 and 11, 2022, EU Heads of State and Government endorsed the decision, stating in the Versailles Declaration that "[they] will further strengthen [their] bond and deepen [their] partnership to support Ukraine in pursuing its European path. Ukraine belongs to [this] European family."

On June 17, 2022, the European Commission issued its Opinion on Ukraine's Application for EU Membership. The opinion began by discussing relations between the EU and Ukraine before assessing Ukraine's ability to satisfy the requirements for membership – the Copenhagen criteria. The European Commission noted that European integration and western orientation had been at the forefront of Ukraine's foreign and internal policy dimensions for many years, evident by long standing EU-Ukraine relations dating back to 1991 when cooperation began soon after Ukraine's independence. Moreover, the Commission emphasized Ukraine's strategic course toward EU membership through amendments to its constitution[36], participation in EU programs,

[36] The *Preamble* to the Ukraine Constitution was updated to include a commitment to "the irreversible course of Ukraine towards European and Euro-Atlantic integration." *Article 85* outlines the powers of the Verkhovna Rada (Parliament) of Ukraine and added the responsibility to implement the state's strategic course towards full membership in the EU and NATO. *Article 102* defines the President of Ukraine as the guarantor of state sovereignty and territorial integrity. The amendment specifies that the President is also the guarantor of the implementation of the strategic course towards EU and NATO membership. *Article 116* details the powers of the Cabinet of Ministers and added the duty to ensure the implementation of the state's strategic course towards full membership in the EU and NATO. These constitutional amendments were made on February 7, 2019, when the Verkhovna Rada (Ukraine's

reforming legislation in the areas of energy, aviation, and transportation to comply with EU standards, and implementing visa-free travel for Ukrainian citizens into the Schengen area. Ukraine has also concluded working arrangements, cooperation agreements, or memoranda of understandings with several EU agencies in pursuit of European integration.

After assessing Ukraine's political framework against the Copenhagen criteria, the European Commission concluded that Ukraine operates as a "parliamentary-presidential democracy with competitive elections at national and local level," based on a robust constitutional, legislative, and institutional framework which overall aligns with European and international standards. The European Commission found that while a legal framework exists to support modern public administration, its full implementation remains a work in progress and thus requires further refinement. Additionally, Ukraine has effectively undertaken successful decentralization reforms, including fiscal decentralization, and has promoted judicial independence. Independent anti-corruption bodies – including the High Anti-Corruption Court – have been created to preserve the integrity of the judiciary. The European Commission underscored the importance of the autonomy of all anti-corruption institutions. It also recognized the advancements made in bringing Ukraine in alignment with the EU's values but also encouraged opportunities to further enhance the accountability and efficiency of the judiciary and combat corruption among law enforcement institutions. Regarding the political criteria for EU membership, the European Commission noted that "Ukraine is well advanced in reaching the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities."

In terms of economic criteria, the European Commission recognized that Ukraine has preserved a strong macroeconomic record, particularly in maintaining remarkable resilience and stability following Russia's invasion in 2022, a testament to Ukraine's political determination and effective institutions. However, to improve the functioning of its market economy, the European Commission stated that Ukraine must continue to pursue ambitious structural reforms to eradicate corruption, reduce the influence of oligarchs, strengthen private property rights, and promote labor market flexibility. The Commission noted that Ukraine's capacity to cope with the competitive economic pressure in the EU will largely hinge on how post-war investments are designed and sequenced to address upgrading physical infrastructure, improving educational outcomes, and encouraging innovation.

In its opinion, the European Commission raised no doubts regarding Ukraine's ability to fulfill the obligations of EU membership. Since 2016, Ukraine has advanced in the EUAA, including a Deep and Comprehensive Free Trade Area (DFCTA), two agreements that capture a numerous amount of the EU *acquis*. Additionally, Ukraine has complied with substantial elements of the *acquis* across multiple chapters. While Ukraine is more advanced in some sectors than others, its overall record of implementing the requisite criteria for EU membership is satisfactory and there is ample proof of Ukraine's adherence to and respect for the values on which the EU is founded.

Because of Ukraine's general adherence to the Copenhagen Criteria, the European Commission ultimately recommended that Ukraine be granted candidate status, conditioned upon Ukraine's compliance with the implementation of seven steps the Commission

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Parliament) approved them. The amendments officially came into effect on February 21, 2019, after being signed into law by then-President Petro Poroshenko.

recommended to reduce the widespread corruption that plagues Ukraine's judiciary, politics, business sectors, and law enforcement.

On June 24, 2022, the European Council granted candidate status to Ukraine and invited the European Commission "to report to the Council on the fulfilment of the conditions specified in the Commission's opinion[] on the respective membership application[] as part of its regular enlargement package." On November 8, 2023, the European Commission assessed Ukraine's implementation of the seven recommended steps of its opinion from June 17, 2022, and ultimately issued a recommendation to open accession negotiations with Ukraine. On December 15, 2023, the European Council decided to open accession negotiations with Ukraine.

Following this decision, on March 12, 2024, the European Commission submitted proposals for draft negotiating frameworks to the European Council and invited "the Council to swiftly adopt them and to take work forward without delay." The negotiating frameworks act as guidelines for the accession negotiations and they are separated into three parts: principles governing the accession negotiations, substance of the negotiations, and negotiations procedure. The purpose of the negotiations is for Ukraine to fully adopt the EU *acquis* and to ensure its implementation and enforcement as policy. The next step is for the European Council to begin their deliberations based on the frameworks. Once the frameworks have been adopted by the European Council, the Council's President will present the EU Common Position which signifies the formal beginning of accession negotiations.

As of January 2025, Ukraine's aspiration of EU accession is within reach. The decision to open accession negotiations with Ukraine signals the EU's support and readiness to embrace Ukraine as a member state. Moreover, as commended by the European Commission in multiple opinions and reports, Ukraine has made notable progress in aligning with EU standards, including various economic and institutional reforms. With Ukraine's commitment to the EU's democratic values and the EU's openness to enlargement, hopes are high for Ukraine's accession to the EU. Political intrigues and change of governments in each of the EU states poses challenges to Ukraine accession, even if Ukraine meets all the criteria. We discuss the specifics below.

Commentary

1. Ukraine's potential accession to the EU has received the largest pushback from Hungary. Hungary has voiced concerns about the level of corruption in Ukraine clashing with EU standards – sentiments that were once more commonly shared among EU leaders. Hungary is Russia's closest ally in the EU and also has its own endemic corruption issues. According to Transparency International's 2023 Corruption Perceptions Index (CPI), Hungary received a score of 42 out of 100, ranking 76th among 180 countries globally. This score indicates a high level of perceived public sector corruption. Notably, Hungary is considered the most corrupt member state within the European Union. It is also the country that has had seen significant democratic backsliding under the regime of Prime Minister Viktor Orbán. In the Economist Intelligence Unit's Democracy Index for 2023, Hungary's score rose slightly to 6.72 out of 10, up from 6.64 in 2022. Despite this improvement, the country remains categorized as a "flawed democracy." Freedom House's Freedom in the World Report for 2023 rates Hungary with a Global Freedom Score of 66 out of 100, designating it as "Partly Free." Nevertheless, rules are rules. Hungary, or for that matter any other EU member state, has the veto power to keep Ukraine out of the EU.

2. Austria also exhibits a degree of support for Russia, primarily through its economic engagements. In contrast to other Western European countries' pullback in trade with Russia following the full-scale invasion of Ukraine in 2022, Austria continues to import Russian gas. It also has significant banking ties with Russia. Politically, Austria maintains a stance of neutrality, which sometimes results in a more accommodating approach toward Russia compared to other EU nations. The rise of Austria's far-right Freedom Party (FPO), which has expressed pro-Russian sentiments, could further influence the country's position on Russia.
3. Bulgaria's relationship with Russia is complex, marked by historical and cultural connections. While the Bulgarian government has supported EU sanctions against Russia, public opinion is more divided. A significant portion of the Bulgarian population harbors pro-Russian sentiments, which can influence the country's political dynamics and its stance within the EU framework.
4. In Romania, the political landscape is experiencing shifts that could impact its stance toward Russia. The electoral success in December 2024 of newcomer Călin Georgescu, a far-right nationalist with pro-Russian views, indicates a potential change in Romania's foreign policy. If Georgescu's influence grows, Romania might adopt a more Russia-friendly approach, affecting its alignment with EU policies on Russia.
5. Slovakia under the current government of Prime Minister Robert Fico could also pose obstacles to Ukraine's accession. Fico has engaged in diplomatic discussions with Ukrainian officials, emphasizing Slovakia's support for Ukraine's sovereignty and territorial integrity. However, he has also criticized EU officials for making statements on Ukraine without prior agreement from all member states, indicating a desire for a more coordinated EU approach
6. On December 1, 2024, newly appointed European Council President António Costa and EU foreign policy chief Kaja Kallas visited Kyiv to reaffirm the European Union's support for Ukraine. During this visit, President Costa emphasized that Ukraine's prospective EU membership would bolster Europe's competitiveness, highlighting the mutual benefits of Ukraine's integration into the EU.
7. On December 5, 2024, EU Ambassador to Ukraine Katarina Mathernova announced a €25 million funding initiative aimed at supporting Ukrainian non-governmental organizations and civil society groups. This funding is intended to facilitate Ukraine's EU integration efforts, underscoring the EU's commitment to Ukraine's accession process.

14.3 Public Reconstruction (A New Marshall Plan for Ukraine)

As noted above, Ukraine's economy suffered significantly as a result of Russia's wars of aggression. Key industries like agriculture and manufacturing have been disrupted which has caused a decline in productivity and output. Millions of internally displaced people due to the war have caused a strain in resources and social services. Ukraine's currency, the Ukrainian hryvnia, has significantly depreciated because of the conflict which has led to inflation and decreasing purchasing power for its citizens. The severe damage Russia has caused to Ukraine's economy exacerbates existing challenges and hinders Ukraine's ability to create and maintain an economy that can cope with the competitive pressure of the EU market–one of the Copenhagen Criteria required for accession. Stated differently, Russia's numerous violations and abuses of human rights, international humanitarian law, and related crimes have imposed obstacles that

impede Ukraine's accession to the EU. Accordingly, preserving Ukraine's territorial integrity and sovereignty requires an economic reconstruction plan similar to the European Recovery Program (ERP), commonly known as the Marshall Plan, which provided foreign aid to the devastated economies of Western Europe following World War II.

Much of Europe was in a full-blown economic crisis after World War II. Parallel to the current plight of the Ukrainian people, crumbling infrastructure, depressed economies, and displaced people led to an urgent need for reconstruction. This was especially true since Communist influence was expanding throughout Europe. By the end of World War II, the Soviet Union established military presence into Central and Eastern Europe and shortly thereafter forced into power communist governments in Poland, Czechoslovakia, Hungary, Romania, Bulgaria, and East Germany. The United States recognized the fragile state of Western Europe and its vulnerability to collapsing under the weight of growing Soviet influence. To prevent Western Europe from succumbing to Communist expansion, US State Department experts under the leadership of Secretary of State George C. Marshall proposed an economic recovery initiative for Western Europe – the so-called Marshall Plan.

The Marshall Plan was an economic recovery program of U.S. aid to Europe between 1948 and 1951. The Plan required joint effort between the United States and Europe to work together to accomplish its goals. In stark contrast to the depressed economies of Western Europe, the United States experienced a post-war economic boom which allowed it to extend financial aid abroad. The Marshall Plan was initially proposed in a speech delivered by Secretary of State George C. Marshall on June 5, 1947.

The "Marshall Plan" Speech at Harvard University

June 5, 1947

> [T]he world situation is very serious. That must be apparent to all intelligent people. I think one difficulty is that the problem is one of such enormous complexity that the very mass of facts presented to the public by press and radio make it exceedingly difficult for the man in the street to reach a clear appraisement of the situation. Furthermore, the people of this country are distant from the troubled areas of the earth and it is hard for them to comprehend the plight and consequent reactions of the long-suffering peoples, and the effect of those reactions on their governments in connection with our efforts to promote peace in the world.
>
> In considering the requirements for the rehabilitation of Europe, the physical loss of life, the visible destruction of cities, factories, mines and railroads was correctly estimated but it has become obvious during recent months that this visible destruction was probably less serious than the dislocation of the entire fabric of European economy. For the past 10 years, conditions have been highly abnormal. The feverish preparation for war and the more feverish maintenance of the war effort engulfed all aspects of national economies. Machinery has fallen into disrepair or is entirely obsolete. Under the arbitrary and destructive Nazi rule, virtually every possible enterprise was geared into the German war machine. Long-standing commercial ties, private institutions, banks, insurance companies, and shipping companies disappeared, through loss of capital, absorption through nationalization, or by simple destruction. In many countries, confidence in the local currency has been severely shaken. The breakdown of the business structure of

Europe during the war was complete. Recovery has been seriously retarded by the fact that two years after the close of hostilities a peace settlement with Germany and Austria has not been agreed upon. But even given a more prompt solution of these difficult problems the rehabilitation of the economic structure of Europe quite evidently will require a much longer time and greater effort than had been foreseen….

At the present time [modern civilization] is threatened with breakdown. The town and city industries are not producing adequate goods to exchange with the food producing farmer. Raw materials and fuel are in short supply. Machinery is lacking or worn out. The farmer or the peasant cannot find the goods for sale which he desires to purchase. So the sale of his farm produce for money which he cannot use seems to him an unprofitable transaction. He, therefore, has withdrawn many fields from crop cultivation and is using them for grazing. He feeds more grain to stock and finds for himself and his family an ample supply of food, however short he may be on clothing and the other ordinary gadgets of civilization. Meanwhile people in the cities are short of food and fuel. So the governments are forced to use their foreign money and credits to procure these necessities abroad. This process exhausts funds which are urgently needed for reconstruction. Thus a very serious situation is rapidly developing which bodes no good for the world. The modern system of the division of labor upon which the exchange of products is based is in danger of breaking down.

The truth of the matter is that Europe's requirements for the next three or four years of foreign food and other essential products - principally from America - are so much greater than her present ability to pay that she must have substantial additional help or face economic, social, and political deterioration of a very grave character.

The remedy lies in breaking the vicious circle and restoring the confidence of the European people in the economic future of their own countries and of Europe as a whole. The manufacturer and the farmer throughout wide areas must be able and willing to exchange their products for currencies the continuing value of which is not open to question.

Aside from the demoralizing effect on the world at large and the possibilities of disturbances arising as a result of the desperation of the people concerned, the consequences to the economy of the United States should be apparent to all. It is logical that the United States should do whatever it is able to do to assist in the return of normal economic health in the world, without which there can be no political stability and no assured peace. Our policy is directed not against any country or doctrine but against hunger, poverty, desperation and chaos. Its purpose should be the revival of a working economy in the world so as to permit the emergence of political and social conditions in which free institutions can exist. Such assistance, I am convinced, must not be on a piecemeal basis as various crises develop. Any assistance that this Government may render in the future should provide a cure rather than a mere palliative. Any government that is willing to assist in the task of recovery will find full co-operation I am sure, on the part of the United States Government. Any government which maneuvers to block the recovery of

> other countries cannot expect help from us. Furthermore, governments, political parties, or groups which seek to perpetuate human misery in order to profit therefrom politically or otherwise will encounter the opposition of the United States.
>
> It is already evident that, before the United States Government can proceed much further in its efforts to alleviate the situation and help start the European world on its way to recovery, there must be some agreement among the countries of Europe as to the requirements of the situation and the part those countries themselves will take in order to give proper effect to whatever action might be undertaken by this Government. It would be neither fitting nor efficacious for this Government to undertake to draw up unilaterally a program designed to place Europe on its feet economically. This is the business of the Europeans. The initiative, I think, must come from Europe. The role of this country should consist of friendly aid in the drafting of a European program and of later support of such a program so far as it may be practical for us to do so. The program should be a joint one, agreed to by a number, if not all European nations.
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> An essential part of any successful action on the part of the United States is an understanding on the part of the people of America of the character of the problem and the remedies to be applied. Political passion and prejudice should have no part. With foresight, and a willingness on the part of our people to face up to the vast responsibility which history has clearly placed upon our country, the difficulties I have outlined can and will be overcome….

The Marshall Plan sought to prevent the expansion of Soviet Communism by reconstructing war-torn Europe. Specifically, the Plan aimed to stimulate European production, promote the adoption of policies that would lead to stable economies, and increase trade between European countries and between Europe and the rest of the world. Less than a year after its initial proposal, the Plan was enacted by the 80th U.S. Congress and signed into law by President Harry S Truman on April 3, 1948. This resulted in providing roughly $13.3 billion (equivalent to $172 billion in 2024) of assistance to sixteen recipient countries, Austria, Belgium, Denmark, France, West Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Sweden, Turkey, and the United Kingdom, which allowed them to exceed their pre-war growth and modernize their economies.

Implementing the Marshall Plan was a multi-faceted and complex process. Two agencies implemented the program: the Economic Cooperation Administration (ECA), which was managed by the United States, and the European run Organization for European Economic Cooperation. The United States created the ECA to oversee the distribution of the aid. The ECA was tasked with administering the aid and seeing that the funds were effectively allocated and utilized to reconstruct Europe. This included ensuring that recipient countries adhered to certain economic reforms that would create sustainable economies that could support long-term growth. Implementing economic reforms were a term of bilateral agreements that countries who wished to receive aid were required to sign. The agreements outlined the terms under which aid would be administered to the recipient countries and the commitment by recipient countries to establish economic reforms. Conditioning the receipt of aid on implementing economic reforms created stability and a strong foundation for long-term economic growth. Some of the reforms included stabilizing the country's currency, balancing budgets, and removing barriers on trade and capital flows. The aid was primarily in the form of interest-free grants and loans and the funds were

used for a myriad of purposes including rebuilding infrastructure, facilitating industrial development and improving agriculture. This ensured food and security, which in turn established a stable environment in the recipient country. Moreover, to ensure the aid was utilized effectively and as intended, recipient countries were required to maintain scrupulous attention to detail in maintaining records of how the funds were allocated and report back to the ECA. The Organization for European Economic Cooperation helped to ensure that recipient countries fulfilled their end of obligations by adopting the required policies and encouraging trade and increased production.

Overall, the Marshall Plan is regarded as one of the most successful foreign aid initiatives in history as it significantly contributed to the reconstruction and economic revival of post-war Europe and prevented westward expansion of Soviet communism during a time when much of Europe was particularly vulnerable to communist influence. Beyond its economic advantages, the political and psychological impacts of the Marshall Plan aid, coming in the wake of such severe trauma throughout Europe, were profound. It restored hope and stability across a continent ravaged by war, boosting morale, and created momentum for continued integration and economic growth.

Russia's wars of aggression against Ukraine has brought war back to Europe. The continent has not seen such tremendous human suffering and large scale destruction since World War II which laid half of Europe to waste. While the people of Ukraine have shown remarkable resilience against Russian forces, the ongoing war has caused widespread damage in Ukraine.

Among the other horrors incident to Russia's war, the people of Ukraine face a humanitarian crisis. Thousands of civilians have been killed or injured and over eight million people have been displaced which has resulted in one of the largest refugee crises in recent European history. According to the European Parliament, Ukraine's gross domestic product (GDP) has fallen by over 30% and potential output is considered to have decreased by more than 20%.A large amount of Ukraine's productive capacity and infrastructure has also been demolished due to Russian aggression. Schools, homes, hospitals, and utilities like water, electricity, and gas supplies have been damaged or destroyed, and in some areas, entire cities have been flattened.

The ongoing conflict has also resulted in a large budget deficit due to supporting both military expenditure and humanitarian needs. Moreover, direct investment has sharply declined to about 1% of what it was before the war, and Ukraine's currency, the Ukrainian hryvnia, has faced significant volatility.

The war has also had a significant environmental impact on Ukraine. Severe ecological damage has resulted from fires set by military action and pollution caused by weaponry. Battles near nuclear power facilities like Zaporizhzhia also risk potential nuclear contamination, a horror that, after Chernobyl, the Ukrainian people know all too well. Agricultural disruption has also resulted from the ongoing terror of the war. Ukraine earned the nickname the "breadbasket of Europe," because grain crops have always been the main exports of Ukrainian agriculture. However, Ukraine has seen its agricultural output severely impacted as landmines and unexploded ordnances present horrific and long-term threats to farming and biodiversity.

The devastating impact of Russia's ongoing aggression has stirred discussions to construct an economic recovery initiative comparable to the Marshall Plan. At the World Economic Forum 2022 annual meeting in Davos, President Zelenskyy called for help to come "as fast as possible." Borge Brende, President of the World Economic Forum, also called for a Marshall Plan to reconstruct Ukraine. The Ukrainian government organized an aid schedule that

is broken down into three primary stages that address the various phases of need and recovery. This comprehensive plan not only addresses Ukraine's need for immediate relief but also sets the groundwork for sustainable development and enduring peace.

The first stage is short-term recovery and it underscores the urgent need for military aid and immediate support to stabilize the nation. The first stage focuses primarily on military aid, humanitarian assistance, and financial aid for Ukraine. Because the war is ongoing, military aid is imperative to Ukraine's victory and survival against Russia. Specifically, Ukraine is in need of defense equipment, ammunition, and intelligence to strengthen its defense against Russia in the ongoing conflict. Humanitarian assistance is also necessary to respond to the humanitarian crisis that has resulted from Russia's relentless attacks. Particularly crucial is emergency medical aid, food, shelter, and support for internally displaced people. Financial assistance is critical in order to ensure that Ukraine's government remains functional and to ensure continuity of civil services and emergency response capabilities.

The second stage is medium-term recovery and it addresses structural reforms and economic reconstruction. This stage focuses primarily on infrastructure repair and economic support. Because so much of Ukraine's infrastructure has been and continues to be demolished in the war, financial aid and assistance is needed to rebuild roads, schools, hospitals, and other infrastructure that has been damaged. The second stage also calls for loans and investments to stabilize the economy. This is especially important to prevent a further economic crisis, encourage economic growth, build resilience against future crises, and prepare for integration into the European market.

The third and final stage is long-term development and resilience. This stage is centered around preparing a stable future for Ukraine that will make the country less vulnerable to future crises. To achieve this goal Ukraine needs to strengthen its institutions, diversify its economy, and develop its community. Strengthening Ukraine's institutions cannot be done without reforming its governmental and judicial systems to ensure rule of law and democracy and thus prevent corruption. Diversifying its economy is accomplished by focusing on industries that promote variety and decrease reliance on sectors that are susceptible to conflict. Economic diversification also encourages sustainable development and promotes overall economic stability. Community and social development is necessary to improve the quality of life for Ukrainians. This calls for long-term educational, health, and welfare programs.

In roughly four years, the economies of each of the sixteen Marshall Plan recipient countries had surpassed pre-war levels, with output at least 35% higher than before the war. The remarkable economic reconstruction of the sixteen recipients was achieved with $13.3 billion (equivalent to $172 billion in 2024). By stark contrast, a joint Rapid Damage and Needs Assessment (RDNA3) estimates that as of December 31, 2023, the total cost for recovery and reconstruction in Ukraine is nearly $486 billion across a period of 10 years. This figure includes "building back better" principles, including a pivot toward using less energy, modernizing regulatory standards to include climate resilience and inclusive design, inflation, market conditions, surge pricing in major areas of construction, and higher insurance premiums.

The highest estimated needs are in the housing sector (over $80 billion) followed closely by transport (nearly $74 billion), commerce and industry ($67.5 billion), agriculture ($56 billion), energy ($47 billion), social protection and livelihoods ($44.3 billion) and explosive hazard management (almost $35 billion). The total cost of debris clearance and demolition (where needed) is nearly $11 billion. The health sector is in need of over $14 billion and the education sector needs nearly $14 billion.

Sector	Damage	Loss	Needs
Social sectors			
Housing	55.9	17.4	80.3
Education and science	5.6	6.9	13.9
Health	1.4	17.8	14.2
Social protection and livelihoods[a]	0.2	9.5[a]	44.5
Culture and tourism	3.5	19.6	8.9
Infrastructure sectors			
Energy and extractives	10.6	54.0	47.1
Transport	33.6	40.7	73.7
Telecommunications and digital	2.1	2.3	4.7
Water supply and sanitation	4.0	11.6	11.1
Municipal services	4.9	6.8	11.4
Productive sectors			
Agriculture	10.3	69.8	56.1
Commerce and industry	15.6	173.2	67.5
Irrigation and water resource management	0.7	0.7	10.7
Finance and banking	0.0	5.7	2.3
Cross-cutting sectors			
Environment, natural resource management, and forestry	3.3	26.5	2.3
Emergency response and civil protection	0.4	0.5	2.3
Justice and public administration	0.3	1.7	0.7
Explosive hazard management	-	34.6	34.6
Total	**152.5**	**499.3**	**486.2**

Total damage, loss, and needs by sector (US$ billion)

The Marshall Plan was an American funded program. The system to fund Ukraine's reconstruction combines funding from America, the EU, individual European nations, and multilateral institutions like the IMF, European Bank for Reconstruction and Development, the World Bank, the European Investment Bank, and others. Coordinating these funding streams is complicated but necessary to ensure that there is no overlap. However, being a joint program of various nations and international funding and trade bodies that did not exist at the time of the Marshall Plan, can make reconstruction of Ukraine, with all hands on deck, a success.

Another challenge is that large foreign aid programs implemented in the last thirty years in other parts of the world have had mixed results. Large amounts of international funding provided to Afghanistan, Iraq, and Haiti reconstruction largely failed due to a lack of coherent strategy for monitoring the allocation and use of funds. Large amounts of aid also drives corruption in vulnerable countries. This is a real threat to Ukraine, ranking in the bottom third of Transparency International's Corruption Perceptions Index. To prevent reconstruction from failing and funds from going to waste, Ukraine and its supporters in the West will need to coordinate to develop clear, coherent and transparent standards for reconstruction planning and implementation.

Since Russia's attack in 2022, Ukraine has received extensive aid and support from several countries and international organizations. The United States and the EU have been pivotal in providing foreign aid packages to Ukraine that address its military, economic, and humanitarian needs. Since the onset of the war, the United States has provided a wide range of military support including weapons like javelin anti-tank missiles, anti-aircraft systems, and small arms. It has also provided other military equipment, training, and intelligence support. In addition to military aid, Congress approved multi-billion dollar financial aid packages that provided funds for economic and military support, in hope of stabilizing Ukraine's economy. The US has also supplied humanitarian aid, including food, medical supplies, and funds for refugee-

related services, all aid that is imperative for addressing the urgent needs of those affected by Russia's war. The EU has also supported Ukraine by providing military, financial, and humanitarian aid. It has supplied military equipment and provided training to Ukraine's military. This is part of the European Peace Facility which facilitates the provisions of equipment and training. The EU has also supplied a multitude of grants and loans to support public services and the maintenance of Ukraine's government operations.

Humanitarian aid has also been supplied to Ukraine including aid via partnerships with non-governmental organizations (NGOs) and various international organizations. The aid encompasses a wide range of urgent needs from medical aid to assistance for internally displaced people. The EU and the US have also worked in conjunction with other international partners to ensure timely delivered aid that addresses the most urgent necessities. Both the EU and the United States have also engaged in significant discussions at international fora to encourage a united global effort to support Ukraine..

Other countries and international organizations have also provided notable aid and support to Ukraine. The United Kingdom has supplied military, financial, and humanitarian assistance through an aid package that included military arms, economic assistance, and aid for refugees impacted by the war. Canada has provided military and humanitarian aid that includes financial aid, non-lethal military gear, and aid for internally displaced Ukrainians. Germany has extended financial, military and humanitarian aid to Ukraine including substantial financial assistance, military gear, humanitarian aid. A number of other countries including Australia, South Korea, Japan, and individual EU member states have supplied various forms of aid including grants, military equipment, humanitarian relief, and medical supplies. International organizations such as the World Bank and the International Monetary Fund (IMF) have also contributed financial aid in support of stabilizing Ukraine's economy. The United Nations (UN) and NGOs have also assisted in providing humanitarian relief to those impacted by the war.

The foreign aid Ukraine has thus far received has been crucial to maintaining its resilience against Russia; however, Ukraine is in need of much more. While the total cost of recovery is estimated at $486 billion over the next decade, in 2024 alone, Ukrainian authorities predict that the country will require $15 billion to satiate immediate reconstruction and recovery at a national and community level. Of this $15 billion, only $5.5 billion has been secured from international partners and Ukraine's own sources; however, the remaining $9.5 billion remains unfunded. The RDNA3 found that the accumulation of direct damage in Ukraine since the onset of the war has grown to reach $152 billion and the most affected sectors have been housing, commerce and industry, transport, agriculture, and energy.

The continuous flow of foreign aid to Ukraine is crucial to its survival. If foreign aid were to cease, Ukraine would face severe and multifaceted consequences. Specifically, a lack of funding and resources would cause Ukraine's economy to deteriorate and this would impede Ukraine's ability to rebuild damaged infrastructure, thus hindering its economic recovery. Furthermore, economic aid is critical for Ukraine to continue defending itself against Russian forces, and without it Ukraine will be swallowed up by Russia. Much is at stake.

Commentary

1. A suitable first step to providing aid to Ukraine should be unlocking frozen Russian assets. The UN General Assembly adopted on November 14, 2022, a resolution calling for this solution, but it is not legally binding.

2. The United States Department of Justice set up in March 2022 a so-called Klepto Capture Task Force to seize assets of Russian oligarchs who are on a sanctions list and hold assets in the US. In December 2024, the DOJ announced that they are moving to seize $3.4 million in proceeds from the sale of a Burbank recording studio sold by Russian oligarch Oleg Deripaska.

14.4 Private Foreign Investment

At the April 10, 2024 address Why We Can Still Imagine a Positive Vision for Ukraine's Future, at the Kyiv School of Economics, American economist Daleep Singh, serving as U.S. Deputy National Security Advisor for International Economics, explained:"To realize its future within the EU, Ukraine will need to follow a pathway that is deliberate by design. The targets are well defined and paired with built-in incentives. The *acquis* is the roadmap that provides the direction and destination as Ukrainians build a modern, transparent, inclusive, market-based democracy and economy. But ultimately, these reforms aren't for the EU – they are meant for the people of Ukraine, and must be owned by Ukraine on the standalone merits. We know that democratic reform and economic growth are strongly correlated. When countries make the hard but essential choices – to tackle corruption, to strengthen rule of law, to open up their economies to competition – they become magnets for private investment."

One of the drivers of Ukraine's economic development and reconstruction is expected to be private foreign investment. This is crucial for Ukraine to create competitive conditions for business and investment and restore trust in its institutions. It is also necessary for Ukraine's accession to the EU, which requires the ability to handle the competitive pressure of the EU market. Moreover, a competitive market will allow Ukraine to further attract investments geared toward modernizing and reforming its economic sectors. Although Ukraine aims to increase its net inflow of foreign direct investment (FDI), the integral indicator of Ukraine's Investment Attractiveness Index in 2023 stood at 2.44 out of 5 possible points, a slight decrease from the 2.48 points it maintained in the second half of 2022. Accordingly, it is clear that Ukraine must urgently improve its investment climate to attract external resources that can assist with the reconstruction of its economy and infrastructure and create job opportunities that will further aid economic recovery.

The primary obstacle cited by investors looking to invest in Ukraine is its negative perception resulting from corruption and political instability. While the current state of Ukraine's political instability stems from the ongoing Russian war, corruption has plagued Ukraine since its independence in 1991. Corruption undermines the rule of law, hampers economic development, and erodes public trust. "While Russia's war poses an external threat to Ukraine, corruption poses an internal threat to their democracy, sovereignty, European aspirations, and to their economic resilience." Grand corruption involves high-level officials who have discretionary control over government policy, selling government assets, and large government contracts. Petty corruption involves lower-level officials who are charged with making decisions about enforcing regulations. Both varieties of corruption permeate throughout Ukraine. Thus, the depth of the pervasive corruption issue in Ukraine is such that it extends from low-level bureaucratic interference to higher echelons of power–where significant investment decisions are made. While Ukrainians are not alone in their battle against corruption, Ukraine scores poorly in comparison to most other countries, consistently in the bottom third of Transparency International's Corruption Perceptions Index.

Corruption in Ukraine is evident in numerous forms, from overt acts like bribery and nepotism to more opaque operations like the procurement of fraud and embezzlement. These corrupt practices not only stain Ukraine's image but create significant challenges to conducting

business effectively. A major concern of foreign businesses is that Ukraine's regulatory and legal hurdles are effectively designed to elicit bribes. Ukrainian government employees intentionally design licensing and registration procedures to be so difficult that the process threatens to slow exporting or importing operations or a foreign investment. Moreover, the permits and licenses required to create and open businesses are complex and costly, and compliance with multiple contradictory demands from the bureaucracy is time consuming and expensive. Consequently, bribes are demanded from those who wish to clear the regulatory and legal hurdles to trading or setting up a business. Although Ukraine offers advantages in labor and other operating costs, investors find that these do not compensate for the frustration and cost of attempting to work through the government bureaucracy. Moreover, investors recognize that bribery creates an uneven playing field such that businesses are not able to fairly compete unless they engage in corruption by succumbing to bribes.

Nepotism further enhances challenges to effectively conducting business due to unqualified people occupying key positions and thus weakening institutional integrity and efficiency. Consequently, transaction costs rise due to poor decision making, poor management, and stalled projects. Misconduct involving the procurement of fraud and embezzlement is harder to discover but nevertheless has the same adverse effect as overt acts of corruption–it inflates transaction costs. The increased financial burden resulting from the rampant corruption in Ukraine increases risks for investors and complicates business operations due to funds intended for business development being siphoned off illicitly. Additionally, increased costs and risks signal to investors the potential decrease in returns on investment. As a result, this makes Ukraine an unattractive investment environment.

In addition to the pervasive corruption, political instability in Ukraine significantly deters private foreign investment by creating an unattractive environment for investors seeking stable and predictable markets. Russia's ongoing war and political volatility in Ukraine are factors that contribute to a high-risk profile that discourages long-term investments. Regions that are vulnerable to unpredictable changes in government are particularly risky for investors because the possibility of shifts in taxation, regulatory frameworks, and economic policy make it challenging for investors to create and execute business strategies. Moreover, ongoing political unrest disrupts economic infrastructure by creating banking instability, unreliable legal institutions, and inconsistent enforcement of contracts. This poses a challenge for foreign investors by making it harder for companies to secure investments against expropriation or fraud. Specifically, companies operating in Ukraine and potential investors are concerned about the unavailability of political and war risk insurance mechanisms. Without a reliable legal system to enforce contracts and resolve business disputes, investors are discouraged from committing capital in Ukraine, especially when they are accustomed to business climates that are more reliable and transparent.

Recognizing these concerns, Ukraine has implemented several reforms to address corruption and stabilize its political climate, including the establishment of anti-corruption laws and anti-corruption institutions. Among the established institutions are the National Agency on Corruption Prevention (NACP), the National Anti-Corruption Bureau of Ukraine (NABU), the High Anti-Corruption Court of Ukraine (HCAC), the Specialized Anti-Corruption Prosecutor's Office (SAPO), the Asset Recovery and Management Agency (ARMA), and the Economic Security Bureau of Ukraine (ESBU). The NACP monitors ethical and legal conduct in public administration and oversees implementation of anti-corruption policies. The NABU enhances integrity and accountability in the government by conducting independent investigations

regarding corruption and related offenses among public figures and high-ranking officials. The HCAC adjudicates cases regarding corruption and related offenses and ensures that allegations against high-ranking and public officials are adjudicated fairly. The SAPO is committed to upholding accountability and justice in public service by prosecuting reasonable allegations of corruption. The ARMA is tasked with identifying, seizing, and handling assets that resulted from corruption and other crimes to prevent money laundering. The ESBU is responsible for investigating financial crimes and offenses that pose threats to Ukraine's economic stability.

Chart of Anti-Corruption institutions in Ukraine

One measure that has been effective to address and minimize corruption across Ukraine's government has been through the Anti-Corruption Strategy. The Anti-Corruption Strategy is a document that calls for cooperation between all state bodies to combat corruption in Ukraine. Developing, coordinating, and implementing the Anti-Corruption Strategy is carried out by the NACP. The 2021-2025 Anti-Corruption Strategy (Strategy) is based on 5 key principles:

1) Optimization of functions of the state and local governments, realization of which shall provide: eradication of duplication of the powers which are exercised by various authorities; temporary suspension of low-efficient powers which are characterized by high corruption risks; elimination of cases when an authority exercises the power combination of which creates increased corruption risks;

2) Digital transformation of the exercise of powers of public authorities and local self-governments, transparency in the exercise and disclosure of data as the basis for minimization of corruption risks;

3) Establishment of lawful and more comfortable ways, contrary to existing corrupt practices, to satisfy needs of individuals and legal entities;

4) Ensuring inevitability of legal responsibility for corruption and corruption-related offenses, that shall enable an additional deterrent effect for all subjects of legal relations;

5) Formation of society's intolerance to corruption, fortifying culture of integrity and respect for the rule of law.

The Strategy outlines a comprehensive framework aimed at confronting corruption throughout Ukraine. It was approved by the Verkhovna Rada – the unicameral parliament of Ukraine – in June 2022, with emphasis on facilitating a system-wide effort to curb corruption in state and local authoritative bodies. The Strategy specifies clear responsibilities, timelines, and funding for each measure, culminating in a robust mechanism for transparency and accountability. Significant emphasis is placed on digital transformation, optimizing government functions, and enhancing transparency of government activities as the basis to reduce corruption. Additionally, the Strategy aims to establish a culture of integrity in which there is public intolerance to corruption, and legal reforms that guarantee punishment for corruption-related offenses. Overall, the Strategy reflects Ukraine's ongoing commitment to aligning with EU standards, especially by addressing accountability, transparency, and integrity in its public sector to promote Ukraine's long-term reconstruction, development, and economic growth.

The 2021-2025 Strategy also represents a significant pivot toward creating a more favorable business climate that is necessary for attracting private foreign investment. Lack of transparency and accountability has long deterred international investors from committing capital in Ukraine, however, the establishment of stringent anti-corruption policies and independent institutions who monitor compliance and enforcement has resulted in a more predictable regulatory environment favored by investors. Moreover, unpredictability in legal proceedings and corruption in public procurement have historically created barriers to foreign investment, but the reforms called for in the Strategy have been paramount in reducing risks associated with doing business in Ukraine. Furthermore, Ukraine's commitment to aligning with EU's legal and regulatory frameworks has reassured investors of Ukraine's dedication to international norms and economic integration, both of which are prerequisites for foreign capital entry.

As a result of implementing the 2021-2025 Strategy, Ukraine has experienced a significant influx in FDI, illustrating growing global confidence in its market. For example, the technology sector has attracted significant investments from notable international tech corporations like Apple, Google, and Microsoft, all of whom are capitalizing on Ukraine's accomplished IT workforce and increasingly transparent business climate. The energy sector has also faced a surge in FDI with substantial investments being made in renewable energy initiatives. Additionally, the manufacturing sector has grown due to international car manufacturers expanding their operations to capitalize on reduced production costs and more transparent regulatory policies.

Overall, it is clear that corruption and private foreign investment are inversely related; as corruption levels diminish, investors commit more capital to Ukraine. Ukraine's dedication to aligning with EU standards and its ongoing reform agenda create a promising business climate for foreign investors seeking to leverage opportunities in technology innovation, renewable energy, and sustainable industrial practices. If Ukraine maintains its pledge to combating corruption, it will be able to quickly establish itself as a lucrative hub for foreign investors which will lead to enhancements in Ukraine's economic recovery and long-term development.

14.5 Reparations & Distribution of Frozen Russian Assets

14.5.1 Russian International Law Violations prompts Post War Reparations for Ukraine

Reparations have been used as a legal tool for the recognition and identification of a country's fault in violating an obligation of international law by requiring the violating nation to remedy the victim of the alleged offense. The horrific acts of Russia's full-scale invasion committed on Ukrainian civilians and the nation as a whole, has already provided substantial evidence to establish a claim for reparations for Ukraine. According to the International Center for Transitional Justice, "reparations are meant to acknowledge and repair the causes and consequences of human rights violations and inequality in countries emerging from dictatorship, armed conflict, and political violence, as well in societies dealing with racial injustice and legacies of colonization." Reparations are used as a legal instrument to acknowledge wrongdoing of a nation and provide some remedy whether in the form of monetary compensation or physical restitution. The concept of reparations is internationally recognized, establishing a responsibility for nations to hold violating nations accountable for the obligation to remedy harmed victims. Ukrainians have been the victims of substantial humanitarian violations from the armed conflict brought upon Ukraine by Russia invasion. The financial compensation to repair the damage caused by Russia for violating international humanitarian law and international treaties can be obtained by invoking a claim for reparations. Rule 150 of International Humanitarian Law dictates that "a State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused." For the victims of Ukraine to successfully invoke a claim for reparations against Russia, evidence of Russia's violation of humanitarian law is required. Ukrainian advocates have already established the existence of an abundance of events that constitute the violation of humanitarian legal principles attributed to the actions of Russia officials and members of the military. This evidence is essential to the initial claim to establish grounds for reparations for the victims of these crimes.

Since February 2022, Russia's invasion of Ukraine has amounted to a multitude of horrific war crimes violating humanitarian and international law. The collaboration of international humanitarian organizations, legal professionals, and citizens of Ukraine have demonstrated remarkable progress for the identification and establishment of critical evidence against Russia regarding the violation of international law principles during their hostile invasion of Ukraine. These violations include the use of internationally recognized prohibited weapons in war, the transportation of children, targeting civilian populated areas with explosive devices, intentionally damaging the environment through use of restricted chemical weapons, and the rape and murder of thousands of civilians. According to the Organization for Security and Co-operation in Europe (OSCE) report on the violation of international humanitarian law in Ukraine, in the first year of Russian invasion there were "16,295 civilian casualties in the country, among which 6,430 civilians killed including 402 children, and 9,865 injured including 739 children." The inherent disregard for human life that Russia has demonstrated towards Ukraine and their civilians, compels the need for Russia to pay reparations to the victims. Targeting major cities with the awareness of imminent civilian casualties is an atrocious act that is condemned internationally. Russia has continued to exhibit their inconsideration of international humanitarian rights and historically established practices of war. Russia has repeatedly executed attacks on densely populated city centers across Ukraine evidently resulting in extensive property

damage and civilian casualties. The OSCE report identifies that "many of these attacks appear to clearly disregard the prohibition on launching indiscriminate and disproportionate attacks, a conduct that may amount to war crimes." This inherent disregard for the consequences of military action imposed by Russia, demonstrates Putin's objective to destroy the population of Ukraine by any means possible. Not only do these actions demonstrate substantial grounds that Russia is violating humanitarian laws, but evidence also points to potential instances of Ukrainian genocide and war crimes committed by Russia. In the first year alone, Russia's violations of humanitarian law imposes an obligation to pay reparations to victims. There is no question as to whether enough evidence exists amounting to grounds for Ukrainian victims claim for Russian reparations. However, the OSCE report will further illustrate that Russia's disregard for Ukrainian life through violent acts of war are directly in violation of humanitarian law and will in turn provide Ukrainian victims with a legal standing for Russian reparations.

Second Interim Report on reported violations of International Humanitarian Law and International Human Rights Law in Ukraine
Organization for Security and Co-operation in Europe
December 2022

V. Updated Assessment of Alleged Violations of IHL during the Conduct of Hostilities

41. IHL requires all parties to a conflict to abide by certain norms in order to minimize harm caused to the civilian population and civilian objects. These include, first, *distinction*: parties to the conflict may direct attacks only against combatants and military objectives and must at all times distinguish between civilians and combatants as well as between civilian objects and military objectives. Indiscriminate attacks which are of a nature to strike military objectives and civilians and civilian objects without distinction are unlawful. The second core principle is *proportionality*: attacks that would cause harm to the civilian population and civilian objects that would be excessive in relation to the anticipated military advantage are prohibited. The final core principle is *precautions*: parties to the conflict must take all feasible measures in the conduct of their military operations to avoid or minimize harm to civilians and civilian objects.

42. The ongoing military attack by the Russian Federation in Ukraine has led to a devastating number of documented civilian deaths and injuries and unprecedented level of damage and destruction of civilian objects. As of 30 October, the Office of the United Nations High Commissioner for Human Rights (OHCHR) had verified 16,295 civilian casualties in the country, among which 6,430 civilians killed including 402 children, and 9,865 injured including 739 children. OHCHR believes that the actual numbers are considerably higher. In addition, tens of thousands of civilian objects across the country, including residential buildings, medical establishments, and educational institutions were damaged or destroyed. Most of the civilian deaths and injuries, as well as damage and destruction of civilian objects, resulted from attacks in which explosive weapons with wide area effects were used in densely populated areas. In addition, the widespread hostilities have caused mass displacement of civilians. At the end of

October, 6.5 million people were displaced within Ukraine and an additional 7.6 million have become refugees across Europe.

43. The evidence gathered by ODIHR during the reporting period largely confirms the findings of the *First Interim Report*. The unabated scale and frequency of reportedly indiscriminate attacks carried out in populated areas of Ukraine has led to widespread civilian deaths and injuries and strongly suggest that the Russian Federation continues to conduct hostilities with a general disregard for the basic principles of IHL noted above. There are also indications that the Ukrainian armed forces have, on a much smaller scale, failed to comply with IHL rules on the conduct of hostilities in some regions that are outside the government's effective control.

a. The use of explosive weapons in populated areas

44. According to OHCHR, 95 percent of civilian deaths and injuries in Ukraine recorded between 1 August and 31 October were caused by the use of explosive weapons with a wide impact area, including shelling from heavy artillery and multi-launch rocket systems, missile and air strikes. These are weapons designed for the open battlefield and, given their inherent inaccuracy, their use in densely populated areas is very likely to cause indiscriminate and disproportionate harm to civilians and civilian infrastructure.

45. Newly discovered evidence, as well as ODIHR's previous monitoring, has confirmed that the Russian Federation has repeatedly carried out attacks using explosive weapons with wide area impact in densely populated urban areas across Ukraine, leading to numerous civilian casualties as well as extensive damage and destruction of civilian objects. Many of these attacks appear to clearly disregard the prohibition on launching indiscriminate and disproportionate attacks, a conduct that may amount to war crimes.

46. For instance, on 1 July, 21 civilians were killed (including one child) and 39 were injured (including six children) as a result of a missile attack on a nine-storey residential building and a recreation centre in Serhiivka (Odesa region), according to OHCHR. The evidence strongly suggests that there were no Ukrainian military targets in the area and that the weapons used were a type of guided missile designed to hit ships and therefore inaccurate and inappropriate for use in urban areas. On 9 July, at least 48 civilians (including one child) were killed when a rocket hit a five-storey residential building in Chasiv Yar (Donetsk region), according to the information provided by State Emergency Service of Ukraine.

47. To a much lesser extent, the Ukrainian armed forces reportedly continued[47] to use explosive weapons with a wide impact area in their attacks on populated areas in the territories of Donetsk and Luhansk regions that are outside of government's control, causing civilian casualties.[48] For example, a representative of the *de facto* authorities in occupied Donetsk region stated that, on 4 August, six civilians (including one child) were killed and five were injured in the shelling of Voroshylovskyi district of Donetsk (Donetsk region),[49] although ODIHR was unable to independently verify this report.

48. 48. IHL generally prohibits weapons that by their design or use are of a nature to cause superfluous injury or unnecessary suffering.[50] The use of any weapon not specifically prohibited under international law must respect the basic IHL principles of distinction, proportionality and precautions. Therefore, if the inherent design of a weapon means it cannot be directed at a specific military target, it is prohibited as its use would constitute an indiscriminate attack.[51] Even if not indiscriminate by nature, the circumstances under which a weapon is used may nevertheless breach the prohibition of indiscriminate attacks. This is the case of the use of certain explosive weapons with wide impact area in residential and urban settings, as the following section will highlight.

c. Attacks against works and installations containing dangerous forces, in particular nuclear power stations

54. During the reporting period, there have been reports of attacks at, and in the area of the Zaporizhzhia Nuclear Power Plant (ZNPP) — Ukraine's largest operating nuclear power station located in the city of Enerhodar in the south-east Zaporizhzhia region, that has been under control of the Russian Federation since 4 March. After conducting a visit to the ZNPP in early September,[71] the International Atomic Energy Agency (IAEA) confirmed that military activities, including shelling, had caused damage to the ZNPP's facilities. The IAEA team also observed the presence of Russian military personnel, vehicles and equipment around the ZNPP.

55. IHL stipulates that "works or installations containing dangerous forces," namely dams ,dykes and nuclear electrical generating stations, shall not be attacked, even where these objects are military objectives, if such attacks may cause the release of dangerous forces and consequent severe loss of life among the civilian population. Deliberately targeting a nuclear power facility in the knowledge that such an attack would cause excessive loss of life to civilians or damage to civilian objects may constitute a war crime. This prohibition also applies to attacks against military objectives located at, or in the vicinity of nuclear power stations as they are also likely to pose colossal risks to the civilian population, including the potential short- and long-term effects on life, health, and the environment. In parallel, parties to conflict shall avoid locating any military objectives in the vicinity of nuclear electrical generating stations.

14.5.2 Requirements for Reparations against a State

The right for a victim of an international humanitarian violation to make a claim for reparations has been a foundational principle of international human rights law. This principle has been outlined across multiple international legal instruments including article 8 of the Universal Declaration of Human Rights, international humanitarian law in article 3 of the Hague Convention, article 91 of the Protocol Additional of the Geneva Conventions, and articles 68 and 75 of the Rome Statute of the International Criminal Court. This list displays a few of numerous legal instruments in place to remedy gross violations of human rights law. Restitution for victims of humanitarian violations is a legal obligation instilled upon a nation to respect, ensure, and implement international human rights law as described in various treaties. Throughout the years many courts have awarded reparations to victims against individual perpetrators who have violated human rights law. Russia's hostile invasion of Ukraine has resulted in a multitude of human rights violations that has sparked a global demand for Russia to pay reparations to

Ukrainian victims as a nation. Traditionally, individual perpetrators were subject to liability to pay reparations for committing acts in violation of international humanitarian law. However, as international tribunals have developed concurrent to horrific acts of human rights violations, the definition of an individual responsible to pay for reparations has also evolved. Ukraine will need substantial financial support to rebuild Ukraine after the war, so establishing liability for Russia to pay reparations as a nation, will further support this effort. Evidently, there is substantial grounds to demonstrate Russia's culpability for thousands of Ukrainian civilians' lives lost, intentional damage to Ukraine' environment through use of forbidden chemical weapons, and the transportation of Ukrainian children, all as a result from the inhumane practices of war from Russia's invasion. The evidence of Russia's horrific violations of international humanitarian law will aggregately reach the level of culpability to establish Russia as a State in which a reparations claim can be brought against.

As widespread governmental violations of human rights law have occurred over the last century, international legal organizations have been required to consider expanding the definition of an individual perpetrator under the reparations obligation, holding an entire State liable to pay reparations for humanitarian violations. According to the United Nations International Law Commission, "the topic of reparation to individuals for damage caused by gross violations of international human rights law and serious violations of international humanitarian law has featured increasingly in the practice of States, international organizations, and international tribunals during the recent decades, reflecting the evolving status of the individual under international law, especially since World War II." This concept of the evolving status of the individual to pay reparations is a product of human rights violations being committed under governmental command. Each nation has the obligation to institute a functioning society that protects each individual basic human rights through the use of law. If a nation fails to uphold this obligation by instead directing members of the nation to commit widespread and gross violations of humanitarian law upon another nation, then the perpetrating nation should be wholly responsible to pay reparations. The concept of reparations is in place to act as some remedy of restitution for the victims of atrocious human rights violations. The Permanent Court of International Justice (PCIJ), the predecessor to the International Criminal Court, claimed that "reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act has not been committed." If Ukraine can successfully establish that the State of Russia is entirely responsible for the destruction of Ukraine and the deaths and injury of Ukrainians, reparations will attempt to achieve the result as described by the PCIJ. Although reparations in no way will return Ukraine back to the condition in which they were in prior to the invasion, the financial support provided by the Russian State would aid the post war rebuilding efforts of Ukraine.

In the Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), the International Court of Justice "explicitly confirmed that a State that has violated a rule of international law causing damage to person has the obligation to make reparations for the damage caused to all the natural or legal persons concerned." This holding in the most recent ICJ case regarding reparations establishes a fundamental legal principle that will aid Ukraine in their efforts to recover war reparations from Russia. Russia has demonstrated nationwide international law violations causing irreparable damage to the nation of Ukraine and their citizens. In addition, the International Court of Justice has established several situations

where violations of human rights entail State responsibility. The ICJ outlines these situations in a report: "(1) the human rights violation is committed by a State organ, (2) the human rights violations is committed by a non-State actor, but under the control or with the authorization, acquiescence, complicity or acknowledgement of State agents, and (3) a private party commits an act that may impair the enjoyment of human rights, which, in and of itself is not attributable to the State, but where the State responsibility may nonetheless be engaged in certain circumstance." Considering the ICJ now holds States responsible for paying reparations as a result of their wrongdoing, Ukraine will be able to demand restitution for the victims of Russia's acts of aggression. Putin has commanded the entire military force of Russia to commit egregious international war and humanitarian violations without regard for human life. Thus, the executive organ of the Russian government has commanded the deprivation of a multitude of human rights violations which establishes liability under the ICJ's conditions above. The ICJ will have substantial grounds to establish Russia as wholly responsible for the lives, injury, and destruction of property committed against Ukraine. The requirements to make a claim for war reparations against a State will be further exemplified by the following United Nations International Law Commission report on Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law.

Reparation to Individuals for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

United Nations International Law Commission
Claudio Grossman Guiloff

The topic of reparation to individuals for damage caused by gross violations of international human rights law ("IHRL") and serious violations of international humanitarian law ("IHL") has featured increasingly in the practice of States, international organizations, and international tribunals during recent decades, reflecting the evolving status of the individual under international law, especially since World War II. However, the availability of international and domestic forums to address violations of individual rights has existed in various forms since the early 1900s.

It is a principle of international law that the breach of an international obligation involves an obligation to make reparation in an adequate form. In 1928, in the *Case Concerning the Factory at Chorzow* (*Chorzow Factory Case*), the Permanent Court of International Justice ("PCIJ") clearly articulated the content of this general obligation, stating "reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed."

The general rule articulated by the *Chorzow Factory Case* has been widely cited and reaffirmed in several judgments of the International Court of Justice ("ICJ"), including the *Case Concerning Armed Activities on the Territory of the Congo*. In that judgment, which dealt with violations of IHL and IHRL, inter alia, the Court recognized that the injury caused to individuals was relevant in assessing the scope of reparation owed by Uganda. The ICJ has explicitly confirmed that a State that has violated a rule of international law causing damage to persons has "the obligation to make reparation for the damage caused to all the natural or legal persons concerned." In the context of Diplomatic Protection, in the case of *Ahmadou Sadio Diallo*, the ICJ also stressed the importance of providing reparation for the injury suffered by Mr. Diallo in breach of international law.

The practice of States and international organizations, and the case-law of international tribunals, show that the principle of reparation has been extensively applied in the fields of IHRL and IHL. Practice reflects that the content and form of reparation has adjusted to the nature of these specific areas of law. The most relevant sources of practice include treaty provisions regarding reparation to individuals, the

establishment of permanent or ad hoc procedures open to individuals, and the creation of specific programmes concerning reparation.

Current practice reveals there are three levels enabling individuals to obtain reparation for violations of IHRL and serious violations of IHL. Opportunity to receive reparation at the inter-State, international, and domestic levels is discussed below.

At the inter-State level, reparation to individuals is sought through the traditional process of diplomatic protection, a topic that was comprehensively studied by the International Law Commission ("ILC") in its Draft Articles on Diplomatic Protection. However, resort to this means of reparation is a right of States. The topic covered by this syllabus would complement the work of the Commission on the topic of Diplomatic Protection by focusing on reparation to individuals at the international and domestic levels.

Reparation at the international level includes international and regional tribunals as well as treaty bodies, which allow individuals to bring complaints against States for violations of IHRL and in certain cases for IHL. Through these mechanisms, individuals seek an objective finding of wrongdoing and an authoritative statement on the appropriate reparation that should be issued, either in the form of a judgment, recommendations, or friendly settlement.

At the domestic level, individuals may bring claims for the violation of IHRL or IHL before the domestic courts of a State, usually the State allegedly responsible for the violation. To comply with the relevant rules of international law, domestic mechanisms are supposed to provide an effective remedy for affected individuals, including appropriate reparation if the violation is proven. On the other hand, access to international procedures also needs to comply with certain requirements, such as the exhaustion of local remedies, to avoid the misuse of international mechanisms and respect the principle of subsidiarity. International and domestic mechanisms may complement each other.

Concerning violations of IHL, one of the main challenges for victims is that there is not a specialized forum to bring claims against the responsible State. However, victims of violations of IHL may be able to bring claims for violations of IHRL that occurred in the context of an armed conflict or emergency situations before competent IHRL mechanisms. In such instances, these bodies may apply the relevant rules of IHL as the *lex specialis*.

Furthermore, in many peace treaties, the injured State receives a lump sum payment from the wrongdoing State for the purpose of distributing it among those of its nationals affected by violations of IHL or other areas of law. Ad hoc bodies have also been created to decide these kinds of cases, typically in the form of mixed-claims commissions. Recent examples include the Eritrea-Ethiopia Claims Commission and the United Nations Compensation Commission, a subsidiary organ of the UN Security Council tasked with deciding claims arising from Iraq's unlawful invasion of Kuwait, including those brought by individual persons.

14.5.3 ICJ Precedent: Democratic Republic of the Congo v. Uganda

The International Criminal Court of Justice (ICJ) is the principal judicial organ of the United Nations, known as the World's Court. One of the ICJ's central responsibilities is to adjudicate legal disputes between two nations regarding principles of international law. In June 1999, the Democratic Republic of Congo instituted proceedings against Uganda for "acts of armed aggression committed … in flagrant breach of the United Nations Charter and of the Charter of the Organization of African Unity." Citizens of the Republic of Congo were victims to unlawful killing and inhumane military tactics employed by Uganda for years leading up to the case presented to the ICJ. The ICJ was required to evaluate whether Uganda was liable as a State to pay reparations for the injuries caused by violations of international humanitarian law. The nature of ICJ cases involve a State bringing a claim against another to evaluate international legal principles. Congo sought reparations for the egregious crimes against humanity Uganda demonstrated to their citizens and therefore brought the case to the ICJ for restitution. According

the ICJ *Democratic Republic of Congo v. Uganda* opinion, Uganda's actions resulted in "massive infringements of those rights and serious violations of international humanitarian law in the form of, *inter alia*, killings, injuries cruel and inhuman treatment, damage to property and the plundering of Congolese natural resources." These horrific occurrences of human rights violations exemplify the foundation for which the reparations principle is founded. The acknowledgement, identification, and obligation of a nation to provide financial support to the victims that they have wronged. In 2005, the ICJ established judicial responsibility for Uganda to pay reparations to the Republic of Congo for violating a multitude of international human rights laws. The initial opinion dictated that the ICJ would later detail the exact financial value of reparations owed absent an agreement between the two nations. In 2022, the ICJ implemented the very first ruling of this nature in history by "establishing the amount of reparations relating to international crimes committed on a very large scale and characterized by extreme cruelty." The ICJ's ruling on the Democratic Republic of Congo v. Uganda is monumental for multiple reasons. This is the first time in history there is an international court system precedent that establishes the exact method of calculation for reparations. In addition, the ICJ has demonstrated their power over infringing nations or individuals who violate international human rights laws to ensure a binding legal obligation to pay reparations. Ukraine will now have a clear and definite ICJ precedent to base their claims against when seeking war reparations from Russia. Although each case adjudicated under the ICJ is unique to the specific nations involved, the existence of this case will be beneficial to evidence similar violations of international humanitarian law as demonstrated by Russia. The following Democratic Republic of Congo v. Uganda opinion by the ICJ will be very useful for Ukraine in their effort to establish Russian liability for the obligation to pay reparations.

Armed Activities on the Territory of the Congo
(Democratic Republic of the Congo v. Uganda)
International Court of Justice
February 2022

Reparations

History of the proceedings (paras. 1-47)

The Court recalls that, on 23 June 1999, the Democratic Republic of the Congo (hereinafter the "DRC") filed in the Registry of the Court an Application instituting proceedings against the Republic of Uganda (hereinafter "Uganda") in respect of a dispute concerning "acts of *armed aggression* perpetrated by Uganda on the territory of the Democratic Republic of the Congo, in flagrant violation of the United Nations Charter and of the Charter of the Organization of African Unity" (emphasis in the original). It also notes that Uganda submitted three counter-claims, two of which were found to be admissible as such.

The Court then states that, in its Judgment on the merits dated 19 December 2005 (hereinafter the "2005 Judgment"), it found that Uganda had violated certain obligations incumbent on it and was under an obligation to make reparation to the DRC for the injury caused.

In relation to the counter-claims presented by Uganda, the Court found that the DRC had violated certain obligations incumbent on it and that it was under an obligation to make reparation to Uganda for the injury caused.

The Court then notes that it further decided in its 2005 Judgment that, failing agreement between the Parties, the question of reparations due would be settled by the Court.

B. The principles and rules applicable to the assessment of reparations in the present case (paras. 69-110)

Having recalled that, in its 2005 Judgment, it found that Uganda was under an obligation to make reparation for the damage caused by internationally wrongful acts (actions and omissions) attributable to it, the Court begins by determining the principles and rules applicable to the assessment of reparations in the present case. It does so, first, by distinguishing between the different situations that arose during the conflict in Ituri and in other areas of the DRC (Subsection 1); second, by analysing the required causal nexus between Uganda's internationally wrongful acts and the injury suffered by the Applicant (Subsection 2); and, finally, by examining the nature, form and amount of reparation (Subsection 3).

1. The principles and rules applicable to the different situations that arose during the conflict (paras. 73-84)

The Court recalls that the Parties disagree about the scope of Uganda's obligation to make reparation for the injury suffered in two different situations: in the district of Ituri, under Ugandan occupation, and in other areas of the DRC outside Ituri, including Kisangani where Ugandan and Rwandan armed forces were operating simultaneously.

(a) In Ituri (paras. 74-79)

The Court observes that the Parties hold opposing views on whether the reparation owed by Uganda to the DRC extends to damage caused by third parties in the district of Ituri.

Having recalled the arguments of the Parties in this regard, the Court considers that the status of the district of Ituri as an occupied territory has a direct bearing on questions of proof and the requisite causal nexus. As an occupying Power, Uganda had a duty of vigilance in preventing violations of human rights and international humanitarian law by other actors present in the occupied territory, including rebel groups acting on their own account. Given this duty of vigilance, the Court concluded that the Respondent's responsibility was engaged "by its failure . . . to take measures to . . . ensure respect for human rights and international humanitarian law in Ituri district" (2005 Judgment, *I.C.J. Reports 2005*, p. 231, paras. 178-179, p. 245, para. 211, and p. 280, para. 345, subpara. (3) of the operative part). It is thus of the opinion that, taking into account this conclusion, it is for Uganda to establish, in this phase of the proceedings, that a particular injury alleged by the DRC in Ituri was not caused by Uganda's failure to meet its obligations as an occupying Power. In the absence of evidence to that effect, it may be concluded that

Uganda owes reparation in relation to such injury.

With respect to natural resources, the Court recalls that, in its 2005 Judgment, it considered that Uganda, as an occupying Power, had an "obligation to take appropriate measures to prevent the looting, plundering and exploitation of natural resources in the occupied territory [by] private persons in [Ituri] district" (*ibid.*, p. 253, para. 248). The Court found that Uganda had "fail[ed] to comply with its obligations under Article 43 of the Hague Regulations of 1907 as an occupying Power in Ituri in respect of all acts of looting, plundering and exploitation of natural resources in the occupied territory" (*ibid.*, p. 253, para. 250) and that its international responsibility was thereby engaged (*ibid.*, p. 281, para. 345, subpara. (4) of the operative part). The reparation owed by Uganda in respect of acts of looting, plundering and exploitation of natural resources in Ituri will be addressed below.

(b) Outside Ituri (paras. 80-84)

As regards damage that occurred outside Ituri, the Court recalls the findings in its 2005 Judgment that the rebel groups operating in the territory of the DRC outside of Ituri were not under Uganda's control, that their conduct was not attributable to it and that Uganda was not in breach of its duty of vigilance with regard to the illegal activities of such groups (*I.C.J. Reports 2005*, p. 226, paras. 160-161, pp. 230-231, para. 177, and p. 253, para. 247). Consequently, no reparation can be awarded for damage caused by the actions of those groups.

The Court found, in the same Judgment, that, even if the MLC was not under the Respondent's control, the latter provided support to the group (*ibid.*, p. 226, para. 160), and that Uganda's training and support of the ALC violated certain obligations of international law (*ibid.*, p. 226, para. 161). The Court will take this finding into account when it considers the DRC's claims for reparation.

It falls to the Court to assess each category of alleged damage on a case-by-case basis and to examine whether Uganda's support of the relevant rebel group was a sufficiently direct and certain cause of the injury. The extent of the damage and the consequent reparation must be determined by the Court when examining each injury concerned. The same applies in respect of the damage suffered specifically in Kisangani, which the Court will consider in Part III.

2. The causal nexus between the internationally wrongful acts and the injury suffered (paras. 85-98)

The Court then recalls that the Parties differ on whether reparation should be limited to the injury directly linked to an internationally wrongful act or should also cover the indirect consequences of that act.

If further recalls that it may award compensation only when an injury is caused by the internationally wrongful act of a State. As a general rule, it falls to the party seeking compensation to prove the existence of a causal nexus between the internationally wrongful act and the injury suffered. In accordance with the jurisprudence of the Court, compensation

can be awarded only if there is "a sufficiently direct and certain causal nexus between the wrongful act . . . and the injury suffered by the Applicant, consisting of all damage of any type, material or moral" (*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 (I)*, pp. 233-234, para. 462). The Court applied this same criterion in two other cases in which the question of reparation arose. However, it should be noted that the causal nexus required may vary depending on the primary rule violated and the nature and extent of the injury.

In particular, in the case of damage resulting from war, the question of the causal nexus can raise certain difficulties. In a situation of a long-standing and large-scale armed conflict, as in this case, the causal nexus between the wrongful conduct and certain injuries for which an applicant seeks reparation may be readily established. For some other injuries, the link between the internationally wrongful act and the alleged injury may be insufficiently direct and certain to call for reparation. It may be that the damage is attributable to several concurrent causes, including the actions or omissions of the respondent. It is also possible that several internationally wrongful acts of the same nature, but attributable to different actors, may result in a single injury or in several distinct injuries. The Court notes that it will consider these questions as they arise, in light of the facts of this case and the evidence available. Ultimately, it is for the Court to decide if there is a sufficiently direct and certain causal nexus between Uganda's internationally wrongful acts and the various forms of damage allegedly suffered by the DRC.

The Court is of the opinion that, in analysing the causal nexus, it must make a distinction between the alleged actions and omissions that took place in Ituri, which was under the occupation and effective control of Uganda, and those that occurred in other areas of the DRC, where Uganda did not necessarily have effective control, notwithstanding the support it provided to several rebel groups whose actions gave rise to damage. The Court recalls that Uganda is under an obligation to make reparation for all damage resulting from the conflict in Ituri, even that resulting from the conduct of third parties, unless it has established, with respect to a particular injury, that it was not caused by Uganda's failure to meet its obligations as an occupying Power.

Lastly, the Court cannot accept the Respondent's argument based on an analogy with the 2007 Judgment in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)*, in which the Court expressly confined itself to determining the specific scope of the duty to prevent in the Genocide Convention and did not purport to establish a general jurisprudence applicable to all cases where a treaty instrument, or other binding legal norm, includes an obligation for States to prevent certain acts (*ibid.*, pp. 220-221, para. 429). The Court considers that the legal régimes and factual circumstances in question are not comparable, given that, unlike the above-mentioned *Genocide* case, the present case concerns a situation of occupation.

As regards the injury suffered outside Ituri, the Court must take account of the fact that some of this damage occurred as a result of a combination of actions and omissions attributable to other States and to rebel groups operating on Congolese territory. The Court cannot accept the Applicant's assessment that Uganda is obliged to make reparation for 45

per cent of all the damage that occurred during the armed conflict on Congolese territory. This assessment, which purports to correspond to the proportion of Congolese territory under Ugandan influence, has no basis in law or in fact. However, the fact that the damage was the result of concurrent causes is not sufficient to exempt the Respondent from any obligation to make reparation.

The Parties having also addressed the applicable law in situations in which multiple actors engage in conduct that gives rise to injury, which has particular relevance to the events in Kisangani, where the damage alleged by the DRC arose out of conflict between the forces of Uganda and those of Rwanda, the Court recalls that, in certain situations in which multiple causes attributable to two or more actors have resulted in injury, a single actor may be required to make full reparation for the damage suffered. In other situations, in which the conduct of multiple actors has given rise to injury, responsibility for part of such injury should instead be allocated among those actors. The Court states that it will return to this issue in assessing the DRC's claims for compensation in relation to Kisangani.

3. The nature, form and amount of reparation (paras. 99-110)

The Court then recalls certain international legal principles that inform the determination of the nature, form and amount of reparation under the law on the international responsibility of States in general and in situations of mass violations in the context of armed conflict in particular.

It thus notes that it is well established in international law that the breach of an engagement involves an obligation to make reparation in an adequate form. According to the jurisprudence of the Court, this is an obligation to make full reparation for the damage caused by an internationally wrongful act.

As stated in Article 34 of the ILC Articles on State Responsibility, "[f]ull reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination". Thus, in accordance with the jurisprudence of the Court, compensation may be an appropriate form of reparation, particularly in those cases where restitution is materially impossible.

In view of the circumstances of the present case, the Court emphasizes that it is well established in international law that reparation due to a State is compensatory in nature and should not have a punitive character. The Court observes, moreover, that any reparation is intended, as far as possible, to benefit all those who suffered injury resulting from internationally wrongful acts.

The Court notes, however, that the Parties do not agree on the principles and methodologies applicable to the assessment of damage resulting from an armed conflict or to the quantification of compensation due.

It recalls in this regard that reparation must, as far as possible, wipe out all the consequences of the illegal act. The Court notes that it has recognized in other cases that the absence of adequate evidence of the extent of material damage will not, in all situations, preclude an

award of compensation for that damage. While the Court recognizes that there is some uncertainty about the exact extent of the damage caused, this does not preclude it from determining the amount of compensation. The Court may, on an exceptional basis, award compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking account of equitable considerations. Such an approach may be called for where the evidence leaves no doubt that an internationally wrongful act has caused a substantiated injury, but does not allow a precise evaluation of the extent or scale of such injury.

The Court observes that, in most instances, when compensation has been granted in cases involving a large group of victims who have suffered serious injury in situations of armed conflict, the judicial or other bodies concerned have awarded a global sum, for certain categories of injury, on the basis of the evidence at their disposal. The Eritrea-Ethiopia Claims Commission (hereinafter the "EECC"), for example, noted the intrinsic difficulties faced by judicial bodies in such situations. It acknowledged that the compensation it awarded reflected "the damage that could be established with sufficient certainty through the available evidence" (*Final Award, Eritrea's Damages Claims, Decision of 17 August 2009*, United Nations, *Reports of International Arbitral Awards (RIAA)*, Vol. XXVI, p. 516, para. 2), even though the awards "probably d[id] not reflect the totality of damage that either Party suffered in violation of international law" *(ibid.)*. It also recognized that, in the context of proceedings aimed at providing compensation for injuries affecting large numbers of victims, the relevant institutions have adopted less rigorous standards of proof. They have accordingly reduced the levels of compensation awarded in order to account for the uncertainties that flow from applying a lower standard of proof (*ibid.*, pp. 528-529, para. 38).

The Court is convinced that it should proceed in this manner in the present case. It will take due account of the above-mentioned conclusions regarding the nature, form and amount of reparation when considering the different forms of damage claimed by the DRC.

The Court then turns to the question whether, in determining the amount of compensation, account should be taken of the financial burden imposed on the responsible State, given its economic condition, in particular if there is any doubt about the State's capacity to pay without compromising its ability to meet its people's basic needs. Recalling that the EECC raised the matter of the respondent State's financial capacity (*ibid.*, Vol. XXVI, pp. 522-524, paras. 19-22), the Court notes that it will further address this question below.

14.5.4 Ukraine Qualifies for War Reparations According to the United Nations

As of 2025, it has been three years since Russia initiated the full-scale invasion of Ukraine with the aim of reaching Kiyv. Over the course of that time, Russia has demonstrated an outright disregard for Ukrainian human life, culture, and property through the acts of aggression and inhumane military tactics. The international legal and governmental communities have recognized Russia's responsibility for the injury, damage, and loss of civilian lives on Ukrainian soil. Copious amounts of evidence has been collected and attributed to Russian forces for violations of international humanitarian law. Although years have elapsed since the initial illegal invasion on Ukrainian territory, the evidence to establish Russian liability to pay reparations was already present within the first year of war. In November 2022, the United Nations General

Assembly published a resolution that officially recognized that "Russia must bear the legal consequences of all of its internationally wrongful acts, including making reparation for the injury, including any damage, caused by such acts." In addition, the UN was successful in obtaining nearly 50 nations to co-sponsor the resolution with the objective to establish an international mechanism for compensation for damage, loss and injury, and as well as a register to document evidence and claims. The global support of this resolution will provide Ukraine with substantial resources and aid for the rebuilding efforts of the nation after the war. Ukraine will still be required to the go through the requisite legal channels to obtain an effective judgement rendering Russia liable to pay reparations, however, this international support condemning Russia is very beneficial for Ukraine. The systems that have been put in place to support the conclusion embodied in this UN resolution will further establish evidence and grounds for Russian liability. Additionally, the international mechanism for compensation for Ukraine identifies a tangible means of financial support that was not previously available prior to the resolution. The UN resolution on the Furtherance of remedy and reparation for aggression against Ukraine, effectively establishes that Ukraine qualifies for war reparations based on legal principles of international humanitarian law, and that Russia is liable to pay these reparations as an obligation of restitution for the acts of aggression they have committed against Ukraine.

Resolution adopted by the General Assembly on 14 November 2022
United Nations General Assembly

Furtherance of remedy and reparation for aggression against Ukraine

The General Assembly,
Reaffirming the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations,

Recalling the obligations of all States under Article 2 of the Charter, including the obligation to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, and to settle their international disputes by peaceful means,

Recalling also the obligation under Article 33 (1) of the Charter that Members which are parties to any dispute shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice,

Taking note of Security Council resolution 2623 (2022) of 27 February 2022,

Recalling its right under Article 14 of the Charter to recommend measures for the peaceful adjustment of any situation which it deems likely to impair the general welfare or friendly

relations among nations, including situations resulting from a violation of the provisions of the Charter,

Recalling also its resolutions ES-11/1 of 2 March 2022, entitled “Aggression against Ukraine”, ES-11/2 of 24 March 2022, entitled “Humanitarian consequences of the aggression against Ukraine”, and ES-11/4 of 12 October 2022, entitled “Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations”, in which, among other things, it reaffirmed its commitment to the sovereignty, independence, unity and territorial integrity of Ukraine,

Recalling further the order of the International Court of Justice of 16 March 2022 on the indication of provisional measures in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*,

Bearing in mind the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for human rights, and of developing friendly relations among nations irrespective of their political, economic and social systems or the levels of their development,

Expressing grave concern at the loss of life, civilian displacement, destruction of infrastructure and natural resources, loss of public and private property, and economic calamity caused by the aggression by the Russian Federation against Ukraine,

Recalling its resolution 60/147 of 16 December 2005, the annex to which contains the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Seri o u s Violations of International Humanitarian Law,

1. *Reaffirms* its commitment to the sovereignty, independence, unity and territorial integrity of Ukraine and its demand that the Russian Federation immediately cease its use of force against Ukraine and that the Russian Federation immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders, extending to its territorial waters;

2. *Recognizes* that the Russian Federation must be held to account for any violations of international law in or against Ukraine, including its aggression in violation of the Charter of the United Nations, as well as any violations of international humanitarian law and international human rights law, and that it must bear the legal consequences of all of its internationally wrongful acts, including making reparation for the injury, including any damage, caused by such acts;

3. *Recognizes also* the need for the establishment, in cooperation with Ukraine, of an international mechanism for reparation for damage, loss or injury, and arising from the internationally wrongful acts of the Russian Federation in or against Ukraine;

4. *Recommends* the creation by Member States, in cooperation with Ukraine, of an international register of damage to serve as a record, in documentary form, of evidence and claims information on damage, loss or injury to all natural and legal persons concerned, as well as the State of Ukraine, caused by internationally wrongful acts of the Russian Federation in or against Ukraine, as well as to promote and coordinate evidence-gathering;

5. *Decides* to adjourn the eleventh emergency special session of the General Assembly temporarily and to authorize the President of the General Assembly to resume its meetings upon request from Member States.

15th plenary meeting 14 November 2022

14.5.5 Russian Assets Frozen Internationally

Russia's full-scale invasion of Ukraine in February 2022 was met with controversy from the global economy. Although Putin found that Russia's claim of ownership of the Ukrainian territory and their citizens was justified, the international consensus directly adverse. Western nations and international organizations around the world identified Russia's invasion as an extreme and hostile violation of multiple international treaties and globally accepted international legal principles. The unanimous international reaction of distain towards the decision of Russia to initiate a war on the civilians of Ukraine promoted the idea to impose sanctions against Russia as an instrument of deterrence to continue the war. Global markets initially targeted Russia's foreign reserves, freezing the assets in accounts as a symbol of condemnation to the Russia government. Additionally, these markets believed that by limiting Russia's access to financial resources, military reserves would diminish and Putin would concede in his efforts of occupying Ukraine. Evidently, the sanctions imposed against Russian foreign reserves did not prevent the continued invasion into Ukrainian territory, and parallelly the freezing of Russian assets increased. In the beginning months of the conflict, "the governments of the United States, Australia, Canada, France, Germany, Italy, Japan, the United Kingdom, and the European Commission seized roughly $300 billion in Russian central bank assets… totaling about half of Russia's foreign reserves." The harmonious decision across the superior national markets across the world exemplifies the global contempt towards Russia's actions in Ukraine. Western and Eastern dominant economies have recognized the harm and destruction the Russia invasion has caused. Although these sanctions have yet to restrict the movement of Russia, the majority of the assets remain frozen in European accounts until the invasion ceases. In addition to the freezing of Russia's foreign reserves, "these governments have also seized tens of billions of dollars to Russia oligarchs and private entities." The assets of Russian oligarchs and private entities in support of Putin's hostile invasion of Ukraine were also targeted based on the idea that these entities and individuals maintain power of the Russia economy. Directing sanctions and financial penalties to the Russian government, powerful families, and corporations will further deplete the Russia economy, restricting resources to fight the war on Ukraine.

Putin and Russia have openly contested international sanctions on their financial accounts claiming Western interference in an Eastern conflict. Despite the continued aggregation of frozen Russian assets, Putin and the Russian military continues with their hostile invasion on Ukrainian territory. As the years of war time in Eastern Europe have passed, more European countries have

joined larger nations in their efforts to restrict Russia's ability to occupy Ukraine through freezing Russian foreign accounts and private oligarch accounts. These countries include Lithuania, Austria, Finland, Greece, Netherlands, Denmark, Sweden, Luxembourg, Latvia, Spain, Switzerland, Hungary, Belgium, Malta, Ireland, Czech Republic, and Poland. With almost the entirety of Europe expressing disapproval of Russia's conflict on Ukraine through the use of legal sanctions of assets, the Russian forces continue their illegal invasion. On November 30th, 2022, the European Union Commission President, Ursula Van der Leyen, stated that "the damage suffered by Ukraine is estimated at €600 billion. Russia and its oligarchs have to compensate Ukraine for the damage and cover the costs for rebuilding the country. And we have the means to make Russia pay. We have blocked €300 billion of the Russian Central Bank reserves and we have frozen €19 billion of Russian oligarchs' money." Ursula Van der Leyen represents the perspective and position of the European community when she condemns Russia for their atrocities committed on Ukrainian soil. However, absent a definite legal avenue to distribute frozen Russian assets to pay reparations for the rebuilding of Ukraine, these assets must remain frozen in the EU accounts. Many other nations have imposed similar legislative measures to ensure that these assets remain frozen until Ukraine is provided the restitution from Russia in which they are entitled. For example, in June of 2023, the United Kingdom implemented new legislation that permits Russian sanctions to remain until compensation is paid to Kyiv. This legislative measure will ensure that the frozen Russia assets in the UK will remain frozen until Russia pays war reparations. This has a beneficial effect for Ukraine because even if the war ends, Russia's assets will remain frozen until an adequate legal avenue allocates these assets to Ukraine. According to the UK government, they are implementing this legislation "to maintain Russian sanctions until compensation is paid to Ukraine and is introducing a route for frozen Russian assets to be donated for Ukrainian reconstruction, under new legislation announced by Foreign Secretary James Cleverly." The United Kingdom's initiative to implement this legislation that effectively sets up a financial route for post war Ukrainian reconstruction, is a substantial step towards obtaining reparations to Ukraine. In conjunction with other international organizations implementing similar methods through the rule of law, the distribution of frozen Russian assets to pay for Ukraine reconstruction becomes a more viable option.

14.5.6 Logistics & Strategy for the Distribution of Frozen Russian Assets to Ray Reparations to Ukraine

Following the international support of the United Nations General Assembly resolution adopted in November of 2022, nations around the world began to entertain a solution for Russia's obligation to pay war reparations to Ukraine. The resolution explicitly identified Russia's fault for the destruction and harm caused to the Ukrainian nation, however, the method and legal application for Ukrainian reparations paid by Russia was not yet determined. International legal scholars, economic experts, and political figures have proposed the idea of distributing frozen Russian assets to pay for Ukrainian war reparations. As evidenced, Western and Eastern dominant nations have imposed sanctions on Russian foreign investments, private Russian oligarch accounts, and the assets of private entities. These sanctions have effectively frozen over €300 million of Russian assets, over €200 million of which are in a European Union bank and the rest of the frozen funds are dispersed among the various governments. The international community has unanimously agreed that Russia has an obligation to pay for the reconstruction efforts in Ukraine after the war. An apparent solution may be; can the frozen

assets be directly transferred to Ukraine now? Although this may appear to be an obvious solution, international organizations are attempting to find a sufficient legal avenue in which the distribution of frozen Russian assets can be used without breach of international law. This legal barrier is currently the primary obstacle between the frozen assets and the Ukrainian bank. In April 2023 during a meeting of the European Council in Brussels, the council identified a possible alternative to distributing the frozen Russian assets. Currently the majority of the assets remain in an EU bank where interest on the stagnant money has been vastly accumulating. The sanctioned funds have been earning roughly $3 billion per year from interest. The Council suggested not distributing the frozen assets, but instead, use the interest that has been accumulating to pay for reparations. Although this is a clever solution, the "World Bank estimates Ukraine will need at least $411 billion to repair the damage caused by the war." Clearly the money needed to rebuild Ukraine and compensate the victims of Ukraine from Russian aggression is far greater than the amount the interest has accumulated, however, this method could still be implemented as a support fund for Ukraine's port war rebuilding efforts. To ensure the distribution of a frozen Russian assets to pay for Ukrainian reparations, a legal strategy and method must be implemented.

While considering the topic of using frozen Russian assets as war reparations for Ukraine, many scholars have pointed to potential international legal restrictions that may lead to a counterclaim from Russia. The first potential issue involves the concept state assets protected by sovereign immunity. "International law generally protects states from being sued, or their property being enforced against without their consent." An initial interpretation to this statute arises suspicion for whether the sanctioned Russian assets is compatible with international law. Russia believes their invasion of Ukraine is justified and should not be met with international backlash. Thus, the sanctioning of Russian foreign investments is without their consent. However, the sovereign immunity rule only refers to judgments made on the basis of a domestic court judgement. Considering "temporary asset freezes on the basis of executive action are sufficiently distinct from the attachment of property in the context of judicial process, sovereign immunities are irrelevant to sanctions." Any claim of Russia's on the basis of sovereign immunity is thus barred and will not apply to conditional freezing of assets from executive action. Another potential legal issue still remains unresolves which involves the customary international law of expropriation. International law "bars the expropriation of foreigners' property without adequate compensation, which constitutes part of the minimum standard of treatment that must be afforded to foreigners." Russia may make an expropriation claim in the future as an attempt of any defense to the use of their frozen assets. However, as will be displayed with the international legal concept of countermeasures, the necessity to freeze and distribute Russian assets will likely outweigh Russia's right to adequate compensation. One final potential roadblock, as presented by the EU, concerns more of an economic caution than legal. The distribution of Russia's assets by the EU may have diminishing effects on the value of the Euro from the prospective of the world. One member presented the idea that foreign nations may be apprehensive to trust the EU single market because one day the EU could give them the same treatment. However, this concern is meniscal compared to the necessity to adequately provide Ukraine will the financial support they need to rebuild their nation.

Under the conditions of war, legal principles and governmental action have historically implemented circumstantial conditions specific to the climate of the conflict. From this principle, international law has also developed to adhere to this phenomenon. The international law of state countermeasures is applied as an incentive for compliance with international law in cases

wrongful state action. Under international law, “a state may take countermeasures in response to the internationally wrongful act of another state, which is intended to induce the latter state to comply with its legal obligations.” Countermeasures are legal instruments and actions that under normal conditions would be unlawful to implement. In reference to Russia’s responsibility for the destruction of Ukraine, the international legal community can enforce the sanctions freezing Russian assets under the principle of countermeasures. “The concept of countermeasures finds justification in the need to restore the equality between sovereign states and to restore the balance that has been disturbed by the commission of the internationally wrongful act.” These countermeasures are used to identify Russia’s wrongdoing with the objective to restore peace in Ukraine and provide financial support for the post war reconstruction of the nation. In order to use the sanctioned funds, the implementation of a sufficient legal strategy is required to successfully and legally distribute the frozen Russian assets for war reparations. One potential strategy for the distribution of frozen Russian assets involves a multilateral asset transfer of the sanctioned assets. In a June 2023 report, the New Lines Institute for Strategy and Policy, proposed the idea that “each state shall identify and transfer all Russian state assets within its jurisdiction – specifically, Russian central bank assets and related holdings – to a central bank escrow account, trust, or analogous arrangement, for subsequent disposition in accordance with international agreements, as outlined in the U.N. resolution.” (Id.) Currently the EU holds roughly two-thirds of all frozen Russian assets which is surely a majority of the funds. However, the final third of the sanctioned assets remain in a multitude of accounts across the world, as many nations have frozen Russian assets through mechanisms of their domestic law. The multilateral transfer of all of these funds into the EU central bank account or to bank account designated specifically for Ukrainian reparations would further fortify the position against Russia. “Consolidating control over Russian reserves can maximize leverage while signaling a strategy of momentum and hope.” Gaining power of negotiation with Russia is substantial to achieve the objective of ending the invasion in Ukraine. Additionally, States can temporarily suspend sovereign immunity of the Russian accounts and resume sovereign immunity when “Russia fulfills its legal obligations to cease its war of aggression and make reparations.” The multilateral assets transfer will prepare the international community with the requisite tools to distribute frozen Russian assets for war reparations when a legal avenue has been realized. The central issue of outstanding legal systems to dictate the method of distribution still exist, however, the assurance that these assets will be ready for distribution in a central account will in hope motivate Russia to fulfill their obligation to pay reparations. With all of the leading international legal experts working on a way to distribute frozen Russian assets to Ukraine without violating international law, a method to accomplish this objective will likely soon present itself. Whether the successful distribution of frozen Russian assets occurs or not, Ukraine will be guaranteed the reparations they are entitled to from Russia’s violations of international law during their acts of aggression in the invasion. The following proposal, Multilateral Asset Transfer: A Proposal for Ensuring Reparations for Ukraine, published by a DC-based nonpartisan think tank, sets out a plan to pay reparations to Ukraine. We reproduce below a portion of the report and urge readers to

examine the full report for discussion of how unfreezing of Russian assets and delivery to Ukraine is in conformity with the law.

Multilateral Asset Transfer: A Proposal for Ensuring Reparations for Ukraine

New Lines Institute for Strategy and Policy
June 2023

Foreword

The November 2022 U.N. resolution formally recognized that Russia must bear the legal consequences for all its internationally wrongful acts, including making reparations for damages to Ukraine and her people as well as affirming the need for an international mechanism to bring about this compensation.

We face the concrete reality, however, of an unrepentant Russia, determined both to damage Ukraine as severely as possible and to shirk from its international obligations — a Russia that will use its veto power to block any conventional attempts at reparations.

This New Lines Institute proposal builds on past research to illuminate the legal power that nation-states can exercise through their own domestic law to effectuate more than just the freezing of Russian state assets. Instead, nations can legally take a step further and *transfer* the $350 billion assets to be held in escrow for reconstruction efforts. The international law of state countermeasures entitles states to do so.

By design, our model leads to the creation of a global fund that will serve as a reservoir for these assets — and fast enough to allow reconstruction efforts to begin this year. It secures funds for a devastated Ukraine and preserves Russian incentives to strategically reengage with the international order for the possibility of returning remaining funds to Russian state bank accounts and restoring Russian sovereign immunity.

The Multilateral Asset Transfer Proposal's power comes from its simplicity; it can be adapted to the specific legal context of each nation adopting it, enabling a unified yet flexible approach to enforcing accountability.

Our proposals and the detailed analysis that follows should serve as a guide and a beacon for nations grappling with the question of reparations. It urges swift action and unity. It is a step toward justice, toward rebuilding Ukraine, and toward a world that unequivocally condemns and deters acts of aggression.

Overview of the Multilateral Asset Transfer Proposal

In light of the November 2022 U.N. resolution on reparations for Ukraine, member states should act not only to freeze Russian state assets, but also to transfer them to support compensation for Ukraine. The November 2022 U.N. resolution formally recognized that Russia must bear the legal consequences of all of its internationally wrongful acts, including making reparations for the injury, as well as "the need for the establishment, in cooperation with Ukraine, of an international mechanism for reparation

for damage, loss, or injury" caused by the invasion. Because Russia's conduct is a serious breach of peremptory norms of international law affecting all states, all states are entitled to address it, including to ensure that Russia performs its duty to compensate injured states.

This proposal recommends that each state shall identify and transfer all Russian state assets within its jurisdiction — specifically, Russian central bank assets and related holdings — to a central bank escrow account, trust, or analogous arrangement, for subsequent disposition in accordance with international agreements, as outlined in the U.N. resolution. Once a global fund to hold and distribute the assets has been established (pursuant to international mechanisms and agreements), states may then consolidate the assets by transferring them to the global fund. Importantly, however, the prior existence of a global fund is not necessary for an individual state to begin locating and transferring frozen Russian assets to an escrow account within its own jurisdiction.

Under the law of countermeasures, states may temporarily suspend the sovereign immunity that these Russian state accounts otherwise enjoy. Observance of sovereign immunity can resume once Russia fulfills its legal obligations to cease its war of aggression and make reparations, including financial compensation, to injured states.

While the Russian state assets are held in escrow, each respective state shall analyze and consider the eventual allocation and disbursement of the assets. To ensure orderly and just distribution of assets and integrity of the process, rules and procedures must be promulgated according to multilateral agreements and in the most transparent way possible, in accordance with the goals of the November 2022 U.N. resolution.

The allocation of assets could most likely address four general purposes:

(1) Funds to compensate Ukraine and Ukrainians and initiate a major program of recovery and reconstruction;

(2) Funds to compensate other injured states entitled to compensation;

(3) Funds for a possible claims process to compensate others to whom courts and tribunals have granted compensatory awards; and

(4) Funds remaining for possible return to Russian state bank accounts, if or when there is a diplomatic settlement and the immunity of these accounts is restored.

As previously noted, determining the exact allocation and distribution rules and procedures is premature at this stage. Given the scale of the task, the process will necessarily extend over a period of years. Even in the best case, it will take considerable time to establish the appropriate process to deploy funds and effectively execute disbursements. Thus, this report primarily discusses the initial step of the domestic transfer of Russian state assets into an escrow account, a trust, or analogous arrangement for holding purposes, pending the establishment of allocation rules and procedures.

In the more immediate sense, transferring Russia's state assets into escrow must be done as expeditiously as possible. Consolidating control over Russian reserves can maximize leverage while signaling a strategy of momentum and hope. It allows states to directly use diplomatic leverage, while such leverage can still influence the outcome of the war. Preemptively isolating the state funds into an escrow account gives states the flexibility to respond appropriately to any outcome that could arise later in the year — Ukrainian victory, short-term recovery, or even a diplomatic settlement. Additionally, immediate action to transfer its state funds would signal to Russia that it cannot, by delay, frustrate the rights of those it has harmed.

The analysis below provides legal authority for each piece of the Multilateral Asset Transfer Proposal through the framework of international law, followed by domestic legal frameworks in presidential power and parliamentary systems, utilizing U.S. and Canadian domestic law as a respective illustration of each. While each government considering adopting the proposal described in this report will necessarily have differing domestic laws and statutes, each should use the general principles of this proposal to identify analogous legal authority in its respective jurisdiction.

Commentary

1. On February 9, 2022, the International Court of Justice adopted a judgement that finally ended the Armed Activities on the Territory of the Congo case. The initial ruling 20 years prior, determined that an agreement regarding the exact pecuniary amount of reparations to be paid was to be formed between Uganda and the Republic of Congo. Absent an agreement, the ICJ were required to calculate these figures and attach the dollar amount of reparations to the judgement for the very first time in history. After the war, the International Court of Justice will hear a claim presented by Ukraine against Russia to determine reparations. Each proceeding under the ICJ is distinct in nature based on the conditions of the party States, however, if the ICJ determines that the two parties are to agree upon a reparations amount after Russia is found liable to pay reparations, it is not likely Russia and Ukraine will come to such agreement. The ICJ will then subsequently be required to conduct this method of calculation again for the damage done to Ukraine. "Despite some early reactions according to which the decision was regarded as unfair, Uganda has timely complied with the reparation judgment. The first instalment of 65 million USD – of a total of 325 million USD – has been paid by the respondent in September 2022." Putin clearly thinks that Russia's invasion of Ukraine is justified and does not violate international law. What international legal mechanism can ensure Russia pays their debt when the ICJ eventually adjudicates the matter? Is there a way to accomplish this without disrupting international and economic global systems?

2. The UN General Assembly Resolution in 2022 recognized Russian liability for the destruction, death, and gross violations of international law committed against Ukraine. The resolution, signed by over 50 countries, affords Ukraine a right to reparations to be paid by Russia. The resolution reiterates that Russia "must bear the legal consequences of all its internationally wrongful acts, including making reparation for injury, including any damage, caused by such acts." However, the method of calculation still remains unclear.

Reparations are to be paid for destruction of property, restitution for victims of crimes of aggression, and intentional devastation of the Ukrainian ecosystem by use of prohibited weapons. One political scientist, Walter Clemens proposes a method for accounting for the harm done to human life by assuming "each Ukrainian life is worth just $1 million." The figures Clemens presents are as follows, and only accounting for harm done up until 2023:

122,000 killed at $1 million: $122,000,000,000
122,000 wounded/incapacitated at $1 million: $122,000,000,000
16 million displaced at $100,000: $1,600,000,000,000
Total damages to human life, 2014 to 2023: $1,844,000,000,000

These calculations only account for harm done to human life. Considering destruction to property and devastation of the ecosystem, Russia will have to face reparations well over $3 trillion. Clemens presents a roadblock for Ukraine's ability to successfully obtain this judgement. "The Putin regime admits to no war crimes, so it must be replaced before any agreement can be reached on reparations or other war related issues." Following the similar reasoning in Note 1 above, Russia will likely exhibit an unwillingness to pay. Must Putin be replaced prior to any agreement obligating payment from Russia? In Nazi Germany Hitler clearly thought his actions were justified and did not think he was violating international law, but after WWII when a new German nation formed, the German State accepted their responsibility to pay restitution. Must Ukraine look to short term financial solutions for the rebuilding of Ukraine? Are Clemens' calculations logical? Will a new regime in Russia be required prior to the acknowledgement of their obligation to pay reparations?

3. In April of 2024, the United States passed legislation, called the REPO ACT, that permits the transfer of seized Russian assets to Ukraine. According to a top Russian lawmaker, Vyacheslav Volodin, Russia has "every reason to make symmetrical decisions in relation to foreign assets." Volodin is under the belief that the United States passed the legislation effectively permitted the confiscation of Russian assets in order to provoke the EU to take the same step. The EU has been hesitant to officially legally codify the distribution of Russian assets to Ukraine because of the potential external effect distribution would have on the value of the EU bank and the currency of the Euro. If nations are skeptical about the security of their money with the EU or simply afraid that their assets could be frozen in the future, the reliance and value of the Euro will decrease. Volodin's suggestion that Russia could simultaneously pass laws to confiscate American assets aboard is both illogical and dangerous. Considering the Russian government's history of acting erratically through law, it is not inconceivable that Putin would instruct the appropriate branches to do so. However, the United States and other nations around the world have seized Russian assets for the sole purpose of deterring Russia from continuing their illegal invasion of Ukraine. If Russia passed legislation of the same kind, it would be baseless and again violate international law.

4. The International Monetary Fund (IMF) has indicated its intent to support the financial reconstruction of Ukraine. Absent a legal mechanism to pay Ukrainian reparations with frozen Russian assets, Ukraine will need to rely on the financial assistance from external nations and organizations. The IMF has established an "overarching goal of the US$15.6

billion extended arrangement under the Extended Fund Facility to help Ukraine solve its balance of payments problems and sustain economic and financial stability at a time of exceptionally high uncertainty, restore debt sustainability, and promote reforms that support Ukraine's recovery on the path toward EU accession in the post-war period." This is largely beneficial for Ukraine in its efforts for postwar reconstruction. The IMF has also established a second phase of financial aid Ukraine after the war ends. "The program will shift focus to more expansive reforms to entrench macroeconomic stability, support recovery and early reconstruction, and enhance resilience and higher long-term growth, including to support Ukraine's EU accession goal."

5. On April 25, 2024, the United States proposed a potential mechanism to tap frozen Russian asset revenues for Ukraine. The Group of Seven officials affirmed its assent to the e US proposal. The Group of Seven (G7) is an intergovernmental political and economic forum comprised of Canada, France, Germany, Italy, Japan, the United Kingdom, the United States, and the European Union. The proposal involves "using the interest derived from $300 billion in frozen Russian assets to aid Ukraine." This proposal may effectively eliminate concern from countries regarding the outright distribution of frozen Russian assets. According the recent meeting, the U.S. proposal is gaining momentum amount the G7 nations for the actual application of this option. The G7 officials claimed that "most of the Russian assets held by Euroclear have now been converted to cash and the assets could generate around $5 billion a year in interest." The use of the interest that has been accruing from the frozen Russian assets in foreign banks around the world could be a viable option to pay Ukrainian reparations while Russia fails to take responsibility. According to the report, the United States is convinced that outright seizure of the Russian assets was justifiable under international law, but said other approaches would likely be more acceptable to some of its G7 partners." The distribution of interest is clearly less invasive then the distribution of the total sanctioned amount, but how is this legally distinct, as the United States suggests? The Russian banks would have normally received these interest earnings if the revenue streams remained directed to Russia, so how does the confiscation and distribution of these monetary amounts legally differ from sending the frozen assets in full? As noted earlier, US Secretary of State Anthony Blinken in a December 4, 2024 briefing indicated that $50 billion of frozen Russian funds representing interest earned will be unfrozen shortly and sent to Ukraine.

14.6 Conclusion

Imagine a world without institutions. It is a world where borders between countries seem to have dissolved, leaving a single, endless landscape over which people travel in search of communities that no longer exist. There are no governments any more, on either a national scale or even a local one. There are no schools or universities, no libraries or archives, no access to any information whatsoever. There is no cinema or theatre, and certainly no television. The radio occasionally works, but the signal is distant, and almost always in a foreign language. No one has seen a newspaper for weeks. There are no railways or motor vehicles, no telephones or telegrams, no post office, no communication at all except what is passed through word of mouth.

> There are no banks, but that is no great hardship because money no longer has any worth. There are no shops, because no one has anything to sell. Nothing is made here: the great factories and businesses that used to exist have all been destroyed or dismantled, as have most of the other buildings. There are no tools, save what can be dug out of the rubble. There is no food.
>
> Law and order are virtually non-existent, because there is no police force and no judiciary. In some areas there no longer seems to be any clear sense of what is right and what is wrong. People help themselves to whatever they want without regard to ownership - indeed, the sense of ownership itself has largely disappeared. Goods belong only to those who are strong enough to hold on to them, and those who are willing to guard them with their lives. Men with weapons roam the streets, taking what they want and threatening anyone who gets in their way. Women of all classes and ages prostitute themselves for food and protection. There is no shame. There is no morality. There is only survival.
>
> For modern generations it is difficult to picture such a world existing outside the imaginations of Hollywood scriptwriters. However, there are still hundreds of thousands of people alive today who experienced these conditions – not in far-flung corners of the globe, but at the heart of what has for decades been considered one of the most stable and developed nations on earth. In 1944 and 1945 large parts of Europe were left in chaos for months at a time. The Second World War – easily the most destructive war in history – had devastated not only the physical infrastructure, but also institutions that held countries together…" Europe", claimed the New York Times in March 1945, "is in a condition in which no American can hope to understand." It was "The New Dark Continent."
>
> That Europe managed to pull itself out of this mire to become a prosperous, tolerant continent seems nothing short of a miracle. Looking back on the feats of reconstruction that took place - the rebuilding of roads, railways, factories, even whole cities - it is tempting to see nothing but progress. The political rebirth that occurred in the west is likewise impressive, especially the rehabilitation of Germany, which transformed itself from a pariah nation to a responsible member of the European family in just a few short years. A new desire for international cooperation was also born during the postwar years, which would bring not only prosperity but peace. The decades since 1945 have been hailed as the single longest period of international peace in Europe since the time of the Roman Empire.

The above description of Europe eighty years ago is from Keith Lowe's *Savage Continent: Europe in the Aftermath of World War II* (2012), xiii-xiv. In 2025, recalling eight decades later this time of Armageddon Europe, should inspire us to return Europe to another lasting peace with the nation that remains at the gates of Europe again free, prosperous and tolerant.

Chapter 15

Repairing Environmental Damage

15.1 Introduction

The ongoing Russian invasion of Ukraine has inflicted catastrophic damage not only upon the people of Ukraine and infrastructure, but also upon its environment. As the conflict continues, Ukraine faces the urgent need to confront and repair the war's environmental damage. The most critical challenges involve the deliberate and incidental acts of environmental destruction, the threat of unexploded mines, and the safety risks posed by conflict in and around Ukraine's nuclear power plants.

These various forms of environmental damage can be encapsulated by the word "ecocide," a term increasingly used to describe the widespread, long-term destruction of local ecosystems as a method of warfare. Ecocide, not yet formally recognized under international criminal law, has nevertheless become an essential concept in understanding the environmental devastation that Ukraine endures. As with other international crimes, the concept of *mens rea* comes into play to judge whether there should be either individual criminal responsibility or state responsibility. Intentional targeting of industrial sites, nuclear plans, forests, and water sources, combined with the reckless bombardment of environmentally sensitive areas, raises the question of accountability for the deliberate harm inflicted upon Ukraine's ecosystems. Such actions pose a lasting threat to biodiversity, climate stability, and human health, with effects likely to persist for decades, even centuries. The immediate task at hand is repair.

As with all environmental damage, the impact is not just on the people of Ukraine and its territory. The Chernobyl nuclear disaster in 1986 brought environmental turmoil to all of Europe; and the leaked radiation ultimately reached the entire planet. Ukraine's Chernobyl is no longer running, but Ukraine has other nuclear power plants, some located close to current conflict

zones. The most dangerous spot on the planet today is the Zaporizhzhia Nuclear Power Plant. Zaporizhzhia is Europe's largest nuclear facility and ranks among the world's top ten in size. In March 2022, Russian forces captured the Zaporizhzhia. Since then, the facility has been in "cold shutdown"; its reactors are not generating power but still require continuous cooling and maintenance to prevent overheating. A constant and reliable external power supply is needed to sustain essential safety systems. The UN has expressed grave concern over the precarious safety and security conditions, emphasizing that returning the plant to Ukraine's full control is crucial for ensuring its safe operation and enabling effective oversight by the International Atomic Energy Agency (IAEA). Russia has been unwilling to do so. In December 2024, the plant experienced near-blackout conditions multiple times due to damage to its power lines, reportedly caused by shelling. Such incidents underscore the plant's vulnerability to a nuclear disaster.

Equally pressing is the challenge of demining Ukraine's expansive, war-torn territories. Landmines and other unexploded ordnance contaminate large swathes of agricultural land, forests, and residential areas, rendering them unusable and hazardous for both people and wildlife. Already in 2017, six years before the full-scale invasion, Ukraine was one of the most landmine-contaminated countries in the world. Landmines, ERWs, and unexploded ordnances (UXO) were the main contributors to child casualties related to the Ukrainian conflict that year. A total of one eighth of landmine victims are children. In September of 2023, the UN found that landmines and explosive remnants of war (ERWs) killed or injured 989 civilians since the full-scale invasion commenced back in February 2022.

15.2 Ecocide

15.2.1 Introduction

"I can still see the bright-crimson glow, it was like the reactor was glowing. This wasn't any ordinary fire, it was some sort of shining… People brought their kids out, picked them up, said, 'Look! Remember!' And these were people who worked at the reactor -- engineers, workers, physics instructors. They stood in the black dust, talking, breathing, wondering at it… We didn't know that death could be so beautiful."

—**Svetlana Alexievich, Excerpts: 'Voices from Chernobyl,' NPR, (2006)**

Nadezhda Petrovna Vygovskaya was able to briefly admire the explosion of the nuclear power plant she lived near before joining 335,000 other evacuees from what would go down in history as the world's worst nuclear accident: the explosion of the Chernobyl Nuclear Power Plant. Almost forty years later, on June 6, 2023, when Ukraine's Kakhovka hydroelectric dam exploded, a disaster many attribute to Russia which controlled the dam at the time, Ukraine's deputy foreign minister Andrij Melnyk called the rupture "the worst environmental disaster in Europe since Chernobyl." In response to this disaster, Ukraine's president, Vladmir Zelensky, posted a poignant response on X:

> This is just one day of Russian aggression. This is just one Russian act of terrorism. This is just one Russian war crime. Now Russia is guilty of brutal ecocide. Any comments are superfluous. The world must react. Russia is at war against life, against nature, against civilization. Russia must leave the Ukrainian land and must be held fully accountable for its terror.

Zelensky's response outlines a crime not yet recognized in international law, ecocide. Ukrainians are currently planning to sue Russia for environmental damage and ecocide before

the International Criminal Court (ICC) through Article 8 of the Rome Statute. Alternatively, Ukrainians could also bring a suit through a set of proposed amendment that would add ecocide as an international crime in the Rome Statute, both excerpted below. As of November 2024, Ukraine's Environment Minister Svitlana Hryntchuk reported at the UN Climate Change Conference (COP29) in Baku that the environmental damage caused by military operations since the full-scale invasion in February 2022 is approximately $71 billion. See Ukraine at COP29

15.2.2 The Legal Precedent

Ukraine Criminal Code

Article 441. Ecocide

Mass destruction of flora and fauna, poisoning of air or water resources, and also any other actions that may cause an environmental disaster, shall be punishable by imprisonment for a term of eight to fifteen years.

Rome Statute of the International Criminal Court

In force July 1, 2002

Preamble

The States Parties to this Statute,

Conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,

Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,

Recognizing that such grave crimes threaten the peace, security and well-being of the world,

Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

Reaffirming the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations,

Emphasizing in this connection that nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict or in the internal affairs of any State,

Determined to these ends and for the sake of present and future generations, to establish an independent permanent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole,

Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions,

Resolved to guarantee lasting respect for and the enforcement of international justice,

Have agreed as follows:....

Article 1 – The Court

An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

…

Article 5 – Crimes within the jurisdiction of the Court

The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

(a) The crime of genocide;
(b) Crimes against humanity;
(c) War crimes;
(d) The crime of aggression….

…

Article 8 – War Crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

Grave breaches of the Geneva Conventions of 12 August 1949….

Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:....

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated….

Proposed Amendments to the Rome Statute (2021)

In 2021, an expert panel proposed the addition of ecocide to the international crimes within the jurisdiction of the ICC under the Rome Statute. This definition would come in an amendment to the Rome Statute placing ecocide after the four other crimes under ICC's jurisdiction: genocide, crimes against humanity, war crimes, and aggression.

A. Addition of a preambular paragraph 2 bis

Concerned that the environment is daily threatened by severe destruction and deterioration, gravely endangering natural and human systems worldwide,

B. Addition to Article 5(1)

(e) The crime of ecocide.

C. Addition of Article 8
Article 8 Ecocide

1. For the purpose of this Statute, “ecocide” means unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.
2. For the purpose of paragraph 1:
a. “Wanton” means with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated;
b. “Severe” means damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources;
c. “Widespread” means damage which extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings;
d. “Long-term” means damage which is irreversible or which cannot be redressed through natural recovery within a reasonable period of time;
e. “Environment” means the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space.

15.2.3 Russian Acts of Ecocide

While the world has yet been able to avoid a nuclear disaster from Russia’s invasion of Ukraine, other forms of environmental calamities have been nearly as disastrous. As noted above, on June 6, 2023, the Kakhovka Hydroelectric Power Plant dam in southern Ukraine was destroyed, leading to extensive flooding along the lower Dnieper River in the Kherson Oblast. The dam, under Russian military control since the early days of the invasion, suffered a breach approximately 240 meters wide. The breach caused significant flooding, submerging numerous villages and necessitating the evacuation of thousands of residents from both Ukrainian- and Russian-controlled areas. By June 21, 2023, official reports indicated 58 fatalities and 31 individuals missing. However, investigations suggest the death toll could be higher, particularly in areas like Oleshky, where local health workers reported hundreds of deaths. The flooding devastated local ecosystems, resulting in the deaths of numerous animals and extensive damage to farmland, homes, businesses, and infrastructure. The depletion of the Kakhovka Reservoir raised concerns about long-term water supply to Russian-controlled Crimea and the Zaporizhzhia Nuclear Power Plant.

Ukraine accused Russian forces of deliberately destroying the dam to hinder a planned Ukrainian counter-offensive, a view supported by many experts. Russia denied these allegations, attributing the breach to Ukrainian attacks. Seismic data and satellite imagery detected signs of an explosion at the time of the breach, indicating a deliberate act rather than structural failure. Seismic data and satellite imagery also detected signs of an explosion at the time of the breach, indicating a deliberate act rather than structural failure.

A year after the incident, reports described the destruction as an "environmental war crime," noting massive flooding, displacement of populations, and significant ecological damage. Ukraine's state-run hydro-electric company, Ukrhydroenergo, initiated international arbitration seeking €2.5 billion in damages from Russia for the destruction of the dam and power station. Ruslan Strilets, Minister of Environmental Protection and Natural Resources of

Ukraine, during an online briefing for Ukrainian and foreign media, explained:.”The blowing up of the Kakhovka Hydroelectric Power Plant dam is the biggest act of ecocide that has been committed by Russia since the start of its all-out invasion of Ukraine.”

Ecologically, the area is rich in biodiversity, housing the Nizhniodniprovsky, Velykyi Luh, Kamianska Sich, and Sviatoslav's Biloberezhzhia National Parks. Each of these parks are a marvel, with the Nizhniodniprovsky National Park alone possessing more than 80,000 hectares of protected land with rare species of biodiversity. There are wetlands sites here also, as well as areas that are part of the European Emerald Network, i.e. recognized as the most valuable in Europe. Ukraine now stands to lose some ecosystems forever.

Ukraine’s Kakhovka Dam after its destruction

Framework Document: High-Level Working Group on the Environmental Consequences of the War in Ukraine

September 15, 2023

Ukraine has suffered catastrophic damage since Russia’s full-scale military attack on the country in February 2022. The number of people killed, injured, or pushed from their homes; the children kidnapped and forcibly taken from Ukraine; the infrastructure destroyed: the loss and the suffering is almost incalculable.

The natural environment has also been a casualty of this war… The consequences of this environmental damage – on mental and physical health, and on the economy and livelihoods – are deep, wide-ranging, and extend well beyond the borders of Ukraine. The protection and sustainability of the environment, in its many forms, is directly linked to human security and well-being, national resilience, and humanitarian safety and welfare. There can be no prioritization between ensuring national security, a safe and prosperous Ukraine, and the protection and safety of the natural environment: they each affect and are dependent on the other.

The environmental impact of war is often underappreciated – sometimes called a "silent victim" – but in Ukraine the consequences are so grave that it has become a central point of international concern. Many of Ukraine's natural forest reserves, its animal and sea life, water, and impressive biodiversity have been terribly damaged or polluted. Global food security is under stress. The possibility of nuclear radiation leaking from an occupied nuclear power plant presents a threat to the whole region. Landmines are strewn in such great number that it will take decades for agricultural production and other land access to return to normal. The war itself is having a terrible impact on the climate, as well as stalling the climate policies that were in process.

President Zelenskyy highlighted the importance of environmental protection in his ten-point peace plan of November 2022, including food and energy security and nuclear safety. The Government of Ukraine has committed to giving these commitments more specificity and setting out a plan for implementation.

Key Factors

The environmental impact of the war in Ukraine is enormous due to a number of important factors:

Russia's prosecution of the war has directly and repeatedly hit environmental sites, and caused significant environmental damage, with no clear military target and seemingly disproportionate to any anticipated military advantage. All evidence points to the collapse of Kakhovka Dam for example as an intentional act by Russia, flooding villages, destroying nature reserves, further strewing land mines, and putting the critical water supply for the Zaphorizhzhia Nuclear Power Plant at great risk.

Ukraine feeds the world. The war – and especially Russia's blockade of food exports through the Black Sea – is affecting food security globally. Ukraine has long been one of the world's major exporters of grains and cooking oils, and the increase in prices and reduction in supply as a result of Russia's actions has increased hunger and poverty for millions in dozens of countries across the world.

Ukraine is a country of environmental splendor: Ukraine is home to 35% of Europe's biodiversity, extraordinarily rich soil, an impressive network of national parks, biosphere reserves, and other valuable ecosystems. Many of these sites have been directly damaged, or even occupied, by Russia whose occupation has had a terrible impact on the animal life and biodiversity of the country.

It is also a country marked by heavy industry, including coal mines, chemical plants, oil depots, and other industrial sites, especially in the eastern Donbas region. This presents heightened environmental risks: enormous amounts of pollutants may be released into the air and water when these sites are damaged in the fighting.

The nuclear threat is real. Russia's refusal to rule out the use of nuclear weapons, and the threat of disaster especially at the Russian- occupied Zaporizhzhia Nuclear Power Plant, represent extraordinarily irresponsible dangers that could impact the entire region.

The war is having an egregious impact on the climate and climate goals. It appears that the war has significantly increased greenhouse gas emissions, while having a secondary effect of expanding fossil fuel development in other countries and reducing funds for adaptation. The poorest countries will suffer the most from this calamity.

Core Principles and Commitments

The High-Level Working Group on the Environmental Consequences of the War in Ukraine, established by the president of Ukraine, was created to bring attention to this terrible damage and help Ukraine see into a better environmental future. It will do this by relying on existing expertise, pushing for new research where needed, and advancing clear recommendations.

The deliberations and recommendations of the Working Group will be science-based and in line with international law and the Lugano Principles that emerged from the 2022 Ukraine Recovery Conference. It will push for full transparency in advancing environmental goals, which is understood as essential for success. More specifically, the Working Group will be guided by the following convictions:

The breadth and extent of the environmental impact of the war, both within Ukraine and globally, must be understood, and thus constantly tracked. This will strengthen accountability and will help guide risk mitigation, adaptation and reconstruction parameters and needs.2. 2There must be accountability for the massive environmental destruction by Russian forces. Accountability includes holding individuals and states responsible for these crimes and providing reparations.

1. Ukraine can build back better, and this must be defined by environmental imperatives. The reconstruction of Ukraine and its industries, cities, and infrastructure, according to Best Available Technologies, should be guided by green sustainability objectives, and by the concept of Planetary Boundaries.
2. Clearly articulated green reconstruction goals deserve strong support from the Ukrainian people, its authorities, and the international community, both public and private. Environmental criteria should be part and parcel of all recovery strategies and action plans across sectors, and assistance should be provided as needed to strengthen national capacity for implementation, which will require considerable interagency collaboration….
5. Both planning and action are needed urgently. Measures to prevent further environmental catastrophe, or mitigate damage, should be prioritized even as the war is still underway.
6. These measures will require engaging all of Ukrainian society, and will depend on partnerships between the public and private sectors, scientists, economists, community leaders, civil society, and others, including the concerns and representation of gender and youth. The Working Group will maintain an inclusive approach in its assessments and deliberations.

Three Priorities

The Working Group will assess what is known, where there are gaps, and what is needed for a comprehensive policy to respond to the environmental consequences of the war.

Damage assessment

The Government of Ukraine collects information on damages on an ongoing basis, with the help of many Ukrainian citizens. Are there aspects of the environmental impact of the war

that are not being captured, or could be reported or analyzed in a way that is more helpful for policy and action planning? Are there additional tools or methodologies that would be helpful for a more complete picture of the ongoing environmental damage and immediate risks?

Accountability:

Attacks during armed conflict that intentionally cause severe damage to the environment are a clear violation of international humanitarian law and constitute a war crime under the Rome Statute of the International Criminal Court. In Ukrainian law, and in a number of other jurisdictions, actions that cause environmental disaster are specifically defined as ecocide.

What is the strategy that will best define and ensure accountability for these massive crimes? How can the international community contribute to a multi-pronged approach to domestic and international legal accountability, including through preserving evidence and standing by international legal norms that have been so flagrantly violated?

In addition to holding persons and states responsible for their actions, a clear commitment to reparations is essential. Difficult questions of resourcing must be addressed, given clear responsibility for the damage and the huge sums required. Examples from other contexts should help establish options for a reparations strategy.

Green reconstruction:

In recovering from the war's damage, Ukraine must also undertake the very difficult task of fully transitioning to a green economy. Independent work to date has set out useful principles to guide this, but more specificity is needed in identifying the best policies and priorities across all sectors of the environment and economy. Ukraine should be guided in part by the recommendations of the Planetary Boundaries framework and other internationally agreed standards and goals, including the EU acquis, in undertaking its reconstruction, significantly improving on its pre-war environmental and industrial realities.

What is the best way for Ukraine to identify sector-specific needs in order to reach its green, net-zero goals? This must include attention to governance, financial, statutory, and oversight structures to facilitate implementation, and will require significant private and government investment, both domestic and international.

Conclusion

The Working Group will dedicate the next year to harness expertise in all of the above areas in order to advance recommendations that help Ukraine move into a green future that protects its environment and gives it due justice for its extensive suffering.

A green Ukraine will benefit all Ukrainians and will benefit humankind worldwide. The opportunity to modernize its industries, significantly reduce its carbon footprint, deepen its ecological protections, and undertake the necessary structural or legal changes to safeguard these protections are all critical elements for the country's recovery and will help define its international relationships.

Ukraine is committed to grasping these responsibilities and standing in solidarity with future generations, in Ukraine and beyond, that will bear the consequences of today's actions. We must do all that is possible to help.

10-Point Peace Plan Proposed by Volodymyr Zelensky at the G-20 Summit September 2024

If there are no concrete actions to restore peace, it means that Russia simply wants to deceive all of you again, deceive the world and freeze the war just when its defeats have become particularly notable.

We will not allow Russia to wait it out, build up its forces, and then start a new series of terror and global destabilization.

I am convinced now is the time when the Russian destructive war must and can be stopped.

So, here are the proposals of Ukraine:…

The eighth challenge is ecocide, the need for immediate protection of environment.

Millions of hectares of forest were burned by shelling. Almost two hundred thousand hectares of our land are contaminated with unexploded mines and shells. Dozens of coal mines are flooded, including the mine in which an underground nuclear test explosion was carried out in 1979...

This is the "Yunkom" mine in the Donetsk region. It is located on the territory occupied by Russia. It has been flooded for several years - precisely because of the occupiers. Everyone in Moscow knows what a threat it poses not only to the rivers in the Donetsk region, but also to the Black Sea basin. Only the de-occupation of our territory can provide the conditions for the elimination of this threat.

It is impossible to accurately calculate the amount of atmospheric pollution from burnt oil depots and other fires... As well as from blown up sewage facilities, burned chemical plants, innumerable burial sites of slayed animals.

Just imagine this – due to the Russian aggression, 6 million domestic animals died. 6 million! These are official numbers. At least 50,000 dolphins were killed in the Black Sea. Thousands of hectares of soil are contaminated with harmful substances - most of them are fertile soils. Were fertile soils.

During the last week's Climate Summit in Egypt, I proposed a platform to assess the environmental damage of war. We have to implement it.

We must also find common responses to all environmental threats created by the war. Without this, there will be no return to a normal, stable life, and the reverberations of the war will remain for a long time - in the explosions of mines that will take the lives of children and adults, in the pollution of water, soil and atmosphere.

I thank all the countries that are already helping us with demining. There is an urgent need for an increased number of equipment and experts for these operations.

Funds and technologies are also needed for the restoration of water treatment facilities.

This is not just a Ukrainian problem. This is a challenge for the whole world."

Commentary

1. The Ukrainian government plans to bring a suit against Russia for environmental harm. If suit is filed, it would make this the first conflict that ends with a claim for full compensation for environmental damages. Many scientific experts and other contributors are working to compile all the destruction. Ukrainian citizens have made thousands of reports through the hotline that the Ministry of Environmental Protection and Natural Resources (MEPNR) of Ukraine set up to report cases of ecocide. Additionally, Greenpeace has contributed through the creation of an interactive Environmental Damage Map. In its Environmental Damage in Ukraine During the Full Scale War Report issued in 2022. The map includes offenses such as

depriving thousands of people of electricity, harming marine ecosystems due to oil spills and warships, leaving thousands of homes without gas supply, burning food, which is both wasteful and a methane emitter, and releasing harmful carcinogens and other toxins into the environment that could cause illness and death. Experts are also gathering scientific evidence to bring against Russia, such as Kateryna Polyanska, a landscape ecologist who gathers photographs of damage and samples from craters to test in the laboratory for toxins.

2. Ecocide comes from the Greek "oikos," meaning home, and "cide," meaning to kill. Dr. Suwita Hani Randhawa has argued that the Kakhovka Dam explosion and its environmental repercussions may spur the recognition of ecocide as a crime in international law. See Will Ukraine's Kakhovka Dam Destruction Make Ecocide an International Crime (2023); Unpacking "Ecocide": A Note of Caution for International Criminalization, Stockholm Env't Inst. (2021); The Fifth International Crime: Reflections on the Definition of "Ecocide," J. Genocide Rsch. (2021). Support for ecocide's recognition as a crime stems from both the desire to facilitate Ukrainian damage collection from Russia and prevention of future environmental harms. Jojo Mehta, one of the founders of Stop Ecocide International, states: "The whole point of criminal liability is not actually punishment, it's prevention. The fact that there is not a crime that says you shouldn't destroy the environment to this degree means that there is implicit permission around it. I mean, you can imagine what will happen if we suddenly decriminalize murder?" Radina Gigova, "Russia is Accused of 'Ecocide' in Ukraine. But What Does That Mean?'' CNN (July 3, 2023).

3. In addition to Ukraine's investigation of damages from Russia and the ICC's investigation launched days after the eruption of the full-scale war, other countries such as Germany, Spain, Sweden and Lithuania have begun to investigate Russia for crimes under universal jurisdiction. While the ICC investigation is explicitly looking into environmental harm, it remains to be seen whether the suits by other states will look at the environment. Additionally, the Council of Europe has established a register for damage that Russia has inflicted on Ukraine since February 2022 and has agreed to establish some type of compensation method. Resolution CM/Res(2023)3 Establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine.

4. Another option for prosecuting environmental damage is trying it as an underlying act of genocide. Genocide is defined in Article 6 of the Rome Statute and includes "[c]ausing serious bodily or mental harm to members of the group" (6(b)) and "[d]eliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part[.]" This would not be a novel strategy as the ICC found environmental harm to be genocide in Sudan when President Omar Al-Bashir poisoned the water of the Masalit and Zaghawa ethnic groups and stole their livestock.

5. The greenhouse gas emissions produced by the war in Ukraine are approximately equivalent to those produced by the nation of Belgium and more than countries like Portugal and Lithuania. Lennard de Klerk et al., Climate Damage Caused by Russia's War in Ukraine, Ecoaction (2023). Currently, experts at Ukraine's State Environmental Inspectorate are calculating climate damages with a formula based on those emissions directly attributable to wildfires caused by the war, facility damage, and military fuel. Ukraine's potential damage

claims could result in the nation becoming the first country to receive compensation for climate costs from a full-scale war. Some argue that emphasizing climate damages could be an effective strategy to garner support from Western nations as the effects of climate change spread beyond Ukraine to other nations that otherwise would be free from the environmental destruction of the war.

On June 7, 2023, the Ukrainian Ministry of Environmental Protection and Natural Resources shared this photo of the destruction caused by the Dam's flooding on their Facebook. Source here

15.3 Demining

15.3.1 Introduction

> "I picked up this thing from the ground and probably pressed something – and then it exploded… I had a lot of blood and I saw my fingers hang from my palm. I was so shocked that I began to tremble. I almost lost consciousness."

—Alexey, Aged 14, quoted in *Children Endure Deadly Legacy of Landmines in Eastern Ukraine*, UNICEF (2020)

> "I have learned to do everything by myself: Ride a bike, swim, get dressed. But I won't be able to play volleyball anymore."

—Maxim, Aged 17, quoted in *After Mine Explosion, Young Volleyball Star Sets Sights on Future*, UNICEF (2019)

Maxim, posing with his volleyball medals—his most prized possession—for the UNICEF article in which he was quoted, can no longer play after tragically losing his hand after picking up a landmine on Ukrainian soil. Demining operations in Ukraine following the Russian invasion

are of paramount importance, not only for the safety and security of civilians but also for upholding international humanitarian law. Mines and unexploded ordnance pose a severe threat to civilians, infrastructure, and post-conflict recovery efforts. International law, particularly the Geneva Conventions and the Convention on Certain Conventional Weapons, prohibits the use of indiscriminate weapons like landmines and mandates the clearance of mined areas once hostilities cease. Failure to conduct demining operations can lead to long-term consequences, including civilian casualties, hindered economic development, and prolonged displacement.

Ukrainian servicemen search for land mines at a burial site in a forest on the outskirts of Izyum, eastern Ukraine, in 2022.

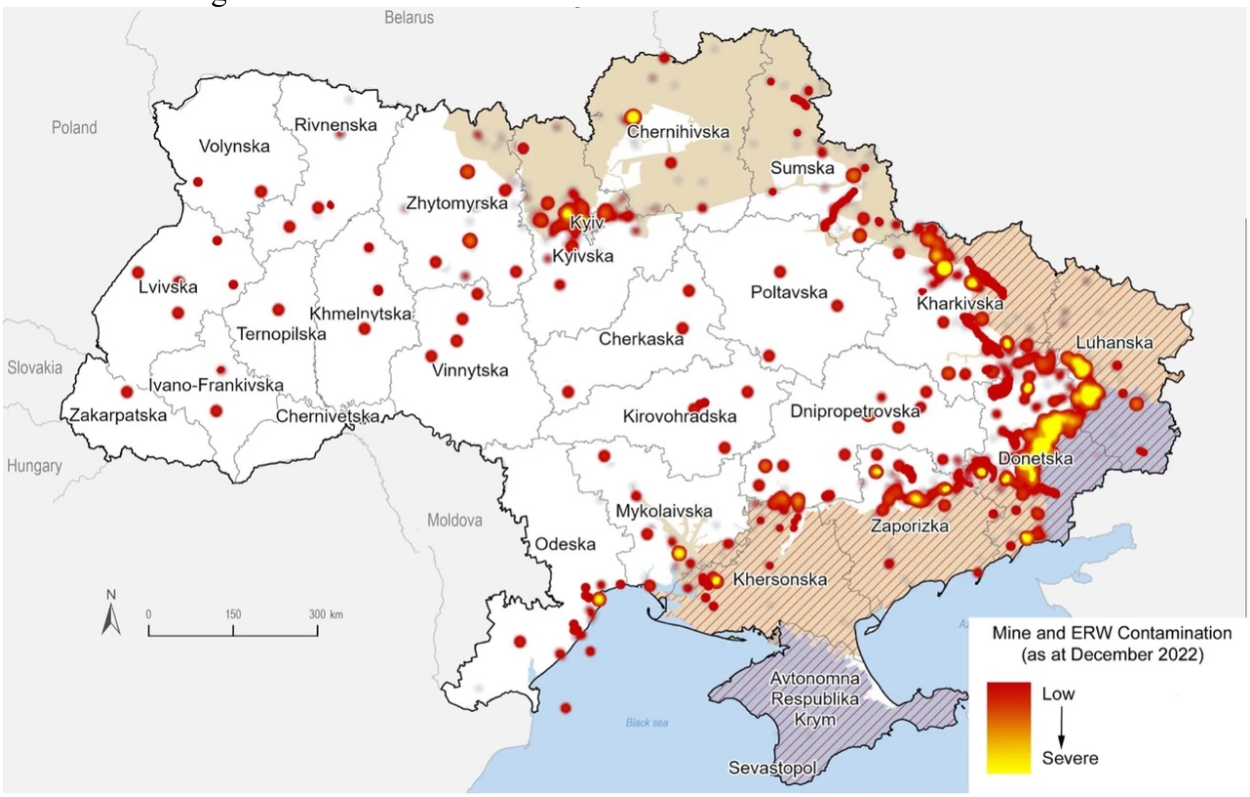
Mines are particularly insidious weapons due to their indiscriminate nature and long-lasting effects. They can lie dormant for years, remaining a threat to civilians even after conflicts have ended. Their indiscriminate nature means they do not differentiate between combatants and non-combatants, often leading to civilian casualties, including children who are especially vulnerable to their allure. Moreover, mines impede access to essential services such as healthcare, education, and agriculture, hindering post-conflict recovery and development efforts. By clearing mined areas, demining operations not only save lives but also pave the way for the return of displaced populations and the reconstruction of vital infrastructure.

Furthermore, demining operations in Ukraine serve as a testament to the international community's commitment to upholding humanitarian principles in times of conflict. By adhering to international law and supporting demining efforts, the global community reaffirms its dedication to protecting civilians and mitigating the long-term impact of conflicts. Demining not only restores a sense of security and normalcy to affected communities, but also fosters trust in the effectiveness of international humanitarian norms. In this way, demining operations in Ukraine are not just about removing physical hazards, but also about upholding the principles of humanity and solidarity in the face of adversity.

In an April 2023 speech, Ukrainian Prime Minister Denys Shmyhal noted that 174,000 square kilometers of Ukrainian land, an area twice the size of the country of Austria, were contaminated with landmines. Shmyhal went on to illustrate the tragic situation, saying, “Russia continues to kill even after we kick it out of our territories. It leaves behind a deadly legacy. Over the past month alone, 724 people have been blown up on Russian mines, 226 of them killed. Many fertile Ukrainian lands are unusable for cultivation. They are dangerous for farmers. But

the harvests from these lands could feed more than 80 million people around the world. Especially in countries suffering from hunger."

In September of 2023, the UN found that landmines and explosive remnants of war (ERWs) killed or injured 989 civilians since the full-scale invasion commenced back in February 2022. Already in 2017, six years before the full-scale invasion, Ukraine was one of the most landmine-contaminated countries in the world. Landmines, ERWs, and unexploded ordnances (UXO) were the main contributors to child casualties related to the Ukrainian conflict that year. A total of one eighth of landmine victims are children.



Mine and ERW Contamination

15.3.2 International Legal Regime

Due to the profound human rights implications, several domestic and international laws seek to regulate the use and removal of landmines. The legal regime surrounding landmines is a complex and critical aspect of international law, aimed at mitigating the devastating humanitarian impact of these devices. Landmines are explosive devices planted underground, designed to injure or kill individuals who trigger them. They pose significant threats not only during conflicts but also long after hostilities cease as many remain active and deadly as civilians reinhabit the areas in which they are deployed. The international community has made great strides in regulating the use, production, stockpiling, and clearance of landmines. The international legal regime includes the 1997 Landmine Ban Treaty (the Ottawa Convention), to which Ukraine is a State Party and Russia is not, which bans anti-personnel mines;[37] the Amended Protocol II of the UN Convention on Certain Conventional Weapons (CCW) which further regulates landmines, booby-traps, and other types of explosives; and the Convention on

[37] Anti-personnel mines are landmines that are activated by victims as opposed to military vehicles.

the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction further regulate States Parties and their production and destruction of anti-personnel mines.

In December 2018, Ukraine enacted Law 908/01 which gives assistance to mine victims and established the National Mine Action Authority , with amendments in 2020.

The issue of landmines holds particular significance due to the ongoing conflict in the eastern regions of Donetsk and Luhansk. Since the outbreak of hostilities in 2014, landmines have been extensively used by both Ukrainian and Russian forces, leading to widespread casualties among civilians and likely hindering post-conflict recovery efforts. The Russian invasion in 2022 only furthered the humanitarian complications as both Ukraine and Russia have used landmines throughout the conflict. The presence of landmines not only poses immediate dangers to the population but also complicates the return of displaced persons and infrastructure repair. As Ukraine navigates the complexities of conflict resolution and peacebuilding, addressing the legacy of landmines remains a pressing concern for both national authorities and the international community.

Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps, and Other Devices (Amended Protocol II)

As Amended on May 3, 1996

Article I

Scope of application

1. This Protocol relates to the use on land of the mines, booby-traps and other devices, defined herein, including mines laid to interdict beaches, waterway crossings or river crossings, but does not apply to the use of anti-ship mines at sea or in inland waterways.

…

Article 3

General restrictions on the use, of mines, booby-traps and other devices

1. This Article applies to:

(a) mines;

(b) booby-traps; and

(c) other devices.

2. Each High Contracting Party or party to a conflict is, in accordance with the provisions of this Protocol, responsible for all mines, booby-traps, and other devices employed by it and undertakes to clear, remove, destroy or maintain them as specified in Article 10 of this Protocol.

3. It is prohibited in all circumstances to use any mine, booby-trap or other device which is designed or of a nature to cause superfluous injury or unnecessary suffering.

…

5. It is prohibited to use mines, booby-traps or other devices which employ a mechanism or device specifically designed to detonate the munition by the presence of commonly available mine detectors as a result of their magnetic or other non-contact influence during normal use in detection operations.

6. It is prohibited to use a self-deactivating mine equipped with an anti-handling device that is designed in such a manner that the anti-handling device is capable of functioning after the mine has ceased to be capable of functioning.

…

8. The indiscriminate use of weapons to which this Article applies is prohibited. Indiscriminate use is any placement of such weapons:

(a) which is not on, or directed against, a military objective. In case of doubt as to whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used; or

(b) which employs a method or means of delivery which cannot be directed at a specific military objective; or

(c) which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

9. Several clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects are not to be treated as a single military objective.

10. All feasible precautions shall be taken to protect civilians from the effects of weapons to which this Article applies. Feasible precautions are those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations. These circumstances include, but are not limited to:

(a) the short- and long-term effect of mines upon the local civilian population for theduration of the minefield;

(b) possible measures to protect civilians (for example, fencing, signs, warning and monitoring);

(c) the availability and feasibility of using alternatives; and

(d) the short- and long-term military requirements for a minefield.

Article 4

Restrictions on the use of anti-personnel mines

It is prohibited to use anti-personnel mines which are not detectable, as specified in paragraph 2 of the Technical Annex.

Article 5

Restrictions on the use of anti-personnel mines other than remotely-delivered mines

1. This Article applies to anti-personnel mines other than remotely-delivered mines.

…

4. If the forces of a party to a conflict gain control of an area in which weapons to which this Article applies have been laid, such forces shall, to the maximum extent feasible, maintain and, if necessary, establish the protections required by this Article until such weapons have been cleared.

5. All feasible measures shall be taken to prevent the unauthorized removal, defacement, destruction or concealment of any device, system or material used to establish the perimeter of a perimeter-marked area.

Article 7

Prohibitions on the use of booby-traps and other devices

1. Without prejudice to the rules of international law applicable in armed conflict relating to treachery and perfidy, it is prohibited in all circumstances to use booby-traps and other devices which are in any way attached to or associated with:

(a) internationally recognized protective emblems, signs or signals;

(b) sick, wounded or dead persons;

(c) burial or cremation sites or graves;

(d) medical facilities, medical equipment, medical supplies or medical transportation;

(e) children's toys or other portable objects or products specially designed for the feeding, health, hygiene, clothing or education of children;

(f) food or drink;

(g) kitchen utensils or appliances except in military establishments, military locations or military supply depots;

(h) objects clearly of a religious nature;

(i) historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples; or

(j) animals or their carcasses.

2. It is prohibited to use booby-traps or other devices in the form of apparently harmless portable objects which are specifically designed and constructed to contain explosive material.

…

Article 9

Recording and use of information on minefields, mined areas, mines, booby-traps and other devices

1. All information concerning minefields, mined areas, mines, booby-traps and other devices shall be recorded in accordance with the provisions of the Technical Annex.

2. All such records shall be retained by the parties to a conflict, who shall, without delay after the cessation of active hostilities, take all necessary and appropriate measures, including the use of such information, to protect civilians from the effects of minefields, mined areas, mines, booby-traps and other devices in areas under their control.

At the same time, they shall also make available to the other party or parties to the conflict and to the Secretary-General of the United Nations all such information in their possession concerning minefields, mined areas, mines, booby-traps and other devices laid by them in areas no longer under their control; provided, however, subject to reciprocity, where the forces of a party to a conflict are in the territory of an adverse party, either party may withhold such information from the Secretary-General and the other party, to the extent that security interests require such withholding, until neither party is in the territory of the other. In the latter case, the information withheld shall be disclosed as soon as those security interests permit. Wherever possible, the parties to the conflict shall seek, by mutual agreement, to provide for the release of such information at the earliest possible time in a manner consistent with the security interests of each party.

…

Article 10

Removal of minefields, mined areas, mines, booby-traps and other devices and international cooperation

1. Without delay after the cessation of active hostilities, all minefields, mined areas, mines, booby-traps and other devices shall be cleared, removed, destroyed or maintained in accordance with Article 3 and paragraph 2 of Article 5 of this Protocol.

2. High Contracting Parties and parties to a conflict bear such responsibility with respect to minefields, mined areas, mines, booby-traps and other devices in areas under their control.

3. With respect to minefields, mined areas, mines, booby-traps and other devices laid by a party in areas over which it no longer exercises control, such party shall provide to the party in control of the area pursuant to paragraph 2 of this Article, to the extent permitted by such party, technical and material assistance necessary to fulfil such responsibility.

4. At all times necessary, the parties shall endeavour to reach agreement, both among themselves and, where appropriate, with other States and with international organizations, on the provision of technical and material assistance, including, in appropriate circumstances, the undertaking of joint operations necessary to fulfil such responsibilities.

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (The Ottawa Convention)

Oslo, 18 September 1997

Preamble

The States Parties,

Determined to put an end to the suffering and casualties caused by anti-personnel mines, that kill or maim hundreds of people every week, mostly innocent and defenceless civilians and especially children, obstruct economic development and reconstruction, inhibit the repatriation of refugees and internally displaced persons, and have other severe consequences for years after emplacement,

Believing it necessary to do their utmost to contribute in an efficient and coordinated manner to face the challenge of removing anti-personnel mines placed throughout the world, and to assure their destruction,

Wishing to do their utmost in providing assistance for the care and rehabilitation, including the social and economic reintegration of mine victims,

Recognizing that a total ban of anti-personnel mines would also be an important confidence-building measure,

Welcoming the adoption of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996, annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, and calling for the early ratification of this Protocol by all States which have not yet done so,

Welcoming also United Nations General Assembly Resolution 51/45 S of 10 December 1996 urging all States to pursue vigorously an effective, legally-binding international agreement to ban the use, stockpiling, production and transfer of anti-personnel landmines,

Welcoming furthermore the measures taken over the past years, both unilaterally and multilaterally, aiming at prohibiting, restricting or suspending the use, stockpiling, production and transfer of anti-personnel mines,

Stressing the role of public conscience in furthering the principles of humanity as evidenced by the call for a total ban of anti-personnel mines and recognizing the efforts to that end undertaken by the International Red Cross and Red Crescent Movement, the International Campaign to Ban Landmines and numerous other non-governmental organizations around the world,

Recalling the Ottawa Declaration of 5 October 1996 and the Brussels Declaration of 27 June 1997 urging the international community to negotiate an international and legally binding agreement prohibiting the use, stockpiling, production and transfer of anti-personnel mines,

Emphasizing the desirability of attracting the adherence of all States to this Convention, and determined to work strenuously towards the promotion of its universalization in all relevant fora including, inter alia, the United Nations, the Conference on Disarmament, regional organizations, and groupings, and review conferences of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects,

Basing themselves on the principle of international humanitarian law that the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited, on the principle that prohibits the employment in armed conflicts of weapons, projectiles and materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering and on the principle that a distinction must be made between civilians and combatants,

Have agreed as follows:

Article 1 General Obligations

1. Each State Party undertakes never under any circumstances:
   a) To use anti-personnel mines;
   b) To develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, anti-personnel mines;
   c) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.
2. Each State Party undertakes to destroy or ensure the destruction of all anti-personnel mines in accordance with the provisions of this Convention.

Article 2 Définitions

1. "Anti-personnel mine" means a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons. Mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped.

2. "Mine" means a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle.

3. "Anti-handling device" means a device intended to protect a mine and which is part of, linked to, attached to or placed under the mine and which activates when an attempt is made to tamper with or otherwise intentionally disturb the mine.

4. "Transfer" involves, in addition to the physical movement of anti-personnel mines into or from national territory, the transfer of title to and control over the mines, but does not involve the transfer of territory containing emplaced anti-personnel mines.

5. "Mined area" means an area which is dangerous due to the presence or suspected presence of mines.

Article 3 Exceptions

1. Notwithstanding the general obligations under Article 1, the retention or transfer of a number of anti-personnel mines for the development of and training in mine detection, mine clearance, or mine destruction techniques is permitted. The amount of such mines shall not exceed the minimum number absolutely necessary for the above-mentioned purposes.

2. The transfer of anti-personnel mines for the purpose of destruction is permitted.

Article 4 Destruction of Stockpiled Anti-personnel Mines

Except as provided for in Article 3, each State Party undertakes to destroy or ensure the destruction of all stockpiled anti-personnel mines it owns or possesses, or that are under its jurisdiction or control, as soon as possible but not later than four years after the entry into force of this Convention for that State Party.

Article 5 Destruction of Anti-personnel Mines in Mined Areas

1. Each State Party undertakes to destroy or ensure the destruction of all anti-personnel mines in mined areas under its jurisdiction or control, as soon as possible but not later than ten years after the entry into force of this Convention for that State Party.

2. Each State Party shall make every effort to identify all areas under its jurisdiction or control in which anti-personnel mines are known or suspected to be emplaced and shall ensure as soon as possible that all anti-personnel mines in mined areas under its jurisdiction or control are perimeter-marked, monitored and protected by fencing or other means, to ensure the effective exclusion of civilians, until all anti-personnel mines contained therein have been destroyed. The marking shall at least be to the standards set out in the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996, annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects.

3. If a State Party believes that it will be unable to destroy or ensure the destruction of all anti-personnel mines referred to in paragraph 1 within that time period, it may submit a request to a Meeting of the States Parties or a Review Conference for an extension of the deadline for completing the destruction of such anti-personnel mines, for a period of up to ten years.

4. Each request shall contain:

a) The duration of the proposed extension;

b) A detailed explanation of the reasons for the proposed extension, including:

(i) The preparation and status of work conducted under national demining programs;
(ii) The financial and technical means available to the State Party for the destruction of all the anti-personnel mines; and
(iii) Circumstances which impede the ability of the State Party to destroy all the anti-personnel mines in mined areas;

c) The humanitarian, social, economic, and environmental implications of the extension; and

d) Any other information relevant to the request for the proposed extension.

5. The Meeting of the States Parties or the Review Conference shall, taking into consideration the factors contained in paragraph 4, assess the request and decide by a majority of votes of States Parties present and voting whether to grant the request for an extension period.

6. Such an extension may be renewed upon the submission of a new request in accordance with paragraphs 3, 4 and 5 of this Article. In requesting a further extension period a State Party shall submit relevant additional information on what has been undertaken in the previous extension period pursuant to this Article.

Article 6 International Cooperation and Assistance

1. In fulfilling its obligations under this Convention each State Party has the right to seek and receive assistance, where feasible, from other States Parties to the extent possible.

2. Each State Party undertakes to facilitate and shall have the right to participate in the fullest possible exchange of equipment, material and scientific and technological information concerning the implementation of this Convention. The States Parties shall not impose [*9]

undue restrictions on the provision of mine clearance equipment and related technological information for humanitarian purposes.

3. Each State Party in a position to do so shall provide assistance for the care and rehabilitation, and social and economic reintegration, of mine victims and for mine awareness programs. Such assistance may be provided, inter alia, through the United Nations system, international, regional or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organizations, or on a bilateral basis.

4. Each State Party in a position to do so shall provide assistance for mine clearance and related activities. Such assistance may be provided, inter alia, through the United Nations system, international or regional organizations or institutions, non-governmental organizations or institutions, or on a bilateral basis, or by contributing to the United Nations Voluntary Trust Fund for Assistance in Mine Clearance, or other regional funds that deal with demining.

5. Each State Party in a position to do so shall provide assistance for the [*10] destruction of stockpiled anti-personnel mines.

6. Each State Party undertakes to provide information to the database on mine clearance established within the United Nations system, especially information concerning various means and technologies of mine clearance, and lists of experts, expert agencies or national points of contact on mine clearance.

7. States Parties may request the United Nations, regional organizations, other States Parties or other competent intergovernmental or non-governmental fora to assist its authorities in the elaboration of a national demining program to determine, inter alia:

a) The extent and scope of the anti-personnel mine problem;

b) The financial, technological and human resources that are required for the implementation of the program;

c) The estimated number of years necessary to destroy all anti-personnel mines in mined areas under the jurisdiction or control of the concerned State Party;

d) Mine awareness activities to reduce the incidence of mine-related injuries or deaths;

e) Assistance to mine victims;

f) The relationship between the Government of the concerned State Party and the relevant governmental, inter-governmental or non-governmental entities that will work in the implementation of the program.

8. Each State Party giving and receiving assistance under the provisions of this Article shall cooperate with a view to ensuring the full and prompt implementation of agreed assistance programs.

…

Commentary

1. Both Ukraine and Russia are parties to Amended Protocol II of the Convention on Certain Conventional Weapons (CCW), which regulates the use of mines, booby-traps, and other devices. Ukraine acceded to the CCW and its protocols, including Amended Protocol II, on June 23, 1999. Russia ratified the CCW and its Amended Protocol II on June 2, 2005.

2. Ukraine is a State Party to the Ottawa Convention. Russia, however, is not. The US is not a party either. The situation in Ukraine is leading to what Human Rights Watch called “an unusual situation in which a country that is not party to the 1997 Mine Ban Treaty uses the weapon on the territory of a party to the treaty.” While both parties are obligated to abide by the regulations laid out in Amended Protocol II, which dictates the appropriate uses of certain kinds of these

devices, Ukraine is obligated to uphold the much more limiting Ottawa Convention requirements. By operating in Ukrainian territory, does Russia take on additional regulatory burdens? What, if any, repercussions are there for Ukraine if Russia engages in behavior that violates its obligations under international law? Dario Pronesti and Jeroen van den Boogaard answer some of these questions in the following article.

Landmines and the War In Ukraine

Dario Pronesti & Jeroen van den Boogaard, The Lieber Institute, March 20, 2023

Human Rights Watch has documented the use of both anti-vehicle and anti-personnel landmines in Ukraine. Following reports that Ukraine is using anti-personnel landmines (APLs) in violation of the Ottawa Convention, the Ukrainian authorities acknowledged this allegation and reaffirmed the State's commitment to its international obligations.

This post addresses the legal framework applicable to the use of landmines in the conflict between Ukraine and Russia. Because Ukraine and Russia have different legal obligations regarding landmines, this framework is complex. What is clear is that the use of APLs by Ukraine is unlawful in all circumstances. For Russia, the legality of employing APLs depends on the way they are used.

Regulating the Use of Landmines

The use of landmines was first regulated in 1980 in the United Nations Convention on Certain Conventional Weapons (CCW). Protocol II to the CCW was one of the three protocols States originally adopted. Article 2(1) of Protocol II defines landmines as "any munition placed under, on or near the ground or other surface area and designed to be detonated or exploded by the presence, proximity or contact of a person or vehicle." Protocol II adopts a design-based approach, clarifying that any munition could be qualified as a mine if it is designed to operate in any of the ways indicated. Consequently, only those devices designed to operate as mines are covered by the Protocol, regardless of their labelling. Munitions that may occasionally behave, or be used, as mines are excluded from its regulatory framework provided these are not specifically designed for such use.

Protocol II regulates not just manually emplaced landmines, but also remotely delivered landmines (RDLs) whose use is subject to different restrictions (art. 5). In summary, Protocol II limits the use of RDLs to areas constituting "a military objective or which contains military objectives" and requires effective advance warning to be given to potentially affected civilian populations.

The restrictions applicable to manually emplaced mine warfare are largely a restatement of the targeting rules contained in Additional Protocol I to the Geneva Conventions. Protocol II to the CCW also provides detailed limitations on the use of landmines in populated areas. In particular, Article 4(2) states that mine warfare is prohibited "in any city, town, village or other area containing a similar concentration of civilians in which combat between ground forces is not taking place or does not appear to be imminent" unless landmines are placed close to the enemy's military objectives or appropriate measures are taken to protect civilians, such as the posting of warning signs. The Protocol II obligations on recording the location of minefields are rather weak.

Towards a More Civilian-Friendly Regulation of Landmines

Efforts to strengthen the regulation of landmines within the CCW led to the adoption of Amended Protocol II in 1996. It contains specific provisions on the use of APLs, understood as

any mine "primarily designed" to be exploded by the presence, proximity, or contact of a person and that will incapacitate, injure, or kill one or more persons. Amended Protocol II prohibits the use of such mines which are "not detectable" as specified in the attached Technical Annex, and which do not comply with specific requirements of self-destruction and self-deactivation.

The prohibition of non-detectable APLs in Amended Protocol II is absolute, but the prohibition of non-remotely delivered APLs that are unable to self-destruct or -deactivate, is not. Belligerent parties may still use such APLs within perimeter-marked areas, or, under certain conditions, outside of such areas. The evident aim of these exceptions, as noted by Air Commodore Boothby, is to enable belligerent States to continue using APLs that do not comply with the more stringent standards of Amended Protocol II without, however, allowing the employment of long-term APL minefields.

Amended Protocol II also made some useful improvements with regard to mine clearance, making each belligerent party responsible "for all mines…employed by it" and "to clear, remove, destroy or maintain" these in the area it controls after the hostilities. Further, the Amended Protocol strengthens the precautionary obligations to protect civilians from the effects of landmines. It absolutely prohibits the use of landmines against civilians and civilian objects by way of reprisal and introduces more stringent recording obligations.

In relation to remotely delivered landmines (RDLs), Amended Protocol II introduced a number of restrictions which affect both their design and use. Most notably, it prohibits the use of all such mines which are not fitted with self-deactivation or self-destruction mechanisms. It also significantly improved the recording obligations. With regard to anti-personnel RDLs, Amended Protocol II created a special regulatory framework identical to that of non-remotely delivered APLs, which aims to further restrict their use.

Although Amended Protocol II went to great lengths to reinforce the law applicable to mine warfare, it failed to achieve an outright ban on APLs. This became the overarching goal of the Ottawa Convention, which was negotiated outside the framework of the CCW. It dictates that States parties shall "never under any circumstance" use, nor "develop, produce or otherwise acquire" APLs. Instead, States parties are required to destroy their stockpiles of APLs.

Customary Nature of the Rules

The fact that a number of highly relevant States, such as the United States, China, Russia, and India, are not party to some, or all the instruments described above begs the question of whether their norms reflect customary international law. The influential ICRC Customary Law Study identifies only three basic customary rules applicable to mine warfare (rules 81 to 83). The more developed rules, including the ban on the use of APLs, thus seemingly lack customary status.

The Russia-Ukraine War

Russia and Ukraine have different obligations regarding mine warfare. While Russia and Ukraine both ratified Protocol II and Amended Protocol II, only Ukraine is a party to the Ottawa Convention. Thus, Ukraine may only use anti-vehicle landmines, whether manually or mechanically emplaced, or remotely delivered. In doing so, it must comply with all the precautionary and protective measures set out in Amended Protocol II.

Conversely, Russia may lawfully use any type of landmine, including APLs, provided that it observes the specific design, monitoring, and clearance requirements indicated in the Technical Annex of Amended Protocol II. Like Ukraine, Russia is bound to comply with all precautionary and protective measures contained in Amended Protocol II when using landmines

of any sort and to observe the strict recording criteria contained in the Technical Annex when manually or remotely positioning APLs.

HPD Anti-Vehicle Mines

An illustrative example of the complex regulation of mine warfare in Russia's war of aggression in Ukraine is whether the belligerents may lawfully use French Mine Antichar a Haut Pouvoir de Destruction (HPD) anti-vehicle mines. These mines may detonate if their anti-handling device comes into contact with mine-detector signals. This functionality may give the impression that the use of these mines is unlawful, and indeed, pro-Russian sources have made such allegations against Ukraine. However, Article 3(5) of Amended Protocol II only prohibits the use of landmines that are "specifically designed" to explode by the proximity of "commonly available" mine detectors. The necessary consequence of this language is that mines occasionally operating in this manner (such as HPD mines), but not "specifically designed" to do so, are generally exempted from the prohibition. Therefore, provided all due precautions are taken, the use of HPD mines by Ukraine is consistent with Amended Protocol II.

Concluding Thoughts

The use of landmines by Russia and Ukraine is not categorically prohibited. This may seem unsatisfactory from a strictly humanitarian perspective, but the war in Ukraine demonstrates the military utility of landmines. For example, dense Ukrainian minefields near Pavlivka stopped a Russian advance on Vuhledar. Nevertheless, the use of landmines, particularly APLs, during armed conflicts remains a matter of concern. These weapons are inherently unable to distinguish between combatants and civilians, and they may also remain a hazard for the civilian population even after the conflict has ended.

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15.3.3 The Demining Process in Ukraine

The wreckage caused by landmine use and Russia's frequent disregard for these laws has caused many nations and international organizations to speak out against the destruction and seek avenues to provide aid and support for Ukraine in cleaning up its contaminated land. Various non-governmental and international organizations with experience in demining operations, such as the Mine Advocacy Group (MAG) and The Halo Trust, are already working within Ukraine's borders to clear existing minefields and unexploded ordinance. As of late 2023, estimates put the total area contaminated by mines at around 174,000 km^2, or nearly 29% of Ukraine's territory. Putting aside the obvious civilian safety implications of such a large swatch of land being contaminated by mines, much of the contaminated area is farmland. Ukraine is often referred to as the "breadbasket of Europe," emphasizing the importance of grain to its economy. As such, the contaminated agricultural areas have an outsized impact on Ukraine's domestic grain supply, its economy, and the grain supply of many surrounding nations.

In the context of global food security, the demining of Ukraine is of paramount importance. Unfortunately, the true scale of the operation cannot be known until the conflict ends. As of this writing in January 2025, there are international reports that both Ukraine and Russia continue to use various types of anti-personnel mines in violation of IHL and other treaty obligations. It is unlikely that any attempt to cajole belligerent party into abiding by their obligations under international law will be successful.

A troubling development took place at the end of 2024 when the US authorized Ukraine to deploy US-supplied anti-personnel land mines to impede Russian military advances. On December 2, 2024, the U.S. announced a $725 million military aid package for Ukraine, which includes various munitions and three types of remote anti-personnel mine-laying systems: the

Area Denial Artillery Munition (ADAM), the Modular Pack Mine System (MOPMS), and the Volcano mine-laying system. These mines are designed to self-deactivate after a set period, reducing long-term risks to civilians. The decision reflects a significant policy shift, as the US had previously limited the use of such mines due to humanitarian concerns. However, the escalating conflict and Russia's extensive use of land mines have prompted this change to bolster Ukraine's defensive capabilities. It is important to note that while Ukraine is a signatory to the 1997 Ottawa Convention banning anti-personnel mines, Russia and the United States are not. The US has emphasized that these mines are intended for use within Ukrainian territory and not in civilian-populated areas, aiming to minimize potential harm to non-combatants.

Ukraine Will Cooperate with NATO Countries on Humanitarian Demining of Territories

Yulia Svyrydenko, Ministry of Economy of Ukraine, May 25, 2023

Since the beginning of the full-scale invasion of Russia, Ukraine's economy has been facing unprecedented challenges. Therefore, the restoration of critical and social infrastructure is one of the main conditions for stimulating the socio-economic development of the regions.

This was emphasised by Yulia Svyrydenko, First Deputy Prime Minister and Minister of Economy of Ukraine, during a meeting of the NATO-Ukraine Commission at the ambassadorial level. Among the key issues discussed at the meeting were the functioning of the Ukrainian economy in the context of the war and the country's economic recovery.

Today, the state's resources are primarily directed towards strengthening defence capabilities, restoring Ukraine's territorial integrity and restoring the territories affected by the armed aggression against Ukraine. Humanitarian demining is an essential component of the country's security and economic recovery. It is therefore one of the top five priorities of the Ukrainian Government. According to the World Bank, the cost of clearing the entire territory will exceed USD 37.4 billion, but by applying new methods we can reduce the cost by ten times," said Yulia Svyrydenko.

The potentially contaminated area covers 174,000 hectares and is home to more than 15 million people, of whom 6.1 million are directly at risk. The main task is a non-technical survey (NTS), i.e. gathering information on the contamination of the territory, which requires specialists and means to collect and analyse data. According to international practice, only 8-18% of the territory requires clearance and demining after NTS.

Rapid land clearance requires the use of human resources and specialised equipment such as scanners, drones, satellite data analysis, etc. The Government is currently negotiating with international partners to bring their experience in mine action to Ukraine, to enter the global market for demining equipment, and to attract foreign demining operators to Ukraine.

"Cooperation with NATO to strengthen Ukraine's humanitarian demining capabilities may include such areas as providing information on the availability of specialised demining equipment manufacturers in NATO countries and their capabilities, identifying potential donors, training Ukrainian deminers, sharing experience with relevant NATO centres of excellence and others," said Yulia Svyrydenko.

Representatives of NATO member countries pledged their continued support for Ukraine and their readiness to provide the assistance Ukraine needs to regain and restore its sovereignty and territorial integrity.

EU-Ukraine: Press remarks by High Representative/Vice-President Josep Borrell Announcing Support for Demining During a Visit to a Demining Site

Thank you to the Deputy Minister [for Internal Affairs of Ukraine, Mary] Akopian for accompanying me to this visit. A place where Ukrainians are trying to clean their land, and they have a lot of work.

30% of your territory is being affected by some kind of explosives due to the war and due to the will of the Russian troops when they withdraw of leaving mines [behind] in order to cause damage to the civilian population.

Unfortunately, Ukraine is one of the most contaminated countries in the world by military remnants of any kind and these people are doing here a gigantic work in order to clean the landscape and make it safe.

We have seen the old equipment coming from the Soviet times and we have seen the new equipment that we will try to bring more [of]. This is very expensive material, as you can imagine.

So, we will try to support you. And there is the first tranche of €25 million in order to increase your modern equipment to save lives and allow your soldiers to work in safer conditions.

This is one of the worst consequences of the war: when the countryside, the forest, even the waters, become contaminated by explosives. The civilian population, mainly children, are the victims of that.

So, you can count on our support.

Q&A

Q. We witness the results of the war activities, and you keep on saying that Europe stands ready to help after the war. Are there any plans in terms of recovery? Perhaps there have already been several financial estimations of the amounts needed?

The European Union will support the recovery and reconstruction of Ukraine by all means and all dimensions. But, you know, when we talk about reconstruction, the best thing is to avoid destruction. We are still in the phase of avoiding destruction. If we avoid destruction, [there] will be less work on reconstruction.

We will support the reconstruction but, [for] the time being, still, the war is raging. And this is the moment of providing anti-aircraft weapons, providing arms, providing the means and tools to avoid destruction.

The time of reconstruction will come. When peace will come, Ukraine will emerge as a free, democratic and prosperous country. And then thousands and hundreds of millions will be needed. But for the time being, what we have to do is to avoid destruction.

Q. What is the role for the EU, concerning the long-term consequences of the conflict, be it demining or reconstruction? How do you see the role?

Support. The word is support. The Ukrainians are doing theirs, and we have to do our job. These soldiers, these people, are Ukrainians. And we have to support them, support [them] by all means – providing the millions for that material. Look at this other one. It is not the same thing to work with this or with that. We cannot substitute them, we have to support them. And this brand-new material costs money. And our role is to support them [by] providing the material they need in order to do their work, in a best safety conditions. And this means saving lives. …

Improving Food Security in Ukraine Through Demining

U.S. Department of State, Reyna Yang, February 28, 2024

Russia's full-scale invasion of Ukraine has had a devastating impact on food security in Ukraine and across the globe. Over one third of Ukraine is suspected to be contaminated with landmines and other explosive hazards, and nearly 6.5 million acres of the country's farmland

has been adversely impacted by the Russia's aggression, according to Ukraine's Ministry of Economy. Widespread mine contamination threatens the livelihoods of millions of civilians and undercuts the economy by reducing Ukraine's agricultural production. As the largest donor of humanitarian demining assistance to Ukraine, the United States is committed to helping Ukraine enable safe access to arable land and returning that land to communities for long-term productive use. Russian forces have left landmines and other explosive hazards in Ukraine's prime agricultural land, and their continued presence is a risk to human life, hindrance to investment, and major obstacle to food security.

The Cost of Russia's War

Since Russia's full-scale invasion, many families and small-scale farmers in the front-line regions are unable to plant crops due to landmine contamination. According to the Food and Agricultural Organization (FAO) in their 2023 Ukraine impact assessment, Ukraine's front-line communities have experienced the greatest proportion of contaminated land.

According to the U.S. International Trade Administration, Ukraine is one of the most fertile places in the world, containing 25-30 percent of the world's black soil reserves, with more than 100 million acres of agricultural land. Around 400 million people worldwide rely on Ukraine for their food supply, according to the United Nations World Food Programme (WFP). Russia's unprovoked, full-scale invasion of Ukraine has disrupted global supply chains and exports and increased production costs, creating unprecedented challenges around the world.

The United States is the largest humanitarian demining donor to Ukraine and remains committed to supporting Ukraine's efforts to address the impacts of explosive hazards. The Department of State is leading the U.S. government's response, having committed $182 million to the effort since February 2022. This assistance is designed to bolster the Government of Ukraine's capacity to clear landmines and unexploded ordnances.

The United States also increased the number of U.S.-funded NGO and contractor demining teams deployed in Ukraine to augment Ukrainian government efforts and accelerate demining in areas identified as high priorities by the Government of Ukraine. Currently, the majority of survey and clearance tasks addressed by State Department implementing partners are agricultural.

The United States supports survey and clearance operations through the implementing partners Tetra Tech, Danish Refugee Council (DRC), The HALO Trust (HALO), Swiss Foundation for Mine Action (FSD), and Mines Advisory Group (MAG). The United States also funds FSD to survey and clear small farms under a joint WFP-FAO project. These farms are prioritized based on criteria developed by agricultural experts, including socio-economic factors, soil productivity, and risk of chemical contamination to the watershed.

In March 2023, U.S.-funded NGO HALO, began working across the Kharkiv region to clear landmines and other explosive hazards from villages and farmlands. Alexandar Mikolaeovich, the director of an agricultural company, has farmed in the Kharkiv region for over 40 years. He has an annual harvest of over 10 tons of wheat, barley, and sunflower, which is then exported to the ports of Odessa and Mykolaiv.

The land that Alexander rents is the economic lifeline of 400 local people living in the nearby village. However, from March to September 2023, Russian forces occupied the land, destroying grain stores that housed years' worth of wheat, damaging the multi-million-dollar farm equipment, and leaving behind a lethal tide of landmines, booby traps, and other explosive hazards.

U.S. partners assist local communities, villages, and farmers like Alexander by investing in machines and new technologies that clears vast tracts of land safely and efficiently, transforming minefields back to farmers' fields. Once agricultural land is surveyed, cleared, and safe for use, farmers are able to return to sowing the fields, harvesting crops, and exporting goods.

The United States, through the U.S. Agency for International Development (USAID), also supports Ukraine's agricultural sector through the Agriculture Resilience Initiative Ukraine (AGRI-Ukraine) program, which works to alleviate the global food security crisis exacerbated by Russia's war on Ukraine by donating seeds to households and farmers, providing additional field equipment, and increasing grain shipping capacity.

Bolstering Ukraine's economy and fostering sustainable recovery, the program targets urgent export challenges and supports Ukraine's wider agricultural sector. Ultimately, demining is the first step to recovery – affecting Ukraine's economy, energy security, global food security, as well as the safety of millions of Ukrainians.

U.S. Commitment

The United States is committed to supporting humanitarian needs and post-conflict recovery of communities affected by mines and other explosive remnants of war in Ukraine through its global conventional weapons destruction efforts. Since 1993, the United States has invested more than $4.6 billion in over 120 countries – and areas to promote international peace and security by addressing the threat of conventional weapons.

A non-technical survey team leader takes notes on an unexploded rocket in Ukraine

Commentary

1. Every NATO country except the U.S. is a party to the Ottawa Convention banning anti-personnel mines. In 2020, the U.S. joined a list of 11 other countries that preserved the right to produce anti-personnel mines: China, Cuba, India, Iran, Myanmar, North Korea, Pakistan, Russia,

Singapore, South Korea, and Vietnam. In a letter describing the new policy, then Secretary of Defense Mark Esper defended the decision with the following statement:

> The National Defense Strategy forecasts a global security environment in which the reemergence of long-term, strategic competition is the central challenge. This environment requires our military to regain its competitive advantages by becoming more lethal, resilient, agile, and ready across a range of potential contingencies and geographies. Area denial systems, such as landmines, play an important role in enabling these force attributes. These systems help protect defending forces from both enemy armor and dismounted threats and ensure units are not outflanked or overrun when under attack. They obstruct and influence the enemy's direction of movement, channeling enemy forces into zones in which U.S. forces can better concentrate overwhelming firepower. They also delay or stop enemy forces, enhancing the effectiveness of other weapons that U.S. forces can then bring to bear, while doing so with reduced manpower requirements and fewer munitions. Ultimately, they serve as a force multiplier, helping U.S. forces to fight effectively against enemy threats, which may be numerically superior or capable of exploiting operational or tactical advantages over U.S. forces.

Russia similarly stated its belief in the strategic importance of landmines "as an effective way of ensuring the security of Russia's borders." Despite countries such as the U.S. and Russia's arguments, many decry landmines as inhumane due to civilian and child casualties. The UN estimates that every other person killed by a landmine in 2021 was a child, and eight in every ten were civilians.

2. Currently, the globe is strewn with 110 million landmines and trying to find them in order to prevent serious future harm to humans that inadvertently find them is a major challenge. Detection methods have ranged from trained canines and bees to robots and metal detectors. Recently, Israeli scientists developed a promising new method that is both cost effective and safer than some other strategies involving E. coli bacteria. Once the bacteria target a landmine, they illuminate, and drones above can pinpoint where the destructive device is. It is hoped that this new technology and other scientific advancements can aid in the demining of Ukraine after the war.

15.4 Safety of Nuclear Plants

15.4.1 Introduction

Nuclear power can be the savior of our planet. It can also be the savior of Ukraine's economy. However, it also carries with it the possibility of being one of the world's most destructive forces. Just under 400 miles from the site of Chernobyl, the location of the worst nuclear accident in history, the Russian military ruthlessly advanced without regard to the safety of the Zaporizhzhia Nuclear Power Plant (ZNPP) and flaunted international law in the process.

Photo of Zaporizhzhia nuclear reactors.

The ZNPP is the largest nuclear power plant in Europe and is the ninth largest nuclear power plant in the world. Located on the shore of the Dnieper River in southeast Ukraine, ZNPP has been in operation since 1985. Ukraine boasts four active nuclear power plants that provide 62% of the country's electric power. ZNPP itself provides more than a fifth of total electricity in Ukraine and the plant has a total output of 5,700 megawatts and consists of six "pressurized light-water reactors" (PWRs), which are the most common nuclear power reactors. Since the Russian capture and occupation of ZNPP in March 2022, the plant does not produce any power. In addition to the six PWRs, the facilities including cooling pools which help regulate the temperature of spent nuclear material. The water for these pools is produced by the Kakhovka Reservoir, which in turn is created by the Kakhovka Hydroelectric Power Plant discussed above. If the cooling water needed by these pools is disrupted, the spent fuel rods may overheat, boiling off the pool water and releasing harmful radiological material into the atmosphere. Nuclear energy is created, in its most reducible terms, by the heat released from nuclear reactions in the fuel rods of a PWR. This heat produces steam from the surrounding water which, then, is released from the pressurized tank. Through its release, the steam turns a turbine much in the same manner as a hydroelectric plant.

Active Nuclear Power Plants in Ukraine

Given the potential risk that radiation poses to both humans and the environment, nuclear energy is heavily monitored and regulated both domestically and internationally. The International Atomic Energy Agency (IAEA) is the UN organization tasked with monitoring, inspecting, and surveying nuclear power plants. Not only has the IAEA created a large number of safety and security guidelines, it also established the International Nuclear and Radiological Event Scale (INES) to rank the impact of nuclear events. The INES separates "incidents" (levels 1-3) and "accidents" (levels 4-7) based on criteria such as: impact on people and the environment, impact on radiological barriers and control, and impact on defense in depth. The separation of each level is "logarithmic – that is, the severity of an event is about ten times greater for each increase in the level of the scale." To date, there have been two level-7 accidents (Chernobyl, USSR and Fukushima, Japan) and one level-6 accident (Kyshtym, USSR). The infamous Three Mile Island accident near Harrisburg, Pennsylvania was a level 5 on the INES scale.

Under normal circumstances, modern nuclear power plants (NPPs) are heavily monitored with state-of-the-art equipment and highly trained personnel. Generally, these NPPs are incredibly safe and stable. Events such as Fukushima and Chernobyl, however, highlight the potential risk inherent in these facilities when disaster strikes. For example, the earthquake and tsunami around Tōhoku, Japan in 2011 caused massive power outages and damaged the structural integrity of Fukushima Daiichi Nuclear Power Plant's generator energy sources. The

loss of power and structural damage led to catastrophic events outside the control of plant operators and forced nearly 200,000 residents in the surrounding areas to evacuate. Since 2011, the Japanese government has spent more than $100 billion on cleanup and containment, and the Fukushima plant remains inoperable as the government continues to remove hazardous material from the site.

Also illustrative, on April 26, 1986, the Chernobyl NPP experienced a catastrophic meltdown which caused an explosion at Reactor 4. The result of a combination of poor plant design and a lack of safety culture, the catastrophe at Chernobyl is considered the worst nuclear power accident of all time. While the total number of deaths related to the disaster remains contested, it is generally accepted that there were 30 direct casualties killed immediately by the explosion or by acute radiation sickness. Estimates of long-term deaths range from 2,000 to 6,000. As seen from this wide estimated range, all deaths besides the confirmed 30 are all heavily disputed.

Ecologically, however, one thing is clear: the disaster at Chernobyl spread radioactive material in the atmosphere as far as Norway and resulted in significant environmental damage across Europe and Eurasia.

With these events in mind, it is understandable that there is a great deal of concern related to military operations near NPPs. How, then, can States protect these facilities in times of war and conflict? What structures exist to hold those who would violate these protections accountable?

15.4.2 International Legal Regime

Russia and Ukraine are both State parties to the Additional Protocol I of the 1949 Geneva Conventions (Protocol I). Adopted in June 1977, Protocol I strengthens the protections for victims of international armed conflicts. Article 1 establishes the scope of the protocol, binding State parties to its terms. Article 48 is a general prohibition against attacks on civilian objects. Notably, because NPPs are considered civilian facilities, they fall under the umbrella of Article 48 protection. Article 56 establishes the prohibition of targeting "dangerous forces," which includes "nuclear electrical generating stations." Article 60 provides an opportunity for conflicting parties to establish demilitarized zones in order to protect civilian populations. Finally, Article 85 covers grave breaches of the Protocol.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)
June 8, 1977

Article 1 - General principles and scope of application

1. The High Contracting Parties undertake to respect and to ensure respect for this Protocol in all circumstances.
2. In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.
3. This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 common to those Conventions.

…

Article 48 - Basic rule

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

…

Article 56 - Protection of works and installations containing dangerous forces

1. Works or installations containing dangerous forces, namely dams, dykes and *nuclear electrical generating stations*, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population. Other military objectives located at or in the vicinity of these works or installations shall not be made the object of attack if such attack may cause the release of dangerous forces from the works or installations and consequent severe losses among the civilian population. (Emphasis added)

2. The special protection against attack provided by paragraph 1 shall cease:

…

(b) for a nuclear electrical generating station *only* if it provides electric power in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support[.] (Emphasis added)

…

5. The Parties to the conflict shall endeavour to avoid locating any military objectives in the vicinity of the works or installations mentioned in paragraph 1. Nevertheless, installations erected for the sole purpose of defending the protected works or installations from attack are permissible and shall not themselves be made the object of attack, provided that they are not used in hostilities except for defensive actions necessary to respond to attacks against the protected works or installations and that their armament is limited to weapons capable only of repelling hostile action against the protected works or installations.

6. The High Contracting Parties and the Parties to the conflict are urged to conclude further agreements among themselves to provide additional protection for objects containing dangerous forces.

…

Article 60 - Demilitarized zones

1. It is prohibited for the Parties to the conflict to extend their military operations to zones on which they have conferred by agreement the status of demilitarized zone, if such extension is contrary to the terms of this agreement.

2. The agreement shall be an express agreement, may be concluded verbally or in writing, either directly or through a Protecting Power or any impartial humanitarian organization, and may consist of reciprocal and concordant declarations. The agreement may be concluded in peacetime, as well as after the outbreak of hostilities, and should define and describe, as precisely as possible, the limits of the demilitarized zone and, if necessary, lay down the methods of supervision.

3. The subject of such an agreement shall normally be any zone which fulfils the following conditions:
(a) all combatants, as well as mobile weapons and mobile military equipment, must have been evacuated;
(b) no hostile use shall be made of fixed military installations or establishments;
(c) no acts of hostility shall be committed by the authorities or by the population; and
(d) any activity linked to the military effort must have ceased.
The Parties to the conflict shall agree upon the interpretation to be given to the condition laid down in sub-paragraph (d) and upon persons to be admitted to the demilitarized zone other than those mentioned in paragraph 4.
…

Article 85 - Repression of breaches of this Protocol

…
3. In addition to the grave breaches defined in Article 11, the following acts shall be regarded as grave breaches of this Protocol, when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health:
(a) making the civilian population or individual civilians the object of attack;
(b) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a) (iii);
(c) launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a) (iii);
(d) making non-defended localities and demilitarized zones the object of attack;
…

6. Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes.

Commentary

1. The USSR signed Protocol I in 1979. Russia signed a declaration of continuity in 1992. When a state's government is overturned, as when the USSR collapsed and the Russian Federation was established, the new government has the opportunity to submit declarations of continuity for each treaty the previous government was party to. In this way, the new government commits itself to continue fulfilling the obligations of those treaties. Ukraine signed Protocol I in 1990.

2. Nuclear energy regulation differs from other energy regulations primarily due to the unique risks and complexities associated with nuclear technology. Unlike other forms of energy production, such as fossil fuels or renewables, nuclear power involves handling radioactive materials, which pose significant safety, security, and environmental concerns. Consequently, nuclear energy regulations tend to be more stringent and comprehensive, covering various aspects such as reactor safety, radiation protection, nuclear waste management, and non-proliferation measures. Regulatory bodies overseeing nuclear energy typically require would-be NPPs to undergo rigorous licensing, inspection, and oversight procedures to ensure compliance with safety standards in order to mitigate potential hazards. Additionally, international treaties and agreements govern the peaceful use of nuclear technology and aim to prevent nuclear

proliferation and the spread of nuclear weapons. These distinct regulatory frameworks reflect the unique challenges and responsibilities associated with harnessing the power of nuclear energy.

3. Nuclear energy has long been the object of international instruments and regulations. Because it is both an incredibly efficient means for electricity production and carries significant risks, strict regulations are ubiquitous. The International Atomic Energy Agency (IAEA) was established as an international regulator and advisor for just those reasons. Founded in 1957, the IAEA has realized its goal to "promote safe, secure, and peaceful nuclear technologies" through various means. First, the agency establishes and upholds stringent safety standards and guidelines for nuclear facilities and activities worldwide, facilitating the safe operation of nuclear power plants, research reactors, and other nuclear installations. Second, the IAEA assists member states in enhancing the security of nuclear materials and facilities, mitigating the risk of theft, sabotage, or unauthorized access. Third, the agency promotes the peaceful uses of nuclear technology, such as nuclear medicine, agriculture, and industry, to address global challenges like healthcare, food security, and climate change. Through its technical cooperation programs, capacity-building initiatives, and regulatory support, the IAEA fosters international collaboration and knowledge sharing, ensuring that nuclear technologies are utilized safely, securely, and for the benefit of humanity.

For example, regarding the IAEA's supervisory role, the IAEA plays a crucial role in conducting inspections to verify compliance with nuclear safeguards agreements and ensure the peaceful use of nuclear technology. Inspectors employed by the IAEA carry out various activities to fulfill this mandate, including:

a. Routine Inspections: Inspectors conduct regularly scheduled inspections of nuclear facilities and facility activities to verify the accuracy and completeness of the information provided by States. These inspections involve examining nuclear materials, facilities, and records to ensure they are being used exclusively for peaceful purposes and in accordance with safeguards agreements.
b. Ad-Hoc Inspections: In addition to routine inspections, the IAEA can conduct ad-hoc, or special inspections, in response to specific concerns or requests regarding suspected violations of safeguard agreements or undeclared nuclear activities. Because of the dangers associated with nuclear misuse,these inspections are conducted on short notice and are aimed at addressing any uncertainties or discrepancies regarding a State's nuclear program.
c. Technical Support: Inspectors provide technical support and guidance to member States to help them establish and maintain effective safeguards. This includes assistance with the design and implementation of nuclear safeguards, training for personnel, and the development of safeguards-related infrastructure.

The frequency of inspections varies depending on factors such as the type and quantity of nuclear material involved, the level of safeguards agreements in place, and the risk assigned to the inspected facilities. Overall, the goal of IAEA inspections is to verify the peaceful use of nuclear technology, prevent the proliferation of nuclear weapons, and build confidence in the international nuclear non-proliferation regime.

In the years leading up to the Chernobyl disaster, the IAEA conducted several inspections of the nuclear facility aimed at validating compliance with safety protocols. These inspections involved thorough assessments of the reactors' operational procedures, safety mechanisms, and radiation containment measures. Despite some concerns raised by inspectors regarding

operational practices and safety standards, the full extent of the risks associated with the RBMK (*reactor bolshoy moshchnosty kanalny*, a Soviet-designed NPP) design and operational deficiencies remained underestimated. Tragically, the catastrophic events of April 26, 1986, highlighted the need for more stringent oversight and safety measures within the nuclear industry, prompting a global reevaluation of nuclear safeguards.

Before the devastating meltdown in 2011 at Fukushima, the IAEA conducted various safety assessments and inspections at the Fukushima Daiichi NPP. These inspections were part of the IAEA's mandate to promote safe, secure, and peaceful nuclear technologies. In a report from 2008, the IAEA noted that while the safety measures at Fukushima were generally in line with international standards, there was a need for stronger measures against seismic events given Japan's susceptibility to earthquakes. Unfortunately, just a few year later in March 2011, the dangers warned about became reality when the earthquake and tsunami that struck Japan wrecked damage beyond what the plant had been designed to withstand, leading to one of the worst nuclear disasters in history. The consequences of this disaster were severe. Not only did the Fukushima meltdown negatively alter the general perception of nuclear energy and the safety of NPPs, along with the long and short-term environmental and social costs, the clean-up costs were between $470 and $660 billion.

In addition to its regulatory role, the IAEA also produces numerous publications related to nuclear safety and nuclear security and is the *de facto* standard for all international and domestic legal frameworks related to nuclear material. The Nuclear Security Series and the Nuclear Handbook are the most prolific of these publications and are used by States with robust nuclear security frameworks as well as states seeking to establish nuclear security frameworks.

4. On September 30, 2022, Russia signed an accession treaty with the Russian proxy government in Zaporizhzhia Oblast, essentially annexing the region to Russia. Within this new, Russian annexed territory was ZNPP. Even if the referendum of the Russian-occupied Zaporizhzhia Oblast government was legitimate, what effect, if any, would the referendum have on the legality of the military attacks on, and occupation of, ZNPP under international law? Likely, even a legitimate referendum would not negate the illegality of Russia's actions at the plant. As an initial matter, the annexation of Zaporizhzhia Oblast did not occur until September 2022. The Russian attack on Zaporizhzhia was in March 2022, pre-empting the annexation by six months. Further, even if Russia could establish to the international community that Zaporizhzhia Oblast was Russian territory the entire time, Russia is a State Party to Additional Protocol II of the 1949 Geneva Conventions (Protocol II). Protocol II protects victims in non-international armed conflicts. Article 15 of Protocol II provides the same protection of nuclear electrical generating stations as Article 56 of Protocol I. Therefore, even under interpretations of events favorable to Russia, the attack on ZNPP is a violation of international law under both Protocol I and Protocol II.

5. Article 60 of Protocol I provides that parties to a conflict may establish demilitarized zones. Article 60(3)(a-d) includes descriptions of what objects states generally qualify for demilitarized zones. However, Article 60 stipulates that the agreement must be express and accepted by each party to the conflict. Russia has repeatedly denounced attempts to create demilitarized zones around ZNPP and other high-risk areas. While attacks on ZNPP by Russia are already in direct violation of both Article 48 and Article 56(1), what other possibilities are there under international law to protect ZNPP? At least one scholar, Emanuela-Chiara Gillard, a Senior Fellow at the Institute for Ethics, Law, and Armed Conflict at the University of Oxford, has argued that "non-consensual safe areas" can be created under certain circumstances. Gillard's

statement highlights one of the defining characteristics in Protocol I and other IHL instruments that refer to protected areas: safe areas must be established, by express agreement, by the belligerent parties. Given the nature of hostile conflicts, getting parties to agree to establish protected areas under existing IHL rules is unlikely, as can be seen by how few of these protected areas have ever actually been created. Gillard, however, argues that there is a precedent to create "safe areas" without the express agreement of both belligerent parties. She points to cases in Iraq and Bosnia and Herzegovina where the UN Security Councilpassed resolutions authorizing UN personnel to establish and manage safe areas for the wounded and sick as well as civilians. These Security Council resolutions did not, however, provide authorization for the UN Protection Force to use force in order to protect the areas despite having the power to do so. Gillard's arguments in this area are interesting and offer a view into the future of conflicts and how to protect civilian lives outside of the structures of IHL. However, a glaring issue with these ideas in their current application is that Russia sits as a permanent member on the Security Council and so wields veto power. This means that Russia has in a way immunized themselves by declining to engage in discussions with Ukraine about establishing protected areas under IHL regimes, while also holding a position where it can veto any attempt by the UNSC to establish safe areas through less conventional means.

6. The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) provides that every nation has a right to develop nuclear power generation for peaceful, civilian purposes. Nuclear power plants, like ZNPP, then, are considered civilian objects protected by Article 48 of Protocol I. While the NPT contemplates that NPPs are strictly civilian in nature, it is possible to conceive situations in which the military of a belligerent state might use an NPP for military purposes and could, therefore, be considered a legitimate target under Article 48 If so, it is necessary, then,to have the additional protection of Article 56. Article 56(2) carves out narrow exceptions to permit the targeting of NPPs, but there is a significantly heightened finding requirement in order to justify such attacks.

7. There are numerous multilateral treaties to which both Ukraine and Russia are state parties that create a framework of nuclear security and nuclear safety laws. For example, the Amendment to the Convention on the Physical Protection of Nuclear Material (A/CPPNM) requires state parties to establish and maintain robust physical protection systems, including measures to prevent theft, sabotage, and unauthorized access. Additionally, the A/CPPNM calls for cooperation among nations to combat illicit trafficking of nuclear materials and to ensure effective response capabilities in the event of security incidents. However, in the context of armed conflicts, the principle of *lex specialis* holds significant relevance. The principle of *lex specialis* asserts that when specialized legal norms conflict with more general norms, the specialized norms should take precedence. As for NPP security during armed conflicts, the specialized legal nature of IHL, such as Protocol I, becomes paramount. These frameworks address the unique challenges and risks associated with safeguarding nuclear facilities amidst hostilities, often superseding general laws related nuclear safety and security. By prioritizing the specialized regulations governing the protection of nuclear installations, *lex specialis* ensures a focused and comprehensive approach to mitigating the specific threats posed to these facilities during times of conflict, aiming to minimize the potential for catastrophic consequences while upholding principles of safety, security, and international law. However, some experts believe that applying IHL to threats against NPPs via *lex specialis* is an insufficient method of ensuring the safety and security of the plants. For instance, much of applicable IHL is vague and ambiguous and may lack meaningful enforcement procedures. Moreover, establishing a robust,

multilateral instrument specific to protecting NPPs in conflict would be difficult given the competing interests of States involved. Despite these difficulties, one author has stated:

> The Russian large-scale military invasion of Ukraine and the dangerous case of Zaporizhzhia showed how a state actor can jeopardize the national nuclear security regime and reveal its weaknesses. Existing international instruments on protecting nuclear installations and radioactive materials are not complete and sufficient enough for such incidents and require the instruments to be complemented and updated.
>
> Given the disastrous implications of nuclear accidents, states should focus on reaching a consensus and fostering the development of a legal framework for the strict prohibition of attacks on nuclear facilities. Such an agreement should also include instruments of control on the state's compliance and definition of transparency level in sharing information to promote nuclear security. To facilitate such paths, the IAEA should consider issuing practical recommendations for developing DBT in countries with armed conflict on their territories (possibly involving a state-actor) in its information circulars, possibly as a part of the Nuclear Security Series.
>
> It is fair to state that no bilateral or regional instruments can prevent attacks on nuclear facilities; however, the experience suggests that international humanitarian law cannot do it either. On a world map, plenty of nuclear-generating countries are located in conflict-prone zones that are likely to remain tense for years ahead. This reality adds value to the creation of adequate national nuclear security threat assessments and understanding vulnerabilities, leading to mutual peace-preserving actions or implementing a code of conduct in military planning based on formal agreements".

15.4.3 Russian Violations of International Law

During the night of March 3, 2022, the Russian military commenced an attack against ZNPP using armored vehicles and tanks. Ukrainians attempted to defend the plant using anti-tank missiles and small arms fire. Russian troops responded by using a variety of small and heavy arms, including rocket-propelled grenades. Security footage from the plant clearly shows that, during the two hours of combat, Russian soldiers repeatedly fired their weapons in the direction of the plant's several PWRs. During the fighting, a fire broke out in a training facility outside the reactor area. Although quickly contained, the fire is a stark reminder of just how delicate the facility is in the face of military conflict.

A serviceman with a Russian flag on his uniform stands guard near the Zaporizhzhia nuclear power plant

By the early morning hours of March 4, 2022, Russian forces occupied ZNPP and were in control of the facilities' functions. A news report in June of 2022 indicated that Russia had established a military base inside the plant complex. Fighting again escalated in August 2022 when shelling further damaged the plant. While both sides blamed the other for the attacks, the IAEA continued to demand the opportunity to investigate the plant and assess any damages. Russia agreed to host an IAEA envoy to conduct a survey and product a report on the plant's condition. Rafael Grossi, the Director General of the IAEA, and a team of inspectors left Vienna on August 29, 2022. Arriving at the plant on September 1, 2022, the IAEA team set to work inspecting ZNPP facilities. Shortly thereafter, the IAEA released its initial report on the state of ZNPP. This report included seven recommendations, based on the "seven pillars of nuclear safety during an armed conflict":

> "Recommendation 1 (Physical integrity) states "The IAEA recommends that shelling on site and in its vicinity should be stopped immediately to avoid any further damage to the plant and associated facilities, for the safety of the operating staff and to maintain the physical integrity to support safe and secure operation. This requires agreement by all relevant parties to the establishment of a nuclear safety and security protection zone around the ZNPP."
>
> Recommendation 2 (Safety and security systems and equipment) states "The IAEA recommends that the physical protection system should be operated as designed and licensed, and that the continued functioning of safety and security systems and operability of the systems and equipment at ZNPP be ensured. This requires the

removal of vehicles from areas that could interfere with the operation of safety and security systems and equipment."

Recommendation 3 (Operating staff) states "The IAEA recommends that an appropriate work environment, including family support, for operating staff should be re-established. Furthermore, as the operator has the prime responsibility for nuclear safety and security, it should be able to fulfil its mission with clear lines of responsibilities and authorities."

Recommendation 4 (Off-site power supply) states "The IAEA recommends that the off-site power supply line redundancy as designed should be re-established and available at any time, and that all military activities that may affect the power supply systems end (see Recommendation 1)."

Recommendation 5 (Logistical supply chain) states "The IAEA recommends that all concerned parties should commit and contribute to ensuring effective supply chains for continued nuclear safety and security of the plant under all conditions including safe transportation corridors,taking advantage of the IAEA assistance and support programme as appropriate."

Recommendation 6 (On-site and off-site radiation monitoring systems and emergency preparedness and response) states "The IAEA recommends that (1) the emergency response functions should be drilled and exercised, and the emergency response facilities to support these functions be re-established, and (2) preparedness should be re-established through regular training,clear decision-making chains and readily available communication means and logistical support. ISAMZ can provide assistance in preparation and support for such training."

Recommendation 7 (Communications) states "The IAEA recommends that reliable and redundant communication means and channels, including internet and/or satellite connectivity, should be ensured with all external organizations necessary for the safe and secure operation of the facility."

Shortly after the release of this initial report, on September 30, 2022, the Russian government annexed the Zaporizhzhia Oblast and, ostensibly, took control of ZNPP. This annexation added further confusion regarding the continued operations of the plant and which country would be responsible for its management. Evidence of this confusion included the detention of Ihor Murashov, the Ukrainian Director General of ZNPP. After a few days, Murashov was released to Ukrainian controlled territory and Russia continued its occupation of ZNPP and control of its staff.

During the next two years, up to the day of this writing, there has been continued military operations by both the Russian and Ukrainian military around, and even directed at, ZNPP. In November 2022, the IAEA mission which remained on at the site reported that the shelling around the plant damaged buildings within the ZNPP complex but not, fortunately, in such a manner that would compromise the integrity and functionality of the plant's operations. During the latter part of 2023, the ZNPP began the process of "hot shutdowns" on several of its reactors. This process involves maintaining the operation of the coolant system as the fuel rods are still active and require cooling in order to avoid overheating and causing a potential meltdown. ZNPP operators decided to shut down these reactors because the fighting had caused damage to the powerlines supplying operational power to the plant and there were fears that the inconsistent power would be insufficient to continue powering operations.

During the almost three years of Russian occupation, from March, 2022 to January 2025, the external power sources to the plant were disrupted a number of times and continues to be a source of concern. The IAEA has repeatedly called for both sides of the conflict to agree to sweeping protective provisions related to the safety and security of the plant, but the confusion and general uncertainty surrounding the situation on the ground in Ukraine have prevented the formation of meaningful agreements.

ZNPP was subjected to further military action in early April 2024. Over three days, the plant came under direct drone strikes. Both Ukraine and Russia denied responsibility for the attacks, with the former claiming they were black-flag operations and the latter claiming Ukraine was attempting to regain control of ZNPP through military force. While international intelligence agencies have said the attacks were likely Russian black-flag operations, as of this writing it is unclear which scenario is actually true. All that can be said for certain is that these attacks highlight the importance of establishing and enforcing strong nuclear safety requirements in areas of conflict.

The Attack at the Zaporizhzhia Nuclear Plant and Additional Protocol I

Tom Dannenbaum, March 13, 2022, The Lieber Institute

On March 4th, the International Atomic Energy Agency (IAEA) announced a report by Ukrainian authorities that Russian forces had attacked the Zaporizhzhia Nuclear Power Plant in southeast Ukraine. Russia denied this characterization. The IAEA reported that a building in the vicinity caught fire, but that essential equipment was not damaged and that there were no reported changes in radiation levels at the plant. Later that day, United Nations (UN) Under-Secretary-General for Political and Peacebuilding Affairs Rosemary DiCarlo briefed the Security Council, describing Russia's activities as "highly irresponsible" and in violation of Article 56 of Additional Protocol I. U.S. Ambassador to the UN Linda Thomas-Greenfield characterized the attack as "incredibly reckless and dangerous" due to the threat posed to "the safety of civilians across Russia, Ukraine, and Europe." In the same meeting, French Ambassador to the UN Nicolas de Rivière described the action as "dangerous and illegal." The U.S. Embassy in Kyiv tweeted, "It is a war crime to attack a nuclear power plant."

In this post, I analyze both the legal framework provided in Article 56 of Additional Protocol I and the associated war crime codified in Article 85(3)I of the Protocol.

Additional Protocol I

As both the Russian Federation and Ukraine are States Parties, Protocol I is applicable to the international armed conflict between them, pursuant to the terms of Articles 1 and 96. The rule codified in Article 56 of Protocol I is more demanding than is the analogous customary rule, at least as that rule is understood by the International Committee of the Red Cross (ICRC), so my focus here is on the treaty rule. To inform what follows, it may be of some use to replicate the first two paragraphs of Article 56 in their entirety:
[*See above*]

These first two paragraphs include a core prohibition and a narrow exception to that prohibition. They are worth evaluating in turn.

The Core Prohibition

The core prohibition is shaped by two extraordinary features. First, attacks are proscribed even if the nuclear power plant "glaringly" qualifies as a military objective under the standard articulated in article 52. In other words, even if the plant is such that by its "nature, location, purpose or use" it unambiguously makes "an effective contribution to military action," such that its "total or partial destruction, capture or neutralization, in the circumstances ruling at the time, [would] offer a definite military advantage," it is still protected from attack (compare art. 52(2)). Second, attacks on military objectives located in the vicinity of the station are also prohibited. In both respects the rule deviates from the ordinary law of armed conflict framework, pursuant to which military objectives may be targeted, with civilians and civilian objects protected from the effects of such targeting by the cumulative requirements of discrimination, proportionality, and precautions in attack.

By prohibiting the targeting of what would otherwise qualify as clear military objectives, Article 56 shifts the rule of distinction. This heightened protective framework is triggered by the combination of two elements. First, the work or installation in question must be a dam, dyke, or nuclear electrical generating station containing dangerous forces. Second, it must be the case that the attack (whether on the installation or on military objectives in its vicinity) "may cause the release of dangerous forces … and consequent severe losses among the civilian population."

The first element is relatively straightforward in the case of the Zaporizhzhia Plant. It is the largest nuclear power plant in Europe and the ninth largest in the world. The second element is more complicated. It requires an assessment of the relationship between the attack and the possible release of dangerous forces and any consequences arising from it. In the case of the Zaporizhzhia Nuclear Power Plant, the IAEA reported "no release of radioactive material." However, for reasons elaborated below, this does not dispose of the legal question, as the prohibition attaches to the risk of release ex ante.

At first glance, the prohibition in paragraph 1 of Article 56 might look like a specific operationalization of the proportionality rule. As articulated in Article 51(5)(b) of Protocol I, the latter supplements the rules on distinction, discrimination, and precautions by prohibiting "an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."

However, the core prohibition in Article 56 is different. It is internal to distinction. If the threshold is met, the object is presumptively not a legitimate target and attacking it is prohibited, regardless of the countervailing military advantage and regardless of whether every feasible precaution was taken to minimize civilian loss. Additionally, and of critical importance here, the epistemic threshold is not the same as that applicable to proportionality. Article 56(1) focuses on whether the attack "may" cause the release of those forces and consequent severe losses among the civilian population. That stands in contrast to the use of "may be *expected*" in Article 51(5)(b) (emphasis added).

As such, the Article 56(1) prohibition on targeting nuclear power plants should not be understood to be triggered only when those engaged in the attack expect or ought to expect that their operation will release radioactive material and cause severe civilian loss. It is enough that the attack entails that risk. Put another way, for the prohibition not to attach, it must be the case that the attacking force is certain that radioactive material will not be released or that if such a release were to occur, the civilian population would not suffer severe losses. As the ICRC Commentary

puts it, an attack would avoid the Article 56(1) prohibition if it "*cannot* cause severe losses" (emphasis added).

Certainty that there will be no radioactive leak is conceivable in the context of a precisely targeted and limited operation that avoids any danger to stocks of radioactive material, to elements essential to the cooling system, or to the core of the installation. Asserting its compliance with this standard in the context of dams and dykes, the Farabundo Martí National Liberation Front (FMLN) claimed in 1988 that its forces focused exclusively on "annihilating the troops stationed" at hydro-electric plants in El Salvador and "damaging the machinery," but specifically not destroying the dams or dykes precisely so as to comply with the requirements of Article 56. As noted below, the Russian Federation appears to have adopted a similar posture in the Zaporizhzhia case.

Alternatively, certainty that a release of the dangerous forces would not cause severe civilian losses could arise if the object were in a remote area without significant civilian habitation. Given the enduring impact of a radioactive leak, such an analysis is more straightforwardly conceivable in the case of dams and dykes. Any such analysis would also need to consider Articles 35(3) and 55 of Protocol I, which prohibit attacks or methods of warfare that "may be expected" to cause "widespread, long-term and severe damage" to the natural environment, regardless of the military advantage such attacks may return.

Early analysis after the reported attack on the Zaporizhzhia plant suggested that the risk of a radioactive release was "low" during the fighting. However, it is less clear that those engaged in the operation could have been certain of that at the time. Certainly, shelling the vicinity does not offer the tight control that might ordinarily underpin certainty that there would be no radioactive release. The Russian Federation has denied engaging in such activity, claiming instead:

> Russian military were heavily fired at from windows of several levels of a training facility building that was located outside the territory of the ZNPP. This was done to provoke retaliation. Russian patrol started retaliatory fire and eliminated the gun posts of Ukrainian sabotage group in the training center. When leaving the building, Ukrainian saboteurs set it on fire. Let me emphasize that the facility was located outside the ZNPP territory.

Notably, IAEA Director General Rafael Mariano Grossi "remained gravely concerned about the situation" at the power plant, even once it was established that the initial fighting had not caused a leak. Reporting since this blog post was written has indicated that the attack entailed significant risk and has made the official Russian position difficult to sustain.

Crucially, Article 56(1) imposes an ex ante prohibition. The absence of a radioactive leak or severe civilian losses does not preclude the unlawfulness of the attack, if perpetrated despite the risk of such an outcome. The virtue of codifying a rule of this kind is that it preempts the ambiguities inherent in assessments of feasible loss mitigation and proportionality, replacing those ambiguous principles with a simple presumption: do not target nuclear electrical generating stations or military objectives in their vicinity.

Exceptions

Deviation from that presumption is permissible only in two scenarios. The first, as already noted, is when the commander can be certain that the dangerous forces will not be released, or that their release will not cause severe civilian losses. In that case, the heightened protection is not triggered, so the station or objects in its vicinity could qualify as legitimate targets, although any attack would still need to comply with the applicable rules on doubt, discrimination, precautions, and proportionality.

The second basis for deviating from the presumptive ban on attacking nuclear power plants or military objectives located in their vicinity applies even if the plant meets the criteria for heightened protection noted above. This exception is framed slightly differently in its application to attacks on the power plant and to attacks on military objectives in its vicinity.

Paragraph 2(b) of Article 56 specifies that the special protection provided for a station meeting the criteria discussed above shall cease "*only* if it provides electric power in regular, significant and direct support of military operations *and* if such attack is the only feasible way to terminate such support" (emphasis added). By the terms of this provision, there can be no other exception to the heightened protections provided in paragraph 1. Additionally, the exception is a demanding one, including three substantive criteria and one procedural criterion.

Substantively, the station must provide electric power in "direct support of military operations." This requires a significantly tighter connection than is specified in the general definition of military objectives, which refer only to those that "make an effective contribution to military action," whether or not that contribution is direct (Art. 52(2)). It is analogous instead to the permissibility of targeting civilians, which applies only for such time as they take a "direct" part in hostilities. (Art. 51(3)). An influential (albeit disputed) analysis understands the latter to attach only when the activity is a single causal step from the infliction of harm on the adversary. Interpreted in that light, the threshold would be very difficult to satisfy. In particular, it is disputed whether "merely supplying electricity" to an integrated grid with "pool[ed] generating capacity," from which the military then draws, would be sufficient to constitute "direct support of military operations." Certainly, the electrical supply must directly "benefit military operations themselves and not merely intermediary objectives which themselves would be related to such operations." Even a nuclear power plant delivering power to "industrial works of the defense industry" might be deemed "debatable" on the grounds that "[w]hat directly supports warfare in such a case is the industry supplied with the power, not the power station in itself."

Additionally, the support to military operations must be "regular." This criterion would not be satisfied by the military occasionally drawing on this power source or having it as a backup power source. The ICRC Commentary suggests that "there must be some continuity in the use, or at least some rhythm." Finally, on the substantive criteria, the support must be "significant." Here, it must be established that the contribution to military operations is "sizeable" and therefore has "a real and effective impact."

Even when each of these substantive thresholds is satisfied, an attack would still be precluded if there is any alternative feasible way to terminate that support. In addition to warnings and requests for cessation, one obvious alternative way to terminate the electrical support of the power station would be to target the main circuit lines or transformer stations at a remove from the station sufficient to eliminate the risk of releasing the dangerous forces contained within.

Paragraph 2(c) of Article 56 applies a similar, but not identical, framework to military objectives at or in the vicinity of the station. Specifically, such objectives may be attacked "*only* if they are used in regular, significant and direct support of military operations *and* if such attack is the only feasible way to terminate such support" (emphasis added). The only significant difference here is that the exception covers support other than the provision of electric power. Each of the substantive and procedural thresholds remains the same. Even when an attack would be permitted under the exclusive permission provided in paragraph 2(c), paragraph 5 of the article clarifies that "installations erected for the sole purpose of defending the protected works or installations from attack" are not to be made the object of attack "provided that they are not used in hostilities except for defensive actions necessary to respond to attacks against the protected works or installations

and that their armament is limited to weapons capable only of repelling hostile action against the protected works or installations." In short, purely defensive installations attached to the nuclear power plant and used in purely defensive ways cannot be understood to qualify as military objectives providing regular, significant, and direct support of military operations.

It has been suggested that military objectives regulated in paragraph 5 are exempt from the standard articulated in paragraph 2(c). However, this is contrary to the text. Paragraph 2(c) is clear in specifying the exclusive context in which military objectives "located at or in the vicinity of" a nuclear power plant may be targeted. Paragraph 5 instead regulates passive precautions and the exceptions thereto. It supplements the prohibition in paragraph 2(c); nothing in the provision suggests that it is meant to create an exception to that prohibition.

Before turning to passive precautions, it is important to emphasize, per the terms of paragraph 3 of Article 56, that the application of this framework at the level of distinction does not replace the requirements of discrimination, precautions, and proportionality. Those are cumulative requirements that would apply to constrain an attack even if it were not precluded by the terms of Article 56.

Notably, the Russian account of the situation makes little attempt to frame the operation in the specific terms of the exceptions in Article 56. Instead, as noted above, the Russian Federation has framed its operations on March 4th as not endangering the plant in the first place.

Passive Precautions

In addition to the rules on targeting military objectives, paragraph 5 of Article 56 also imposes specific passive precautions associated with the location of military objectives in the vicinity of such stations. Specifically, parties to the conflict are to "endeavour to avoid" locating military objectives in that vicinity, but for defensive installations of the kind mentioned above. If Russia's claim to have been "heavily fired at" from the vicinity of the power plant were to be borne out, this could indicate a violation of Article 56(5) on the part of those who initiated that firefight. Significantly, however, a party's failure to comply with that requirement would not itself eliminate the protection accorded to any military objectives in the vicinity of the power plant. As noted above, paragraph 2(c) lays out the exclusive conditions under which such objectives may be targeted. Defensive installations used defensively cannot be targeted at all, but even military objectives that are not defensive and that ought not to have been located in the vicinity of the power plant cannot be targeted, except as permitted by the terms of Article 2(c).

The explicit specification in paragraph 4 of Article 56 further affirms that it is "prohibited to make any of the works, installations or military objectives mentioned in paragraph 1 the object of reprisals." The fact that one side has breached the requirements of paragraph 5 does not allow breach of paragraph 2(c) as a mechanism of law enforcement. This is consistent with the general posture of Additional Protocol I on the protection of the civilian population as articulated in Article 51(8).

A War Crime?

The threshold for the war crime, as specified in the grave breaches regime of Additional Protocol I, is notably higher than is the threshold for the underlying provision. Article 85(3)(c) identifies that breach as "launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a) (iii)." Additionally, per the terms of the chapeau, this rises to the level of a grave breach only when the attack is "committed wilfully, in violation of the relevant provisions of this Protocol, *and* causing death or serious injury to body or health" (emphasis added).

Three things are worth noting about this articulation of the war crime, as compared to the underlying rule. First, the epistemic threshold is far higher. For an individual to be criminally liable for such an attack, that individual must have acted in the knowledge that the attack will cause excessive loss, injury, or damage to civilians or civilian objects. This, of course, requires a very different analysis from whether the context was such that dangerous forces may be released with severe losses for the civilian population.

Second, the reference to Article 57(2)(a)(iii) indicates that the war crime attaches only to attacks that would cause civilian loss, injury, or damage that would be "excessive in relation to the concrete and direct military advantage anticipated." In other words, it is derivative of a proportionality assessment. The underlying rule, on the other hand, precludes attacks that risk severe losses, regardless of military advantage.

Third, the grave breach has a consequence element—the illegal attack must cause death or serious injury to body or health. To be clear, it need not be established that severe civilian losses occurred. It is relevant in that respect that two individuals were reported injured in the Zaporizhzhia operation. However, the underlying rule is violated when an attack is launched despite the risk of releasing dangerous forces with consequent severe civilian losses, whether or not any death or serious injury in fact occurs.

Conclusion

Ultimately, if it is established that Russian forces engaged in the shelling of the Zaporizhzhia plant or objectives in its vicinity in a way that risked a radioactive leak, it is almost certain that this operation violated Article 56. The Russian Federation, of course, contests the claim that its operation entailed any such risk. It has not, however, provided information indicating that if such a risk were taken, it would have been permitted pursuant to the exception provided in Article 56(2)(c).

It is less likely that the operation satisfied the threshold for the associated war crime, as articulated in article 85(3)(c). Given that there was in fact no radioactive leak and that there seems to have been relatively little collateral damage, it does not appear that those who engaged in the attack would have known at the time that excessive civilian loss would arise from it.

The virtue of the underlying rule is that it provides a bright line to commanders: do not target nuclear power stations or military objectives in their vicinity, except in very rare and specifically identified circumstances. The clarity of the presumption is such that any decision that one of the exceptions applies ought to be made at a high level of command (para. 2159) and the justification ought to be clear cut. In cases such as this, it is crucial not to allow the difficulty of establishing the war crime to muddy the clarity of that underlying prohibition."

IAEA Director General Statement to United Nations Security Council

May 30, 2023

I thank the President of the Security Council in allowing me the opportunity today to update you on IAEA activities concerning safety, security and safeguards in Ukraine. Your own personal conviction in supporting me and the work of the IAEA has been remarkable. I also thank the Council for their continuing support for the IAEA's efforts. I will also lay out the basic principles needed to prevent a nuclear accident.

I have addressed the Council on the situation in Ukraine four times before, on 4 March, 11 August, 6 September and 27 October last year. However, I see today's meeting as the most important one, and I will explain why.

But first I want to briefly update you on what the Agency has been doing in Ukraine. It is now over 15 months since the beginning of the war.

May I remind you that it is the first time in history that a war is being fought amid the facilities of a major nuclear power programme. This includes several of Ukraine's five nuclear power plants and other facilities have come under direct shelling, and all NPPs having lost off-site power at some point.

Furthermore, one of Ukraine's nuclear power plants Zaporizhzhya NPP has come under Russian military and operational control. The IAEA has been closely monitoring the situation and assisting Ukraine every single day since the start of the war. This assistance has involved the continuous engagement of the IAEA's Incident and Emergency Centre. There have been 12 expert missions to Ukraine. I have personally led seven of them, including two to ZNPP.

Additionally, since 1 September 2022 we have had an IAEA Support and Assistance Mission stationed at Zaporizhzhya NPP, which is literally on the front lines of this war, and we are on the eighth rotation of our dedicated and courageous staff – who have had to cross that front line to undertake this vital work. 23 of our staff have been part of these teams.

…

Mr. President,

The nuclear safety and security situation at the Zaporizhzhya NPP, in particular, continues to be extremely fragile and dangerous. Military activities continue in the region and may well increase very considerably in the near future. The plant has been operating on significantly reduced staff, which despite being in temporary shut-down is not sustainable. And there have been seven occasions when the site lost all off-site power and had to rely on emergency diesel generators, the last line of defence against a nuclear accident, to provide essential cooling of the reactor and spent fuel. The last one, the seventh, occurred just one week ago.

We are fortunate that a nuclear accident has not yet happened. As I said at the IAEA Board of Governors in March - we are rolling a dice and if this continues then one day our luck will run out. So we must all do everything in our power to minimize the chance that it does.

As the Council knows, since returning from my first of two missions to the Zaporizhzhya NPP last September I have been urging all parties to protect the nuclear safety and security of the plant. This has involved numerous meetings, intensive consultations and exchanges, including at the highest levels in Ukraine and the Russian Federation.

Mr President, Excellencies, Ladies and Gentlemen

As you would recall, already a year ago I have elaborated the Seven indispensable pillars for ensuring nuclear safety and security during an armed conflict. These are:

1) The physical integrity of facilities – whether it is the reactors, fuel ponds or radioactive waste stores – must be maintained.
2) All safety and security systems and equipment must be fully functional at all times.
3) The operating staff must be able to fulfil their safety and security duties and have the capacity to make decisions free of undue pressure.
4) There must be a secure off-site power supply from the grid for all nuclear sites.
5) There must be uninterrupted logistical supply chains and transportation to and from the sites.
6) There must be effective on-site and off-site radiation monitoring systems, and emergency preparedness and response measures.
7) There must be reliable communication with the regulator and others.

These common-sense rules derive from a vast body of IAEA documents, guidelines, and experience. They have been universally quoted and supported. This is encouraging.

A nuclear or radiological accident during the ongoing conflict could have disastrous consequences for the people of Ukraine, for the people of Russia, as well as for neighbouring States, and beyond. The time has come to be more specific as to what is required. We must prevent a dangerous release of radioactive material.

To that end, and mindful of the 7 indispensable pillars for nuclear safety and security, I have been working intensively, and in consultation with the leadership of Ukraine, as well as of Russia.

As a result of these intensive consultations, I have identified the following concrete principles to help ensure nuclear safety and security at ZNPP in order to prevent a nuclear accident and ensure the integrity of the plant. I see these commitments as essential to avoid the danger of a catastrophic incident:

1) There should be no attack of any kind from or against the plant, in particular targeting the reactors, spent fuel storage, other critical infrastructure, or personnel;
2) ZNPP should not be used as storage or a base for heavy weapons (i.e. multiple rocket launchers, artillery systems and munitions, and tanks) or military personnel that could be used for an attack from the plant;
3) Off-site power to the plant should not be put at risk. To that effect, all efforts should be made to ensure that off-site power remains available and secure at all times;
4) All structures, systems and components essential to the safe and secure operation of ZNPP should be protected from attacks or acts of sabotage;
5) No action should be taken that undermines these principles.

The IAEA experts onsite, namely the IAEA Support and Assistance Mission to Zaporizhzhya (ISAMZ), will report to the IAEA Director General on the observance of these principles. The Director General will report publicly on any violations of these principles.

I respectfully and solemnly ask both sides to observe these five principles. I request distinguished Members of the Security Council to unambiguously support them.

Let me say something very clearly: These principles are to no one's detriment and to everyone's benefit. Avoiding a nuclear accident IS possible. Abiding by the IAEA's five principles is the way to start.

Ladies and Gentlemen, Mr President, distinguished colleagues:

The IAEA's five principles to avoid a nuclear accident are hereby established. The IAEA intends to start monitoring these principles through its on-site mission.

I thank you for your attention."

Commentary

1. The IAEA Director General is Rafael Grossi, who has served in his post as Director General since December 2019. Previously, Mr. Grossi served as Chief of Staff of the IAEA and the Organisation for the Prohibition of Chemical Weapons and as Deputy Director of the IAEA. He has also worked in various foreign service and international positions since 1997.

2. For 2024 article, see here

President of Ukraine: Russia is Considering a Scenario of a Terrorist Attack at the Zaporizhzhia NPP with Radiation Leakage, the World Must Act

June 22, 2023

"Dear Ukrainians!

And all the people of the world.

All of them - I emphasize this.

We have just had a report from our intelligence and the Security Service of Ukraine. Two points. The Russian terrorist attack at the Kakhovka hydroelectric power plant that took place. And another terrorist attack, which, unfortunately, is being prepared by the Russian occupiers, at the Zaporizhzhia nuclear power plant.

Regarding Kakhovka. Ukrainian intelligence and the Security Service of Ukraine have gathered new evidence of how Russian terrorists blew up the dam and other structures of the Kakhovka hydroelectric power plant. It was an absolutely deliberate, premeditated crime. In the occupied territory, at a plant that was under the full control of the occupiers. And, importantly, last year we warned the world that Russia was preparing such a terrorist attack.
We warned them when we received the first confirmed information about the mining of the hydroelectric power plant.

Now concerning the Zaporizhzhia NPP. I remind those who have forgotten: this is the largest nuclear power plant in Europe. Everyone in the world - the IAEA, all countries, all leaders - knows exactly what is happening there.

Russia uses the Zaporizhzhia nuclear power plant as an element in its aggression. It occupies the plant. It uses it to cover the shelling of neighboring cities. It keeps weapons and troops there.

Now our intelligence has received information that Russia is considering a scenario of a terrorist attack at the Zaporizhzhia nuclear power plant. A terrorist attack with radiation leakage. They have prepared everything for this.

Unfortunately, I have repeatedly had to remind that radiation has no state borders. And who it will hit is determined only by the wind direction…

We share all available information with our partners – everyone in the world. All the evidence. Europe, America, China, Brazil, India, the Arab world, Africa – all countries, absolutely everyone should know this. International organizations. Absolutely everyone.

There should never be any terrorist attacks on nuclear power plants anywhere. This time it should not be like with Kakhovka – the world has been warned, so the world can and must act.

Glory to Ukraine!”

IAEA Notes Reported Attack on Zaporizhzhia Plant, Russia Accuses Ukraine

Reuters, April 18, 2024

“The U.N.'s nuclear watchdog said on Thursday that officials at Ukraine's Russian-held Zaporizhzhia nuclear power plant had reported a new attempted drone attack on the facility's training centre -- less than two weeks after other similar incidents.

Russia-installed officials at the plant, the largest nuclear facility in Europe, said Ukraine was behind the latest incident.

Russian forces occupied the plant in the first weeks of the February 2022 invasion of Ukraine and each side has since repeatedly accused the other of attacking the plant.

Rafael Grossi, director general of the International Atomic Energy Agency (IAEA), has warned that attacks and incidents at the plant are "reckless" and could trigger a major nuclear accident.

Grossi said the latest incident had caused no damage or injuries. The IAEA's monitors stationed at the power plant, he said in a statement, had heard an explosion at the same time as the Russia-installed team reported an attempted Ukrainian drone attack.

"If confirmed, it would be an extremely worrying development," Grossi said.

"Whoever is behind these incidents, they appear to be ignoring the international community's repeated calls for maximum military restraint to avert the very real threat of a serious nuclear accident."

Grossi said IAEA monitors were denied access on security grounds to a training centre where the incident was said to have occurred.

There was no immediate comment on the latest reports from Ukrainian officials. Kyiv has denied any connection with previous incidents and suggested the Russians may have staged them.

Russia-installed officials at the plant said the drone had been destroyed above the roof of the building. They added there had been no damage and that nobody had been injured.

Grossi addressed meetings of the IAEA board and the U.N. Security Council this month in connection with a series of incidents over three days, including what Russian officials described as an April 8 attack on the training centre."

Commentary

1. Numerous cities surrounding ZNPP provided their citizens potassium iodide pills (a medication used to treat radiation exposure) and evacuation routes. These cities also provided education and training for their first responders related to responding to radiological incidents.

2. On October 5, 2022, Russian President Putin issued a decree claiming Russian control over ZNPP. The decree stated that Rosenergoatom, a Russian nuclear power operator, would operate and maintain the plant. Most governments, including Ukraine, consider the decree meaningless despite Russia's *de facto* control of the plant.

3. While operations at ZNPP have continued throughout the conflict, the IAEA still stresses the incredible good fortune that there has not been a significant radiological incident and continues to urge Russia and Ukraine to designate this area as a demilitarized zone. In early April of 2024, renewed attacks around and against ZNPP have raised the level of concern about a possible nuclear incident. IAEA Director General Rafael Grossi has stated that the drone strikes against ZNPP "shifted [the war] into an acutely consequential juncture." The attacks, lasting more than three days, included direct drone strikes on reactor buildings.

4. During the Russian occupation of ZNPP, the IAEA has continued to issue reports, findings, and statements related to developments in Ukraine. As of March 1, 2024, there have been 214 updates from the IAEA on the situation in Ukraine. Each of these statements included updates such as the status of ongoing negotiations between Russia and Ukraine related to the present condition of the plant and its employees.

Reports related to the condition of ZNPP from Russian sources have largely been both ambiguous and opaque, leading to concerns regarding the accuracy and transparency of the information provided. Notably, Russian reports have often lacked sufficient detail and clarity regarding the specific issues or incidents at the plant, making it challenging to assess the situation accurately. There also have been instances where Russian authorities have withheld or manipulated information related to the plant's condition, raising doubts about their commitment to transparency and accountability. This lack of transparency has fueled speculation and mistrust, exacerbating tensions and hindering efforts to address any potential safety or security concerns at the ZNPP. Overall, the unclear nature of Russian reports on the plant's condition underscores the

importance of open communication and cooperation among all relevant stakeholders to ensure the safe and secure operation of nuclear facilities.6. Russia continues to exert *de facto* control over the Zaporizhzhia Oblast and ZNPP. Although *lex specialis* suggests that IHL controls the responsibilities of the States involved, general law under other international instruments must still be applied. As discussed as is, the A/CPPNM requires state parties to work towards the safety and security of nuclear material so that it may not be abused while in storage, use, or transport. While Russia maintains control of ZNPP, Ukraine must not do anything to compromise the safety or security of the plant and must do everything within its power to prevent a radiation incident. Further, Ukraine must abide by the law of armed conflict when planning and executing military operations. This means that Ukraine must avoid violating the same Articles of AP I that Russia has likely violated. Attacks to reclaim ZNPP, at least insofar as they target the plant or the immediate vicinity, are therefore forbidden.

15.4.4 Legal Remedies Available to Ukraine

Every legal regime includes methods of implementation and remedies for aggrieved parties. It is no different in the context of Russian violations of international humanitarian law (IHL). Unfortunately, for various reasons IHL is often viewed as either incapable of enforcement or, at the very least, difficult to implement. For instance, the Geneva Conventions (GC) lay out that High Contracting Parties must establish legislation that enables the prosecution of grave breaches as defined in that instrument. All states, regardless of their status as signatories to the Rome Statute, are responsible for prosecuting grave breaches of the GC under the doctrine of universal jurisdiction.

This framework begs the question: What happens if a nation does not establish the necessary national legislation? Or, as likely applies in the case of Russian attacks on ZNPP, the offending state does not recognize that the actions violate the GC? One overarching goal of this national legislation is to enable each State to prosecute violators within its own borders. Merely trusting States to enforce these national laws is rather Pollyannish. In reality, ascribing universal jurisdiction to these crimes obviates the hope that an offending State would try their own citizens in such proceedings.

IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW: PROBLEMS AND PROSPECTS

Umesh Kadam, *Regional Legal Adviser, International Committee of the Red Cross, 2002*

Introduction

Any well intentioned law will fail in fulfilling its purpose if it cannot be implemented effectively. By and large it is said that international law lacks effective implementation mechanisms. However, it would be incorrect to put entire international law in one basket and label it as a weak law with ineffective implementation mechanisms. Many areas of international law are respected by States very meticulously even in the absence of sanctions.

Humanitarian law is considered as one of the weak branches of international law. It is generally said that contemporary humanitarian law has well developed and articulated norms and rules for the regulation of armed conflicts, but it is not well developed in so far as implementation and enforcement of these rules are concerned. It is easier to secure

compliance with a law in a centralised society like the one that exists within a State. In the contemporary decentralised international community, there are several hurdles in implementing international humanitarian law. The problem is further compounded on account of existence of a sense of extreme hostility between parties to an armed conflict who are essentially the addressees of international humanitarian law and are expected to respect this law in relation to each other. Be that as it may, it must be admitted that this law has succeeded in humanising warfare and alleviating suffering of victims of wars and armed conflicts to a significant extent even in the absence of strong compliance ensuring mechanisms at its disposal. There are certain ways and mechanisms which contribute to the process of implementation of international humanitarian law. At the same time, of late, some centralised mechanisms are being applied and developed to secure better implementation.

…

A. Unilateral Measures

Often international law depends on national legal systems to ensure implementation of its rules, mainly because the international legal system may not have adequate mechanisms for this purpose. However, it is possible that the national means are supplemented and perhaps supplanted in course of time. For instance, today we have a law of the sea tribunal or a tribunal to settle trade related disputes, which was not the case a few years ago. That apart, when international law leaves implementation to nation states, it is usually in deference to the sovereign prerogative of the states and their unwillingness to accept a supra-national authority to oversee implementation. The 1949 Geneva Conventions heavily depend on this system in view of the understanding which evolved at the time of their adoption. In general, national implementation does not rule out international implementation, which can be complementary to each other. It may be appropriate to see what are the national means of international humanitarian law implementation which are currently well established in this law.

1. National legislations and prosecutions

The Geneva Conventions and their Additional Protocols require the State Parties to make grave breaches of these instruments punishable offences by making necessary provisions in their respective national legal systems. Most of the countries which are parties to these instruments have done this. This obligation is spelt out in the Conventions and Protocols. Other international humanitarian law instruments also envisage enactment of national legislations to give effect to the conventional provisions, for instance, the Ottawa Anti-personnel Landmines Treaty, the Chemical Weapons Convention, etc. It is possible for a state to enact a special legislation - as is done in most of the common law countries or to make necessary amendments in the penal or other related laws - as is done by countries following the civil law system. Since the Geneva Conventions have recognised universal jurisdiction for prosecution of grave breaches, we often come across situation where a state attempts to exercise jurisdiction on the basis of such laws against a foreign national who is alleged to have committed war crimes another countries. It must be admitted that enactment of a national legislation and its appropriate implementation is an important aspect of national humanitarian law. Such legislations often provide protection to the emblems of the red cross and red crescent against their misuse.

2. National humanitarian law, working groups, and committees

Implementation of international humanitarian law is an ongoing process which encompasses a wide range of efforts involving many very different fields of government activity and numerous sectors of public life. It requires the co-ordination and co-operation of various ministries, government administrative departments, state bodies, public service establishment and other national institutions.

In order to facilitate this process, many states have set up special bodies like national committees or inter-ministerial working groups on international humanitarian law. Their functions are specifically defined in terms of promoting humanitarian law and devising measures for its application. Generally, their objective is to advise and assist governments on matters pertaining to participation in the humanitarian law treaties, adoption of measures for their implementation and dissemination of their provisions. Although there is no legal obligation to set up such bodies, their creation has been recognised as an important step towards the effective application of humanitarian law.

In countries where bodies of this kind have been established they have proven useful in encouraging measures for application of the humanitarian treaties and in facilitating contact and co-operation between the authorities and other entities concerned. Experience has also shown that it is often in countries where such bodies have been set up that real headway has been made in this field.

3. Military manuals and training of armed forces

In order to ensure respect to international humanitarian law, it is necessary to include the substance of international humanitarian law instruments to which a State is a party in its military manual and organise training of armed forces accordingly. It is also possible to prepare special training manuals for armed forces in accordance with applicable international humanitarian law. This is envisaged by the Geneva Conventions and their Additional Protocols. Although this is an obligation on states party, very often we come across states who have not taken these steps to fulfil their obligations under these instruments. But no one will disagree that it is the members of armed forces who must know the constraints imposed by international humanitarian law on their conduct in times of and during armed conflicts. A commanding officer is accountable for the conduct of his subordinates. Hence at the higher level as well as lower level, rules of international humanitarian law and consequences of showing disrespect to them must be widely known.

4. Identification and training of human resources

Additional Protocol I of 1977 lays emphasis on the role of certain personnel to ensure respect to its provisions. Thus, it requires the State Parties to train such personnel to facilitate the application of the conventions and Protocol. Although who are these personnel is not defined, but it is possible to suggest they comprise of doctors, paramedical staff, volunteers, lawyers, etc. The Protocol also provides for appointment of legal advisers to advise military commanders at the appropriate level on the application of the Conventions and Protocol. What one can notice is, there is some role to be conferred by national authorities on individuals who can contribute to implementation. This undoubtedly presupposes their adequate training in international humanitarian law.

5. Administrative measures

Many international humanitarian law instruments require States Parties to adopt some administrative measures which facilitate implementation. For example, issuing special instructions to authorities directly concerned with application of international humanitarian law, making of protected sites and objects, identification of cultural objects and their marking, establishing National Information Bureaux, etc. These are supplementary measures which States Parties are obliged to adopt.

B. Bilateralism in Implementation

In times of an armed conflict - international or non-international certain bilateral elements, arrangements or understanding may facilitate implementation of international humanitarian law. Since the parties to a conflict have an immediate and proximate interest in international humanitarian law rather than the rest of the international community, in some specific situations bilateral elements may prove extremely useful, though not always to the satisfaction of both the parties. Let us see how these elements have a bearing on ensuring respect to international humanitarian law.

1. Reciprocal advantages

Reciprocity has played a significant role in the earlier periods to ensure respect to international humanitarian law even when there was no formal understanding between the two adversaries. For example, the dictates issued by Louis XV on the eve of the battle of Fontenoy in 1747 that the enemy wounded shall be treated like his own wounded soldiers had a tacit expectation that his own men in the hands of the enemy will receive the same kind of treatment. The underlying assumption is: If a party to a conflict follows humanitarian law in relation to the adversary, then only it can expect the latter to respect the law. Even today this stands valid to a certain extent. It is very easy to point out a violation of international humanitarian law and collect empirical data to suggest that the law is not respected. But it is very, difficult to chronicle all those situations when the armed forces abstained from violation and respected the law. Violations get highlighted and respect remains unnoticed, especially by the media. This distorts the ground realities in so far as observance of international humanitarian law is concerned.

2. Bilateral agreements

During the 18th and 19th centuries, before the advent of international conventions on international humanitarian law, humanisation of war was dealt with by bilateral agreements in Europe. Pictet refers to one of the most remarkable document of this nature: the treaty between Frederik the Great and Benjamin Franklin signed in 1785 with protection of individual as its central idea. Such arrangements eventually led to emergence of customary norms of international humanitarian law. This practice was supplanted by the emergence of international conventions, but not wholly. Even today it is possible in accordance with Common Article 3 of the four Geneva Conventions for the parties to a non-international armed conflict to bring into force, by means of special agreements, other provisions of the Conventions as between themselves. Even in cases of international armed conflicts the Geneva Conventions do not rule out the possibility of the parties entering into special agreements for specific arrangements in connection with matters coming within the purview of the Geneva Conventions or generally to provide for additional protection for the victims of armed conflicts. Such agreements have proved useful in dealing with matters pertaining to prisoners of wars in various conflicts.

3. Threat of reprisals

Reprisals can be defined as acts directed against an enemy which are otherwise illegal, but justified in view of illegal conduct of the enemy, and resorted exclusively to compel the enemy to respect the law. It is often said that states may respect international humanitarian law because of the threat of reprisals from the adversary. It is always difficult to quantify a threat perception, but this worked well in some contexts. Modern international humanitarian law has curtailed the liberty of a party to a conflict to resort to reprisals in case of a breach on the part of the adversary. Draper has chronicled how reprisals have been increasingly subject to limitations and as such they may not be considered as a valid law enforcement mechanism. Although we concur with his views, it is still possible to suggest that in some situations, it is the possibility of reprisals from the adversary, a party to a conflict may honour its obligations under the law.

4. Compensation

As a matter of international legal theory, violation of international humanitarian law may entail a responsibility to pay reparation. This has been acknowledged by humanitarian law instruments as well. However in practice, it has never been a feasible mechanism. In the absence of an impartial authority to quantify and award compensation to the sufferer of violation of international humanitarian law and ensure its payment, one cannot consider this an effective element which may contribute to ensuring respect to international humanitarian law. Only in rare cases where peace agreements were signed between the parties after termination of hostilities, the question of reparation was addressed with some practical implications.

C. International Measures of Implementation

A number of developments have taken place during the last about half a century which are closely associated with implementation of humanitarian law and which are international in character. Although there has been an incremental growth in these types of measures over the years, they are still far from an effective system of implementation. The cumulative impact of these may have contributed to ensuring respect to international humanitarian law, but they have not succeeded in checking some of the most flagrant violations of international humanitarian law during the recent past. Their efficacy is, therefore, open to question.

1. Collective responsibility of States

The question whether there is a collective responsibility on states to ensure respect to international humanitarian law is some times debated in international legal circles. This is in view of the provisions in the Geneva Conventions and the Additional Protocols which require the States Parties to respect and ensure respect to the Conventions and Protocol 1. According to some writers this is a vague provision and has no practical implication. In the present writer's view this provision, even if it is vague, may have some practical implications. It can serve as a basis for initiation of action by national authorities including courts against alleged violators of the Geneva Conventions as seen recently in the case of issuance of an international arrest warrant against the Foreign Minister of the Republic of Congo by a Belgian Court. But there could also be other implications of this type of responsibility. It is because of this responsibility, the members of the international community can be urged and encouraged to develop new mechanisms to make international humanitarian law more effective by developing and adopting new implementation measures. It can serve as a justification for the war crimes jurisdiction of the new International Criminal Court or for establishing ad hoc tribunals to prosecute war criminals.

Thus, in our view the provision, though ambiguous, is not without practical implications for implementation of international humanitarian law.

2. International war crimes trials

Much has been written on war crimes trials, their historical background and the recent developments concerning, a permanent international criminal court. There is no need to review the whole process and related developments, but a few comments will suffice. Those guilty of violations of international humanitarian law must be prosecuted and punished to ensure that this law has some sanctions. Individuals concerned with armed conflicts the political leadership and armed personnel ought to realise that there is a possibility of punishment if they disregard international humanitarian law and commit serious violations of this law. Until recently, this was a distant dream. But the events of 1990s, especially the end of Cold War and attendant changes in the international political scenario paved way for the ad hoc Tribunals for former Yugoslavia and Rwanda. This eventually led to the resuscitation of the concept of permanent international criminal court with war crimes jurisdiction. Adoption of the Rome Statute is one milestone in the process but the real challenge of making the new institution acceptable to majority of the nations including those whose participation in it really matters is a daunting task.

3. International Fact Finding Commission

The mere possibility that an impartial third party organ may investigate violations of international humanitarian law under the auspices of international community has a bearing on its implementation. Thus, with a view to strengthen international humanitarian law, the Additional Protocol I of 1977 for the first time introduced the concept of international fact-finding mechanism in international humanitarian law. This mechanism is optional. The fact that a structure with well defined powers and procedure has been created but has been used is indicative of reluctance of states to submit to the authority of impartial dispute settling mechanisms. This is so even when the Commission has a very limited power of only making recommendations to the parties, and, not of handing over binding decisions.

4. The United Nations role

One of the primary responsibilities of the UN is to maintain international peace and security. It is not directly concerned with implementation of international humanitarian law. However, some of its actions may have a bearing on ensuring respect to this law. Persistent violation of international humanitarian law may lead to a threat to international peace and security. Hence, it is possible for the UN to call upon parties to a conflict to respect international humanitarian law. The Security Council can also impose economic sanctions to ensure this. The UN interest in international humanitarian law became evident after the Tehran Conference on Human Rights which addressed the issue of respect for human rights in armed conflicts. Although the UN approach to international humanitarian law issues has been via human rights, it is necessary to maintain the distinct identity of these two areas of law. But at the same time, it must be acknowledged that protection of human rights in armed conflicts has the effect to ensuring respect to some of the basic norms of international humanitarian law. In view of this limited convergence, the UN system can be of some use to ensure respect to international humanitarian law. As a matter of fact a number of resolutions of the UN Security Council on the situation in the Middle East, Iraq-Kuwait conflict, former Yugoslavia, Rwanda closely deal with ensuring respect to international humanitarian law.

5. Role of the International Committee of the Red Cross (ICRC)

Neither the humanitarian law instruments, nor the Statutes of the Movement of the Red Cross and Red Crescent envisage the ICRC as an agency for implementation of international humanitarian law. However, it must be acknowledged that there is a close knit association between the ICRC and international humanitarian law right from the very establishment of the ICRC which has been strengthened, articulated and accepted over the years by the international community. This is reflected in the Statutes of the ICRC that have enjoined a responsibility on the ICRC to work for the faithful application of international humanitarian law, to work for the understanding and dissemination of knowledge of this law and to facilitate its development. The ICRC, although not an implementing agency, its activities have a close bearing on implementation of international humanitarian law. Firstly, the ICRC is convinced that if international humanitarian law is faithfully implemented by the States, it will enhance the quality of protection to victims of armed conflicts. Therefore it has adopted a plan of action -to facilitate implementation of international humanitarian law in close collaboration with States. Secondly, the ICRC's activities in the area of protection of and assistance to victims of wars and armed conflicts may indirectly help in ensuring respect to some norms of international humanitarian law.

Activities aimed at facilitating implementation of international humanitarian law at the national level are conducted under the auspices of the ICRC's Advisory Service on international humanitarian law. It provides technical assistance, for instance, in the following areas:

- translating the Geneva Conventions and their Additional Protocols into national languages;
- where necessary, incorporating international humanitarian law into national law;
- enacting legislation to ensure that war crimes are prosecuted and punished;
- incorporating instruction on international humanitarian law into official training programmes (e.g. for the armed forces);
- appointing and training legal advisers within the armed forces;
- establishing National Information Bureaux.

The ICRC discusses issues concerning national implementation with the authorities of various States in different parts of the world with a view to help them in adopting appropriate measures for implementation of international humanitarian law.

The system of protecting power as envisaged by the Geneva Conventions did not succeed in ensuring application of international humanitarian law. The conventions have envisaged the ICRC as a substitute of protecting powers. In situations of armed conflicts, the ICRC can act as a substitute of protecting powers or in its own capacity in accordance with the provisions of the Geneva Conventions and their Protocols to undertake work for protection of and assistance to victims of armed conflicts. As it is widely known, the ICRC, if and when it comes across violations of international humanitarian law, takes it up with the concerned authorities with a view to bring an end to such violation in accordance with its well established principles and procedure. On the whole, the ICRC activities are conducive to implementation of international humanitarian law.

D. Concluding Remarks

The above examination reveals that the situation is not entirely satisfactory. Whatever mechanisms are at the disposal for ensuring adequate implementation of international

humanitarian law unilateral, bilateral or international there are many weaknesses and shortcomings in almost all of them.

In so far as unilateral measures are concerned, first of all it must be noted that these are to be adopted by individual state for application of international humanitarian law instruments in good faith. External agencies or other states have no control or supervision over this process. This means there is almost no accountability. It is left to the good will, interest and a genuine urge on the part of a state to work for faithful implementation of international humanitarian law. As a result, we have varied responses, as may be seen below.

- Although many international humanitarian law instruments expect the States Party to adopt national implementing legislations, there is a large number of states which has not cared to enact the requisite national legislation or make necessary changes in the existing national legislations as envisaged by such instruments. Even when national laws are enacted by a state, the members of its own armed forces may not be subject to such laws.
- Although international humanitarian law national working groups or committees are an excellent mechanism to facilitate international humanitarian law implementation, only countries around the world have attempted this mechanism [sic]. In some cases where such bodies have been established, they are not necessarily functioning as efficient as expected. International humanitarian law does not figure out in many countries' military manuals. It is also not systematically included in military instruction inspite of a clear obligation to do so in some of the most basic international humanitarian law instruments.
- Training of qualified personnel as envisaged by the Additional Protocol I is not taken seriously. Many States Parties to the Protocol have not cared to designate the qualified personnel at all.
- Administrative measures which a State is expected to take under international humanitarian law are not taken in a timely and appropriate manner or, in a worst scenario, not taken at all.

The situation regarding bilateral measures discussed earlier in this paper is equally disappointing.

- Although the element of reciprocity may compel parties to a conflict to respect international humanitarian law for obvious mutual advantages yet it must be understood that this works when parties to a conflict are more or less equal in strength. Whereas, a strong party may tend to undermine the weaker one which may not be in a position to resort to reprisals as a reply to illegality of the former.
- As a matter of fact, reprisals are now almost outdated and have been subject to many restrictions. As it is, reprisals were not a satisfactory mechanism to ensure respect to international humanitarian law for the obvious reasons that resort to them invariably led to greater violence and more humanitarian problems.
- The bilateral “special agreements” envisaged by the Geneva Conventions are seldom executed. In so far as internal armed conflicts are concerned, in most of the cases a State does not admit that there exists an internal armed conflict on its territory. The question of executing a special agreement as envisaged by Common Article 3, therefore, does not arise in such situations.
- Compensation for violation of international humanitarian law is claimed only by a victor State as one of the conditions of a peace treaty. But this practice has become

obsolete, and even if a claim of compensation is preferred, there is no guarantee that it will be taken seriously by the adversary.

When we come to international mechanisms for implementation of international humanitarian law, we have mixed results. Although there are many weaknesses in the mechanisms coming under this category, yet some positive developments have taken place during the recent past and the picture is not as gloomy as in case of unilateral and bilateral mechanisms. The principle of collective responsibility of States, such as the cne enshrined in Article I of the four Geneva Conventions, has paved way for some specific developments. On the negative side, the new mechanism of international fact-finding commission has not attracted a large number of States. Still there is apprehension amongst States as regards its objectivity, impartiality and usefulness.

The UN is also increasingly addressing international humanitarian law issues and calling upon States to respect their obligations under this law. But it must be remembered that it remains a political organ and as such political factors, rather than ground realities or humanitarian concerns, will play a crucial role in its decision making process. A large number of States were not comfortable with the idea of setting up ad hoc tribunals for former Yugoslavia and Rwanda by passing a resolution of the Security Council and also, with the association of this organ with the proposed International Criminal Court. The ICRC has its own limitations to ensure appropriate implementation of international humanitarian law. Its mandate is limited and it is not envisaged as an implementing agency.

The remarkable progress on the front of war crimes prosecutions during the last ten years is a great hope for all those who strive for strengthening international humanitarian law. The two ad hoc Tribunals of early 1990s and the Rome Statute of a permanent International Criminal Court have sent a clear message that no longer there will be absolute impunity for all those who have perpetrated most heinous atrocities against countless innocent people in times of armed conflicts. However, one must not get carried away by these developments because still there is a large number of States which is not yet convinced about the usefulness of the International Criminal Court and has reservations concerning some of its important features.

In view of the foregoing,. a few suggestions may be made for the future course of action for individual States, the international community as a whole and the civil societies of different countries.

- First of all, those States which have not fulfilled their obligations under the international humanitarian law instruments to enact national legislations must take steps to enact the legislations, Those who have failed in doing so have violated the basic principle of the law of treaties*: pacta sunt servanda*. It also amounts to showing disrespect to the obligation in Article 1 of the four Geneva Conventions which says: "The High Contracting Parties undertake to respect and ensure respect for the present Convention in all circumstances".
- Incorporation of international humanitarian law in military manuals and in courses of military instruction will significantly contribute to ensuring respect to this law. Many States have not done this which also amounts to non-fulfilling of obligation flowing from the Geneva Conventions. States must be urged to take other measures which are envisaged by instruments of international humanitarian law, such as training of qualified person designating protected objects and sites, etc.
- In view of the developments concerning international war crimes prosecutions, it is necessary to secure general support to the International Criminal Court. Civil

> societies in many countries are in favour of this institution whereas the governments have reservations. It is possible to generate a debate on this in civil society with a view to dispel certain doubts and persuade the authorities to support the new institution. At the same time it must also be ensured that alleged violations of international humanitarian law are brought before the national courts in appropriate circumstances. A well informed civil society can play a meaningful role in this respect. Wide dissemination of international humanitarian law in civil society will contribute to this process. It is a common knowledge that the national courts' jurisdictions are seldom invoked because the authorities tend to be protective towards the members of armed forces even when there is a clear indication that they are implicated in violations of international humanitarian law.

To conclude, it is clear that the process of securing implementation of international humanitarian law has several hurdles. States have agreed to do, certain things which are acceptable to them in view of the existing nature of international relations and international community. It is not that international humanitarian law cannot be made more effective. It can be done by strengthening the existing mechanisms and by developing and adopting new ones, provided there is general consensus on the part of the international community to do so. We have seen during the last decade how the civil society at the international level encouraged developments in the field of environmental protection, human rights, and particularly regarding banning anti-personnel landmines, creation of international criminal court. This has proved that a well informed international public opinion can bring about a significant and positive change. This force of public opinion can be constructively used to persuade certain (excessively) protectionist States to discard their restrictive policies and embrace a truly humanitarian approach to ensure implementation of international humanitarian law in the best possible manner. Ideally speaking, implementation of international humanitarian law can be considered as a collaborative and co-operative process in which the States, international agencies and a well informed civil society can play a meaningful and constructive role to bring about positive results and thereby strengthen international humanitarian law.

Commentary

1. The International Committee of the Red Cross (ICRC) is one of the principal international organizations responsible for interpreting IHL as it applies to real world situations. In fact, one division of the ICRC is dedicated to assisting States to apply and implement IHL. The ICRC website describes its Advisory Service as follows:

   > As a specialized structure of the ICRC, the Advisory Service assists States to implement IHL at the national level. With a global network of legal advisers, the Service provides guidance to national authorities on specific domestic implementation measures needed to meet their IHL obligations, and it supports the work of national IHL bodies established to facilitate IHL implementation domestically. Moreover, the Service supports the exchange of information on national measures of implementation. Besides providing legal advice and technical support, the Service helps in capacity building, upon specific request of national authorities and other concerned actors.

   The ICRC Advisory Service on International Humanitarian Law, International Committee of the Red Cross website, January 1, 2015.

2. One of the first means of implementation highlighted by Mr. Kadam is the requirement, under Protocol 1, of States Parties to create domestic legislation to criminalize grave breaches of the Protocol. What if a State Party does not create this legislation? Or, as is the case with Russia, the State Party has created the legislation but decides to ignore it in pursuit of military objectives? Russian state sovereignty prevents other States from forcing it to enforce its own domestic laws. There are international mechanisms to entice a State to enforce its laws such as sanctions or UN Resolutions. In the past these methods, particularly sanctions, have been ineffective at achieving the desired results. This is especially true when viewing sanctions against States with resilient economies, as Russia's has been. Further, Russia has shown time and again that it does not give much weight to UN Resolutions or efforts by the UNSC to curb behavior.

   What, then, can be done? Despite the ineffectiveness of sanctions and UN Resolutions, the international community will continue to use them. In addition, other international organizations will continue to issue reports condemning violations of international norms and IHL. The IAEA, for instance, will maintain its team at ZNPP indefinitely to monitor the situation on the ground. The ICC will continue its investigation into alleged war crimes and other violations of IHL and captured Russians suspected of breaches of Protocol 1 will stand trial in Ukrainian domestic courts. The international community will continue to support intelligence gathering and investigations of alleged violations. These collaborative efforts would make any post-war tribunals more effective and likely to succeed.

15.4.5 Conclusion

The Ukraine War will unfortunately not be the last time a nuclear power plant is the object, either directly or indirectly, of a military conflict. As green energy proliferates, so will nuclear power plants. The growing number of nuclear power plants means that there will be more scenarios where armed conflict encounters them. Until the international community can establish meaningful ways to prevent the violation of IHL as it pertains to nuclear power plants, the risk of nuclear disaster will continue to increase rather than decrease. Until the ongoing conflict between Russia and Ukraine concludes, the fate of the ZNPP remains unclear.

As of this writing in December 2024, it is fortunate that no nuclear accident has taken place at ZNPP. A September 2024 report "highlights the challenges and achievements of the IAEA's activities to protect Europe's largest nuclear power plant since Director General Grossi launched the historic mission on 1 September 2022. During this time, the IAEA teams at the site have reported on incidents including shelling and drone strikes at the facility, which has also suffered repeated loss of off-site power events." As if to highlight the risks to an even greater extent, shortly before this casebook went to press an SUV carrying IAEA inspectors in Zaporizhzhia was struck by a drone. The situation at the ZNPP remains precarious.

IAEA Director General Rafael Mariano Grossi and IAEA staff crossed the frontline of the conflict in Ukraine to reach the Zaporizhzhya nuclear power plant. (IAEA)

Chapter 16

Restoring Cultural Heritage

16.1 Introduction

[W]hen cultural property is lost, it is impossible to replace: just as an individual without a memory is a dysfunctional individual, so too can a community or society without a memory—its cultural heritage—become dysfunctional.

- Peter Stone, UNESCO Chair in Cultural Property Protection and Peace at Newcastle University, President, The Blue Shield

When Russia waged war on Ukraine the aim was not just to disrupt Ukrainians' everyday lives but to also wipe away Ukrainian culture. Russia, since 2014, has continued to attack Ukraine's sovereignty and identity. Now, Russia is coupling its old rhetoric of Ukraine being Russia with active efforts to destroy Ukrainian culture. These actions make it clear that protecting Ukrainian cultural property, immovable and moveable, is as important as protecting the Ukrainian borders.

This chapter will discuss various aspects of cultural property protection and restitution. Section 16.2 discusses the relevant passages, conventions, and articles of the various legal frameworks that protect cultural property. Section 16.3 will discuss Russia's history of looting cultural property, not just Ukrainian cultural property. Section 16.4 will discuss cultural property that Russia has looted and destroyed since the 2022 invasion. Section 16.5 will examine methods of prevention, trafficking of cultural property, and restitution of Looted Ukrainian Cultural Property (LUCP).

16.2 Legal Frameworks

International and domestic law govern claims dealing with the dispossession of property. In the context of cultural heritage, the same principles apply. For armed conflicts, international law supplements individual domestic laws. Specifically, UNESCO's 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict seeks to compel signatory states to protect the cultural property of the adverse state. It is essential to understand the existing legal frameworks and how they impact implementation and enforcement of claims for cultural property.

16.2.1 International Law and Cultural Heritage

In 1954, after the devastating damage from World War II, the international community gathered at the Hague to ensure that the destruction of cultural history and artifacts that occurred would never happen again.

> "The High Contracting Parties,
>
> **Recognizing** that cultural property has suffered grave damage during recent armed conflicts and that, by reason of the developments in the technique of warfare, it is in increasing danger of destruction;
>
> **Being convinced** that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world;

> **Considering** that the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection; …
>
> **Being of the opinion** that such protection cannot be effective unless both national and international measures have been taken to organize it in time of peace;
>
> **Being determined** to take all possible steps to protect cultural property;
>
> Have agreed upon the following provisions: …
>
> Article 1 – Definition of cultural property
> …The term' cultural property' shall cover, irrespective of ownership: (a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above; (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter… the movable cultural property…; (c) centers containing a large amount of cultural property …

In articles two through four, the parties agreed to protect cultural property and for parties to ensure that, during peacetime, safeguarding measures are undertaken to protect cultural property. Article 4 outlines the contracting parties' obligations and prohibitions.

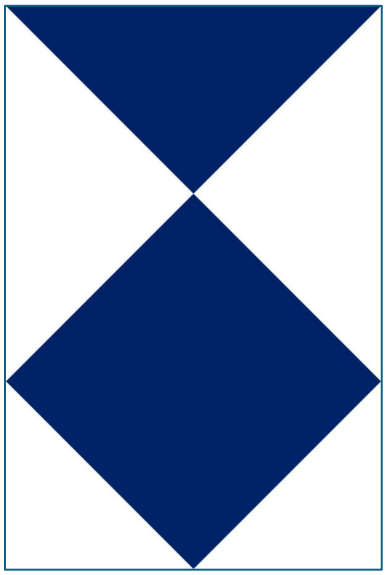
> "…Contracting Parties further undertake to prohibit, prevent, and if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. They shall refrain from requisitioning moveable cultural property situated in the territory of another High Contracting Party."

Contracting parties are restrained from taking cultural property when they are engaged in an armed conflict with another contracting party. Article 4 also requires that the parties prevent and prohibit their actors from destroying or taking cultural property.

The second section of the Convention discusses the special protections to which cultural property is entitled. Article 8 outlines the special protections parties may employ to protect cultural property. A special exception for safeguarding cultural property exists when cultural sites are used for military purposes.

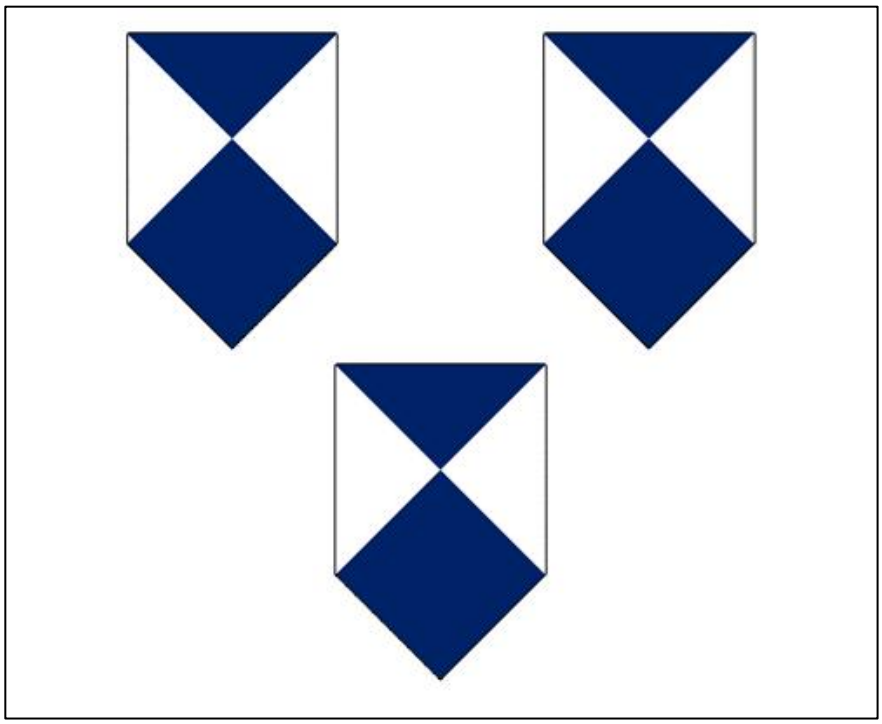
> "A center containing monuments shall be deemed used for military purposes whenever it is used for the movement of military personnel or material, even in transit. The shall apply whenever activities directly connected with military operations, the stationing of military personnel, or the production of war material are carried on within the center."

The article dictates that cultural property refuges may be protected if it is an "adequate distance from any large center or from any important military objective, " including broadcasting stations, national defense stations, port or railway stations, or communication main lines. However, Article 9 clarifies that sites that are under special protection and are not used for, or near sites used for, military purposes are immune from acts of hostility. Article 10 discusses the "distinctive emblem," the blue shield, marking cultural property under general or special protection as qualifying cultural property.



Source: https://www.unesco.org/en/heritage-armed-conflicts/convention-and-protocols/emblem

The blue shield may also appear in threes. When the blue shield appears in sets of three, it marks immovable cultural property under special protection, transportation of cultural property, and an improvised refuge for cultural property.



Source: https://www.unesco.org/en/heritage-armed-conflicts/convention-and-protocols/emblem

Lastly, the blue shield may appear alone but with a red band outline. According to the Sixth Meeting of the Parties in 2015, this final emblem indicates cultural property that is "under enhanced protection, particularly during the conduct of hostilities."

Article 11 enumerates events which can trigger withdrawing of immunity for cultural property. If a contracting party violates Article 9, they should attempt to remedy it within a reasonable time. The party withdrawing immunity should also notify the Commissioner-General for cultural property in writing, stating the reason for withdrawing immunity. This violation releases the opposing party from the Article 9 obligations.

Article 11 also contains a significant exception whereby immunity is withdrawn from cultural property under special protection.

> "…immunity shall be withdrawn from cultural property under special protection only in exceptional cases of unavoidable military necessity, and only for such time as that necessity continues. Such necessity can be established only by the officer commanding a force the equivalent of a division in size or larger. Whenever circumstances permit, the opposing Party shall be notified, a reasonable time in advance, of the decision to withdraw immunity."

This exception recognizes that parties may abuse the special protections cultural property enjoys for military advantage and penalizes them accordingly.

Articles 12 and 13 discuss the transportation of cultural property. Article 14 directly states that under Article 12 protection, cultural property is immune from seizure, capture, and "placing

in prize." Chapter four is concerned with the personnel responsible for protecting the cultural property. Chapter five discusses the distinctive emblem and its uses.

Notably, Chapter 6 of the Convention is titled "Scope of application of the Convention." Article 18 specifies that the Convention applies during any declared war, armed conflict, or partial or total occupation between two or more Contracting Parties, even if they do not recognize the state of war. The Convention also covers a non-contracting party if it accepts the Convention's provisions and applies them or if one of the parties to the Convention is involved.

Since the Convention's initial promulgation there have been subsequent reviews that produced the First and Second Protocols. Many of the following additions from both protocols are discussed above. The First Protocol supplemented the Convention by prohibiting the export of cultural property from occupied territory and requiring its return if exported. It required that any exported property is not retained and returned to the appropriate party. Lastly, the First Protocol also prohibited the sale of cultural property and fair compensation from the occupying party if there were any sales of cultural property.

During the Second Protocol, the Convention gained teeth. Some provisions have already been discussed, such as the enhanced protection category. Most importantly, the Second Protocol allowed for sanctions for serious violations of the Convention and defined conditions where criminal responsibility would apply to violators. The sanctions and criminal responsibility are both enumerated within Article 28.

Ukraine became a party to the Second Protocol on June 29, 2020. The Russian Federation became a party to the First Protocol and the Convention on January 3, 1957. Ukraine is also a party to the first protocol as of February 5, 1957. The Ukrainian Soviet Socialist Republic signed the Convention on May 14, 1954. As parties to the Convention and the First Protocol, Russia and Ukraine are bound by the articles and provisions. However, the heightened liability and sanctions would only apply to Ukraine, not Russia, as the Russian Federation is not a signatory of the Second Protocol.

Lastly, the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects of 1995 applies. The UNIDROIT Convention sought to supplement the gap between the common law and the Convention concerning the purchase of cultural property. The 1995 UNIDROIT convention produced "minimal legal rules on the restitution and return of cultural objects. It guarantees the rules of private international law and international procedure, which makes it possible to apply the principles set down in the UNESCO Convention. The two Conventions are at once compatible and complementary." The 1970 and UNIDROIT Conventions work together to set out the international norms and legal mechanisms to address illegal export, restitution, and return of cultural property. After the 1970 Convention was adopted, member states found that it lacked bite. Thus, the UNIDROIT addresses the Convention's gaps. At the time of the Convention, member states' most significant concerns were protections for good faith purchasers and restitution.

According to Russia's report to UNESCO regarding the progress of implementing the 1970 Convention, as of 2022, Russia has almost all its cultural property inventoried, with part of

the inventory digitized. Virtually all the protected cultural property in Russia is inventoried. However, the report lacks information on efforts to train police and customs officers to address cultural property crimes.

UNIDROIT focuses on the mechanisms of restitution. Article 3 is the heart of this Convention.

> "(1) The possessor of a cultural object which has been stolen shall return it…
>
> (3) Any claim for restitution shall be brought within a period of three years from the time when the claimant knew the location of the cultural object and the identity of its possessor, and in any case within a period of fifty years from the time of the theft.
>
> (4) However, a claim for restitution of a cultural object forming an integral part of an identified monument or archaeological site, or belonging to a public collection, shall not be subject to time limitations other than a period of three years from the time when the claimant knew the location of the cultural object and the identity of its possessor.
>
> (5) Notwithstanding the provisions of the preceding paragraph, any Contracting State may declare that a claim is subject to a time limitation of 75 years or such longer period as is provided in its law. A claim made in another Contracting State for restitution of a cultural object displaced from a monument, archaeological site or public collection in a Contracting State making such a declaration shall also be subject to that time limitation…
>
> (7) For the purposes of this Convention, a "public collection" consists of a group of inventoried or otherwise identified cultural objects owned by:
>
> (a) a Contracting State
> (b) a regional or local authority of a Contracting State;
> (c) a religious institution in a Contracting State; or
> (d) an institution that is established for an essentially cultural, educational or scientific purpose in a Contracting State and is recognised in that State as serving the public interest.
>
> (8) In addition, a claim for restitution of a sacred or communally important cultural object belonging to and used by a tribal or indigenous community in a Contracting State as part of that community's traditional or ritual use, shall be subject to the time limitation applicable to public collections."

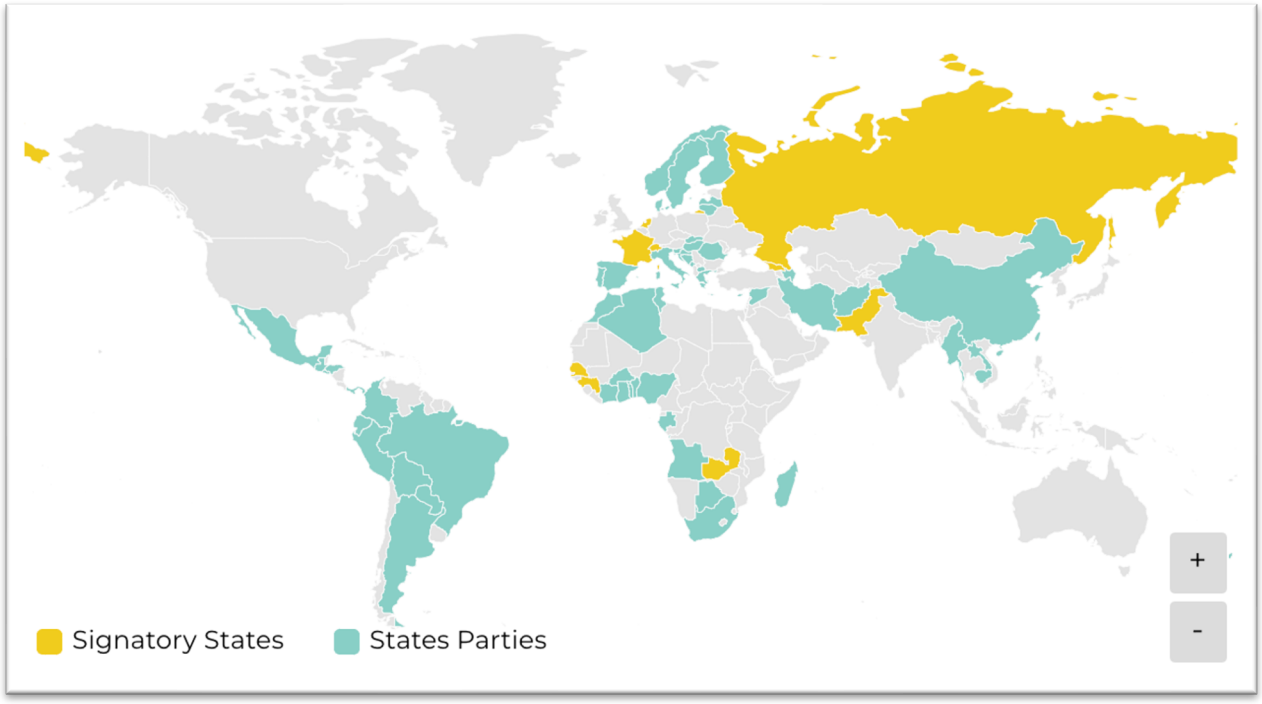
This pivotal article gives the basis for standing, the statute of limitations, and boldly states that the possessor of a stolen cultural object shall return it.

UNIDROIT makes restitution "an absolute duty" and monetary compensation attainable for the good faith purchaser. Article 4 outlines the remedies available to plaintiffs and good faith purchaser defendants.

> "The possessor of a stolen cultural object required to return it shall be entitled, at the time of its restitution, to payment of fair and reasonable compensation provided that the possessor neither knew nor ought to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object."

Section four sets out the standard for due diligence. The possessor must consider the totality of the circumstances around the acquisition, including the character of the parties, purchase price, consultation of reasonably accessible registry of stolen cultural objects, other reasonably obtainable information, consultation with any accessible agencies, and any measure a reasonable person in the same circumstance would have taken.

Article 5 describes the procedure for requesting an illegally exported good. The dispossessed State may request another state or appropriate authority to return its cultural property. After the initial request, the state possessing the property has three years to return it or fifty years from the date of the export. Article 6 discusses compensation for good faith purchaser States. Under Article 6, possessing states may request payment or agree with the requesting state to retain ownership. Article 7 provides exceptions. Below is the status map of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.



Article 8 provides States with the option for arbitration or judicial proceedings in an appropriate jurisdiction. UNIDROIT's final provisions cover adoption, potential conflicts of law, and procedures for the States to ratify and accept. The Russian Federation is a signatory state, and Ukraine has not signed, ratified, nor adopted the UNIDROIT convention.

16.2.2 European Law and Cultural Heritage

The European Union (EU) is made up of 27 member countries. The EU allows for economic and political cooperation between the member states. The European Commission develops policies and programs to preserve and promote European cultural heritage. "There is no contradiction between national responsibilities and EU action: heritage is always both local and European." The EU treaty specifies that although the protection of cultural heritage is primarily the responsibility of the national, regional, and local authorities, the EU's responsibilities are in line with those of the member states. Thus, all EU member states are also contracting parties to at least one portion of the Convention. While the policies would work with existing national obligations, these policies and programs apply to member states. Russia is not a member of the European Union.

EU member nations are also governed by the European Convention on the Protection of the Archeological Heritage (European Convention). The European Convention sought to recognize the importance of archeological heritage because it

> "*provides evidence of ancient history, is seriously threatened with deterioration because of the increasing number of major planning schemes, natural risks, clandestine or unscientific excavations and insufficient public awareness…*
>
> *Stressing that responsibility for the protection of the archaeological heritage should rest not only with the State directly concerned but with all European countries, the aim being to reduce the risk of deterioration and promote conservation…*"

EU countries are tasked with protecting archeological heritage, which the European Convention defines as structures, constrictions groups of buildings, developed sites, moveable objects, and monuments. European countries are then tasked with protecting these items, specifically in Article 10, by preventing the illicit trade and circulation of archeological heritage.

Ukraine is currently not a member of the EU. However, on February 28, 2022, Ukraine applied for EU membership. Chapter 15 discussed the feasibility of Ukraine joining the EU. Should the EU accept Ukraine's application for membership, the other member states would be duly obligated to assist in protecting cultural property.

16.2.3 Ukrainian Law and Cultural Heritage

Ukraine's national cultural heritage laws also supplement the Convention's laws. In total, six laws apply. Ukraine's laws cover immovable, moveable, and intangible cultural property. The laws also cover export, import, restitution, return, maintenance, and protected areas and/or goods. This includes law that addresses imports and exports during armed conflict.

In 2014, Ukraine completed its periodic reporting cycle, which gave updates on implementing the Convention. The National Kyiv-Pechersk Historical and Cultural Preserve is the primary governmental organization responsible for the implementation. However, several other organizations work together to assist in implementation, including the Ministry of Culture of Ukraine, the Ukrainian National Committee of ICOMOS (International Council on Monuments and Sites), and the Ukrainian Society of Historical and Cultural Monuments.

As of the reporting date, Ukraine had inventories, lists, and registers for cultural and natural heritage. National cultural heritage inventories were continually updated at the time of

reporting, while regional, provincial, state, and local inventories were "well-advanced." These inventories help protect cultural property and identify potential World Heritage properties.

The report details Ukraine's various legislative efforts toward implementing the Convention. During this reporting cycle, Ukraine's main efforts were aimed at protecting and inventorying 'natural heritage' and immovable cultural property. Implementation of international conventions was slower. Ukraine reported limited coordination and integration of international conventions into its national policies. Within the government entities, there was only "some cooperation between principal agencies/ institutions." Given the lack of intergovernmental cooperation, it is not surprising that Ukraine has self-reported deficiencies in intragovernmental cooperation for cultural property conservation and protection.

Ukraine's efforts towards international cooperation on restitution and protection are also present in the report. "The Government of Ukraine actively collaborates with the National Heritage Board of Poland, Ministries of Culture of Turkey, of the Republic of Belarus, the Government of Norway, Federal Ministry for the Environment, Nature Conservation and Nuclear Safety of Germany, Ministry of Environment of the Slovak Republic regarding the conservation, protection and promotion of the World Heritage sites." Despite these significant efforts, there were still areas that required more immediate attention. Ukraine reported that there was still limited coordination or integration of legal instruments for conservation, protection, and presentation policies for cultural heritage. In tandem with the legal tools, there was a need for capacity building in the field of heritage conservation.

16.2.4 Russian Law and Cultural Heritage

Russia also has numerous laws on the protection of cultural property. The laws range from federal to criminal and administrative statutes. The laws cover the import and export of cultural property, trafficking to restitution, sanctions, and return of cultural property. Russia's cultural property laws apply to moveable, intangible, and immovable cultural property.

The EU's Moving Art: A Guide to the Export and Import of Cultural Goods between Russia and the European Union describes Russia's international and domestic law obligations. This guide also details the various governmental branches and offices that oversee the export and import of cultural goods to Russia.

The guide deals with liability issues under Russian law under the section "Does violation of export and import legislation carry any liability?" Those who violate import or export laws may be subject to administrative and criminal liability. Under Russian administrative law, violations can carry fines up to 300% for illegal movement of goods across the Russian Federation's customs borders and for a failure to declare or an untrue declaration of goods.

Under Russia's criminal code, the illicit export and import of cultural goods are considered smuggling. Smuggling can carry prison time from three to seven years and a fine of up to one million roubles, wage or income garnishment to pay the fine over five years, or a prison term without a fine.A different section of the criminal code finds liability for "the theft of objects and documents of special historical, scientific, artistic or cultural value."

Lastly, Russia has made progress in implementing the 1970 Convention. UNESCO's 2023 Periodic Report for the implementation of the Convention on prohibiting and preventing the illicit import, export, and transfer of ownership of cultural property shares Russia's progress from 2019 to 2022. Russia self-reported the specific laws it enacted, which have been discussed above, and that there has been no overall policy or strategy implemented to fight illicit trafficking of cultural property.

16.3 Russia's History of Looting

Looting, Stealing, Destroying: How Russia Weaponized Art Theft
Nata Druhak, European Resilience Initiative Center, March 2023

Throughout the history of Ukrainian-Russian relations, the physical atrocities have always been complemented by eradicating the Ukrainian identity. To this end, Moscow imposed its influence by repressing Ukrainian intelligentsia, banning the Ukrainian language and assimilating its grammar, appropriating Ukrainian artists, and stealing their artworks. A centuries-long attempt to erase Ukraine as a nation and a sovereign country from geographical and mental maps has culminated in the ongoing war of extinction called by the Russian propagandist *de-ukrainization*.

To achieve its goals, Russia weaponises culture. Looting artworks during the war is a common practice prohibited under international law, particularly by the 1954 The Hague Convention for the protection of cultural property in armed conflicts. Prior to and during WWII it was common that by capturing cultural heritage the invading army could either pursued material goals, while not always capable of comprehending the actual price of cultural objects, or tried to gain soft power for the aggressor state. In Ukraine, Russia is targeting the cultural heritage that can embody the long-time history of Ukraine as a cultural entity. The physical presence of Ukrainian cultural objects in Russian museums helps Russia rewrite the narratives around historical events to present Ukraine as part of Russia and call Ukraine's history to be fiction.

St. Dmytro of Solun. Mosaic from Kyiv St. Michael Cathedral, looted and transferred to Moscow Tretyakov Gallery after the Cathedral's demolition in 1930s.

The Scythian Gold Saga

The Russian invasion of Ukraine has challenged international law that aims at protecting and preserving cultural heritage in dire circumstances of armed conflicts. Since 2014, Ukraine has been in a complicated legal dispute with Russia concerning the collections of Scythian gold, colloquially known as Crimean treasures. Just a month before Russia illegally invaded the Crimean Peninsula, the Allard Pierson Museum in Amsterdam hosted the exhibition *Crimea. Golden Island in the Black Sea*, dedicated to the ancient history of Crimea. It featured 19 exhibits from the Kyiv Museum of Historical Treasures, a branch of the National Museum of History of Ukraine in Kyiv, and 565 exhibits from four Crimean museums.4 The collection included gold and ceremonial daggers used by the nomadic tribe, a golden helmet from the 4th century BC, amulets, jewellery, and other treasures.

After the annexation of Crimea, Russia pressed the Netherlands to send the exhibits back to the Russia-controlled Crimean museums. In its turn, Ukraine insisted on Ukrainian ownership of the collection exhibits, as they belonged to the State Museum Fund of Ukraine. The first decision of the Amsterdam district court in 2016 determined that the Dutch museum must hand over the disputed objects to Ukraine. The court ruling was based on the 1970 UNESCO Convention and defined the central role of state authorities in international art loans.6 The judgment also proved that the Allard Pierson Museum acted rightfully by storing the objects until the final verdict. The gold should have remained in the Dutch museum's stores pending an appeal. Ukraine was required to cover the storage and insurance costs to preserve the collection. As expected, Crimean museums acting in the interests of Moscow appealed the ruling.

Scythian golden helmet. Photo by the Ukrainian Museum of Cultural Valuables.

Only in October 2021, the Amsterdam Court of Appeal ruled in Ukraine's favour. The collection should be returned to the Ukrainian state "until the situation in Crimea has "stabilised". In January 2022, a month before the full-scale Russian invasion and on the last possible day, Crimean museums filled the appeal again. The Supreme Court of the Netherlands has scheduled a court session to take a final decision for the 15th of September, 2023.

Weaponisation of Culture

However, Russia's pursuance of stealing ownership of Ukraine's collections of Scythian gold is not the only example of Russia's looting Ukrainian cultural heritage. As of 2016, Ukraine lost control over 99 museums, following Russia's occupation of Crimea and the parts of Luhansk and Donetsk regions. Ukraine's estimated losses ranged between one and two million cultural objects. Following the full-fledged Russian aggression against Ukraine in 2022, the number of such lost cultural artifacts has skyrocketed.

In 2022, Russian troops stole Scythian gold artifacts from the Museum of Local History of Melitopol, a temporarily occupied city in Zaporizhzhia region. The collection comprised at least 198 gold objects, including gold plates, rare old weapons, 300-year-old silver coins, and special medals. As art critic Charlotte Mullins noted:

> *"it is clear that Putin sees the Scythian gold as particularly central to Ukraine's cultural identity and independence. It is not the first time he has tried to claim it for Russia. But these latest thefts are in keeping with Putin's attempts to erase Ukraine's independent history and promote his own expansionist model of a new Russian empire."*

Brian Daniels, who works with cultural workers at risk in conflict, explains Russia's logic:

> *"There is now very strong evidence this is a purposive Russian move, with specific paintings and ornaments targeted and taken out to Russia. There is a possibility it is all part of undermining the identity of Ukraine as a separate country by implying legitimate Russian ownership of all their exhibits."*

A golden Scythian sword. Photo by the Ukrainian Museum of Cultural Valuables

After capturing Mariupol, Russia has reportedly stolen over 2,000 artworks from three local museums. The city council prepared evidence for Interpol to conduct a criminal investigation. Among the allegedly stolen works could be a handwritten Torah scroll, paintings by Arkhip Kuindzhi, Ivan Aivazovsky, Tetiana Yablonska, Ivan Marchuk, a bible from 1811, Orthodox icons, and 200 medals from the Museum of Medallion Art.

Three original works by the Ukrainian realist painter of Greek descent Arkhip Kuindzhi, a sketch titled *Red Sunset* and two preparatory works, *Elbrus* and *Autumn Crimea*, were reportedly stolen by Russians from the Kuindzhi Art Museum. The museum was destroyed in a Russian airstrike on the 21st of March, 2022. However, none of the three original Kuindzhi paintings were present in the building at the time of the bombing. Another detective story concerns the romantic maritime painter of Armenian origin Ivan Aivazovsky. Ukrainian Mariupol authorities reported that his original painting, *The Coast of the Caucasus*, was looted from the museum of Mariupol. The Russian side also reported the “temporary transferring” of one of Aivazovsky’s works to the local history museum in occupied Donetsk.

'Elbrus' by Arkhyp Kuindzhi (1900).

These thefts demonstrate a larger Russian identity pattern. Both painters were born and lived in modern-day Ukraine, Aivazovsky in Feodosia, Crimea, and Kuindzhi in Mariupol, Donetsk region. In their lifetime, both cities were under the Russian Empire's rule. Since 2014 and 2022, respectively, Russian forces have occupied the cities. Russia's policy of cultural appropriation created a reality, in which cultural institutions across the globe designated both painters as Russians, while ignoring their complex identities. Since 2022, museums worldwide have started reconsidering their approach.

The looting was not a random plundering for the sake of enriching individuals. Witnesses say that the operations were expert-led, centrally controlled, and well-organised with the help of the Russian army. Scythian gold artifacts were allegedly extracted from the Melitopol museum by "a man in the white lab coat, using tweezers and special gloves". Russian soldiers with guns stood behind, watching around in case anybody would try to prevent a robbery.

Compensations for Russia's Museum Looting

The actual number and items of stolen art pieces are still to be estimated, which makes the restitution process even more complicated. Ukrainian museum employees have already identified some of the works based on photos taken in a museum storage in Simferopol, Crimea. The digital archive of the Kherson Art Museum preserves data about 14 000 artworks, including the paintings of Mykola Pymonenko, Ivan Aivazovskyi, Zinaida Serebriakova, August von Bayer, Mikhail Vrubel, and others. Alina Dotsenko says that up to 80% of the collection could be lost. The same destiny happened to the Kherson Museum of Local Lore. Before the invasion, its collection consisted of more than 170,000 exhibits: weapons, Scythian gold, ancient steels, amphoras, herbarium, and others. Russians left the rooms of the museums almost empty. Some stolen objects were already noticed in Henichensk, a temporarily occupied town in Kherson region.

The liberation of the Ukrainian territories will not result in automatic immediate return of cultural treasures, particularly as there is no confirmed information of their current whereabouts.

In most cases, the exact lists of stolen artifacts are also unclear. In 2014-2015, all the museums in the annexed Crimea were "nationalised" by Russia. The collections in the occupied parts of the Donbas region were allegedly transferred to Russia. As Russia has demonstrated on multiple occasions, the artworks could end up in museums across Russian borders, such as the State Hermitage Museum in St. Petersburg and the State Tretyakov Gallery in Moscow.

'The Red Sunset' by Arkhyp Kuindzhi (1905)

Although the ideological purpose seems to be the primary purpose of mass plundering, some artifacts could re-emerge in the hands of private collectors or on the black market. Recently, the International Council of Museum (ICOM) published the Ukraine Edition of the Red List of Cultural Objects at Risk to assist collectors and institutions in identifying the stolen cultural objects. The list comprises 53 types of objects in seven categories, including span archaeology, books and manuscripts, numismatics, folk, religious, applied and fine arts. It is important to note that the list does not depict the actual stolen items but only serves to illustrate the categories of cultural goods that are the most vulnerable to illegal traffic.

Based on experiences from previous armed conflicts, several international documents were developed to regulate the illegal trade of artworks from the places affected by armed conflicts. However, as in other spheres of international law, the regulations require updates considering the scale and nature of the Russian attack against Ukrainian culture. Furthermore, the legal recognition of Ukrainian ownership over these cultural artifacts could take decades. The longer it takes, the more difficult it would be to find the looted cultural artifacts, examine their origins, background and owners, and to prove their belonging to the Ukrainian people, who understand their cultural and historical meaning.

16.4 Russia's Looting Since 2022

"They were trying to kill us and our culture centuries ago and are doing it now."

-Oksana Semenik

On March 25, 2024, The Kyiv State Academy of Decorative Applied Arts and Design was destroyed by a ballistic missile attack. By April 2023, 248 UNESCO heritage sites had been damaged by the Russian invasion. An estimated 15,000 pieces of Ukrainian art and artifacts have been reported missing since the Russian invasion. As of April 2024, UNESCO has identified 349 damaged cultural sites. Reports continue to show that Ukrainian cultural heritage is in danger and has been looted by Russians into their museums and onto the black market.

Since March 27, 2024, UNESCO has verified damage to 349 cultural sites in Ukraine since February 24, 2022. In total, UNESCO has confirmed damage to 127 religious sites, 157 buildings of historical or artistic interest, 31 museums, 19 monuments, 14 libraries, and 1 achieve. Although there is only a focus here on immovable cultural property, these ongoing reports, while devastating, do not present the full scope of damage, loss.

16.4.1 Places of Worship

Russian forces have destroyed religious sites in Ukraine. These sites include churches, Kingdom Halls, two mosques, a seminary, and other religious sites and monuments. In the Chernihiv Region, UNESCO has confirmed that seven religious sites have been damaged. Kyiv has forty religious sites that have sustained damage. Kharkiv has sustained damage to twenty religious sites. Five sites were damaged in Zaporizhzhya. Three sites were damaged in Zhytomyr; Donetsk sustained more damage to religious sites than all other regions, with 48 sites damaged. Luhansk has had damage to twenty sites. Mykolaiv, Vinnystsya, and Dinpropetrovs'k all have one confirmed that has been damaged. Odesa has two damaged religious sites, and Kherson has three damaged sites. Sumy and L'viv have not had any religious sites confirmed to have been damaged.

Saint-Sophia Cathedral in Kyiv by Maksym Kozlenko via Wikimedia Commons

16.4.2 Museums

Russia has decimated Ukrainian museums and systematically stolen or destroyed cultural property and art. Chernihiv has three museums with confirmed damage. Kyiv has confirmed damage to seven museums. Odesa has confirmed five damaged museums, including the Fine arts and Archeological museums. Kharkiv and Donetsk have four damaged museums. Kherson has confirmed two damaged museums, the House-Museums of Polina Raiko in Olshky and the Ostap Vyshnia House Museums in Krynky. Sumy has three confirmed damaged museums. Zaporizhzhya and L'viv have confirmed one damaged museum each. Zhytomyr, Luhansk, Mykolaiv, Vinnystsya, and Dinpropetrovs'k have not reported any damaged museums.

One of the most significant instances of looting Ukraine has endured has been the plunder of the Kherson region. The Kherson Art Museum, the Kherson Regional Museum, and the Kherson Region National Archives were looted by invading Russian forces in November 2022. Almost one-third of the Kherson Art Museum's collection was estimated to be stolen.

Olga Honcharova, temporary director of Kherson Regional Museum, shows empty display cases in Kherson, Ukraine, on Dec. 22, 2022.

Museums in the Russian-occupied territories have the most uncertain fate. Russian media outlets have reported that administrators in these regions have "evacuated" museum and gallery collections in Nova Kakhova. Russian forces have moved the cultural property to territories under their control, including museums in the Crimean Peninsula. The Central Museum of Tvrisa in Simferopol on the Crimean Peninsula has received many of these looted works of art. Some of the items the Russians took include ancient Greek amphorae, gold ornaments from steppe nomads, medieval weapons, and Orthodox icons. The items were taken "to the left bank of the Dnipro River, an area still occupied by Russia… Some of the exhibits ended up in the Russian-occupied city of Henichesk in southern Ukraine… Some of the exhibits were taken to the Chersonese Taurian Museum in Sevastopol."

16.4.3 Other Cultural Sites

Various other cultural sites have also been damaged or destroyed. In the Chernihiv region, the ten sites include historic buildings, courthouses, libraries, houses of culture, and monuments. Kyiv's sixteen damaged sites include houses of culture, art academies, libraries, memorials, and monuments. In Kharkiv, nineteen cultural sites have been damaged, including a courthouse, libraries, and the National Academic Opera and Ballet Theater. Zaporizhhya's seven damaged sites also include a local monument in Verbove for the soldiers of the Second World War, seen below.

By Петро Халява - Own work, CC BY-SA 4.0

Donetsk is one of the hardest hit regions, with thirty-five damaged cultural sites. Odesa has the most damaged cultural sites at forty-one. In both regions, the houses of culture, monuments, historic homes, architectural monuments, libraries, and palaces have been damaged. In Mariupol, located in the Donetsk region, one of the libraries that has been destroyed is the V. Korolenko Central City Public Library, as seen below. The library building was an intellectual and educational center in the city but is now in ruins.

Source: https://ui.org.ua/en/postcard/v-korolenko-central-city-public-library/

Other regions have also suffered damage to their cultural sites. Luhansk has fourteen damaged sites, Sumy has nine, Mykolaiv has eight, Vinnystya and Dinpropetrovs'k have one, Kherson eleven, and L'viv has two. Luckily, Zhytomry is the only region with no confirmed cultural sites damaged. However, given the ever-changing nature of an armed conflict, information on the status of each region may not be current.

While there is a deluge of information on the destruction in Ukraine, it is still impossible to quantify and identify the extent of the loss of cultural heritage. For now, there are only estimated losses. This has pushed the government and various organizations to create registries for endangered items. Until there are more reliable sources reporting on cultural heritage property in Russian-held areas, the true impact of the Russian invasion on Ukraine's cultural heritage will be unknown. The best option for Ukraine is to focus on prevention and restitution measures.

16.5 Restitution and Trafficking of Looted Ukrainian Cultural Property (LUCP)

The Ukrainian people have a right to express their culture and identity. However, since the start of the invasion, Russia has systematically targeted Ukrainian cultural heritage. Once the cultural property leaves its safe haven, its fate become unclear. "In the process of looting…many of [the art pieces] are destroyed in the process. Authorities do not have knowledge of most pieces until they are auctioned or displayed." Some of the cultural property has been taken to Russian-occupied cities or museums, like Henichesk or to the Chersonese Taurian Museum. In order to preserve future legal claims Ukraine and its supporters must focus on preventing looting, restitution, monitoring trafficking of cultural property, and of LUCP.

16.5.1 Preventing LUCP from Being Trafficked

Both Ukrainian and Russian laws can help prevent cultural property from being trafficked. Under Russian law, it may be possible to retrace the journey of looted art when importing cultural goods. "All cultural goods imported to Russia (that is, for permanent import) are always cleared through the customs and entered in a register kept for this purpose under the Cultural Objects Export and Import Law." The internal database is not linked with INTERPOL or other international bodies. According to Russia's reporting, the database records the following:

> "According to the statement of the right holders or owners of stolen cultural property, the Ministry of Culture records in the register the missing, stolen, lost cultural property information about the relevant fact. When registering an item in the specified database, its name, distinctive signs, state of preservation, visual description, photographic image are indicated, each item is assigned an individual number in the registry."

However, Russia is asserting that the invasion of Ukraine is to restore territory that is rightfully Russian. It is possible that Russia is not closely categorizing and monitoring cultural property that is entering Russia or Ukrainian territory under Russian control. Although it is unlikely that the Russian Federation would share these records, such records in any subsequent international claim could prove pivotal.

The UNESCO progress report on implementing the 1970 Convention gives great insight into holes in Russia's policies. The report says Russian legislation poorly addresses regulations on the trade of cultural property, cultural heritage, and art galleries, as well as regulations regarding the trade of cultural artifacts on the Internet. The report explicitly states that Russia has difficulty returning and restituting cultural property to its place of origin because of challenges in confirming ownership. Interestingly, the report states that the country's museums have fully adopted a code of ethics, such as the ICOM Code of Ethics, to ensure they align with the Convention. However, the distinction between museums, dealers, and auction houses also demonstrates a disconnect between the intent of the ethics code and laws and reality. "Art dealers and auction houses generally follow the practice of law-abiding citizens," which would include following UNESCO's code of ethics for dealers in cultural property and the Convention's operational guidelines.

Since its UNESCO reporting, Ukraine has advanced in implementing practical solutions to protect its cultural property in response to the invasion. To combat "the destruction of Ukrainian culture, which has been going on since the time of the Russian Empire and is an integral part of Russia's policy aimed at destroying Ukrainians as a nation." Similarly, Blue Shield International (BSI), one of the organizations that works to implement the Convention's articles, is attempting to assist in mitigating the destruction of cultural sites. As of August 2023, BSI completed its third mission in Ukraine to assess damage to immovable cultural property. This third mission focused on the recent counteroffensive areas of Kharkiv, Donetsk, Dnipro, and Kaporizhizha, where extensive damage records have been made.

Ukraine's Territorial Defense Forces investigates the targeting of cultural heritage led by lawyer Vitaliy Tytch. The Territorial Defense Forces collect evidence for future prosecutions. However, their work centers on preparation for future legal proceedings, not necessarily protecting the current cultural heritage. Other countries with integrated units tasked explicitly

with protecting cultural heritage may serve as a guide for Russia and Ukraine. Vitaliy Tytch, leader of the Territorial Defense Forces, and Gyunduz Mamedov, Deputy Prosecutor-General of Ukraine from 2019 to 2021 and expert in international and national criminal law, proposed some solutions to reduce the harm to cultural heritage. The UK's Cultural Property Protection Unit and the U.S. Army's Civil Affairs and Information and Psychological Operations Command can serve as models.

Members of the working group of the Territorial Defense Forces on a business trip in Komyshuvate.

Ukraine has other domestic agencies working on trafficking prevention. The Security Service of Ukraine (SBU) has investigated the looted museum collections believing this to be "'violations of the laws and customs of law' as a part of a 'suspected genocide of the Ukrainian people.'" The Ukrainian Ministry of Culture and Information Policy is also creating a registry for the collections in occupied territories.

As previously discussed, the impact and depth of the looted collections and lost cultural heritage cannot be fully determined during the war. However, it is evident that Ukrainians are working to prepare for restitution and return of their cultural property.

16.5.2 Trafficking of LUCP

Russia has a duty to cooperate with other member states in preventing trafficking of cultural property under the Convention. Ukraine's obligations under the Convention also require it to safeguard its cultural property. However, these obligations have not stopped state and individual actors from attempting to traffic LUCP.

While there have been other instances of trafficking, there have been several notable instances. On September 2, 2022, U.S. Customs and Border Protection seized three metal swords and a stone ax at the JFK International Mail Facility that had been stolen from Ukraine and en route to Russia. A propaganda video disseminated by Russia in 2023 shows at least one hundred Ukrainian art pieces in a Crimean museum.

One of the most shocking instances of trafficked art occurred this year. In February, Russia planned to auction a stolen painting, 'Moonlit Night' by Ivan Aivazovsky, despite an international order calling for its return to Ukraine. The painting was on the international wanted list in 2017 after Russia's illegal annexation of Crimea. The painting was reported to take place in a Moscow auction house. 'Moonlit Night' subsequently sold for $995,000 on February 19, 2024. The Moscow Auction House, where the painting was sold, is alleging that the painting it sold is not the 'Moonlit Night' on the wanted list but a different one that Aivazovsky also painted.

16.5.3 Restitution of LUCP

Russia has a duty to cooperate with other member states in preventing trafficking of cultural property under the Convention. Accordingly, Russia reports that in instances of restitution and/or return cases in which it has been involved, the Convention has helped to some extent with providing a legal framework for restitution/return and, to a considerable extent, in providing a moral and diplomatic framework. This means that Russia has the laws, infrastructure, and knowledge to aid in the restitution of LUCP. The biggest hurdle will be Russia's willingness to cooperate in LUCP restitution.

Individual organizations are working to restore Ukrainian cultural property. One such organization is the International Council of Museums (ICOM). ICOM is a non-governmental organization that carries out international missions and raises public awareness of the ethical standards for museum activities. ICOM has created a Red List of Ukrainian cultural property that is at risk of trafficking, which has been discussed briefly in previous sections. "The purpose of this Emergency Red List of Cultural Objects at Risk - Ukraine is to contribute to the protection of cultural heritage by identifying the types of objects that are most at risk."

Source: https://icom.museum/en/ressource/emergency-red-list-ukraine/

Social media has assisted in restitution efforts. Alina Dotsenko, museum director for the Kherson Museum of Arts, described how she and her staff combed through photos and videos shared via social media to locate the museum's missing works. Using these methods, Dotsenko has located 94 of the missing works. Another Russian propaganda video shows Ukrainian art taken from the Kherson Art Museum, now housed in Crimea's Central Museum of Tavrida. Another online effort, 'Saving Ukrainian Cultural Heritage Online (SUCHO) has been working since 2022 to achieve online content.

Kyiv Pechersk Lavra National Reserve employees unpack returned cultural property in Kyiv Monastery National Conservation Area, Ukraine, Friday, Oct. 20, 2023. Ukraine returned 14 archeological items allegedly stolen by a Russian man and apprehended at a U.S. airport during an attempted illegal artifact importation.

Looking to courts abroad may also provide insight to legal arguments, rulings, and procedures that Ukraine may use for future litigation. The United States has had varying results in restitution claims. In *Museum of Fine Arts v. Seger-Thomschitz*, the defendant-heir seeking to appeal summary judgment to the museum to keep two oil paintings that had been looted by the Nazis was upheld on statute of limitations grounds. Although the court applied domestic law, similar time limitations in the Convention may follow similar reasoning and holdings in Ukraine's cases. The court in *United States v. One Lucite Ball Containing Lunar Material* considered Honduran law when it concluded that, the moon rock was stolen from Honduras and the United States was entitled to forfeiture of the moon rock. In the U.S., "Federal law controls the question of whether an item is stolen," but 'local law' – i.e., the law of the place form where the item was taken – governs "whether any… entity has a property interest in the item…and whether the receiver of the item has a property interest in it." (*Id*. at 1372 (quoting *United States v. Portrait of Wally*, 105 F.Supp2d 288, 292 (S.D.N.Y. 2000)). Contrasted with *Von Saher v. Norton Simon Museum of Art* where the United States applied the act of state doctrine to find that the Dutch government's "conveyance [was a] sovereign act" and in doing so, the Dutch government did not violate international law nor Federal law.

The Netherlands Supreme Court shows how Ukrainians and other nations may utilize international law to ensure the rightful restitution of Ukrainian cultural heritage. The Allard Pierson Museum in Amsterdam had hundreds of Ukrainian artifacts on display in 2014 when Russia invaded Crimea. The Russian-controlled museums in Crimea, the Allard Pierson, and the Ukrainian government attempted mediation first. In 2021, after mediation failed and subsequent

legal proceedings, the Dutch Supreme Court upheld a lower court's decision, citing the 1970 UNESCO convention stating that "the objects must be returned to the sovereign state that loaned them and the issue of ownership should be decided by a Ukrainian court."

16.6 Conclusion

The state of cultural property and preservation in Ukraine is alarming. UN experts have voiced the alarming nature of such actions by Russia. "We are also concerned by the severe targeting of Ukrainian cultural symbols…and there is a widespread narrative of [demonization] and denigration of Ukrainian culture and identity promoted by Russian officials, along with calls for ideological repression and strict censorship in the political, cultural and educational spheres." Russia's intent in suppressing and erasing cultural expression and sources of cultural identity is clear, Ukraine is not separate from Russia.

It is important to remember that, as of this paper, the war in Ukraine is ongoing. Various changes in cultural heritage status are inevitable in an armed conflict. This is especially true with this conflict because the Russian Federation is framing the military operation as not a destruction of cultural identity but rather a re-unification of wayward Russians.

Although this chapter focuses heavily on international organizations, there must also be a continued focus on intra-state efforts to preserve culture. One such organization that is essential within Ukraine is the Ukrainian Institute. It seeks to "Strengthen Ukraine internationally and domestically as a subject using the tools of cultural diplomacy. We promote better knowledge and understanding of Ukraine internationally and develop cultural relations between Ukraine and other countries." Engaging with Ukrainian-based organizations, both those that cater to a domestic audience and those that cater to foreign audiences, will provide the best insights into necessary legal responses and assistance.

Chapter 17

Repressive Laws Before the 2022 Invasion

17.1 Introduction

Since Vladimir Putin became president in 2005, Russia has increasingly restricted the rights and freedoms of its citizens. In 2025, Russia is an authoritarian dictatorship. Much of the repression has been achieved through the legal system, with Vladimir Putin as the legal puppet master. Peaceful public protests have been criminalized; independent media have been silenced and/or exiled; “foreign agents” and “undesirable organizations” have been stigmatized and banned; the list goes on. Russia under Putin also uses the legal system to whitewash its Soviet past, including falsification and distortion to justify its invasions of Ukraine. A good example of the fealty shown by the Russian judiciary to Putin took place on May 23, 2023, when Vyacheslav Lebedev, the Chief Justice of Russia's Supreme Court, met with President Putin at the Kremlin. During the televised meeting, the Chief Justice presented the president with a gift: a French map from the 17th century that depicted Europe without Ukraine, suggesting that Ukraine did not exist as a separate entity at that time. To view, click here. Another example: the Association of Lawyers of Russia, the leading private bar group, came out in support of the invasion.

In the years leading up to the invasion, Russia has adopted countless new laws, or amended existing legislation, to increase repression. The Russian parliament, the Duma, has been a willing enabler of Putin’s agenda. The judiciary does the president’s bidding. Russian prosecutors usually

receive from judges the verdicts they request, both criminal and civil, depending on the level of punishment that the authorities seek to impose.[38]

The instant chapter and those that follow aim to provide a discussion of specific repressive laws passed in Russia during Putin's presidency; yet the list is not exhaustive. Other repressive laws not touched on are discussed in texts and materials set out below and through the hyperlinks.

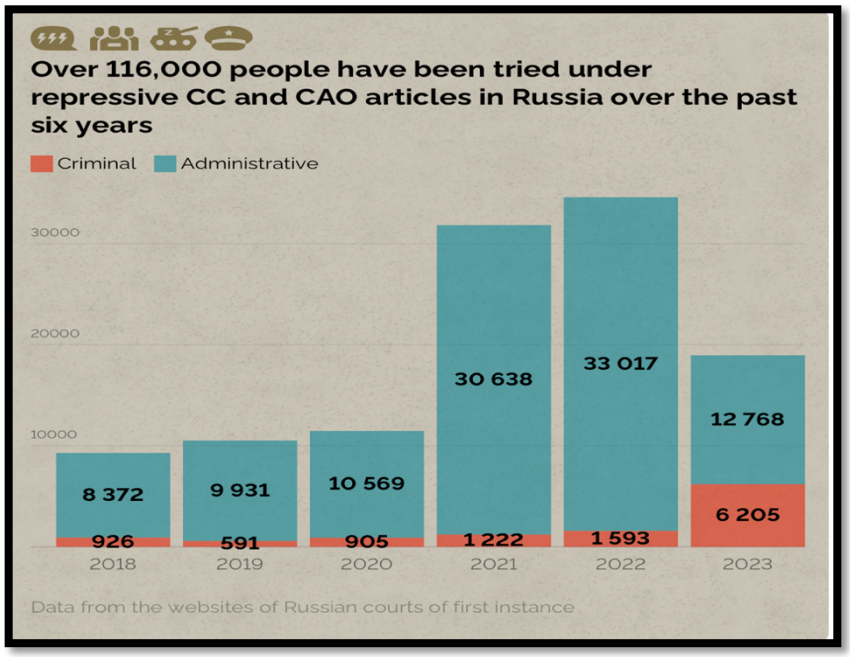
Although the full-scale invasion in February 2022 marked a significant turning point that divided the world into a "before" and "after," roots of repression run deep within Russian history and society. For most of its existence, Russia has been an authoritarian state, whether in the form of the Czarist Empire or as the Soviet Union. The end of the Cold War brought hope for the Russian polity to finally live under democratic freedoms, but on the heels of the Gorbachev thaw and Yeltsin short-lived liberalism in post-Soviet Russia came Putin authoritarianism. This chapter explores the repressive laws already in place prior to the 2022 invasion; the following chapter will examine the Kremlin's latest round of authoritarian measures that emerged to clamp down further dissent.

17.2 Repression Before the Invasion

Russians are often criticized for not opposing the regime or for speaking out against the ongoing war in Ukraine. However, this criticism is likely due in part to a misunderstanding of the overwhelming repression that citizens face under Putin's regime. In reality, the number of people who have been convicted under political and other charges during Putin's most recent presidential term alone has exceeded those recorded during prior USSR dictatorships.

17.2.1 Repression in Numbers

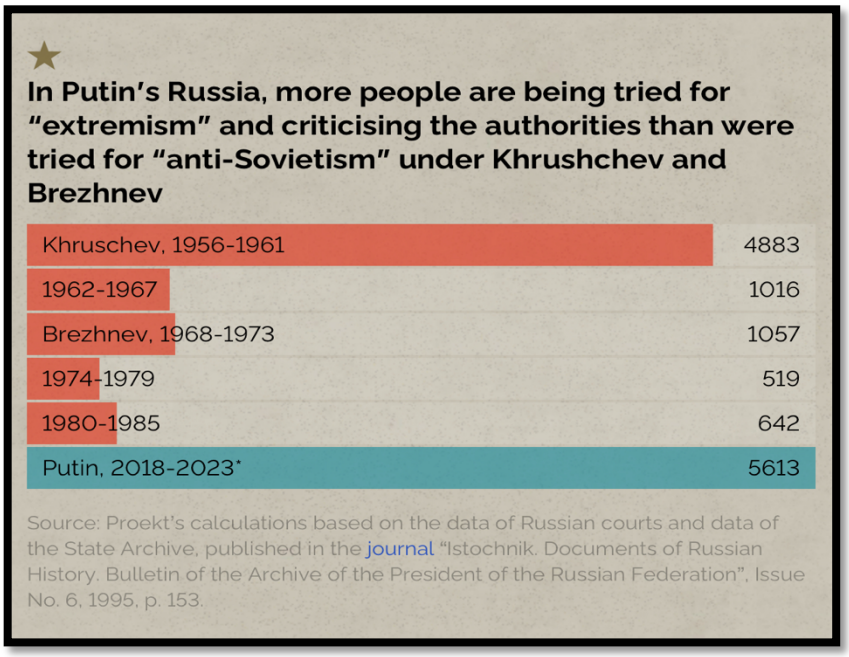
[38]In Soviet times, that system was mockingly referred to as telephone justice (telefonnoye parvo), a phrase that came into usage in the days of Joseph Stalin.



Source: https://www.proekt.media/en/guide-en/repressions-in-russia-study/

A study documenting repression between 2018 and 2023 reported that roughly 116,000 people have been subjected to direct repression in Russia. However, this is more of a rough estimate; if those who have been unjustly punished are also considered, the actual amount is much greater.

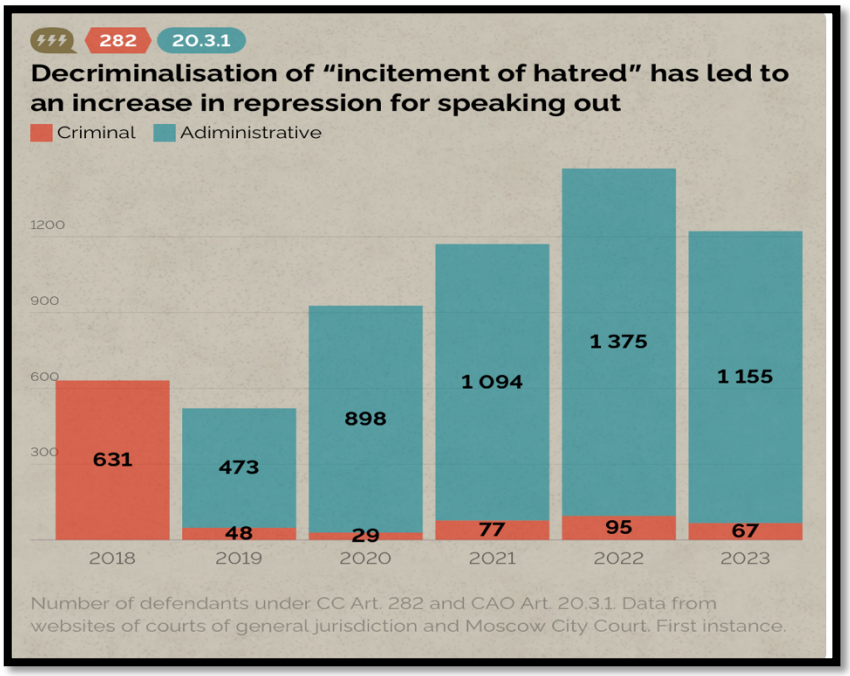
The study further explained how Putin's regime has tried more individuals for acts of "extremism" and criticizing authorities than those who were tried for "anti-Sovietism" during the Nikita Khrushchev and Leonid Brezhnev eras. It is likely that the victims of today's repressive regime are more numerous, since Russian authorities, much like the Soviets, have a wide range of mechanism at their disposal to charge and sentence dissenters. Even if the actual number of victims had been closely monitored, "they are only kept covertly, somewhere in the bowels of Centre E [the Anti-Extremism Center] or the FSB [the Federal Security Service]".



Source: https://www.proekt.media/en/guide-en/repressions-in-russia-study/

Between 2018 and 2023, more than 50,000 people were charged under the main repressive article — Article 282 "Incitement of Hatred or Enmity, as Well as Abasement of Human Dignity". After winning reelection, Putin initiated a thaw of Article 282 by partially decriminalizing it; however, it was left incomplete. Consequently, the number of individuals who have been prosecuted for "incitement of hatred and enmity" has grown exponentially. In total, more than 45,000 individuals have been punished for public statements that oppose the current regime.

As shown in the graph below, most cases brought against Russian citizens and foreign organizations were charged under "administrative" statutes, many of which are broadly construed to encompass any type of speech that has the tendency to "incite hatred" against Putin or the Russian government. Thus, although the decriminalization of the "incitement of hatred and enmity" has led to a decrease in criminal penalties, the sheer increase in administrative penalties has undoubtedly led much of the Russian population to live in fear of speaking out against Putin's regime.



Source: https://www.proekt.media/en/guide-en/repressions-in-russia-study/

The stabilizing factor in Russia today is identical to that which was practiced during the USSR: political repression. However, back then, the Criminal Code of 1926 contained all of the offenses under which millions of Soviet citizens were repressed, including treason[39], anti-Soviet propaganda, and agitation. Further, the USSR did not hide its motives beneath its laws: all dissidents were tried under special "political" articles.

In modern-day Russia, the laws are much more nuanced, and there seems to be no single code to punish and repress dissenters. Rather, the real motives of the state are hidden beneath a wide array of laws that have been amended so many times that they are no longer recognizable. Yet, these laws continue to be used by courts and the government to further repress Russians and others who oppose Putin.

Commentary

1. In the 2014 case *10P/2014*, the Russian Supreme Court upheld the constitutionality of Federal Law No. 121-FZ, Russia's "Foreign Agent" law. This law, which enabled the Russian Ministry of Justice to label Russian political organizations that received foreign funding as "foreign agents" without their consent, resulted in the widespread stigmatization of organizations that received this label as the term is nearly synonymous with espionage and treason in the Russian language. In spite of the fact that many early registrants were Russian NGOs who were in no

[39]Discussed in Chapter 18.

way associated with politics, the Russian Supreme Court interpreted the phrase "political activity" to mean any "activity which in its substance and aims is not limited to the needs of an organization itself, but obviously concerns both public interests in general and the rights and freedoms of everyone." By including activities such as public gatherings and marches for issues, such as those involving basic human rights under the umbrella of "political activity", the Russian Supreme Court ensured that Russia's Foreign Agent law could be arbitrarily used to portray organizations supporting positions contrary to the Russian government as enemies of the state in the eyes of the Russian public.

2. In the 2014 case *33-15382/2014*, the Rostov Regional Court and Russian Supreme Court refused Yevgeniy Vladimirovich Bulgakov's appeal to unblock his website. Access to his entire website "Worldview of the Russian Civilization" (www.razumei.ru) had been blocked on the basis of a judgment by the Kirovskiy District Court in Rostov-on-Don due to the presence of a pamphlet and e-book categorized as "extremist publications", in spite of Bulgakov's prompt removal of this content. Two pages of this website contained documentation of a prohibited political party, which were labeled "extremist materials". As of 2020, there were at least 12,000 judgements in which Russian courts had exercised their judicial powers to block access to online content.
3. In 2017 and 2018 respectively, the Yessentuki Town Court and the Stavropol Regional Court refused to open a criminal case against Chechen police investigators over the kidnapping and torture of Maksim Grigoryevich Lapunov, an openly homosexual man. Lapunov had been detained by authorities in the face of a 2017 campaign of persecution against LGBT individuals personally instigated by Ramzan Kadyrov, the President of Chechnya. According to *Novaya Gazeta*, there were reports of abductions, arbitrary detentions, and torture of men suspected of being gay – actions which had been carried out with the direct involvement of Chechen law enforcement officials acting on the orders of the highest Chechen authorities. Even armed with a large amount of evidence of physical abuse, the courts refused to open a criminal case in Lapunov's matter no fewer than five separate times.
4. **For further reading**, *see* (1) Timothy Snyder, *The Road to Unfreedom: Russia, Europe, America* (2018); (2) Catherine Belton, *Putin's People: How the KGB Took Back Russia and Then Took On the West* (2020); (3) David G. Lewis, *Russia's New Authoritarianism: Putin and the Politics of Order* (2020); (4) David Remnick, *The Weakness of the Despot*, The New Yorker (March 11, 2022); (5) Andrei Kolesnikov, *Blood and Iron: How Nationalist Imperialism Became Russia's State Ideology*, Carnegie Endowment for International Peace (Dec. 6, 2023); (6) Stanislav Klimovich, *From Failed Democratization to the War Against Ukraine: What Happened to the Russian Political Regime* (Feb. 27, 2023); (7) Kathryn Stoner, *The Putin Myth*, Journal of Democracy (April 2023); (8) Stephen Kotkin, *The Five Futures of Russia*, Foreign Affairs (April 18, 2024); (9) Anastasia Edel, *Why Russia Is Happy at War*, The Atlantic (June 9, 2024).

17.3 Deprivation of Fundamental Rights and Freedoms

In 2023, the International Federation of Human Rights[40] prepared report of the 50 most repressive laws adopted in since 2018, titled "The Last 50." Of the fifty laws that were adopted,

[40]The International Federation for Human Rights is an international human rights NGO federation composed of 199 organizations from 116 countries.

most of them either severely restricted or eliminated the fundamental rights and freedoms of Russian citizens and foreign organizations.

The primary fundamental freedoms discussed below include freedom of speech, freedom of expression, and freedom of assembly. Although discussed separately, these freedoms overlap considerably with one another, and involve other rights that are not discussed at length, such as access to unbiased news and media and unrestricted access to the Internet.

17.3.1 Freedom of Speech

In 2017, the Russian government amended Article 15.1 of the "Federal Act on Information, Information Technology, and Information Protection" and Article 5 of the "Federal Act on the Protection of Children from Information Harmful to their Health and Development". The overall amendment was tactlessly titled "Inciting Minors to Commit Illegal Actions."

Formal conditions for the start of Internet censorship began in 2012 following the amendments to Article 5 above. Soon after, the "Unified Register of Prohibited Sites" and the agency responsible for it, Roskomnadzor[41], were created. The "Federal Service for Supervision of Communications, Information Technology, and Mass Media," also known as the Roskomnadzor, is a Federal Executive Authority of the Russian Federation, and is tasked with the following functions: control and supervision of mass media, mass communications, information technology, and telecommunications, to name a few.

Initially, Article 15.1 was not formulated for the *protection of* children. Rather, the article *limited access to* child pornography, ways to commit suicide, and the manufacturing and purchase of illicit drugs, as well as information recognized by the court as potentially extremist. However, in 2017, the amendments introduced an additional prohibition of information disseminated on the Internet and other public forums, specifically focusing on information that may "[incite] minors to commit illegal actions."

Essentially, both articles banned the dissemination of information "aimed at inducing or otherwise involving minors in the commission of unlawful acts endangering their life and/or health or the life and/or health of others." Although the amendment appeared to protect minors from "harmful" information, the amendment actually restricted freedom of speech and freedom of assembly for non-minors and organizations participating in or calling for rallies. Thus, any information on the Internet or any related public forum regarding rallies that was not approved by the authorities was considered "involvement of minors in the commission of unlawful acts," especially if the information did not contain an age restriction.

In January 2021, the authorities forced social media platforms to delete any and all materials "inciting" minors to participate in rallies in support of Alexei Navalny, the well-known Russian opposition leader, lawyer, anti-corruption activist, and political prisoner.[42] Videos and posts promoting the rallies quickly went viral, particularly on TikTok, YouTube, and Instagram, as

[41]The formal name of the entity is the Federal Service for Supervision of Communications, Information Technology, and Mass Media.
[42]Discussed in Chapter 19.

well as hashtags involving "Free Navalny". Young people also filmed themselves dressing for upcoming rallies and removing Putin's portrait from classrooms to hang Navalny's in its place.

Several news articles recounted that the media regulator, Roskomnadzor, "quickly jumped" to pressure social media platforms to remove the material that it claimed, "called for minors to participate in protests, warning that it was illegal for them to do so." After a few days, the Roskomnadzor reported that most of the videos and posts had been deleted, yet the owners of the social media platforms expressed uncertainty about the accuracy of how many posts and videos were removed. Although the attempt at restricting social media communication didn't stop protesters form showing up in the tens of thousands of dozens of cities across Russia, 3,500 demonstrators across the country were detained by Russian authorities.

17.3.2 Freedom of Expression

Repression of free speech in Russia overlaps greatly with the freedom of expression. Although there have been countless amendments limiting the freedom of expression over the past six years, one of the earliest laws involved the alleged disrespect of authorities under "Lugovoi Law". "Lugovoi Law" was named after the parliament member who sponsored the law and was entered into force in February 2014.

The law initially authorized the Prosecutor General and its' deputies to *ask* Roskomnadzor to block access to media that disseminated calls for mass riots, "extremist" activities, and participation in unsanctioned mass public events. The law also required the prosecutor's office to provide Roskomnadzor with the name of domains, web addresses, and specific pages where banned content could be identified, so that the agency could notify the Internet service providers about the banned content. After being notified, the providers had to immediately block access to the website and remove the content.

In action, however, the authorities failed to follow the provisions of the newly amended law. Kremlin officials *were supposed* to notify Internet service providers regarding which of their publications called for illegal actions, but Roskomnadzor failed to inform providers what banned material their websites actually contained. Further, when there were violations of the law, the authorities never told providers "what exactly [they were] supposed to do to remove the blocking of the website[s]." It is highly likely that many of those sites remain blocked today.

Five years later, Russian authorities amended two laws relating to the Lugovoi Law, both of which created even more issues for alleged violators. First, the amendments to the "Code of Administrative Offences of the Russian Federation" introduced administrative sanctions for the online publication of content that was deemed disrespectful towards Russia and its countries' symbols, the President and other public officials, and the State Constitution. The sanctions included fines amounting up to 100,000 rubles [approximately USD 1,000] for the first offense, up to 300,000 rubles for the second, and administrative arrests up to a period of fifteen days for repeat offenses.

Because the amendment failed to clearly define what amounted to "disrespect," the law has been applied very broadly and thus, has been used arbitrarily to prohibit the expression of any criticism against the Kremlin and its' politicians. Recently, the SOVA Research Center[43] cited over 133 cases of administrative penalties under this amendment in a period of only four years. One stark example involved a court in Krasnodar that fined Lev Gammer, a coordinator of Navalny's local headquarters, for stating that "Putin is doom for Russia".

The second amendment to the "Lugovoi Law, on "Information, Information Technologies, and the Protection of Information," detailed the procedure for restricting and blocking content that was deemed disrespectful by Roskomnadzor. Essentially, the law extended the scope of the "Lugovoi Law," so the blocking mechanism for "disrespect" now occurred at the request of the Prosecutor General's office instead of the courts.

Similarly to the first, the wording of this amendment was extremely vague, and did not provide for what an "indecent form" included or what was meant by "bodies exercising state power". Thus, there was broad application of the newly amended law by bodies who did not originally have the authority to enforce the law prior to the amendment. The Supreme Court clarified that the law protects and allows the President, members of the Federal Assembly and the Kremlin, the courts, local deputy assemblies, and government to regulate "disrespectful" content. In practice, Russian courts also often consider the police and the FSB to be "bodies exercising state power." Consequently, lower-level authorities now have the ability to control and restrict freedom of expression throughout the country.

17.3.3 Freedom of Assembly

Aside from repression of free speech and freedom of expression, Russian citizens and organizations have also been banned from protesting in the public sphere. Three specific laws amended in December 2020 added new requirements for public protest organizing, criminal sanctions for obstructing traffic during public protests, and additional public protest restrictions.

Regarding the amendments to the Federal Law on "Meetings, Rallies, Demonstrations, Processions, and Pickets," new requirements were added for the organization of public protests, including new restrictions on their form, place, time, and manner. The amendment also targeted journalists by prohibiting them from "carrying out agitation" in support of, or against, objectives of the public event they were covering. Additionally, the definition of "public event" was expanded to include "a mass simultaneous presence and/or movement of citizens." Because this language is so broad, a journalist "carrying out agitation" could include any overt participation in or even presence at a public event, and thereby, violate the law.

[43]The SOVA Center for Information and Analysis is a Moscow-based nongovernmental organization and think tank conducting sociological research primarily on nationalism and racism in post-Soviet Russia.

Additionally, the extension of the definition of "public events" to include "picket-lines" suppressed the only form of public protest which originally did not require any prior approval from authorities. Because Russian authorities stopped authorizing opposition rallies a long time ago, picket-lines were the only form of public protest that did not require prior approval. Since any form of public protest now required prior approval, local officials were given the final say in where, when, and how the protest could proceed. If the organizers disagreed with the local authorities, they had to either cancel the protest or face the repercussions of violating the amendment.

As for the next amendment, Article 267 of the Criminal Code of the Russian Federation criminalized the obstruction of traffic and provided new sanctions for violators. Initially, Article 267 provided only for punishment of protestors who put transport vehicles or communications out of commission, or blocked roads, if such blockage caused serious harm or major damage. Even though the purpose of the article was to apply in exceptional cases, in the first months of 2021 following the amendment, more cases of blocking transport communications were initiated than in the previous ten years.

Punishment for "deliberate obstruction" of transport communication, infrastructure, and the hindrance of the movements of transportation means and pedestrians on the streets often included a fine of at least 100,000 [approximately USD 100] and up to 300,000 rubles. If the courts did not deem a fine satisfactory for the level of the violation, they could also require up to 240 hours of forced labor and up to one year of imprisonment.

The grounds for imposing criminal liability under Article 267 was allowed if the action "pose[d] a threat to the life, health, and safety of citizens or the threat of destruction or damage to the property of individuals [and/or] legal entities." However, what was meant by "threat" was not specified by the legislature; thus, there was no clear criteria by which to distinguish a situation that posed a threat to the life, health, and safety of citizens, etc. from a situation that did not pose such a threat. Consequently, the authorities abused this ambiguity and, in applying the law, wrongly sanctioned those who participated in public events and protests.

Lastly, the amending of the Federal Law on "Assemblies, Rallies, Demonstrations, Processions and Picketing" introduced new restrictions for the funding of public protests and manifestations of more than 500 people and organizations. This law forbade Russian citizens, organizations, and companies from using or receiving money for public events from donors, such as foreign governments and organizations, international organizations, foreign citizens, "foreign agents", and "anonymous" donors.

In effect, this amendment made it extremely difficult for independent non-government organizations (NGOs), and people affiliated with them, to organize and hold public events. The essential provisions are included below:

- Individuals who were labeled as "foreign agents" could no longer apply for or finance such events.

- ❖ “Anonymous” donations, money received from “illegal” sources, and any leftover funds after the event had to either be returned to the donors or sent to the state.
- ❖ If an assembly expected to host more than 500 participants, the events’ organizers were required to use a bank account for raising and spending funds; however, the amendment also prohibited the use of cash and multiple bank accounts to collect money.
- ❖ Donors were required to: provide all of their identifying information, verify that they were Russian citizens, and provide evidence that they were not prohibited from funding assemblies.
- ❖ Event organizers had to provide a financial report to the authorities, which was often used to hold the organizers accountable for any “irregularities”.

These new requirements created excessive obstacles for protest organizers and donors. Both parties had to deal with bookkeeping, checking donations for possible violations of the law, returning “illegal” donations, preparing reports, etc. Fines for violators could be up to 20,000 rubles for organizers and up to 15,000 rubles for donors. Donors also faced the risk of possible reprisals for financially supporting potentially illegal protests. In practice, these restrictions effectively denied all groups from holding peaceful assemblies and forced such groups to quit participating in and supporting public event-organizing altogether.

Aside from the logistics of organizing a protest, there were other means employed by authorities to repress the right of free assembly. These included punitive civil lawsuits against protest organizers, the excessive use of force by the police, unfair trials for protestors, and disproportionately severe sanctions for violators.

Commentary

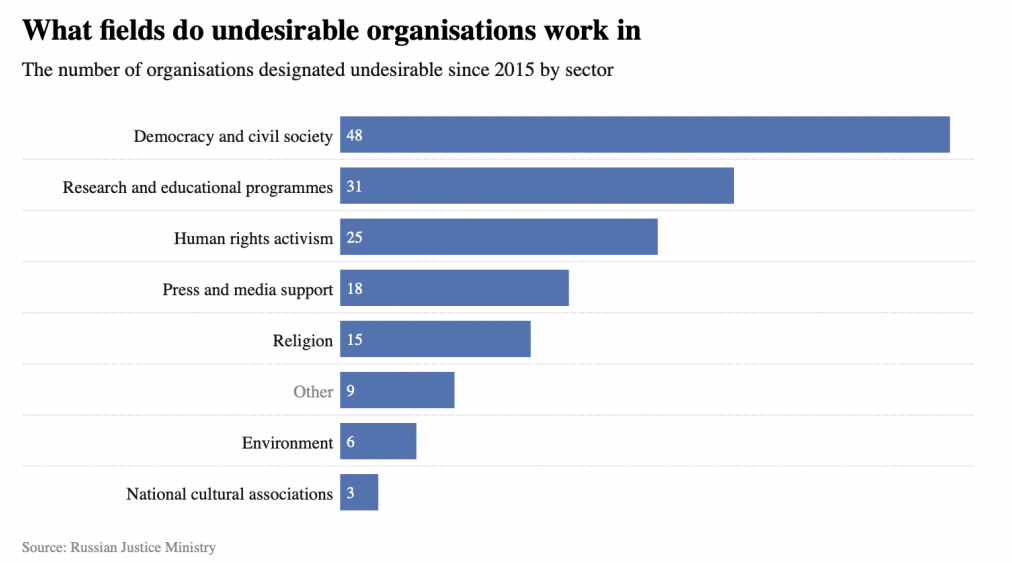
1. This past May marked the twelfth anniversary of the "March of Millions," also known as the "Bolotnaya [Square]" protests, when tens of thousands of demonstrators flooded the streets of Moscow to demand fair parliamentary and presidential elections. These protests followed Vladimir Putin's controversial victory in the March 2012 presidential election. In 2012, key figures like Alexei Navalny and Boris Nemtsov played prominent roles in leading the movement. As one of the participants of the protest described, "[it] was so fun and interesting, and we were all so absurdly optimistic. And then it came to an end. Some of [the protest leaders] are dead or in prison; others have been forced into exile or silence. The country came to an end too. How strange it all was. How naive and stupid. And, yet, how incredible it had all been.” Today, however, a protest of that scale being held in Moscow seems almost unfathomable.

“Putin must step down!” See image here.

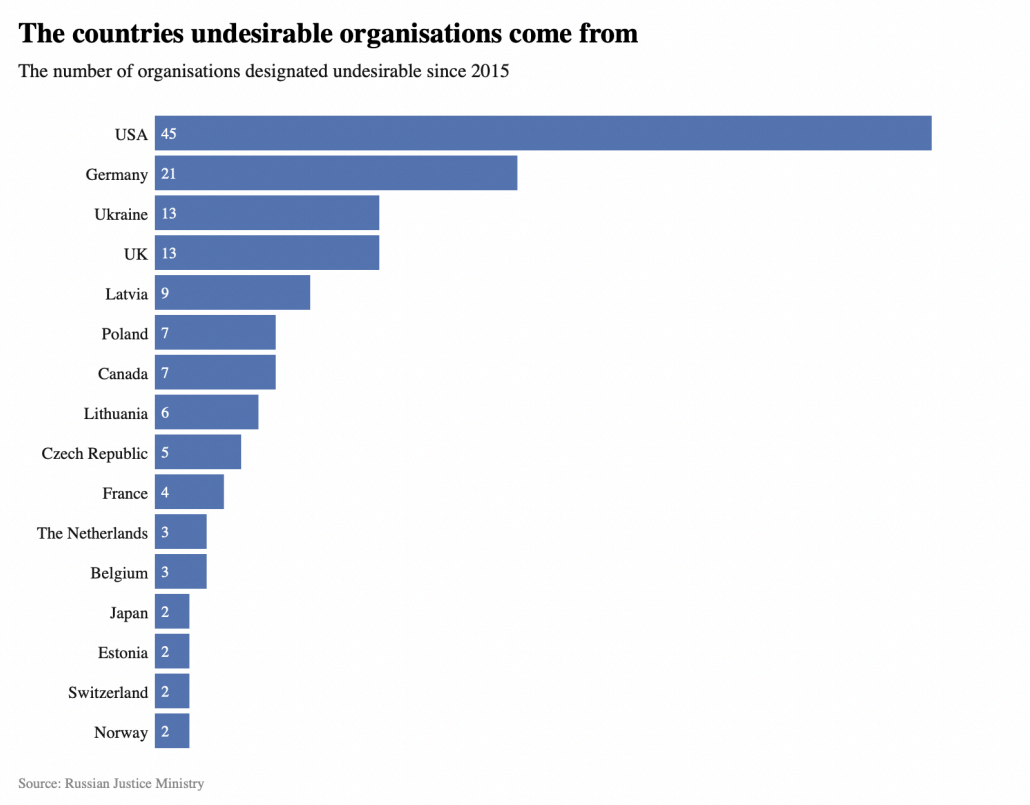
2. **For further reading**, *see* (1) *Democracy Has to Be Fought For': Twelve Years After the Bolotnaya Square Protests, Meduza's Russian Readers Reflect on What Went Wrong*, Meduza (May 16, 2024); (2) *The Bill "Without a Catch"*, OVD-Info (June 1, 2021); (3) *The Putin Regime Will Never Tire of Imposing Internet Control: Developments in Digital Legislation in Russia*, Council on Foreign Relations (Feb. 22, 2021); (4) *The Last 50: Russian Repressive Laws Since 2018*, Mediazona (June 8, 2023); (5) *Russia: No Place for Protest*, Amnesty International (July 2021).

17.4 "Undesirable Organization" Labeling

What are "undesirable organizations"? It is not entirely clear, and it is even less clear why the amendment was needed at all, since its text is so vague. Any group that is deemed to present "a threat to the foundation of the constitutional order of the Russian Federation" is undesirable. In its simplest terms, an undesirable organization is any foreign or international organization that opposes the Kremlin's views. Such groups could be news and media outlets; organizations engaged in political, cultural, and educational activities; organizations in support of democratic institutions; investigative projects; religious organizations; and NGOs involved in election rights.



Source: https://novayagazeta.eu/articles/2024/04/17/much-to-be-desired-en



Source: https://novayagazeta.eu/articles/2024/04/17/much-to-be-desired-en

As of 2024, there are now more than 140 organizations on Russia's "undesirable" list. Although Russia claims that all of these organizations are a threat to the state's national security, it is evident that the list is just an attempt by Russian authorities to silence and repress any and all voices that do not align with the Kremlin's politics.

Once an organization is added to the list, it must completely stop their work inside the country; if it does not, it can face hefty fines and criminal repercussions. Further, after an organization is labeled as "undesirable" Russia authorities often demand that the organization label all of its content as produced by "foreign agents". If organizations refuse to so label their content, it is forced to either pay hefty fines for noncompliance with the "foreign agents" law, or must shut down their operations in Russia.

Not only are foreign groups targeted and banned from working in the state, but Russian citizens are also punished for cooperating with any organization on the "undesirable" list. Any citizen or entity that is discovered to have been cooperating with an organization deemed "undesirable" risks facing a potential fine for the first violation and, potentially, criminal charges with a maximum punishment of up to five years imprisonment for further cooperation. Additionally, anyone inside Russia who sends news tips to news organizations and similar groups face possible administrative and criminal responsibility.

Although citizens inside Russia are legally allowed to read material published by "undesirable organizations," they are forbidden to share, repost, or include hyperlinks to any future or past material from the organization. Regardless of whether they may *legally* read or have access to this information, Russian citizens run the risk of facing administrative and criminal responsibility if their social media pages have links to material from an "undesirable organization," even if the post was made years before the law came into effect.

Although the repression of "undesirable organizations" began around 2015, NGOs were not directly targeted until the passage of the amendment of Article 3-1 of the Federal Law on "Measures to Influence Persons Involved in Violations of Fundamental Human Rights and Freedoms, Rights and Freedoms of Citizens of the Russian Federation". Specifically, Article 3-1 was amended to expand the designation of foreign and international NGOs as "undesirable" for alleged interference in state elections.

Since 2018, there have been at least three amendments further harshening the laws regarding "undesirable organizations" and even more severe punishments for collaboration with such organizations. By August 2021, Putin's regime had substantially prohibited any collaboration with an "undesirable organization," while increasing the punishments from administrative to criminal responsibility, including up to six years imprisonment.

Initially, NGOs were merely labeled "undesirable" for the following reasons: promoting or obstructing the nomination and election of Russian candidates; promoting or instructing the conduct of a referendum or its outcome; and for any other participation in election or referendum campaigns. However, in 2021, amendments to the two laws, "Counteracting the Legalization (Laundering) of Criminally Obtained Incomes and Financing of Terrorism" and "Measures of Impact on Persons Involved in Violations of Fundamental Human Rights and Freedoms," expanded the designation of "undesirable organizations" and further prohibited individuals from participating in activities conducted by organizations outside of Russia.

The amendments also created mandatory controls over the receipt and/or expenditure of funds or property from foreign sources by NGOs. This led many NGOs who acted as brokers of financial transactions for organizations already designated as "undesirable" to be deemed undesirable and added to the ever-growing list. Thus, not only did the laws impose an increase in financial oversight for independent society organizations, but they further undermined the freedom of association by holding individuals and organizations liable for involvement in the activities of other "undesirable organizations".

For a complete list of the entities that have been labeled as "undesirable" since 2015, please see the list.

17.4.1 "Foreign Agent" Status

Since 2012, "foreign agents" laws have been actively developing in Russia. They have now become one of the most prominent instruments of repression against civil society today. Initially, the laws were applied only to NGOs engaging in "political activity" and were created as a means of ensuring transparency of the activities of recipients of foreign funding. After the law was passed, though, waves of protests ensued, likely in retaliation following accusations of voting fraud that gave the Putin-supported United Russia Party a slim parliamentary majority.

In response to the accusations and subsequent protests, Putin stated that "[i]t is necessary that the laws which were passed…make their way into society correctly, peacefully and in accordance with the letter and spirit of the law…But in no case (may they) allow any destructive forces to shake up the situation or moreover allow them (to do so) in a destructive-terroristic way." Putin has continued to use this rhetoric to invariably justify the passage of numerous repressive laws and to further to silence the "destructive forces" that dare to shake up the country.

As mentioned, "foreign agents" laws initially applied to NGOs, but the 2019 amendments to the Russian Federation Law on "The Mass Media" and the Federal Law on "Information, Information Technology, and Information Protection" expanded the "foreign agents" notion to encompass individuals. Thus, anyone who received foreign funding, disseminated materials from foreign mass media sources, and took part in the creation of such materials were required to register as a legal entity and to label their posts as "Media Foreign Agents".

The first groups affected by these laws were human rights defenders, prominent opposition leaders, and journalists; yet two years later, the law expanded the reach of the "foreign agents" legislation by including unregistered NGOs. Thus, even though these organizations did not have a legal entity, they were required to label all their materials and regularly report to the Ministry of Justice on the use of foreign funding.

If forced labeling of individuals and organizations was not enough, Russia also implemented criminal sanctions for noncompliance with the "foreign agents" laws under Article 330.1 of the Criminal Code of the Russian Federation. The sanctions included up to two years in prison for failure to submit "foreign agents" registration documents and for violations of the rules for "Media Foreign Agents".

Alongside criminal sanctions, the amendment to the Code of Administrative Offenses of the Russian Federation introduced fines for dissemination of materials by "foreign agent" organizations and citizens that failed to label their material and mention their "agent" status. Any publication by an "agent" was required to include a 24-word disclaimer about their status; agents whose publications lacked the disclaimer were fined up to 50,000 rubles.

One of the last "foreign agents" laws amended before the full-scale invasion of Ukraine included the Code of Administrative Offenses of the Russian Federation. This amendment required a "foreign agent" label to be put on all content distributed by a physical or legal person in Russia if the content was created or published by either a foreign media or Russian legal entity that had already been deemed an "agent". Not surprisingly, this amendment created yet another obstacle for Russian individuals and entities to disseminate independent media in Russia. Although the

number is much greater today, several hundred fines were issued in 2021 to "agents" who did not use the "foreign agent" label.

17.4.2 Impact on Elections

The chilling effects of forced labeling of "undesirable organizations" and "foreign agents" have subsequently led to stringent restrictions on individuals running in Russian elections. This has been especially true for opposition leaders and political opponents of Putin and the current regime.

A prevailing feature of a dictatorship is that the power of a state's political system is concentrated in the hands of either one leader, or a small group of leaders. Russia is no exception. With loyalist security forces, a subservient judiciary, a controlled media environment, and a legislature consisting of a ruling party, it is evident that the Kremlin and its president holds all the power. Because of this, Putin has been able to manipulate elections and suppress genuine dissent and opposition.

After conducting its annual methodology for the year 2021, the Freedom House[44] gave Russia a score of 5/40 in regard to political rights. The reasons for this score are reminiscent of the events that took place in Soviet Union and Czarist Russia. The historic lack of political rights has played a huge role in the current scoring, contributorily due to factors such as a dictator-like electoral process, a lack of political pluralism and meaningful participation in elections, and a corrupt, authoritarian government.

However, there were also pivotal moments in 2021 that likely influenced the current score. As discussed briefly, the arrest and detention of Navalny resulted in some of the largest protests Russia has seen in decades. Coupled with the continued repression of the freedom of assembly, Russian authorities also used excessive force against demonstrators, detaining more than 11,500 people. Next, the expansion of existing legal restrictions on "undesirable organizations" and "foreign agents" contributed to an increase in the outright censorship of the Internet, social media, and other public forums. Last, the September elections for the Duma were marked with "extensive irregularities," which left the ruling United Russia party with a substantial supermajority.

Indisputably, the use of the legal system to restrict the rights and freedoms of its citizens has contributed significantly to the lack of political rights in Russia. So, what laws and subsequent amendments have led Russia to where it is today?

As mentioned previously, the amendment to Article 3-1 of the Federal Law on "Measures to Influence Persons Involved in Violations of Fundamental Human Rights and Freedoms, Rights and Freedoms of Citizens of the Russian Federation" expanded the designation of foreign and international NGOs as "undesirable" for alleged interference in Russian elections. Thus, NGOs

[44]The Freedom House issues its annual "Freedom of the World" global report on political rights and civil liberties.

and other support groups' efforts to establish fair election rights in Russia have all but been extinguished.

Next, in 2020, the amendment to "Certain Legislative Acts of the Russian Federation" expanded the prohibition of citizens from being elected to public posts if they had previously been convicted "for a range of crimes of average gravity". Following the amendment, those convicted were unable to run in elections for five years after their sentences were either served or cancelled. An example of how this played out occurred in October 2019 when opposition politician Yulia Galyamina declared that she was running for the State Duma. Soon after, she was accused of several administrative offenses, which then became criminal charges under Article 212.1. Not surprisingly, she was found guilty of all the alleged offenses and was prohibited from taking part in the election.

The law also introduced changes to the Election Laws by authorizing the Election Commission to unilaterally block access to information and materials that violated prohibitions on election lobbying. In effect, websites with election campaign materials and other election information were subjected to extrajudicial blocking if the content contradicted the "Certain Legislative Acts of the Russian Federation" amendment. Although this law was introduced before the 2021 Duma elections, the media landscape has essentially been destroyed, so there has been no need to enforce the law since.

Last, the amendments to the "Act in Basic Guarantees of Electoral Rights and the Right to Participate in Referendums for Citizens of the Russian Federation" and the "Act on the Election of Deputies to the State Duma" prohibited anyone who was involved in the activities of an "extremist" or "terrorist" organization from running in an election of *any* government body. Consistent with other amendments, the restrictions of this act are very broad and thus, apply to anyone who was a leader, member, or merely an individual who *may* have been involved "extremist" or "terrorist" organization activities, as well as anyone who had ever expressed verbal approval or provided financial, material, advisory, or other support to such organizations.

This law came into force literally days before a hearing on the designation of Navalny's Anti-Corruption Foundation as an "extremist" organization. The hearing ultimately resulted in a ban on Navalny and his supporters from participating in the September 2021 parliamentary elections.

Commentary

1. Some countries use the Russian draconian laws as a source of inspiration. For instance, Georgia's Parliament, controlled by the pro-Russian Georgian Dream party, passed legislation often compared to the Russian "foreign agents law." Under the legislation, media and non-governmental organizations that receive over 20% of their funding from abroad will have to register as "organizations acting in the interest of a foreign power." While the Georgian parliament argued that the law will ensure transparency of money flowing to support NGOs and support Georgia from foreign interference, its opponents believe the real reason for the legislation was to stifle dissent. The political situation in Georgia remains volatile. In

November 2024, Prime Minister Irakli Kobakhidze announced the suspension of Georgia's European Union accession process until 2028. He accused European politicians and the European Parliament of using EU accession and grants as instruments of "blackmail." This decision was praised by Russian President Vladimir Putin, who admired the Georgian administration's "courage and character." Protests followed. President Salome Zourabichvili has rejected the legitimacy of the current parliament and has stated she will not step down until a legitimate parliament is elected.

2. The United States also has a federal law criminalizing those who are unregistered foreign agents of a foreign government. The Foreign Agents Registration Act (FARA), enacted in 1938, requires individuals or entities that act as agents of foreign principals in the United States to register with the Department of Justice (DOJ) and disclose their activities, finances, and relationship with the foreign principal. Failure to register or make false statements under FARA can result in significant fines and imprisonment. The US Government defends FARA as a transparency measure and condemns Russia's law as oppressive. However, both laws assign a level of suspicion to foreign-funded entities. The difference is primarily in degree: In the US under FARA, entities disclose their funding and activities without an overt "label," which makes it seem less stigmatizing. However, being investigated under FARA can still carry reputational harm, particularly in high-profile cases (e.g., NGOs accused of working for adversarial governments). In Russia, the stigma is formalized through the "foreign agent" designation, which is often perceived as a tool to delegitimize civil society organizations and individuals. However, the line between "disclosure" and "delegitimization" is not clear-cut. Those defending FARA also maintain that the US foreign agent law operates in a democratic system with checks and balances, where individuals and organizations have the right to challenge government actions in court. In Russia, lack of judicial independence and systemic constraints on dissent mean that a "foreign agent" designation often serves as a political tool to marginalize critics and independent organizations. The DOJ has also prosecuted and obtained criminal convictions under FARA of individuals for acting as unregistered agents of a foreign country (recent cases involved acts on behalf of Turkey, South Korea, China and Ukraine); meaning that the person acted on behalf of a foreign state but failed to register as a "foreign agent" under FARA. We leave for the reader to decide.

Protestors' outside of Georgia parliament says "No to Russian Law"; See image here.

3. **For further reading**, *see* (1) Natalia Glukhova, *Much to Be Desired: A Law Supposedly Passed to Protect Russia from Extremism Has Since Day One Been Used to Silence Dissent*, Novaya Gazeta Europe (April 17 2024); (2) Robyn Dixon, *Georgia Enacts Russian-Style 'Foreign Agent' Law in Victory for Moscow*, The Washington Post (May 28, 2024); (3) *US to Pause $95 Million Assistance to Georgian Government Over 'Foreign Agent' Law*, Reuters (August 1, 2024); (4) Katherin Machalek, *Factsheet: Russia's NGO Laws*, Freedom House; (5) Iskra Kirova, *Foreign Agent Laws in the Authoritarian Playbook*, Human Rights Watch (Sept. 19, 2024); (6) Samuel Rebo, *FARA in Focus: What Can Russia's Foreign Agent Law Tell Us About America's?*, Journal of National Security Law & Policy, Vol. 12, No. 277 (2022); (7) *A Complete Database of Foreign Agents and Undesirable Organizations*, OVD-Info (2024).

17.5 Back to the USSR

A recent study conducted by exiled Russian journalists revealed that Russia is more politically repressive today than the Soviet Union under all leaders since Stalin. According to the study, over the past six years, the Putin regime has indicted more than 5,600 Russians on explicitly political charges. This number is significantly higher than in any other six-year period of Soviet rule following Stalin's death. In addition to criminal sentences, more than 100,000 individuals have been tried on administrative charges. These charges often impose hefty fines and even forced labor for up to thirty days without an appeal. Because administrative punishments are administered and implemented quickly, there is no real opportunity for a fair appeal process. In terms of repression, the study distinctly concluded that Putin surpassed all of the Soviet leaders long ago, except for Stalin.

Putin's actions to remain in power are a stark reminder to the days of Stalin and his reign over the USSR. Presidential elections in 2024 gave President Putin a fifth term in office, the longest of any Russian president. As of 2024, Putin has served as president for approximately 20 years cumulatively, and this excludes his time as prime minister. This is how it transpired, all in formalistic accordance with the law. Under the 1993 Russian Constitution, a president could serve two consecutive terms of four years each (later extended to six years in 2008). Putin served as president from 2000 to 2008 (two terms) and was constitutionally barred from running for a third consecutive term. To remain in power, he became prime minister from 2008 to 2012 under Dmitry Medvedev's presidency, during which the presidential term was extended to six years. In 2012, Putin returned to the presidency. In 2020, Putin introduced sweeping constitutional amendments that included a provision resetting presidential term limits for himself and any future president seeking reelection. The amendment package, including the term reset, was quickly approved by the Russian parliament (State Duma) and the Constitutional Court. The final step was to get approval from the Russian people. In a nationwide 2020 referendum, election officials announced that 78% of voters approved the amendments, The now duly- approved amendments reset the term count for Putin and any future president, allowing Putin to run for two additional six-year terms starting in 2024. Putin, now 72 years old, can run again in 2030 and stay in power until 2036, when he would be 83 years old, effectively extending his rule to a potential total of thirty-six years as president.

17.5.1 History Rewritten

A good resource for this topic is James C. Pearce *The Use of History in Putin's Russia* (2020). The book analyzes the ways in which Putin's Russia uses history to create a broad coalition of consensus and forge a new post-Soviet national identity. There is nothing insidious in this effort. As we discuss in Chapter 1, every nation lies about its history, constructing its historical narrative selectively, often minimizing or omitting darker periods while emphasizing and glorifying aspects of the past that align with desired national ideals or a positive self-image.

Pearce points out that Russia has been described as a country walking forwards facing backwards. As he notes, the past is very present in the halls of the Kremlin, and surrounds the Russian public from their bus stops, through school, bookshops, parks and all the way home to their television and computer screens. In the Russian state's view, patriotism forms the basis of Russian society. As Pearce observes, every schoolchild in Russia today has grown up entirely in the Putin era, making his study of the textbooks and class assignments students receive an invaluable window into the uses of history. The following essay expands on this topic.

Jade McGlynn

Imposing the Past: Putin's War for History

War on the Rocks (2023)

A great deal has been written about Vladimir Putin's relationship with history: the way it fascinates him, the way it inspires him, and the way it distorts his thinking. Yet, insightful as much of this analysis is, it does not always convey the extent to which Putin is actually fighting the West over control of historical narratives. It's not simply that Putin believes history has destined Russia for greatness. He also believes that appreciating this fact is a prerequisite for fulfilling it. For the past decade, Russian politicians and state-aligned media have insisted that foreigners are waging a forever war against Russian history, allegedly aimed at destroying the very essence of Russian identity. In response, the Russian state has launched an onslaught of historical propaganda aimed at convincing Russians that they are part of a great nation resisting historical and cultural colonization. Putin invaded Ukraine, at least in part, to impose his view of the past on a country that he feared was willfully and maliciously misremembering it.

[subtitle omitted] In 2016, right outside the Kremlin, Putin unveiled a statue of Grand Prince Vladimir, the ruler of the Orthodox medieval polity of Kyivan Rus. It stands at a petty 10 centimeters taller than Ukraine's statue of the same Grand Prince. Ukrainian and Russian historians have long sparred over the legacy of this medieval empire. To Putin, Rus is the first Russian state and the common point of origin for both Ukrainians and Russians. Furthermore, it is proof that Ukraine, as a country, people, culture, and identity, does not really exist. It is important for Russia's leaders to maintain this belief because, if Ukraine is a separate nation and culture, then Russia's claim to the civilizational legacy of Kyivan Rus would disappear with it, undermining the foundations on which the Russian state has constructed its post-Soviet identity.

The Great Patriotic War, Russia's term for the Soviet Union's war against the Nazis from 1941 to 1945, lies at the center of Russian memory politics and post-Soviet identity. Having nationalized the Soviet victory as a Russian one, the Kremlin sees the victory over Nazism as having confirmed Russia's right to a sphere of influence — a right also endowed by Russia's inheritance of Kyivan Rus. To question this post-1945 right, or to sully the memory of the Great Patriotic War in any way, regardless of accuracy, is criminal — in the literal sense.

In 2020, Vladimir Putin ushered in sweeping new legislative amendments that amounted to a new Russian constitution and included codification of the duty to 'defend historical truth' and

'protect the memory' of the Great Patriotic War. Such phrasing reinforces the notion that memory and truth are under threat by alternative — Western — versions of the past.

In the Russian official memory — and law — there is no space for the Red Army's mass rapes in Berlin or the post-1945 Soviet occupation of Eastern Europe. In this context, restrictive legislation did not come out of the blue: the Russian government, media, and — to some extent — public had carefully laid the groundwork for it far in advance, working as memory makers to push history into the heart of Russian political and popular culture. The efforts they undertook formed part of the Kremlin's intensive use of selective history to define what it means to be Russian, to justify its own rule, and to project power at home and abroad. And it worked. Arguably, the only truly unifying national idea for many Russians is the Great Patriotic War: it is one of the few topics on which almost all Russians agree, with 89 percent feeling pride in the Great Victory according to a poll conducted in September 2020.

Of course, historical propaganda is hardly unique to Russia. Glorifying the past is a fundamental facet of building national identities. Wars over historical narratives between and within societies are increasing around the world, from the battle between President Trump's 1776 Commission and the 1619 Project to China's rediscovery of World War II as a new form of anti-Western nationalism. As the historian Margaret Macmillan has argued, in secular societies in particular, history is frequently used to provide morality tales previously sourced from religion. Indeed, the active discursive reconstruction of the past has played an especially emphatic role in the post-communist space that emerged after 1989, as countries looked to create new futures but needed new pasts to justify them.

That said, these narratives play a special role in modern Russia. After the fall of communism, Russia was not in the same position as the other post-Soviet states. As the heir to the Union of Soviet Socialist Republics, it proved unable to reject the Soviet legacy entirely or cast itself as the occupied, rather than the occupier. Moreover, Russia was and is too ethnically and religiously diverse for either religion or ethnicity to function as a cohering element. Managing ethno-nationalism had been a political priority between 2006 and 2012 and continued to be a prominent concern at the beginning of Putin's third term. Although the government has flirted with ethnocentrism, notably during the annexation of Crimea in early 2014, outright ethno-nationalism has played a limited role in government discourse. Instead, there has been an imperial nationalism, with ethnic Russians as the *primus inter pares*, even referred to as the "state forming people" within the constitution.

Thus the invocation of history as the basis for Russian national identity has the advantage of meeting a wide range of demands: it appeals to the hereditary and genealogical elements of ethnic nationalism while still reflecting the polyethnic nature of the Russian Empire and Union of Soviet Socialist Republics. Russia's political system, presidentialism, and prioritization of state over society have made it almost impossible to create a civic identity, which would require a popular political engagement and civil society, both of which the Kremlin has dismantled. Likewise, there is no coherent ideological set of principles to govern the way people live, as there was in the communist era. This only reinforces the significance of history in creating a unifying

national concept or an answer to the question of why Russians belong together as a nation. Cultural memory and a sense of shared history are the only feasible options.

In his study of Soviet and post-Soviet historical narratives, the academic Thomas Sherlock demonstrates how the delegitimization of the Soviet past that took place under Mikhail Gorbachev had a deeply destabilizing effect on Soviet society, even contributing to the Soviet Union's downfall. In many ways, the Russian establishment under Putin has set about reversing this destabilization, but this has not always equated to reinstating the old history. Instead, it has focused on reinstating old attitudes towards history, denigrating the critical approaches seen during the *perestroika* era.

Beyond Kyivan Rus' and the Great Patriotic War, which function respectively as the foundation stone and ultimate, incontrovertible proof that Russia is special, the actual events that constitute the historical narrative matter very little. New bits can always be added, provided that they can be interpreted in such a way as to support three core arguments. These arguments are: Russia needs a strong state; Russia has a special path of development; and Russia is a messianic great power with something unique to offer the world. Whether the celebration of the state in question relates to Stalin or Tsar Nicholas I is less important than that the strength of the state being celebrated.

The government's intensive use and propagation of selective interpretations of history to define what it means to be Russian, to justify its own rule, and to project power at home and abroad shift the focus from 'what' is known towards the 'act' of knowing and performing that knowledge. Put another way, within certain limits, it doesn't matter whether you believe, or what you believe, it matters that you say and act as if you believe it. Ultimately, this is about Russian identity construction. The problem is that this identity has been, and is being, constructed atop Ukraine.

[subtitle omitted] In 2012, Putin announced that strengthening national consciousness would be a priority for his coming term, declaring that the definition of Russian identity was vague and needed refining. He chose to refine it around a confected but emotionally powerful common past, declaring 2012 the Year of History and setting up new historical societies responsible for churning out blockbuster war films, exhibitions, museums, military history children's clubs and camps, and World War II theme parks.

Subsequently, the Russian government created a multitude of different memory-centered activities and practices, offering plenty of opportunities for people to engage with history and, in so doing, bring to life its assertion that the Kremlin was leading Russian citizens to greater historical awareness and cultural consciousness. Most prominent among such bodies are the so-called government-organized non-government organizations, such as the Russian Military Historical Society and Russian Historical Society. Although clearly controlled by the government, these organizations present themselves as independent civil society bodies, disguising the state's involvement in memory politics. In just seven years, between 2013 and 2020, the Russian Military Historical Society produced 3,000 memorial plaques, 650 open lectures, 600 documentaries and films, 300 monuments, 251 military history tours, 213 military history festivals, 155 military history camps, 70 conferences, 40 forty exhibitions; nine themed trains, seven historical

commissions, six historical web portals, four museums, and countless branded exercise books, pencil cases, and pens.

The government has also commandeered genuine civil society commemorations, as exemplified by the hostile takeover of the nationwide Immortal Regiment movement, a procession developed by independent journalists in Tomsk to encourage people to retain personal memories of family members involved in the Great Patriotic War effort. When it became popular, the government cloned the organization and forced many volunteers to join its new, highly politicized, variant, where Putin now marches at the head of the Victory Day procession with various world leaders.

The Russian government has utilized historical interpretation as a byword for patriotic awareness, to spin a narrative of Russian counter-revolutionary consciousness against Western cultural colonization, which is (allegedly) most egregious in the sphere of historical falsification. The 2021 Russian *National Security Strategy* dedicates an entire section to cultural and spiritual values and historical truth, arguing that Russian identity and Russian people were under constant attack from efforts to distort and falsify Russian history. These threats emanate not only from the West but also from its agents in Russia (and what the Kremlin considers to be Russia), who are supposedly waging a campaign of cultural colonization.

As Putin wrote in his essay on the Historical Unity of Russia and Ukraine in June 2021, "Ukraine's ruling circles decided to justify their country's independence through the denial of its past…. They began to mythologize and rewrite history, edit out everything that united us." He blames Western forces for pushing Ukraine to rewrite history. The Russian president is articulating an often repeated idea, namely that Western culture had caused countries to forget their own historical value, as happened to Russia in the 1990s. However, this process, under Putin's 'historical renaissance', was being remedied.

Despite the supposed magnitude of the threat, Putin insists that Russia remains uniquely positioned to maintain its cultural sovereignty due to its attainment of cultural consciousness. To attain cultural consciousness is to be aware of history's structural importance to everyday factors. It is to recognize attempts to distort history as attempts to distort reality and to reject them accordingly. Russia's knowledge and experience of history are supposedly providing the nation with protection against cultural colonization and assuring its continued cultural sovereignty.

Able to resist the types of cultural colonization and historical alienation to which other countries have fallen prey, Russia now has a mission to help others rediscover their own cultural consciousness — to awaken them from an American-imposed cultural slumber. This argument has been promoted widely in the media since the 2015 intervention in Syria and depicts Russia as a beacon of cultural consciousness, showing other countries how to reconnect with and remain faithful to their history and heritage. It is this narrative that allows the Kremlin to claim it knows Ukraine's true identity better than Ukrainians, and that Russia was best placed to restore and protect that identity in 2022. The battle is not only to convince Ukrainians of their history but, by doing so, to save and protect a particular understanding of Russian history, which depends on Ukrainian subservience.

Russia's hubristic 'special military operation' to denazify Ukraine floundered on contact with real Ukrainians, who turned out to be very different from those constructed in the Kremlin's mythomaniac minds. Russia found in Ukraine a nation where it believed there was not one. And yet recognizing this would have a deeply destabilizing impact on official conceptions of Russia's identity. It would ultimately require rewriting Russian history and national identity from scratch — which is exactly what Putin is fighting against. In fighting to impose its memory on Ukraine, Russia is risking not only its future but also its past. Unfortunately, this could make for a long war.

17.5.2 Military Censorship

Although Russia introduced "military censorship" after the start of the war, the Kremlin and its authorities have been preparing for it well in advance. Specifically, Article 205.2 on "Justification of Terrorism" has been the main repressive tool under Putin's regime. The article was first introduced in 2006 when Russia ratified the Council of Europe Convention on the Prevention of Terrorism. Even though Russia has now been expelled from the Council of Europe, and Putin claimed a near total victory over domestic terrorism in 2018, the article continues to be used for military censorship.

Over the past six years, Article 205.2 has been used by the Kremlin to "fight the internal enemy," and following the outbreak of the war, it has been used by law enforcement to repress military personnel. Military censorship was rampant among those in the army who initially refused to fight in Ukraine. Although punishments against army personnel existed before the full-scale invasion, they were often lenient and only applied to personnel who were late for formation, did not return from leave, or were absent without leave. When this did occur, conscripts were sentenced to short arrests, and contract soldiers were suspended from service altogether.

Over time, however, Russian authorities became harsher in their attempt to strive for discipline in the army. By the time of the full-scale invasion, punishments relating to military censorship were severely toughened and mostly dealt within the courts. For those who initially refused to fight, and for personnel who disobeyed orders, abandoned military units, or faked illnesses to avoid fighting, punishment could include up to ten years imprisonment.

As mentioned above, the Federal Law on "Information, Information Technology, Information Technology and Information Protection" has been amended for various purposes. In regard to military censorship, the amendment to Article 15.1 introduced the concept of "unreliable socially significant information," the dissemination of which is punishable by extrajudicial blocking and hefty fines under Article 15.3.

Initially, Article 15.1 only applied to online publications and required the Prosecutor General to inform the Roskomnadzor of potential violations, which, in turn, required publishers to remove "unreliable" information lest the website be blocked. However, during the Covid-19 pandemic, the law was applied arbitrarily to "objectively accurate information that [was found to

be] undesirable by the authorities". After the full-scale invasion of Ukraine on February 24, 2024, the amendment's scope was broadened, allowing it to become an instrument of military censorship.

In December 2020, the authorities also amended the Criminal Code of the Russian Federation and Articles 30 and 31 of the Code of Criminal Procedure of the Russian Federation to include provisions addressing crimes against the *territorial integrity* of the Russian Federation. Specifically, Article 280.2, titled "Violation of the Territorial Integrity of the Russian Federation," was created to respond to the "exclusion of parts of the Russian Federation" and "other actions aimed at violating the integrity of Russia". Consequently, violators of the law could face up to ten years imprisonment for questioning or disputing the State's control over new territories.

This particular law has created many problems, especially since the terms "exclusion" and "other actions aimed at violating the integrity of…" are extremely vague and have not been defined. Thus, the law can be easily interpreted and misused by authorities and courts to arbitrarily prosecute individuals for expressing differing opinions on the status of certain Russian territories, such as Crimea and the areas in and around the four oblasts – Donetsk, Kherson, Luhansk, and Zaporizhzhia.

Commentary

1. History has always served as an ideological battlefield. Vietnamese-American writer Viet Thanh Nguyen, in his *Nothing Ever Dies: Vietnam and the Memory of War* (2017) pointedly notes: "All wars are fought twice, the first time on the battlefield, the second time in memory." Lonnie Bunch, III, Secretary of The Smithsonian in Washington DC, states: "I have always thought you can tell an enormous amount about a nation by what it chooses to remember."
2. See also February 2023 Guardian story: "The war over history is raging and one of the fiercest battles can be found in our classrooms. Last month Florida Governor Ron DeSantis announced that his state would block the new AP African-American Studies class. It was developed by the College Board….. DeSantis banned the teaching of 'anything that would make people feel guilt, anguish or any form of psychological distress because of their sex, race or national origin…."
3. For three years now, Putin has sought to justify Europe's largest invasion since World War II by portraying it as a sacred mission to reclaim "historically Russian lands." As discussed in Chapter 1, many Russians still regard Ukraine as a core part of their own nation's historical heartlands and Ukraine being part of the Russian empire, whether in Czarist form or part of the Soviet space. Independent Ukraine is a painful symbol of modern Russia's retreat from empire, a fact that Putin and some Russian historians today wish to avoid.
4. During the initial stages of the Kremlin campaign to reassert Russian authority over independent Ukraine, considerable effort was made to undermine the historical legitimacy of the Ukrainian state not only among Russian audiences but also inside Ukraine itself. When Putin launched the invasion of Ukraine in 2014 with the seizure of Crimea, he began referring to southern and eastern Ukraine as "Novorossiya" ("New Russia").
5. In 2020, the Russian government amended the Federal Law on "Education in the Russian Federation" to reflect the compulsory patriotism in Russian schools. More specifically, this law introduced new elements to the definition of "education" to conform to the 2020 constitutional

amendments that were made months prior. The term "education" was redefined as an "activity" that must guarantee "the formation of a patriotic spirit among students, a sense of citizenship, respect for the memory of the protectors of the Motherland, and for the feats accomplished by the Heroes of the Nation." Overall, this amendment, coupled with the changes to the constitution, brought together all the other legislative acts to instill a state narrative surrounding the victory in the Second World War. There were at least three amendments from 2021 to 2022 that sought to emphasize an official patriotic element. in the country's educational system. The first amendment to Articles 3 and 13.15 of the Code of Administrative Offenses of the Russian Federation introduced liability for legal entities and media outlets that disseminated "knowingly false" information that insults the memory of the defenders of the homeland or "exonerates Nazism". Next, amendments to the Federal Law on "The Commemoration of the Victory of the Soviet People in the Great Patriotic War of 1941-1945" established additional restrictions on the debate surrounding the role of the USSR in the Second World War. Because of this amendment, there is now a basis for the criminalization of speech that equates the role and actions of the USSR to Nazi Germany. Last, a few months after the 2022 invasion of Ukraine, another amendment to the Code of Administrative Offenses of the Russian Federation introduced further punishments for comparing the USSR to the Third Reich.

6. **For further reading**, *see* (1) James C. Pearce, *The Use of History in Putin's Russia*, Vernon Press (May 5, 2020); (2) Ekaterina Reznikova et al., *A Study into Repression Under Putin*, Proekt Media (Feb. 22, 2024); (3) Adrian Karatnycky, *Putin's Russia Is Back to the Stalinist Future*, Foreign Policy (March 24, 2024); (4) Walter Clemens, *Back in the USSR: Zhivago's Lessons About Russia*, The Center of European Policy Analysis (May 1, 2024); (5) Serge Schmemann, *Things in Russia Aren't as Bad as the Bad Old Soviet Days. 'They're Worse.'*, The New York Times (May 8, 2023); (6) Mark Temnycky, *Putin's Dreams of a New Russian Empire Are Unraveling in Ukraine*, Atlantic Council (April 25, 2023).

17.6 Conclusion

Stephen Kotkin, a historian and expert on Russia, in a 2024 article outlines five potential futures for Russia in light of its historical, economic, and geopolitical dynamics. These scenarios reflect various trajectories Russia could follow depending on internal and external factors:

1. *Continued Authoritarianism:* Russia remains under authoritarian rule, with a focus on consolidating power domestically and maintaining control over its periphery. This scenario involves ongoing repression of dissent, a strong security apparatus, and efforts to stifle political pluralism. The regime prioritizes stability over reform, maintaining the status quo.
2. *Reform and Modernization:* Russia embraces political and economic reforms, aiming to modernize its economy and integrate more deeply with the global order. This path would involve reducing corruption, improving governance, and fostering innovation, potentially shifting away from heavy reliance on natural resources.
3. *Economic Decline and Fragmentation:* Structural weaknesses, corruption, and demographic challenges lead to economic stagnation or decline, potentially causing regional tensions or fragmentation. This scenario envisions a

weakening of centralized control, with parts of Russia seeking greater autonomy or facing unrest.

4. *Imperial Expansion:* Driven by a historical impulse to assert itself as a global power, Russia doubles down on imperial ambitions. This could involve further military interventions, efforts to reclaim influence over former Soviet territories, and a confrontational stance toward the West, risking overextension.
5. *Integration into the Global System:* A long-term shift sees Russia cooperating more with global institutions and adopting a pragmatic approach to international relations. In this scenario, Russia leverages its strategic position and resources to play a constructive role in global politics, moving away from confrontation and isolation.

Kotkin tends to view *Continued Authoritarianism* and *Imperial Expansion* as the most likely scenarios for Russia's near-term future. The next chapter examines the next chapter of repressive laws that Putin and the Duma enacted in the aftermath of the February 2022 full-scale invasion.

Chapter 18

Repressive Laws After the 2022 Invasion of Ukraine

18.1 Introduction

In the early morning of February 24, 2022, the Russian Federation invaded Ukraine, unleashing the first full-scale war in Europe since 1945. If this statement had been made in modern Russia, one would have been charged with public dissemination of knowingly false information (Articles 207.2 and 207.3), discreditation of the armed forces (Article 280.3), and, perhaps, espionage (Article 276). According to President Vladimir Putin and the Russian propaganda, the brutal invasion of Ukraine is a "special military operation" ("специальная военная операция" or "СВО"), and anyone who labels it otherwise will be punished with draconian laws, which essentially made it illegal to call the war a "war." Only by October 2022, Russian law enforcement had initiated nearly 5,000 administrative cases based on the new laws and more than 100 criminal cases in which those prosecuted faced sentences of up to 15 years in prison. At the same time, President Putin freely refers to the conflict as a "war" whenever it serves his interests without facing repercussions. The laws have been enforced selectively to target longtime Putin critics while war supporters and state television propagandists use the word "war" without penalties.

Not only did the 2022 invasion affect the lives of Ukrainians and people all over the world. The lives of ordinary Russians were changed forever. Most independent media have been forced out of the country. Hundreds of thousands of Russians fled what the Kremlin called a "partial mobilization." Since the 2022 invasion, more than 7,000 people have been tried under repressive criminal articles and more than 45,000 – under administrative ones.

The first group of readings in this chapter continues to examine Putin's repressions on fundamental human rights and freedoms, including freedom of speech and expression, freedom of

assembly and association, and the right to privacy. Next, we will examine the army-related repressions. At the end of the chapter, we will go back in time and discuss a couple of revived Soviet laws. We don't know what the war's end entails for Ukraine and Russia, but one thing is clear – Vladimir Putin slowly but surely follows Joseph Stalin's playbook.

18.2 Censorship Laws

Fundamental rights and freedoms hold immense significance to all human beings. Protecting and upholding these rights is considered a fundamental duty of governments towards its citizenry. The following subchapters examine how well the Russian Federation has done its duties since the 2022 invasion of Ukraine.

18.2.1 Freedom of Speech and Expression

In early March 2022, on the tenth day of the full-scale war against Ukraine, the 2018 law on the dissemination of "fake news" about the army was supplemented with a penalty for disseminating "knowingly false information" about embassies, prosecutors' offices, the Rosgvardia and the Ministry of Emergency Situations. The whole process, from voting to the president's signature, only took two days. In October 2022, Russian authorities announced that they had opened over 4,500 administrative offense cases and over 100 cases on "discreditation" or "false information" about Russian armed forces. According to Russian human rights watchdogs, almost half of the criminal cases were against journalists, bloggers, or civil activists.

By the beginning of 2024, according to a report by Alexander Bastrykin, the head of the Investigative Committee, 273 criminal cases were initiated under the Russian Federation's Criminal Code Article 207.3, with 145 cases reaching the courts and 148 people being charged. Despite the vague wording of this article, there have not yet been any acquittals under it so far. Cases that were dismissed during the trial or returned to prosecutors for further investigation were always returned to the courts and sentences on them were eventually handed down.

A month after Russia invaded Ukraine, Russian authorities opened at least 60 cases on the administrative offense of "discrediting Russian armed forces," which includes public calls for the armed forces to be withdrawn or to stop fighting. The laws introduce new provisions to the Russian Criminal Code (Article 280.3) and to the Code of Administrative Offenses (Article 20.3.3), making "public actions aimed at discrediting" Russian Armed Forces illegal.

According to OVD-Info, an independent Russian human rights and legal defense group, authorities have launched more than 6,500 cases under Article 20.3.3, making it the most widely used tool in Russia's wartime crackdown. The law scooped up a vast array of ordinary Russians,

including people who staged solo anti-war demonstrations, posted their opinions online[45], or wore anti-war symbols on their clothes. Anyone questioning the war or revealing sympathy with Ukraine – even in a private conversation – is now liable to prosecution in Russia

Another set of provisions makes it both a criminal and administrative offense for Russian nationals or Russian legal entities to call for sanctions against Russia, its nationals, or Russian legal entities.

Source: https://www.proekt.media/en/guide-en/repressions-in-russia-study/

Article 207.3 – Public Dissemination of Deliberate False Information

1. Public dissemination, under the guise of reliable reports, of deliberate false information containing data on the use of the Armed Forces of the Russian Federation to protect the interest of the Russian Federation and its citizens, maintain international peace and security, or on the exercise by State bodies of the Russian

[45]More than 3,000 cases involved social media or messaging platforms popular in Russia. *See* Troianovsky et al., *supra* note 193.

Federation of their powers outside the territory of the Russian Federation for the aforementioned purposes, or containing data on the provision by volunteer formations, organizations or persons of assistance in the performance of tasks assigned to them by the Russian Federation or the troops of the National Guard of the Russian Federation, is punishable by a fine in the amount of seven hundred thousand [approx. USD 7,500.00] to one and a half million rubles or in the amount of wages or other income of the convicted person for a period of one year to eighteen months, or correctional labor for a term of up to one year, or forced labor for a term of up to five years, or imprisonment for the same term.

2. The same act committed (a) by a person using his official position; (b) by a group of persons, a group of persons by prior conspiracy, or an organized group; (c) with the artificial creation of evidence for prosecution; (d) for greedy reasons; (e) for reasons of political, ideological, racial, ethnic, or religious hatred or enmity, or for reasons of hatred or enmity towards any social group, shall be punishable by a fine in the amount of three million [approx. USD 30,000.00] to five million rubles, or in the amount of the wages or other income of the convicted person for a period of three to five years, or by forced labor for a term of up to five years, with deprivation of the right to hold certain positions or engage in certain activities for a term of up to five years with deprivation of the right to hold certain positions or engage in certain activities for a term of up to five years.

3. Acts provided for in parts 1 and 2 of this article, *if they entailed grave consequences*, *shall be punishable by imprisonment for a term of ten to fifteen years* [emphasis added] with deprivation of the right to hold certain positions or engage in certain activities for a term of up to five years.

Article 20.3.3 – Public Actions Aimed at Discrediting the Use of the Armed Forces

1. Public actions aimed at discrediting the use of the Armed Forces of the Russian Federation to protect the interests of the Russian Federation and its citizens, to maintain international peace and security, including public calls to prevent the use of the Armed Forces of the Russian Federation for these purposes, or to discredit the execution by State bodies of the Russian Federation of its powers outside the territory of the Russian Federation for the specified purposes, as well as to discredit the provision of assistance by volunteer formations, organizations or individuals in the performance of tasks assigned to the Armed Forces of the Russian Federation or the troops of the National Guard of the Russian Federation, if these actions do not contain signs of a criminal offense shall entail the imposition of an

administrative fine on citizens in the amount of thirty thousand[46] [approx. USD 300.00] to fifty thousand rubles; for officials – from one hundred thousand to two hundred thousand rubles; for legal entities – from three hundred thousand to five hundred thousand rubles.

2. The same actions accompanied by calls for holding unauthorized public events, as well as creating a threat of harm to the life and/or health of citizens, property, a threat of mass disruption of public order and/or public safety, or a threat of interfering with the functioning or termination of the functioning of vital support facilities, transportation or social infrastructure, financial credit institutions, energy, industrial or communications facilities, if these actions do not contain signs of a criminal offense, shall entail the imposition of an administrative fine on citizens in the amount of fifty thousand [approx. USD 500.00] to one hundred thousand rubles; for officials – from two hundred thousand to three hundred thousand rubles; for legal entities – from five hundred thousand to one million rubles.

Article 280.3 – Discreditation of the Russian Armed Forces

1. Public actions aimed at discrediting the use of the Armed Forces of the Russian Federation to protect the interests of the Russian Federation and its citizens, to maintain international peace and security, including public calls to prevent the use of the Armed Forces of the Russian Federation for these purposes, or to discredit the execution by State bodies of the Russian Federation of its powers outside the territory of the Russian Federation for the specified purposes, as well as to discredit the provision of assistance by volunteer formations, organizations or individuals in the performance of tasks assigned to the Armed Forces of the Russian Federation or the troops of the National Guard of the Russian Federation, committed by a person after he was brought to administrative responsibility for the same charge within one year is punishable by a fine in the amount of one hundred thousand [approx. USD 1,000.00] to three hundred thousand rubles or in the amount of the wages or other income of the convicted person for a period of one to two years, or by forced labor for a term of up to three years, or by arrest for s term of up to five years with deprivation of the right to hold certain positions or engage in certain activities or the same period.

2. [These same actions] resulting in death through negligence and/or causing harm to the health of citizens, property, massive violations of public order and/or public safety, or those that interfere with the functioning or cessation of the functioning of life support facilities, transportation or social infrastructure, financial credit

[46] 30,000.00 rubles [approx. USD 300.00] is about half the average monthly salary in Russia.

institutions, energy, industrial or communications facilities, are punishable by a fine in the amount of three hundred thousand [approx. USD 3,000.00] to one million rubles or in the amount of wages or other income of the convicted person for a period of three to five years, or imprisonment for a term up to seven years with deprivation of the right to hold certain positions or engage in certain activities for the same period.

Article 20.3.4 – Calls for Sanctions Against Russia

Calls for the implementation […] of restrictive measures, expressed in the introduction or extension of political or economic sanctions against the Russian Federation, citizens of the Russian Federation or Russian legal entities, committed by a citizen of the Russian Federation and/or Russian legal entity, of these actions do not contain signs of a criminal offense, entail the imposition of an administrative fine on citizens in the amount of thirty thousand [approx. USD 300.00] to fifty thousand rubles; for officials – from one hundred thousand to two hundred thousand rubles; for legal entities – from three hundred thousand to five hundred thousand rubles.

Article 284.2 – Calls for Sanctions Against Russia

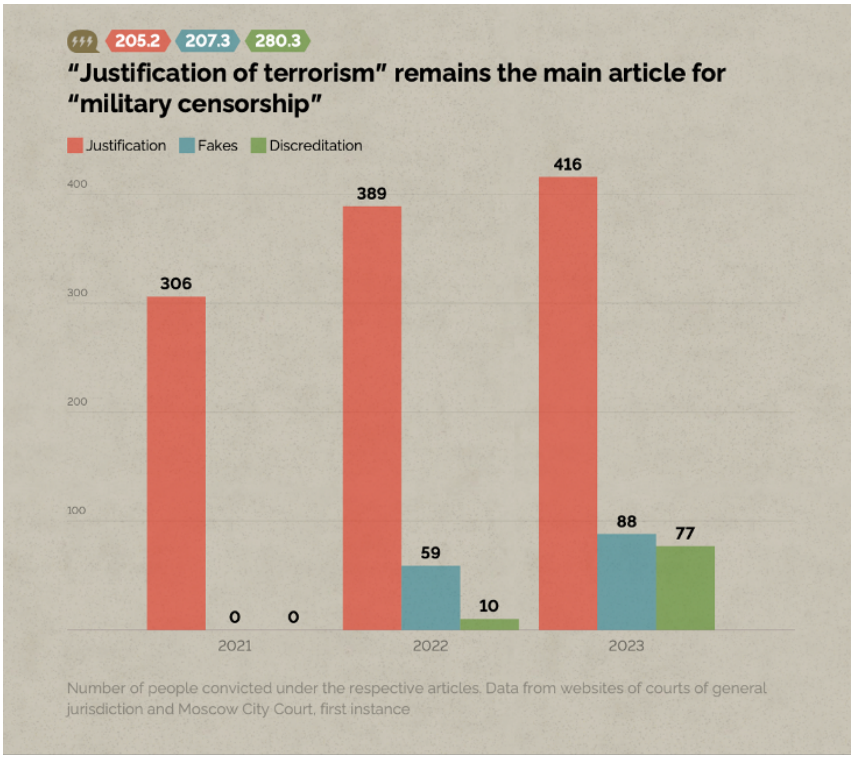
Calls for the implementation […] of restrictive measures, expressed in the introduction or extension of political or economic sanctions against the Russian Federation, citizens of the Russian Federation or Russian legal entities, committed by a citizen of the Russian Federation after he has been brought to administrative responsibility for a similar act within one year, is punishable by a fine in the amount of up to five hundred thousand rubles [approx. USD 5,000.00] or in the amount of the wages or other income of the convicted person for a period of up to three years, or restriction of liberty for a term of up to three years, or forced labor for a term of up to three years, or arrest for a term of up to six months, or imprisonment for a term of up to three years with a fine of up to two hundred thousand rubles or in the amount of wages or other income convicted for a period of up to one year or without it.

Article 205.2 – Public Calls for Committing of Terrorist Activity or Public Justification of Terrorism

1. Public calls for terrorist activities, public justification of terrorism, or propaganda of terrorism are punishable by a fine in the amount of one hundred thousand [approx. USD 1,000.00] to five hundred thousand rubles or in the amount of the wages or other income of the convicted person for a period of up to three years, or by imprisonment for a term of two to five years.

2. The same acts committed using the media or electronic or information and telecommunication networks, including the Internet, are punishable by a fine in the amount of three hundred thousand [approx. USD 3,000.00] to one million rubles or in the amount of wages or other income of the convicted person for the period from three to five years or imprisonment for a term of five to seven years with deprivation of the right to hold certain positions or engage in certain activities for a term of up to five years.

Note: [For the purpose of this Article], public justification of terrorism is understood as a public statement recognizing the ideology and practice of terrorism as correct, in need of support and imitation [and] as the activity of disseminating materials and/or information aimed at forming in a person the ideology of terrorism, the conviction of its attractiveness, or the idea that it is permissible to carry out terrorist activities.



Source: https://www.proekt.media/en/guide-en/repressions-in-russia-study/

Federal Law No. 255-FZ of July 14, 2022 – On Control Over the Activities of Persons Under Foreign Influence

1. For the purpose of this Article, a foreign agent is a person who has received support and/ or *foreign influence in other forms* [emphasis added] and carries out activities, the types of which are established by Article 4 of Federal Law No. 255-FZ of July 14, 2022 "On Control over the Activities of Persons Under Foreign Influence." The following entities may be recognized as foreign agents: Russian or foreign legal entity, regardless of its organizational and legal form; public association operating without forming a legal entity; other association; unincorporated foreign structure; an individual, regardless of her citizenship or in the absence of such.

2. Foreign influence mentioned in Part 1 of this Article shall mean providing a foreign source of support and/or influence on a person, including coercion, persuasion, and/or other ways. Support mentioned in Part 1 of this Article shall mean providing a person with a foreign source of funds and/or other resources, as well as providing organizational, methodological, scientific, and technical assistance.

[The remainder of the Federal Law is omitted.]

18.2.2 Freedom of Assembly and Association

People in Russia are not able to protest peacefully without fear or reprisals. For over a month after February 24, 2022 demonstrators in different parts of Russia held mass protests against Russia's invasion of Ukraine. The authorities responded with mass detentions, police brutality, and criminalization of anti-war protestors. They arrested over 15,000 protesters in the first month alone and opened thousands of administrative and hundreds of criminal cases against them.

Following the full-scale invasion, Russian authorities also doubled down on blacklisting organizations as "undesirable" and persecuting activists for alleged involvement with such organizations in and out of the country. New amendments to the 2015 law allowed Russian law

enforcement to prosecute activists for anything they might have done abroad that could be qualified as affiliation with "undesirable" organizations.

Police officers arrest Yelena Osipova at an anti-war protest on March 2, 2022. See image here.

Article 212 – Mass Riots

1. Organization of mass riots, accompanied by violence, pogroms, arson, destruction of property, the use of weapons, explosives, poisonous or other substances and objects that pose a danger to others, as well as armed resistance to a representative of the authorities, as well as the recruitment of a person for the organization such mass riots or participation in them are punishable by imprisonment for a term of eight to fifteen years.

1.1. Inducing, recruiting, or otherwise involving a person in committing actions provided for in Part 1 of this Article shall be punishable by a fine in the amount of three hundred thousand [approx. USD 3,000.00] to seven hundred thousand rubles, or in the amount of the wages or other income of the convicted person for a period of two to four years, or by forced labor for a term of two to five years, *or by imprisonment for a term of five to ten years* [emphasis added.]

2. Participation in mass riots provided for in Part 1 of this Article is punishable *by imprisonment for a term of three to eight years* [emphasis added.]

3. Calls for mass riots provided for in Part 1 of this Article or for participation in them, as well as calls for violence against citizens shall be punishable by restriction of freedom for a term of up to two years or forced labor for a term of up to two years, or imprisonment for the same term.

4. Training for the purpose of organizing mass riots or participating in them, including the acquisition of knowledge, practical skills and abilities during physical and psychological training classes while studying methods of organizing mass riots, rules for handling weapons, explosive devices, explosive, poisonous, as well as other substances and objects that pose a danger to others, is punishable *by imprisonment for a term of five to ten years* [emphases added] with a fine in the amount of up to five hundred thousand rubles [approx. USD 5,000.00] or in the

amount of the wages or other income of the convicted person for a period of up to three years.

Note: A person who has committed a crime provided for in Part 4 of this Article is exempt from criminal liability if she informed the authorities about the undergoing training, which she knew was conducted for the purpose of organizing mass riots or participating in them, contributed to the disclosure of the crime committed or the identification of other persons who have undergone, carried out, organized, or financed such training, as well as the places where it was carried out unless her actions contain another crime.

Article 212.1 – Repeated Violation of the Established Procedure for Organizing or Conducting an Assembly, Rally, Demonstration, March, or Picket

Violation of the established procedure for organizing or holding a meeting, rally, demonstration, procession, or picket, if this act is committed repeatedly, shall be punishable by a fine in the amount of six hundred thousand [approx. USD 6,000.00] to one million rubles, or in the amount of the wages or other income of the convicted person for a period of two to three years, or by compulsory labor for a term of up to four hundred eighty hours, or by corrective labor for a term of one to two years, or *forced labor for a term of up to five years, or imprisonment for the same period* [emphases added.]

Note: [For the purpose of this Article, a repeated violation means] a person has been previously brought to administrative responsibility for committing administrative offenses, provided for in Article 20.2 of the Code of the Russian Federation on Administrative Offenses, *more than twice within one hundred and eighty days* [emphasis added.]

Article 282.4 – Repeated Propaganda of Nazi Symbols

1. Propaganda or public display of Nazi paraphernalia or symbols, or paraphernalia or symbols that are confusingly similar to Nazi paraphernalia or symbols, or symbols of extremist organizations, or other paraphernalia or symbols, the propaganda or public display of which is prohibited by federal laws, if these acts committed by a person subjected to administrative punishment for any of the administrative offenses provided for in Article 20.3 of the Code of Administrative

Offenses of the Russian Federation shall be punishable by a fine in the amount of six hundred thousand [approx. USD 6,000.00] to one million rubles, or in the amount of the wages or other income of the convicted person for a period of two to three years, or by compulsory labor for a term of up to four hundred eighty hours, or by corrective labor for a term of one to two years, or forced labor for a term of up to four years, or imprisonment for the same period.

2. Production or sale for the purposes of propaganda or acquisition for the purpose of sale or propaganda of Nazi paraphernalia or symbols, or paraphernalia or symbols that are confusingly similar to Nazi paraphernalia or symbols, or paraphernalia or symbols of extremist organizations, or other paraphernalia or symbols, propaganda or public demonstration of which is prohibited by federal laws, if these acts were committed by a person subjected to administrative punishment for any of the administrative offenses provided for in Article 20.3 of the Code of the Administrative Offenses of the Russian Federation shall be punishable by a fine in the amount of six hundred thousand [approx. USD 6,000.00] to one million rubles, or in the amount of the wages or other income of the convicted person for a period of two to three years, or by compulsory labor for a term of up to four hundred eighty hours, or by corrective labor for a term of one to two years, or forced labor for a term of up to four years, or imprisonment for the same period.

Article 20.33 – Participation in the Activities of a Foreign or International Non-Governmental Organization in Whose Respect a Decision Has Been Taken to Declare Its Activities Undesirable on the Territory of the Russian Federation

Participation in the activities of a foreign or international non-government organization (NGO) that is recognized as undesirable on the territory of the Russian Federation […] if these actions do not contain signs of a criminal offense entails the imposition of an administrative fine on citizens in the amount five thousand [approx. USD 50.00] to fifteen thousand rubles; for officials – from twenty thousand to fifty thousand rubles; for officials – employees of election commissions – disqualification for a period of one year; for legal entities – from fifty thousand to one hundred thousand rubles.

Article 284.1 – Carrying out the Activities of a Foreign or International Non-governmental Organization in Whose Respect a Decision Has Been Made to Declare Its Activities Undesirable on the Territory of the Russian Federation

1. Participation in the activities of a foreign or international non-government organization (NGO) that is recognized as undesirable on the territory of the Russian Federation […] is punishable by a fine in the amount of three hundred thousand [approx. USD 3,000.00] to five hundred thousand rubles, or in the amount of the wages or other income of the convicted person for a period of two to three years, or by compulsory labor for a term of up to three hundred sixty hours, or by forced labor for a term of up to four years with or without restriction of freedom for a term of up to two years, or imprisonment for a term of one to four years with deprivation of the right to hold certain positions or engage in certain activities for a term of up to ten years.

2. Providing or collecting funds or providing financial services knowingly intended to support the activities of a foreign or international NGO that is recognized as undesirable on the territory of the Russian Federation […] is punishable by compulsory labor for a term of up to three hundred sixty hours, or forced labor for a term of up to four years with or without restriction of freedom for a term of up to two years, or imprisonment for a term of one to five years with deprivation of the right to hold certain positions or engage in certain activities for a term of up to ten years.

3. Organizing activities of a foreign or international NGO that is recognized as undesirable on the territory of the Russian Federation […] is punishable by compulsory labor for a term of up to four hundred eighty hours or by forced labor for a term of up to five years with restriction of freedom for a term of up to two years, or imprisonment for a term of two to six years with deprivation of the right to hold certain positions or engage in certain activities for a term of up to ten years.

Note: A person who has committed a crime under this Article is exempt from criminal liability under this Article if she voluntarily ceased participation in the activities of a foreign or international NGO that is recognized as undesirable on the territory of the Russian Federation […], or contributed to the suppression of the activities of such an organization, for the support of which it provided or collected funds or provided financial services if it actively contributed to the detection and/or investigation of a crime.

18.2.3 Right to Privacy

Federal Law No. 580-FZ of December 29, 2022 – On the Organization of Transportation of Passengers and Luggage by Passenger Taxis in the Russian Federation […]

[…]

14. The taxi ordering service must provide the federal security body or its local security body access to information systems and databases used for receiving, storing, processing, and transmitting passenger taxi orders in the order that is established by the government of the Russian Federation.

[The remainder of the Law is omitted.]

Article 6.21 – Propaganda of Non-Traditional Sexual Relationship and/or Preferences, Gender Reassignment

1. Propaganda of non-traditional sexual relationships and/or preferences or gender reassignment, expressed in the dissemination of information and/or the commission of public actions aimed at the formation of non-traditional sexual attitudes, the attractiveness of non-traditional sexual relationships and/or preferences or gender reassignment or a distorted idea of social equivalence of traditional and non-traditional sexual relationships and/or preferences, or imposition of information about non-traditional sexual relationships and/or preferences or gender change that arouses interest in such relationships and/or preferences or gender change […] shall entail the imposition of an administrative fine on citizens in the amount of fifty thousand [approx. USD 500.00] to one hundred thousand rubles; for officials – from one hundred thousand to two hundred thousand rubles; for legal entities – from eight hundred thousand to one million rubles or administrative suspension of activities for a period of up to ninety days.

[…]

3. Actions provided for in Part 1 of this Article, committed using the media and/or information and telecommunication networks (including the Internet) […] shall entail the imposition of an administrative fine on citizens in the amount of one thousand [approx. USD 1,000.00] to two hundred thousand rubles; for officials – from two hundred thousand to four hundred thousand rubles; for legal entities –

from one million to four million rubles or administrative suspension of activities for a period of up to ninety days.

[…]

5. Actions provided for in Part 1 of this Article, committed by a foreign citizen or a stateless person […] shall entail the imposition of an administrative fine in the amount of fifty thousand [approx. USD 500.00] to one hundred thousand rubles with administrative deportation from the Russian Federation, or administrative arrest for a term of up to fifteen days with administrative deportation from the Russian Federation.

[…]

7. Actions provided for in Part 1 of this Article, committed by a foreign citizen or a stateless person using the media and/or information and telecommunication networks (including the Internet) […] shall entail the imposition of an administrative fine on citizens in the amount of one hundred thousand [approx. USD 1,000.00] to two hundred thousand rubles with administrative deportation from the Russian Federation, or administrative arrest for a term of up to fifteen days with administrative deportation from the Russian Federation.

Commentary

1. Russian criminal law does not contain an exhaustive list of what constitutes "grave consequences" and depending on the specific crime, law enforcement and courts have interpreted it to include significant financial loss and bodily harm or death. What might constitute a grave consequence of disseminating alleged false information is, therefore, essentially at the discretion of the prosecution.
2. In the days following Russia's full-scale invasion of Ukraine on February 24, 2022, Russian authorities increased suppression of critical voices and independent media, threatening to block access to several media outlets or fine them unless they limited their reporting to reproducing the official Kremlin narrative. Between February 28 and March 3, 2022, the Russian authorities blocked access to at least eight Russian media sites, including The Village, Dozhd (TV Rain), Echo of Moscow, DOXA, The New Times, Krym.Realii, Taiga.Info, and the Current Time and several Ukrainian media outlets.

March 3, 2022: The founder and CEO of Dozhd, Natalia Sindeyeva (wearing a bright green blazer in the picture), announced that Dozhd was suspending its broadcast due to the new draft law criminalizing what the authorities would consider "false news" about Russia's invasion of Ukraine, with a penalty up to 15 years imprisonment. See image here.[47]

3. The latest provisions create a risk of criminal prosecution leading to imprisonment not only for professional journalists but for anyone posting messages on the Internet or potentially anyone discussing the war in public. As such, activities that are seen to contribute to the International Criminal Court investigation into potential war crimes in Ukraine could lead to prosecution and jail, and investigative group gatherings and publicizing data and imagery on violations of international humanitarian and human rights law could be at risk. Shortly after the indictment of Putin and his children rights commissioner by the ICC, Russian prosecutors brought charges against the ICC prosecutor under Russian law.
4. Cases of denunciation have proliferated in Russia since its full-scale invasion of Ukraine. People across the country have been reported to authorities for expressing dissenting views in private or in closed settings. The New York Times found more than 100 cases where someone reported to the authorities the comments or behavior of someone else – something overheard on a train or mentioned in a workplace chat group. Teachers have reported pupils; students have informed on professors and fellow classmates; neighbors, colleagues, and even family members have filed complaints. Informing was common practice in the Soviet Union. First cultivated as a tool to weed out counter-revolutionary ideas, it soon developed into a widespread system of self-policing that reached fever pitch under Joseph Stalin[48]. Just like in the Soviet times, Article 20.3.3 has fueled denunciations in modern Russia. Some local authorities have set up bots on the messaging app Telegram that allow people to inform on others in a more automated and anonymized way simply by sending a few details by text. One of the most infamous cases concerning denunciations is the case of 13-year-old Maria Moskaleva and her father, Alexei Moskalev. In March 2022, an art teacher in Russia's Tula region asked her sixth-grade class to draw pictures showing support for the Russian military in Ukraine. When Maria Moskaleva drew an anti-war image depicting Russian and Ukrainian flags and wrote "No war" and "Glory to Ukraine," the teacher immediately reported her to the police. After police searches of their home, Maria's father, a single parent, was placed under house arrest, accused of "discrediting" the army for posting about the killing of civilians in Bucha. His 13-year-old daughter was placed in a children's "social rehabilitation center." Shortly thereafter, a lawsuit has been filed to permanently restrict Alexei's parental rights – he was sentenced to two years in jail. Despite the unsuccessful attempt to flee to Belarus[49], Mr. Moskalev was eventually prosecuted while his minor daughter was handed over to her estranged mother.

[47]Dozhd resumed broadcasting from abroad on the evening of July 18, 2022, after being forced to shut its Moscow studio following Russia's invasion of Ukraine. Dozhd is currently broadcasting from its main studio in Amsterdam, the Netherlands.

[48]Sergei Dovlatov, a Russian author, famously said, "We are endlessly blaming Comrade Stalin, and, of course, with good cause. And yet I can't help but ask – who wrote the four million denunciations?"

[49]Mr. Moskalev was arrested in Minsk by Belarusian authorities at the request of the Russian police.

Masha Moskaleva's picture instigates case against father Alexei. See image here.

5. On April 23, 2024, yet another common Soviet practice was revived. A so-called expert center[50] for evaluating printed and electronic publications has been launched under the auspices of the Russian Book Union. It is the first censorship agency for books since the Main Directorate for the Protection of State Secrets in the Press under the Council of Ministers of the USSR, also known as Glavlit. The so-called experts will be looking for "LGBT propaganda" in all books except educational, normative, and official ones. If "violations" are detected, the "expert center" recommends withdrawing books from sale, but the final decision remains with the publishers. On the recommendation of the "expert center," the AST publishing house decided to stop sales of the novels "Inheritance" by Vladimir Sorokin, "A Home at the End of the World" by Michael Cunningham, "Giovanni's Room" by James Baldwin, "A Little Life" by Hanya Yanagihara, and "The Song of Achilles" by Madeline Miller.
6. The government also started cracking down on protests online – including people's "likes" on antiwar posts. The authorities targeted speech on a wide range of platforms – from YouTube and Instagram to Chatroulette, a website for video chats with random strangers. Only in 2022, Roskomnadzor, the state censor, received 284,000 reports from citizens, the majority of which concerned "illegal information posted on the Internet, including fakes about the special military operation in Ukraine." That figure does not include reposts made to the police or the FSB security service. Communications that people expected to be private ended up serving as evidence against them; many were prosecuted for exchanges in closed chat groups. But most of all the authorities cracked down on posts on Russia's most popular social network, VK, a Russian-owned website that is known to cooperate with law enforcement. The New York Times found more than 1,000 related cases.
7. There is no reasonable expectation of privacy when using your electronic devices in Russia regardless of whether you are a foreigner or not. In 2022, U.S. citizens entering Russia have reported that Russian immigration authorities have conducted searches of their mobile phones upon arrival. In June 2022, the U.S. Embassy and Consulate in Russia warned U.S. citizens that the Russian System for Operational-Investigative Activities (SORM) legally permits authorities to monitor and record all data that traverses Russia's network. Telephone and electronic communications are subject to surveillance at any time and without advisory, which may compromise sensitive personal or business-related information. Finally, the U.S. Embassy and Consulate reminded Americans that the Department of State's Travel Advisory level for Russia is "Level 4: Do Not Travel" and the Department of State continues to advise that U.S. citizens in Russia should depart immediately. Nevertheless, despite these warnings, some Americans keep coming to Russia. The case of Ksenia Karelina, a U.S.-Russian dual citizen, serves as a good illustration of the consequences of such disregard. On January 2, 2024, the 33 year-old Karelina came to the Russian city of Yekaterinburg to visit her 90-year-old grandmother but was detained upon her arrival instead. Although she was released, the authorities kept her cell phone. She was subsequently arrested over allegations that she "used to purchase tactical medical items, equipment, means of destruction and ammunition for the

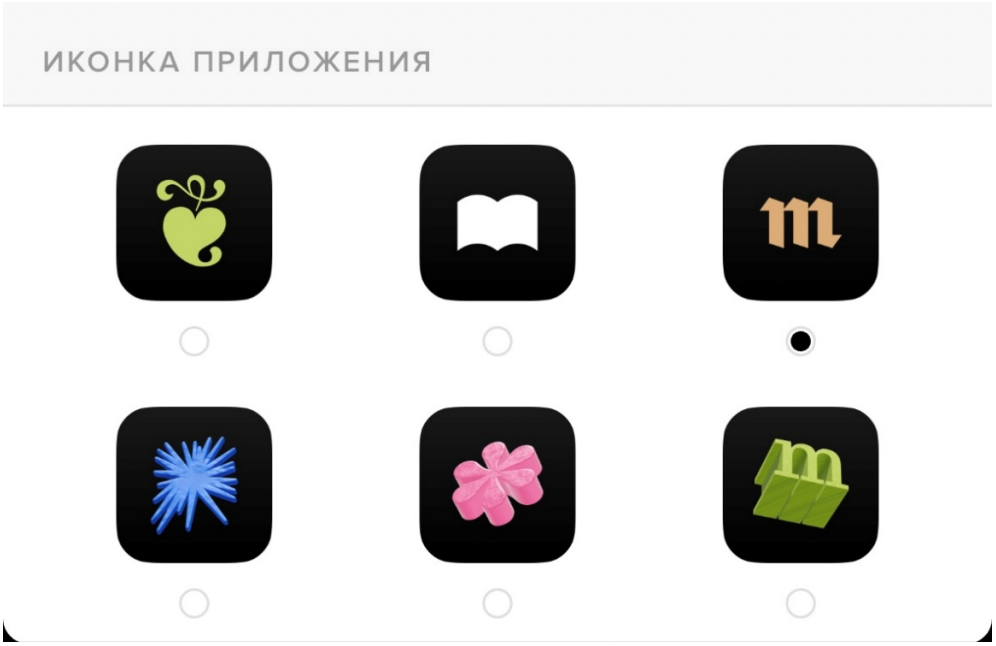
[50]The "expert center" included representatives of Roskomnadzor, the Russian Lawyer Association, the Russian Academy of Education, the A.M. Gorky Literary Institute, the Russian Historical Society, and the Russian Military Historical Society. In addition, it included representatives of the Russian Orthodox Church, the Spiritual Administration Muslims of Russia, and the Federation of Jewish Communities of Russia.

Ukrainian armed forces," the FSB said. She admits that she donated about $50 to Razom for Ukraine, a nonprofit in New York that sends assistance to Ukraine. Karelina was charged with violating Russian Criminal Code Article 275, high treason committed by a citizen of the Russian Federation. The Russian state contends that for a U.S. citizen to make a donation to a U.S. charity and to attend a peaceful protest on U.S. soil is a punishable offense on arrival in Russia. On August 7, she pleaded guilty, and on August 15, the Sverdlovsk Regional Court sentenced her to 12 years in prison. The same judge had previously sentenced *Wall Street Journal* reporter Evan Gershkovich on espionage charges. Her lawyer, Mikhail Mushailov, has indicated plans to seek her inclusion in a future prisoner swap. Her appeal was rejected by the Second Court of Appeal of General Jurisdiction, but her lawyer expressed optimism about her potential inclusion in an upcoming swap.

8. Russia does not discriminate between citizens and non-citizens when it concerns repressions. As such, Russian citizens are subjected to the strictest scrutiny off and online. In March 2022, just a few weeks after the full-scale invasion of Ukraine, Russian police began stopping commuters and demanding to check their phones. According to OVD-Info, officers at two metro stations in the south of Moscow were telling travelers to unlock their smartphones so messages could be read. The move made anyone who followed the dissident social media accounts potentially liable for criminal prosecution. To protect its users from criminal charges, Meduza[51], an independent Russian media in exile, offers its readers different icons on its mobile application, thereby preventing police officers from locating the media on the phone screens.

People on the Moscow Metro are stopped by police to check for signs of dissent. See image here.

[51]Russian authorities have designated Meduza as a 'foreign agent.'



A screenshot of the Meduza app illustrating a choice of different icons for the app.

Source: Meduza application

9. President Putin frequently refers to the government of Ukraine and, in particular, President Volodymyr Zelensky[52] as a "neo-Nazi regime". In fact, the "denazification" of Ukraine was claimed to be one of the goals of a so-called special military operation. According to Professor Jeffrey Veidlinger, a professor of history and Judaic studies at the University of Michigan, the common Russian understanding of Nazims hinges on the notion of Nazi Germany as the antithesis of the Soviet Union rather than on the persecution of Jews. Regardless of the rationale behind Mr. Putin's rhetoric, millions of Russians are compelled to filter their speech, appearance, and attire. Expressing your views in a foreign language or moving abroad won't offer any solution. For example, a 38-year-old Russian woman in the Russian city of Sochi is now facing jail time after she posted a Korean-language status update on her WhatsApp account translated to "Glory to Ukraine." She is accused of violating Article 20.3 of the Russian Criminal Code and displaying "Nazi symbols of extremist organizations." Valery Meladze, a popular Russian signer, has also been accused of violating Article 20.3. While giving a speech at a New Year's Eve party in Dubai, UAE, Mr. Meladze allegedly shouted the slogan "Glory to Ukraine." As a result, Yelena Afanasyeva, a senator from the Orenburg region, called for the revocation of Meladze's Russian citizenship, claiming that "some people are allowing themselves to give Nazi salutes with Ukrainian Nazis."

[52]It should be noted that President Zelenskyy is Jewish, and members of his family died in the Holocaust.

Source: https://www.nytimes.com/interactive/2022/07/02/world/europe/ukraine-nazis-russia-media.html

10. Some people are targeted without even mentioning the war. They are prosecuted for wearing Ukrainian colors – or just a green ribbon, which activists display as a symbol of peace. In April 2024, Antonida Smolina was reported by an anonymous accuser of promoting the colors of Ukraine after she posted photos of her wearing a yellow coat against a blue sky. In doing so, she was allegedly "causing associations with enemy symbols and discrediting [Putin's] government and army." Smolina was forced to write a formal response to the accusation, and the police will decide what action to take. Social media users mocked draconian new laws in Russia which have led to people seeing enemies everywhere. "Yellow is banned? The rainbow is banned?[53] The triumph of greyness," said one. "The next step is to ban the yellow sun against the blue sky," posted another. They should be careful – Russian authorities monitor people off and online. Another example involves 46-year-old Olga Dyachenko, who was reported to the police for having a blue and yellow manicure. Ms. Dyachenko allegedly had her fingernails painted with colors of the Ukrainian flag while her ring finger was decorated with black and red colors of the Right Sector (an extremist organization banned in Russia.) The woman told the authorities that she was born in Ukraine and received Russian citizenship in 2021. She also assured them that she regularly had multi-colored manicures. The police took photographs of Ms. Dyachenko's hands and reported the manicure to the local FSB office.

Antonida Smolina was reported for wearing a yellow coat against a blue sky, thereby "discrediting the Russian government and army" in April 2024. See image here.

[53]Referencing to the ban of the "international LGBT social movement" in Russia.

11. In June 2023, Russia's Constitutional Court rejected an attempt by rights groups to seek the repeal of Article 20.3.3. of the Code of Administrative Offenses, which bans people from speaking out against Russia's invasion of Ukraine. Campaigners, including OVD-Info and the banned organization Memorial, had filed a case in April, saying it violated articles of Russia's Constitution, including on free speech and freedom of conscience. One of the plaintiffs was Ilya Yashin, an opposition politician who was fined three times for anti-war statements under Article 20.3.3. and later sentenced to eight and a half years in prison last December on charges of spreading "false information" about the army. In a lengthy ruling on Yashin's complaint, the Constitutional Court said decisions taken by State bodies to "defend the interests of the Russian Federation and its citizens and support international peace and security" could not be arbitrarily questioned on the basis of subjective opinions. The Court left it up to individual judges to decide what exactly qualified as illegal speech – a remarkable acknowledgment of the law's arbitrariness that the Kremlin has embraced. The Russian government seems to be as confused about the vagueness of the law as everyone else. In November 2023, Dmitri S. Peskov, Mr. Putin's spokesman, said it was very hard to determine the line. "Where's the line? I can't tell you," he said. "It's very thin."

Ilya Yashin, opposed to Russian regime, appears outside Smolensk during a court hearing on December 13, 2023. See image here.

12. A number of Russian opposition figures, including the late opposition leader Alexey Navalny[54], his aids, and other opposition politicians and activists have long been calling for sanctions against Russian targets, such as oligarchs whom they believe to be close to President Putin. Articles 20.3.4 of the Code of Administrative Offenses and 284.2 of the Criminal Code are yet other tools for persecuting dissidents in Russia and abroad.
13. Since Russia began the full-scale war in Ukraine, thousands have gathered in the streets across Russia to peacefully protest and call on Russian authorities to end the war. Instead, authorities responded with mass detentions, intimidation, and police brutality. On March 4, 2022, Yulia Galamina[55], an opposition activist and a former Moscow City Duma deputy for the liberal Yabloko party, was detained on allegations of calling for participation in protests. She served 30 days in jail. To this day, Yulia Galamina is among the few opposition politicians and activists who have remained in Russia after Putin's invasion of Ukraine and his subsequent crackdown on dissent.
14. Amendments to the 2015 law on "undesirable organizations" give the prosecutor general unfettered authority to ban foreign organizations deemed a threat to Russia's constitutional order and security. As of April 2024, the list of "undesirables" encompasses 158 organizations, including Transparency International, Greenpeace International, and Human Rights House Foundations. Three Russian activists have already been sentenced to prison over alleged violations of Articles 20.33 of the Code of Administrative Offenses and 284.1 of the Criminal

[54]The case of Alexei Navalny is discussed in detail in Chapter 19.
[55]Russia's Justice Ministry added Yulia Galamina to its list of "foreign agents" in September 2022. She challenged the designation in court, which ultimately sided with the authorities.

Code of the Russian Federation. In July 2022, a court in Krasnodar sentenced Andrey Pivovarov, former executive director of the now-defunct pro-democracy Open Russia Civic Movement, to four years in prison on politically motivated charges of leading an "undesirable organization." In April 2023, a court in Moscow sentenced Vladimir Kara-Murza[56] to 25 years in maximum security prison on combined charges of involvement with an "undesirable organization," treason, and dissemination of "false information" about the conduct of the Russian Armed Forces.

15. In Russia, the term "foreign agent" is synonymous with "spy" or "traitor." Federal Law No. 255-FZ of July 14, 2022 "On Control over the Activities of the Persons Under Foreign Influence" expands the definition of foreign agent to a point at which almost any person or entity, regardless of nationality or location, who engages in civic activism or even expresses opinions about Russian policies or officials' conduct could be designated a foreign agent, so long as the authorities claim they are under "foreign influence." "This new tool in the government's already crowded toolbox makes it even easier to threaten critics, impose harsh restrictions on their legitimate activities and even ban them. It makes thoughtful public discussion about Russia's past, present, and future simply impossible," said Rachel Denber, deputy Europe and Central Asia director at Human Rights Watch. As of April 2024, there are 308 entities, including non-governmental organizations, individuals, and media outlets, designated as "foreign agents."
16. In late November 2023, Russia's Supreme Court held that the "international LGBT movement" is an "extremist organization" jeopardizing all forms of LGBT rights activism in the country. As such, the "International LGBT Movement" became the 107th entity designated as an extremist organization. Under Article 20.3 of the Code of Administrative Offenses of the Russian Federation, a person found guilty of displaying symbols of an extremist organization faces up to 15 days in detention for the first offense and up to four years in prison for a repeated offense.[57] Further, under Article 282.2 of the Criminal Code of the Russian Federation, participating in or financing an extremist organization is punishable by up to 12 years in prison. Since the "International LGBT Movement" does not exist, human rights defenders fear that the ruling will allow the authorities to arbitrarily prosecute anyone for any activities related to LGBT rights.
17. At the beginning of 2024, Russian courts handed out the first convictions in connection with what the government calls the "International LGBT Movement." After Artyom P. posted a photograph of an LGBT flag online, a court in the southern region of Volgograd found him guilty of "displaying the symbols of an extremist organization." The accused was ordered to pay a fine of a thousand rubles [approx. USD 10.00 USD], admitted guilt, and repented, saying that he posted the image "out of stupidity." At the same time, the court in Nizhny Novgorod, east of Moscow, sentenced 24-year-old Anastasia Ershova to five days in administrative detention for wearing frog-shaped earrings displaying an image of a rainbow.
18. In December 2024, *Jurist* magazine58 provided the following update and overview:

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[56]The case of Vladimir Kara-Murza is discussed in detail in Chapter 19.
[57]Under Article 282.4 of the Criminal Code of the Russian Federation.
58 Jiahang Li, Russia police raid bars under laws criminalizing 'LGBT propaganda', JURIST (Dec. 2, 2024), https://www.jurist.org/news/2024/12/russia-police-raid-bars-under-laws-criminalizing-lgbt-propaganda/.

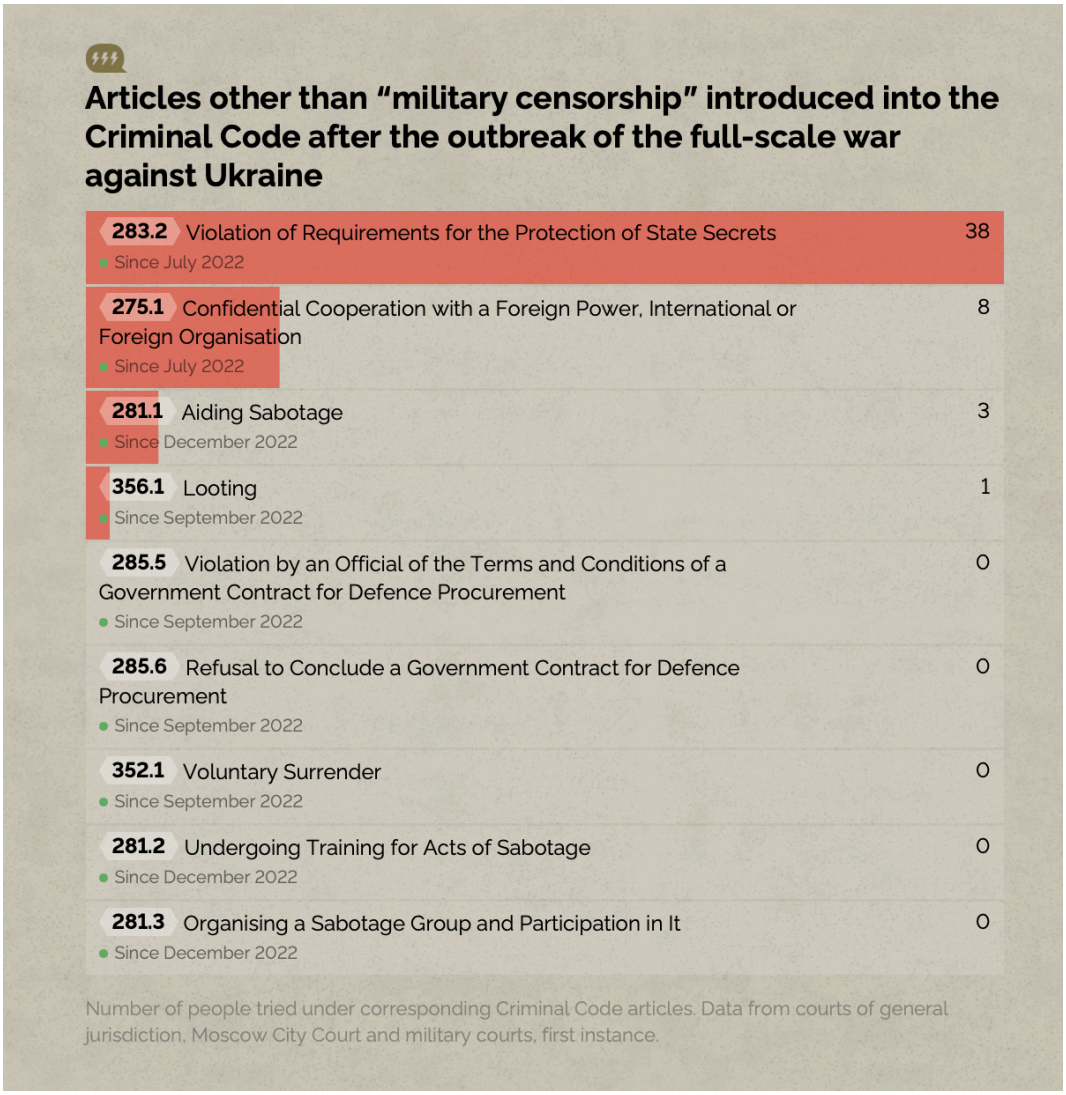
> "Russian security forces raided several bars and nightclubs in Moscow on Saturday as part of efforts to combat what is classified as LGBT propaganda…. The raids come a year after the Russian Supreme Court outlawed the LGBTQ+ movement, labeling its proponents as extremists under newly enacted legislation. Under the Criminal Code of Russia, participation in extremist communities can result in imprisonment of up to two years. Volker Türk, the UN High Commissioner for Human Rights, condemned the decision, stating, 'No one should be imprisoned for engaging in human rights work or deprived of their rights based on sexual orientation or gender identity.' The LGBT community in Russia has faced escalating challenges since the 2020 amendments to Article 1 of the Family Code, which defined marriage exclusively as a "voluntary conjugal union between a man and a woman". In 2023, the government further restricted LGBT rights by banning gender-affirming surgeries. Earlier this year, following the enactment of laws criminalizing LGBT propaganda, the Russian media regulator, Roskomnadzor, launched an investigation into the language-learning app Duolingo, accusing it of spreading LGBT propaganda. Additionally, the Federal Service for Monitoring labeled the "LGBT public movement" as a terrorist organization, intensifying the crackdown. Most recently, in November, Russia's upper house of parliament approved two laws that will prohibit the visibility of LGBT people in media and ban citizens of countries that allow gender transitioning from adopting Russian children."

Anastasia Ershova is wearing frog-shaped earrings displaying an image of a rainbow and sentenced to prison for five days. For images see Ershova and her earrings.

19. **For further reading**, *see* (1) Anton Troianovski et al., *How the Russian Government Silences Wartime Dissent*, The New York Times (Dec. 29, 2023); (2) *Russia Criminalizes Independent War Reporting, Anti-War Protests*, Human Rights Watch (March 7, 2022); (3) *'Total Distrust': Rise of the Russian Informers*, Financial Times (March 29, 2023); (4) Charlie Smart, *How the Russian Media Spread False Claims About Ukrainian Nazis*, The New York Times (July 2, 2022); (5) *Russia: Supreme Court Bans "LGBT Movement" as "Extremist"*, Human Rights Watch (Nov. 30, 2022); (6) *Russia Expands Money Laundering Statutes to Enable Broader Political Repressions Against Anti-Kremlin Speech and Fundraising*, Meduza (Dec. 13, 2024); (7) Dasha Litvinova, *How Putin's Crackdown on Dissent Became the Hallmark of the Russian Leader's 24 Years in Power*, The Associated Press (March 6, 2024); (8) *Repression Grows in Russian Universities*, Science Business (Aug. 1, 2024); (9) Clare Sebastian, *As a Fifth Term for Vladimir Putin Looms, Russia Is Stepping Up Its War on Its Own People*, CNN (March 9, 2024); (10) Benoit Vitkine, *Repression Targets Russian Citizens Guilty of Liking Posts and Sharing Dreams*, Le Monde (Jan. 25, 2023).

18.3 Army-Related Repressions

According to the Kremlin's rhetoric, Russia is not formally engaged in any war, there is no martial law introduced in the country, and the September 21, 2022 mobilization was described as only "partial." Yet, in 2022-2023, more than 4,600 people have been tried under the new repressive parts of the Criminal Code articles related to the army. Furthermore, in 2023, 4,379 cases on "abandonment of military unit" were initiated, with only 6 of them being dropped later. Despite these numbers, there are probably many more repressive cases related to the war. Not only do the courts conceal information about the defendants and do not publish sentences on repressive articles of the Criminal Code, but also not all cases in general appear in the records of Russian courts.



Source: https://www.proekt.media/en/guide-en/repressions-in-russia-study/

18.3.1 Going to the War

Russia uses a wide variety of tools, forcing potential soldiers to go to the so-called special military operation in Ukraine– from enticing them with increased salaries with bonuses for capturing territories, debt forgiveness, and even citizenship for foreigners and their families to threatening them with many years of imprisonment. Yet, one must not be misled by this carrot-and-stick approach. While offering three times more than the average salary in Russia and making promises of a brighter future, the Kremlin does not publish accurate numbers of losses in Ukraine.

Decree "On the Announcement of Partial Mobilization in the Russian Federation" from September 21, 2022

In accordance with federal laws of May 31, 1996 No. 61-FZ "On Defense," of February 26, 1997 No. 31-FZ "On Mobilization Preparation and Mobilization in the Russian Federation," and of March 28, 1998 No. 53-FZ "On Military Duty and Military Service," I decree:

1. To declare partial mobilization in the Russian Federation from September 21, 2022.

2. To carry out the conscription of citizens of the Russian Federation for military service by mobilization into the Armed Forces of the Russian Federation. Citizens of the Russian Federation called up for military service upon mobilization have the status of military personnel performing military service in the Armed Forces of the Russian Federation under a contract.

3. To establish that the level of pay for citizens of the Russian Federation called up for military service upon mobilization into the Armed Forces of the Russian Federation corresponds to the level of pay for military personnel serving in the Armed Forces of the Russian Federation under a contract.

4. Contracts for military services concluded by military personnel continue to be valid until the end of the period of partial mobilization, with the exception of cases

of dismissal of military personnel from military service on the grounds established by this Decree.

5. To establish during the period of partial mobilization the following grounds for dismissal from military service of military personnel undergoing military service under a contract, as well as citizens of the Russian Federation called up for military service upon mobilization into the Armed Forces of the Russian Federation:

a) by age – upon reaching the age limit for military service;

b) for health reasons – in connection with their recognition by a military medical commission as unfit for military service, with the exception of military personnel who have expressed a desire to continue military service in military positions that can be filled by the specified military personnel;

c) in connection with the entry into force of a court verdict imposing a sentence of imprisonment.

6. To the Government of the Russian Federation:

a) finance activities to carry out partial mobilization;

b) take the necessary measures to meet the needs of the Armed Forces of the Russian Federation, other troops, military formations and bodies during the period of partial mobilization.

7. For administrative use.

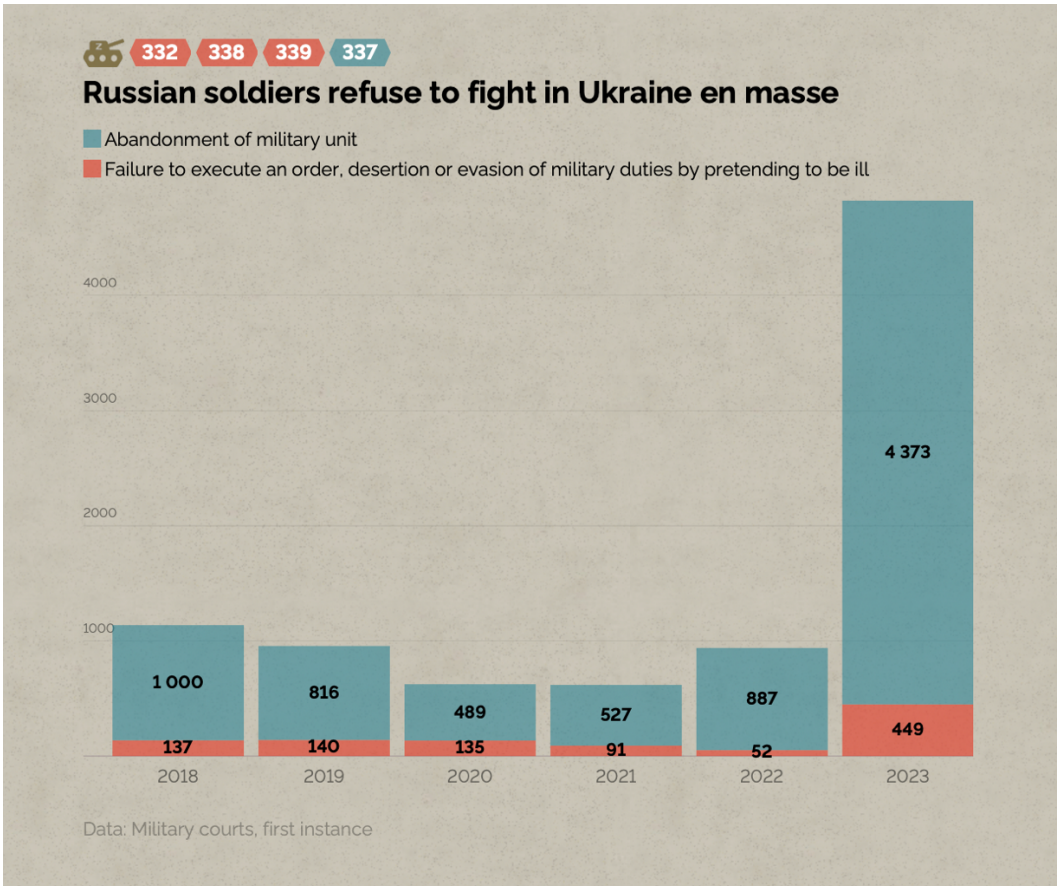
8. The highest official of the constituent entities of the Russian Federation shall ensure the conscription of citizens for military service upon mobilization into the Armed Forces of the Russian Federation in the quantity and within the time frame determined by the Ministry of Defense of the Russian Federation for each constituent entity of the Russian Federation.

9. To grant citizens of the Russian Federation working in organizations of the military-industrial complex the right to a deferment from conscription for military service upon mobilization (for the period of work in these organizations.) The categories of citizens of the Russian Federation who are granted the right to deferment and the procedure for granting are determined by the Government of the Russian Federation.

10. This Decree comes into force on the date of its official publication.

18.3.2 Getting Out of the War

By 2023, one of the main problems for the Kremlin was the mass refusal of the contracts and mobilized soldiers to fight in Ukraine. As a solution, the authorities toughened a whole set of articles under which people now can be tried for breach of discipline in the troops. Harsher penalties were now introduced for offenses committed during "mobilization," "marital law," "wartime," "armed conflict," or "hostilities." For example, imprisonment for the failure to execute an order (Article 332), unauthorized abandonment of a military unit (Article 337), and deliberate destruction of military property (Article 346) increased from up to five years to up to ten years. At the same time, the punishment for desertion (Article 338) increased from up to ten to up to fifteen years in prison. The penalty for negligent destruction or damage of military property toughened from up to two years to up to five years in prison, and the loss of military property is now punished by imprisonment to up to seven years.



Source: https://www.proekt.media/en/guide-en/repressions-in-russia-study/

In September 2022, the article for voluntary surrender also returned to the Criminal Code – just like during and after the Great Patriotic War, when Soviet soldiers who returned from German concentration camps were immediately sent to Gulag. The punishment under Article 325.1 is up to 10 years, while in the Soviet Criminal Code, the punishment was even harsher – the death penalty or 15 years in prison.

Article 332 – Failure to Execute an Order

1. Failure by a subordinate to comply with an order from a superior given in the prescribed manner, which caused significant harm to the interests of the service shall be punishable by restriction in military service for a term of up to two years, or by arrest for a term of up to six months, or by detention in a disciplinary military unit for a term of up to two years.

2. The same act, committed by a group of persons, a group of persons by prior conspiracy, or an organized group, *entailing grave consequences is punishable by imprisonment for a term of up to five years* [emphasis added.]

2.1. Failure by a subordinate to comply with an order from a superior given in the prescribed manner during a period of martial law, in wartime, or in conditions of an armed conflict or hostilities, as well as refusal to participate in military or hostilities shall be punished by imprisonment for a term of two to three years.

2.2. Acts provided for in Parts 1 or 2 of this Article, committed during martial law, in wartime, or in conditions of an armed conflict or hostilities, as well as refusal to participate in military or hostilities, which *entailed grave consequences shall be punished by imprisonment for a term of three to ten years* [emphasis added].

[The remainder of the Article is omitted.]

Article 337 – Unauthorized Abandonment of Military Unit

[…]

2.1 Unauthorized abandonment of a unit or place of service, as well as failure to appear on time without a good reason for service for a *duration of more than two days, but not more than ten days* [emphasis added], committed by military personnel serving on conscription or under a contract, during mobilization or martial law, in wartime or in conditions of armed conflict or hostilities, *shall be punishable by imprisonment for a term of up to five years* [emphasis added].

[…]

3.1 [Unauthorized abandonment of a unit or place of service, as well as failure to appear on time without good reason for service *for a period of more than ten days, but not more than one month*, committed by military personnel serving on conscription or under a contract], during mobilization or martial law, in wartime or

in conditions of armed conflict or hostilities, *shall be punishable by imprisonment for a term of up to seven years* [emphasis added].

[…]

5. Unauthorized abandonment of a unit or place of service, as well as failure to appear on time without good reason for service *lasting more than one month* [emphasis added], committed by a military serviceman serving on conscription or under a contract, during the period of mobilization or martial law, in wartime or in conditions of armed conflict or hostilities, *shall be punished by imprisonment for a term of five to ten years* [emphasis added.]

Article 338 – Desertion

[…]

3. [Desertion, meaning an unauthorized abandonment of a unit or place of service in order to evade military service, as well as failure to appear for service for the same purposes, desertion with weapons entrusted to service, and desertion committed by a group of persons by prior conspiracy or by an organized group], committed during the period of mobilization or martial law, in wartime or in conditions of armed conflict or combat operations, *shall be punishable by imprisonment for a term of five to fifteen years* [emphasis added].

Article 339 – Evasion of Military Service Duties by Pretending to Be Ill, or by Any Other Method

[…]

[Evasion of military service duties by feigning illness, or causing any damage to himself (self-mutilation), or forgery of documents, or other deception, or committed for the purpose of complete exemption from performing the duties of military service], committed during the period of mobilization or martial law, during martial

law time or in conditions of armed conflict or hostilities, *shall be punished by imprisonment for a term of five to ten years* [emphasis added].

Article 352.1 – Voluntary Surrender

Voluntary surrender in the absence of signs of a crime provided for in Article 275[59] of this Code shall be punished by *imprisonment for a term of three to ten years* [emphasis added.]

Commentary

1. On September 21, 2022, President Putin announced Russia's first mobilization since World War II. The mobilization was a tacit admission that Russia is facing serious difficulties in a conflict that Mr. Putin still refuses to describe as war with Ukraine, calling it instead a "special military operation." Although Defense Minister Sergei Shoigu said that some 300,000 additional personnel with combat experience would be drafted, the mobilization proceeded chaotically at best. Panic triggered by the broader mobilization effort, coupled with growing reports of men who qualified from exemptions nonetheless receiving summonses, has led to scenes of men being chased down by recruiters, in some cases rounded up in the middle of the night, and loaded onto buses and planes to be sent to military training and deployment to Ukraine. Despite assurances by the authorities of a "partial" mobilization, the initial haphazard call-up process has sparked fears that Putin is trying to activate far more soldiers than the 300,000 initially stated by Sergei Shoigu. This fear of conscription has also led hundreds of thousands of Russians and counting to flee across the country's borders by land and air to Central Asian states like Kazakhstan and Kyrgyzstan and to others like Finland, Georgia, Turkey, and Serbia. According to OVD-Info, more than 2,000 anti-war protesters have been arrested since the announcement, and some recruitment centers have been attacked, including one incident where a gunman opened fire in a draft office in Siberia. The Levada Center, long considered Russia's most reliable pollster, said in a September 29 survey that 47 percent of the respondents said they were anxious, scared, or horrified by the government's decision to decree partial mobilization, while 23 percent said they were shocked by the move.

Among the 1300 protestors detained by Putin's partial military draft, a woman holds a sign that says "нет могилизации." See image here.

2. For the seven months before the so-called partial mobilization, the Russian military relied on units of soldiers from ethnic minority regions, such as Siberia and the Muslim-majority provinces of the North Caucasus. Those same minority populations have also been disproportionately targeted amid the mobilization process. The rights workers believe that

[59]Discussed in subsection 18.4 of this chapter.

Russian military recruiters are focusing their efforts in rural and remote areas, rather than big cities like Moscow or St. Petersburg, because of a lack of media outlets and protest activity makes it easier for them to enforce recruitment orders and appease the regional leaders seeking to curry favor with Putin. The Asia ethnic populations of Siberia and the Russian Far East are also less likely to have personal and family connections to Ukraine. Yet, a week after the announcement of mobilization, President Volodymyr Zelenskyy, in his daily video address, urged minority groups across Russia to resist the Kremlin's mobilization drive. "You don't have to die in Ukraine. Your sons don't have to die in Ukraine," Zelenskyy said, standing next to a monument in Kyiv to an imam from the Caucasus.

3. One of the consequences of partial mobilization is a women's protest movement in Russia. Two months after the announcement of partial mobilization, in an apparent bid to boost patriotic morale, President Putin invited a group of mothers, some of whom had lost their sons in the war, for tea in a televised event. Activists denounced the meeting as fake. Mr. Putin told one mother that her son had a purpose and "didn't die in vain," while others, he said, died of alcoholism. As such, according to President Putin's reasoning, men in his country have two choices – to die for Mr. Putin's ambitions on the battlefield or to die from delirium tremens. As the mobilization campaign hit its one-year mark, a group of wives and mothers of those who have been mobilized for Russia's war in Ukraine began protesting online (by spreading videos of smattering manifestos) and offline (by small rallies). Their message is clear – they want their loved one to be discharged from military duty and replaced by fresh recruits. Crucially, these women generally belong to Russia's so-called patriotic camp and do not oppose the war itself. Instead, they criticize the way the "special military operation" is being managed. But their attempt to bring their husbands home is to no avail. "It's as if we don't exist. How much longer can you continue to mock us, our families?" said one of the wives in a video uploaded to YouTube. Some of the group's members have reported receiving police visits at home and being threatened with legal prosecution. But coming down too hard on the women – traditionally the backbone of Putin's electorate – would be a terrible optic, even for the Kremlin.

Relatives of men drafted in Moscow rally together on November 7, 2023. See image here.

4. In July 2023, Russia's parliament conveniently extended the maximum age at which men can be mobilized to serve in the army by at least five years while the minimum age at which a person can be drafted remained the same. By doing so, Russia enlarged the scope of men who could be mobilized to fight in the so-called special military operation in Ukraine. Raising the upper age limit for men to be called up for compulsory military service to 30 from 27 made it much harder for young men to avoid the draft. The law also allows men who have completed their compulsory service without any further commitment to be mobilized up to the age of 40, 50, or 55, depending on their category. Furthermore, Russia also maintains a "mobilized reserve" of men who have signed up to receive periodic military training and a stipend after their compulsory or professional service ends. The new law means that those from this reserve with the highest tanks can now be called back into service up to the age of 70 rather than 65, other senior ranks up to 65, junior officers up to 60, and all others up the age of 55 rather than 45.

5. Growing numbers of Russian soldiers are trying to get out of the war. Some of them are taking drastic measures to escape such as asking their friends and fellow soldiers to shoot them in the leg. Independent Russian media outlet Mediazona has documented more than 7,300 cases in the Russian courts against AWOL soldiers since the announcement of the so-called partial mobilization in September 2022; cases of desertion, the harshest charge, increased sixfold in 2023. Record numbers of people seeking to desert – more than 500 in the first two months of 2024 – are contacting Idite Lesom, a group run by Russian activists in the Republic of Georgia. The increase in people seeking to leave the war is obvious – from 3% in the spring of 2023 to more than a third in January of 2024. Although the number of known deserters remains small compared to Russia's overall troop strength, they are an indicator of morale.
6. **For further reading**, *see* (1) Mikhail Komin, *Kremlin Seeks Greater Battlefield Effectiveness With Military Purge*, Carnegie Endowment for International Peace (June 6, 2024); (2) *Putin Offers Citizenship to Foreigners Who Fight for Russia*, Reuters (Jan. 4, 2024); (3) Katherine Spencer, *Foreign Troops Help Putin Avoid Pitfalls of Another Russian Mobilization*, Atlantic Council (Dec. 12, 2024); (4) Daniil Belovodyev, *Inside Russia's Improvised System for Mobilizing Men for the Ukraine War: An RFL/RL Investigation*, Radio Free Europe/Radio Liberty (May 15, 2024); (5) Leyla Latypova, *How Russia's 'Covert Mobilization' Finds Manpower for the War in Ukraine*, The Moscow Times (May 21, 2024); (6) Olivia Yanchik, *North Korean Troops Could Help Putin Avoid a Risky Russian Mobilization*, Atlantic Council (Oct. 24, 2024); (7) Margarete Klein, *How Russia Is Recruiting for the Long War*, German Institute for International and Security Affairs (June 2024).

18.4 Back to the USSR

Whether we like it or not, history repeats itself. President Putin repeatedly illustrated his obsession with history. In 2008, as Putin sat down with then-U.S. Ambassador William Burns, now the director of the Central Intelligence Agency, he was blunt in expressing his vision of history. "Don't you know that Ukraine is not even a real country?" the Russian president asked, according to Burns. In February 2024, Mr. Putin gave a history lesson to another American. In his two-hour interview with Tucker Carlson, President Putin spent more than thirty minutes describing his understanding of history since the Medieval times. But most importantly, the President gets a lot of ideas and inspiration from his so-called counterparts – Peter the Great, Catherine the Great, Vladimir Lenin, and, unfortunately, Joseph Stalin.

For the past couple of years, people in Russia and abroad have heard about what seemed to be well-forgotten crimes. Putin's authorities, like the Soviet authorities, use a wide range of articles, including treason, espionage, cooperation with foreign organizations, disclosure of state secrets, participation in a subversive community, and others as tools of their repressive machine. Interestingly, some of these articles are used more often in modern Russia than in Brezhnev's USSR. But luckily, nowadays, those convicted under them are not shot. Yet.

Source: https://www.proekt.media/en/guide-en/repressions-in-russia-study/

Article 64 – Treason

Treason, that is, an act intentionally committed by a citizen of the USSR to the detriment of the sovereignty, territorial integrity or state security and defense capability of the USSR: defection to the side of the enemy, espionage, betrayal of state or military secrets to a foreign state, flight abroad, or refusal to return due to borders in the USSR, providing assistance to a foreign state in carrying out hostile activities against the USSR, as well as conspiracy to seize power *shall be punishable by imprisonment for a term of ten to fifteen years with confiscation of property or death penalty with confiscation of property* [emphasis added.]

[The remainder of the Article is omitted.]

Article 275 – Treason

Treason, that is, espionage committed by a citizen of the Russian Federation, the issuance to a foreign state, international or foreign organization or their representatives of information constituting a state secret, entrusted to a person or becoming known to him through his service, work, study or in other cases provided for by the legislation of the Russian Federation, going over to the enemy's side or providing financial, logistical, consulting or other assistance to a foreign state, international or foreign organization or their representatives in activities directed against the security of the Russian Federation *shall be punishable by imprisonment for a term of twelve to twenty years with a fine in the amount of up to five hundred thousand rubles* [approx. USD 5,000.00] *or in the amount of the wages or other income of the convicted person for a period of up to three years, or without it and with restriction of freedom for a term of up to*

two years or life imprisonment [emphasis added.]

Note: [For the purpose of this Article], going over to the enemy's side means the participation of a person in the forces (troops) of a foreign state, international or foreign organization directly opposing the Russian Federation in an armed conflict, military operations or other actions with the use of weapons and military equipment.

[The remainder of the Article is omitted.]

Article 65 – Espionage

Transfer, as well as theft or collection for the purpose of transfer to a foreign state, foreign organization or their agents of information constituting state or military secrets, as well as transfer or collection on the instructions of foreign intelligence of other information for use to the detriment of the interests of the USSR, if espionage was committed by a foreign citizen or a stateless person, *shall be punishable by imprisonment for a term of seven to fifteen years with confiscation of property or death penalty with confiscation of property* [emphasis added.]

Article 276 – Espionage

Transfer, collection, theft or storage for the purpose of transfer to a foreign state, international or foreign organization or their representatives of information constituting a state secret, as well as transfer or collection on the instructions of foreign intelligence or a person acting in its interests, other information for use against security Russian Federation or transfer, collection, theft or storage for the purpose of transferring to the enemy information that can be used against the Armed Forces of the Russian Federation, other troops, military formations and bodies of the Russian Federation, committed in conditions of an armed conflict, military operations or other actions with the use of weapons and military equipment with the participation of the Russian Federation, that is, espionage, if these acts were committed by a foreign citizen or a stateless person, *are punishable by imprisonment for a term of ten to twenty years* [emphasis added.]

Note: [For the purpose of this Article], an enemy is understood as a foreign state, international or foreign organization opposing the Russian Federation in an armed conflict, military action or other actions using weapons and military equipment.

Article 75 – Disclosure of a State Secret	Article 283 – Disclosure of a State Secret
1. Disclosure of information constituting a state secret by a person to whom this information was entrusted or became known through service or work, in the absence of signs of treason or espionage, is *punishable by imprisonment for a term of two to five years* [emphasis added.]	1. Disclosure of information constituting a state secret by a person to whom it was entrusted or became known through service, work, study or in other cases provided for by the legislation of the Russian Federation, if this information has become available to other persons, in the absence of signs of crimes provided for in Article 275 and 276 of this Code, is *punishable by arrest for a term of four to six months or imprisonment for a term of up to four years* [emphasis added] with or without deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years.
2. The same act, *if it entailed grave consequences, shall be punished by imprisonment for a term of five to eight years* [emphasis added.]	2. The same act, *which through negligence entailed grave consequences, is punishable by imprisonment for a term of three to seven years* [emphasis added] with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years.

Andrei Kolesnikov,

The New Moral Resistance to Putin: Relearning a Soviet-Era Act Amid Repressions and War

Foreign Affairs (2024)

(reproduced at https://www.foreignaffairs.com/russia/new-moral-resistance-putin)

In the face of efforts by civil society to uphold basic constitutional rights, [the Putin regime] has expanded the penal code to quash all forms of dissent, criminalizing any actions that can be related to "extremism" and "discrediting the armed forces." Investigators, prosecutors, and judges have begun to behave like their counterparts from half a century ago. In 2022, there was a notable increase in the number of articles of the penal code dealing with political crimes. In 2023 and in the first months of this year, legislators switched their focus to enforcing restrictions that violate the "human and civil rights and freedoms" section of the constitution, including labeling individuals as "foreign agents." The punishments now being meted out for these invented crimes are formidable: for instance, the authorities are confiscating property from alleged offenders at levels that surpass those of the 1960s.

Meanwhile, prosecutions on antiwar charges have steadily increased since the war began. By the end of 2022, according to the Russian human rights organization OVD-Info, 378 people had been charged; that number had reached 794 people by the end of 2023. This year, between January and April alone, 960 people were detained. By contrast, even in the early 1970s, when the Soviet repressive machine was at its peak, the number of convictions for political crimes was about 160 per year. If anything, the situation today is much harsher and more repressive, arbitrary, and chaotic than it was then.

Neither does this trend seem likely to end soon. Given the increasingly absurd pretexts the state is using for criminal prosecution and the resounding success of informers of all stripes, the judicial crackdown will continue to worsen. And this is apart from the alarming rise in extrajudicial repression: OVD-Info, for example, has documented such tactics as pressure in the workplace, threats, expulsion from universities and schools, destruction of property, censorship, and forced public apologies—a tactic introduced by the Kadyrov regime in Chechnya for any alleged misdemeanor against the government. There is also the continual risk of being branded a "foreign agent," an "undesirable organization," or an "extremist," not to mention the authorities' pervasive disregard for the freedom of speech, freedom of assembly, and freedom of association, an approach that renders almost any public activity suspect.

Commentary

1. In 2023, Russia opened 70 treason cases, according to a report by Perviy Otdel. Defendants were found guilty in 37 of these cases. One of the most infamous treason cases is the prosecution of a prominent Russian opposition figure, Vladimir Kara-Murza Jr., for publicly denouncing the war in Ukraine. Mr. Kara-Murza Jr. has been sentenced to 25 years in prison, a particularly severe punishment even for modern Russia. A more recent treason case concerns the arrest of a Los Angeles resident Ksenia Karelina, a Russian-American ballerina, who allegedly donated $51.80 to a Ukrainian charity. But Russian authorities persecute not only dissenters or foreigners. Alexander Kuranov, an eminent Russian physicist who worked to develop the country's hypersonic capabilities, was convicted of treason and sentenced to seven years in a maximum-security prison. Persecution of scientists is not new for the Kremlin – when physicist Andrei Sakharov began arguing for human rights in the USSR, the KGB kidnapped him and confined him to a hospital, where he was tied to bed, drugged, brutally force-fed, and subjected to other tortures.

Ksenia Karelina, a dual citizen in the U.S. and Russia, detained by the Russian authorities over suspected treason. See image here.

2. Foreigners are a very appealing target for President Putin, who sees them as pawns for potential exchanges. In fact, in his two-hour interview with Tucker Carlson, Mr. Putin openly admitted his desire to exchange a couple of foreigners and dissidents for Vadim Krasikov, a Russian killer jailed in Germany. One such potential pawn for Putin is Evan Gershkovich, a Wall Street Journal reporter, who was arrested on charges of espionage in March 2023. Although Mr.

Gershkovich was working with press accreditation issued by the Russian foreign ministry, Russian Foreign Ministry spokesperson Maria Zakharova stated that what Gershkovich "was doing in Yekaterinburg has nothing to do with journalism." On April 23, 2024, Evan Gershkovich saw his latest appeal denied by a Russian court, leaving him jailed in Russia on espionage charges until at least late June. The U.S. State Department deemed Gershkovich as "wrongfully detained" soon after his arrest. The White House, Gerskovich's family, and his employer insisted that the espionage charges against him were baseless. The trial, conducted behind closed doors, concluded in July 2024 with Gershkovich being sentenced to 16 years in a high-security penal colony—a verdict widely condemned by international observers as a violation of press freedom. On August 1, 2024, Gershkovich was suddenly released as part of a significant prisoner exchange between the United States and Russia, the largest since the Cold War. The swap, mediated by Turkey, involved 26 individuals, including fellow Americans Paul Whelan and Alsu Kurmasheva, in exchange for Russian nationals held in various Western countries. Despite the absence of concrete evidence publicly presented to support the espionage claims, the trial became emblematic of Russia's broader use of legal mechanisms as political tools amidst escalating tensions with the West. Gershkovich's eventual release in a prisoner exchange demonstrated the delicate balance between diplomacy and justice in resolving high-profile detentions. The case is likely to resonate as a key moment in the ongoing struggle for press freedom and an independent judiciary in an increasingly polarized Cold War 2.0 global landscape.

Wall Street Journal reporter Evan Gershkovich charged with espionage in custody before hearing in Moscow April 23, 2024. See image here.

3. **For further reading**, *see* (1) Anastasia Tenisheva, *'One Name, One Life, One Plaque': Russian Project Installs Reminders of Soviet Repressions*, The Moscow Times (June 17, 2024); (2) Olga Romashova, *Russia's Repression Replay. Prosecutor General Pushes For New Review of Soviet Era Repression Victims' Rehabilitation Orders*, Mediazona (Sept. 19, 2024); (3) *Say Their Names: Why Remembering the Victims of Soviet-Era Repression Is More About Russia's Future Than Its Past*, Novaya Gazeta Europe (Nov. 3, 2024); (4) *Citing 'Fire Safety Violations,' Russia Shutters Its Only State-Funded Museum Dedicated to Soviet-Era Repressions*, Meduza (Nov. 15, 2024); (5) Robert Coalson, *How the Russian State Ramped Up the Suppression of Dissent in 2023: 'It Worked in the Soviet Union, and It Works Now'*, Radio Free Europe/Radio Liberty (Dec. 31, 2023); (6) Mikhail Zygar, *Putin's Myths About Ukraine, Debunked*, TIME (Feb. 10, 2024).

18.5 Conclusion

In 2024, the media is saturated with disheartening news about Ukraine's prospects of maintaining its status as a sovereign independent country. While people around the world are getting tired of war, Russian propaganda spreads discussions about reviving – yet another Soviet practice – the death penalty. It is unclear whether President Putin is about to announce the second

mobilization and, if so, when it is going to happen. Although this chapter focuses on the repressive laws after the 2022 invasion of Ukraine, the repressions themselves are not its main focus. Repressions cannot exist in a vacuum – they are the State's response to dissent. The more we hear about detentions, convictions, and newly enacted draconian laws, the more nonconforming society is. And the more the government tightens the screws, the more likely it is to collapse. The Soviet Union, for once, provides a good example of that.

Chapter 19

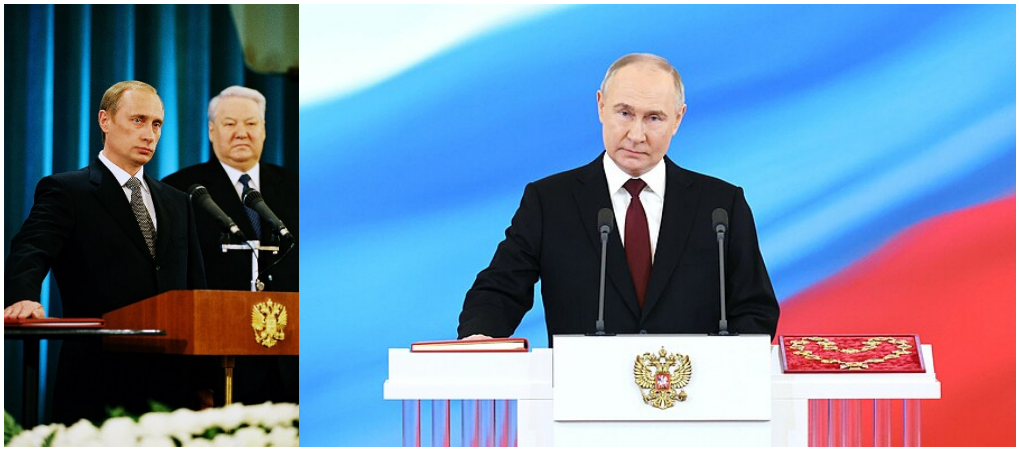
Russian Judicial Repressions

19.1 Introduction

Ceasing defiance is not a new concept for Russian President Vladimir Putin. His background as a former KGB operative shaped his political psyche geared toward maintaining control and suppressing opposition, often through mechanisms that coerce compliance and stifle dissent. As the conflict in Ukraine wages on, the war against freedom of expression within Russia’s own borders intensifies.

This chapter further examines the evolution of Russia’s legal landscape under Putin’s administration, with particular attention to how legal instruments have been employed to silence dissenting voices. Through a series of case studies, it will highlight the experiences of individuals who have faced legal repercussions for expressing dissent. The chapter concludes by offering a forward-looking analysis of Russia’s potential trajectory, considering the implications of continued repression for the future of governance and civil liberties in the country.

19.2 Creation and Structure of the Russian Legal System



Vladimir Putin is taking the oath of office, placing his right hand on the Russian Constitution—in 2000 (left) and in 2024 (right).

Source: http://www.kremlin.ru/events/president/news/73981/photos/75880

19.2.1 History and Structure

The years following the fall of the Soviet Union led to a transition to a new system of governance. Under the leadership of Boris Yeltsin, the Russian Federation adopted a new Constitution in 1993 that split the government, much like that of the United States, into independent federal, legislative, and judicial branches. The power of the court is established in Article 118 of Chapter 7.

Article 118

1. Justice in the Russian Federation is administered only by the court.

2. Judicial power is exercised through constitutional, civil, arbitration, administrative, and criminal proceedings.

3. The judicial system of the Russian Federation is established by the Constitution of the Russian Federation and federal constitutional law. The judicial system of the Russian Federation consists of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, federal courts of general jurisdiction,

arbitration courts, and justices of the peace of the subjects of the Russian Federation. The creation of emergency courts is not permitted.

Federal constitutional laws are further established in a separate document adopted on October 23, 1996. Judicial powers, per Article 5, are to be independent "of anybody's will as governed solely by the Constitution of the Russian Federation and the law." The judicial system is comprised of the Constitutional Court, the Supreme Court, four levels of general jurisdiction courts, three levels of military courts, and a three-level system of arbitration courts. The Supreme Court, for the first time, was granted the power of judicial review known to the US students since the times of *Marbury v. Madison*[60]. While Russia does not explicitly utilize common law, Supreme Court rulings "usually not only clarify the application of existing law but also create new legal rules," which lower courts adhere to in executing decisions of their own. Judicial decisions are binding within the territory of the Russian Federation.

Criteria for judges is established under Chapter 2 of the Federal Constitutional Law on the Judicial System of the Russian Federation, as well as the Russian Constitution. "Judges are selected by a professional council dominated by judges that assesses candidates' knowledge of law and appropriateness for the bench. They enjoy life tenure, subject to removal for cause." The council in question is the Council of the Federation, Russia's upper chamber of Parliament. The judicial candidates referred for selection candidates to the Constitutional Court, Supreme Court, and all other federal courts are made by the President. Eligible individuals must be over the age of 25, possess a degree in law, and have practiced for at least five years.

As with the United States Constitution, the Constitution of the Russian Federation grants citizens the right to counsel.

Article 48

"1. Everyone shall be guaranteed the right to qualified legal assistance. In the cases envisaged by law, legal assistance shall be provided free of charge.

2. Any person detained, taken into custody or accused of committing a crime shall have the right to use the assistance of a lawyer (counsel for the defense) from the moment of being detained, placed in custody or accused."

[60] 5 U.S. 137 (1803).

Individuals are also able to represent themselves in proceedings, excluding those that are criminal in nature.

19.2.2 Legal Rights of Russian Citizens and Defendants

Chapter 2 of the Russian Constitution codifies human and civil rights. Among the rights mentioned, the document purports to recognize principles of international law; prohibit persecution on the basis of gender, social, racial, national, and religion; protect human dignity; forbid torture or severe violence as punishment by the state; and the rights to privacy, assembly, and free expression. The rights of accused persons are also established in Chapter 2.

Article 47

1. Nobody may be deprived of the right to have his (her) case heard in the court and by the judge within whose competence the case is placed by law.

2. Any person accused of committing a crime shall have the right to have his (her) case examined by a court with the participation of a jury in the cases envisaged by federal law.

As with American law, defendants are innocent until proven guilty, are not required to prove their innocence, and are protected against double jeopardy. Individuals also have a right to appeal.

The Russian legal system contains two pre-trial phases. The first stage, the preliminary investigation, "consists of a) promulgation of court members; b) identification of the accused; c) control of attendance of participants in the trial; d) explanation of rights to participants in the trial; e) removing witnesses from the hall and f) examination of petitions." The second stage, the institution of proceedings, includes an examination of evidence by the court, pleadings, and a second pleading prior to trial by relevant parties to the case. Prior to the trial's conclusion and sentencing, defendants are able to make a final address to the court, and the participating parties have an opportunity to "present to the court their suggestions concerning the sentence." Ultimately, sentences for crimes eligible for imprisonment beyond five years are decided by a majority vote of the judge and two peoples' assessors, officials with equal powers to that of a judge.

19.2.3 Constitutional Loopholes

Though the constitution purports to uphold democratic values, there are two key articles that set the basis for their undermining.

Article 55

> 1. The enumeration in the Constitution of the Russian Federation of the basic rights and freedoms should not be interpreted as a denial or diminution of other universally recognized human and civil rights and freedoms.
>
> 2. In the Russian Federation, no laws must be adopted which abolish or diminish human and civil rights and freedoms.
>
> 3. Human and civil rights and freedoms may be limited by federal law only to the extent necessary for the protection of the basis of the constitutional order, morality, health, rights and lawful interests of other people, and for ensuring the defense of the country and the security of the State.

Despite their alleged adoption of international human rights law, the Russian Constitution does not recognize human rights to be inalienable. The document does not provide any explicit legal standard for what actions or events constitute the "interests of other people" or would require "ensuring the defense of the country and security of the State." As a result, the third provision of this Article grants broad discretion to the country's leadership, through legislation or Presidential decree, to establish the criteria that would allow a legal elimination of individual rights.

Article 56

> 1. In the conditions of a state of emergency, in order to ensure the safety of citizens and the protection of the constitutional order and in accordance with federal constitutional law, certain restrictions may be imposed on human rights and freedoms with an indication of their limits and the period for which they have effect.

2. A state of emergency of the entire territory of the Russian Federation and in certain areas thereof may be introduced subject to the circumstances and in accordance with the procedure stipulated by federal constitutional law.

3. The rights and freedoms specified in Articles 20, 21, 23 (part 1), 24, 28, 34 (part 1), and 46-54 of the Constitution of the Russian Federation might not be restricted.

Similarly to the third section of Article 55, the first section in Article 56 also contains language lacking narrow definitions that enable the legal restriction of human rights and freedoms. For example, while there is no explicit Constitutional right to a free expression of sexual orientation, the Kremlin's recent anti-LGBT legislation, as discussed in the preceding chapter, imposes a restriction on individual freedoms in violation of this Article in its indefinite imposition. Individual behavior that constitutes a "state of emergency" or that ensures "the safety of citizens" is left to the full determination of the present leadership.

Section 3 of Article 56, on the other hand, is alarming for a separate reason. The language states that the Articles explicitly listed "might not be restricted." The word "might" is defined by Merriam-Webster to mean, "Used to express permission, liberty, probability, or possibility in the past." While this could be a result of translation, the use of the word "might" connotes to the reader that the prohibition against violating these specified liberties is not absolute. As a result, designating certain rights, such as Article 21's protection against corporal punishment, in this Section is a hollow gesture and, in fact, establishes legal protection for the nation's egregious treatment of prisoners.

19.2.4 Corruption within the Legal Profession

The legal professionals within the system at large also pose grave issues to the system. Russian judges often receive their positions due to personal connections, as approximately two thirds "are former court secretaries and judicial assistants of judges," who obtained their legal degrees largely through remote or part-time learning. Additionally, while there are no formal avenues to promotions, judges are oftentimes promoted for politically motivated sentencing, such as Judge Oksana Demyasheva, the judge convicting Sasha Skochilenko, whose case is discussed later in this chapter.

In criminal courts, most judges are former prosecutors and police officers. They lack broad legal experience, spending most of their careers in public service to increase their chances of selection for the bench. As a result, judges are considered, both by themselves and the Kremlin, as an extension of the executive branch. Such attitudes lead to outcomes favoring the government, even when unwarranted.

Despite the constitutional protections granted to the accused, Russian criminal courts frequently deviate from these principles, operating within a framework of their own design. The judicial system is predominantly inquisitorial in nature, often undermining the fundamental presumption of innocence that should be central to the rule of law. "The rate of acquittals in Russia for non-jury courts (99 percent of all cases) has been less than one percent for many years and is still declining. The public perception is that this is done to protect people from criminals, but this argument barely holds water." To the contrary of Igor Slabykh's quote, this argument *does* hold water when taking into account the previous discussion regarding the discretion the Constitution's broad language grants leaders in its execution. The government is able to consider protecting the population from criminals as a method of protecting the safety of citizens, thus legally curbing supposed protected rights.

Due to inadequate scrutiny in the judicial selection process, decisions issued by Russian courts often exhibit a lack of the systematic organization and comprehensive reasoning that are hallmarks of judicial rulings in the United States legal system. Igor Slabykh writes:

> "Russian courts mindlessly 'copy-and-paste' entire paragraphs from legal codes without justifying why and how these laws should be applied in a particular situation … Citations of laws are given by Russian courts only to enlarge judicial opinions, very often without any legal reasoning. It is common for a court not to mention the parties' reasoning at all. If it is mentioned, the court simply dismisses it with the short statement: 'The arguments are unfounded.'"

Although this system may not reflect the reformed judiciary that Boris Yeltsin envisioned, a legal framework that operates primarily at the discretion of the President aligns with the ambitions that Vladimir Putin pursued before assuming office.

Commentary

1. While the American student might notice many similarities between the Russian and American Constitutions, a key difference stands out. In the United States, the process of making amendments is quite onerous. Specifically, an amendment may be proposed by a two-thirds vote of both Houses of Congress, or, if two-thirds of the States request one, by a convention called for that purpose. The amendment must then be ratified by three-fourths of the State legislatures, or three-fourths of conventions called in each State for ratification.[61] It is not surprising that there have only been 27 amendments since the Constitution was ratified in 1788. In contrast, the Russian Constitution serves more as a flexible instrument that aligns with the political aims of the President, particularly when it comes to extending his time in office. On January 15, 2020, President Putin, who was serving his fourth and final six-year term, announced plans to overhaul the Constitution in his annual State of the Nation address. After

[61] U.S. Const. art. V.

the mandatory three readings in the Duma, a bill to that effect was adopted by a near-unanimous vote in both Houses on March 11. As required by the Constitution, the bill was also put to Russia's 85 regional parliaments, which also gave it their unanimous approval. Events took an unexpected turn in March 2020, when lawmakers and former cosmonaut, Valentina Tereshkova, tabled a last-minute amendment to re-set the clock for presidential terms, allowing Putin to stay on as president for another 12 years, should he choose to do so. Apart from this, the amendments, which revise 42 of the Constitution's 137 articles, fall into four main groups concerning 1) the role of Russia's political institutions, 2) Russian sovereignty, 3) socioeconomic benefits, and 4) values. Although there was no constitutional requirement to do so, the amendment was put to a nationwide vote (not a referendum, which under Russian law required at least a 50% voter turnout for a valid result.) Citizens could only vote on the entire package of amendments and not on individual proposals. The vote was originally planned for April 22, 2020, but was postponed to June 25, 2020 - July 1, 2020, due to the coronavirus pandemic. It is not entirely clear why President Putin even needed voters to approve a raft of constitutional amendments that, already ratified by the national parliament in Moscow and regional legislatures across the country, entered into law months ago. "From a juridical point of view, this whole exercise is insane," said Greg B. Yudin, a sociologist and political theorist at the Moscow School of Social and Economic Sciences. But, he added, "it is not at all a meaningless procedure," because Russia's system under Mr. Putin depends on the appearance of popular support to confer legitimacy on decisions he has already made. "It is theater, but very important and well-played theater. The system needs to stage displays of public support even when it doesn't have it," Mr. Yudin said. "The vote is putting Putin's theatrical techniques to the test." On the morning of July 1, 2020, the Central Election Commission reported that 55 percent of Russia's 108 million registered voters had already cast their ballots. The turnout alone validated the success of Putin's extravagant show. By late evening, with 98 percent of ballots counted, 78 percent of voters backed the constitutional amendments, election officials said. That nearly matched the earlier exit poll results from the state-controlled Russian polling organization, VTsIOM, that showed 76 percent of voters backing the amendments. The foregone nature of the outcome, in Mr. Yudin's view, reflected Russia's "plebiscitary democracy," a system that revolves around a single, unchallenged leader but still requires regular cries of "public acclamation to give it legitimacy." As a result of Russia's so-called referendum, Vladimir Putin can serve up to 2036, effectively altering the Constitution to extend his political dominance in Russia and on the international stage.

4. **For further reading**, *see* (1) Kathryn Hendley, *Russian Legal System and Use of Law*, Oxford Research Encyclopedias (Jan. 30, 2024); (2) Ilya V. Nikiforov, *World Factbook of Criminal Justice Systems: Russia*, Bureau of Justice Statistics; (3) Igor Slabykh, *How Russian Courts Create Their Own Reality*, Institute of Modern Russia (Mar. 31, 2021).

19.3 "Dictatorship of Law"

Upon assuming the presidency, Vladimir Putin articulated his intention to establish a "dictatorship of law." Initially, this concept was framed as a means to curtail the activities of local leaders, a response to the destabilizing effects of Chechen rebel actions and the bombing of Russian cities. However, as his tenure progressed, it became evident that Putin's vision extended beyond mere governance uniformity or the mitigation of violence. Instead, it represented a comprehensive

consolidation of power within the presidency aimed at centralizing authority and undermining regional autonomy.

Vladimir Putin delivers a New Year's Eve address in 1999 and 2018. Throughout his time in office, President Putin has addressed the nation with his New Year's Eve speech a total of 21 times. See image here.

Putin achieved this level of control through legislative reforms. Many such reforms, at least on paper, emphasized international human rights and established criminal procedural norms of Western countries for Russia to join the Council of Europe.

Ensuring allies occupied all sectors of government also secured Putin's authority over Russian affairs. The Constitution, however, made these selections an easy – and legal – task. Within the Russian government, the President has the highest authority. Regarding appointments, the President has the power to select the Prime Minister; deputy prime ministers; federal ministers of defense, state security, internal affairs, justice, foreign affairs, emergencies, and public security; federal judges; and representatives of the Russian Federation to the Council of Federation.

One notable example is Dmitry Medvedev. Early in his public career, Putin was tasked by the mayor of St. Petersburg to reorganize the city-controlled financial institution, Rossiya Bank, and save it from further collapse. He was successful, and in the years that have followed, the bank has transformed into a major establishment, housing Putin's own salary and the assets of his fellow committee members from St. Petersburg City Hall – present-day oligarchs. Medvedev is one of these former members who later served as Putin's campaign manager and, upon his election, his chief of staff and, later, his first deputy prime minister. Due to Russia's bar against individuals serving consecutive Presidential terms, Medvedev assumed the Presidency and nominated Putin as Prime Minister, effectively governing the country together. In September 2011, the two switched positions. The two continued on in these respective roles for subsequent elections until Medvedev's resignation in 2020. During Putin's current term, Medvedev now holds an appointment as Deputy Chairman of the Security Council.

President Dmitry Medvedev on the path to stand up to Prime Minister Vladimir Putin. See image here.

In addition to appointments, the President has the power to remove officials from office. Putin can dissolve the government, discharge the Prime Minister, confirm the resignations of key officials, and dismiss the State Duma. He also has the power to veto legislation. While the judiciary has the ability to review legislative and executive actions, it is unlikely to act as a check on the leaders who appointed them to their positions in the first place. Special presidential powers for addressing emergency and military situations likewise grant special removal powers. With the

Council of the Federation's approval, the President can suspend the powers of local authorities and the activities of any political parties, prohibit public events, and impose other restrictions to ensure the safety of citizens and constitutional order. A nationwide state of emergency cannot exceed 30 days but can be renewed by the President indefinitely. Even without the Council's approval, a decree issued by the President has the force of law for 72 hours following its issuance. Once again, there is a lack of specifications for what constitutes an "emergency," "other restrictions," or "safety of citizens and constitutional order," granting Putin broad discretion to wield his authority as he sees fit.

Following the February 24, 2022 invasion, Putin has decided that maintaining the "safety of citizens and constitutional order" equates to punishing any and all individuals criticizing his attack on Ukraine. The Kremlin has targeted political opponents, the independent press, and tycoons exerting power and influence against Putin's wishes since his early years in office. Journalist Michael Wines wrote in 2001, "Some of Mr. Putin's opponents are in self-imposed exile, driven abroad by highly selective – some would say political – criminal investigations. Others have been politically neutered by new laws or new twists on old ones."

In examining Russian prosecutions today, it is evident that old habits do, in fact, die hard. Recent years have seen a rise in cases against both activists and ordinary Russians due to the enactment of new, extreme legislation. In August 2022, Sergei Klokov, a former employee of the Moscow police headquarters, became one of the first individuals arrested for the new crime of "deliberately [spreading] false information about Russia's armed forces." The false information in question was telling co-workers over the phone that he had heard from friends and family in Ukraine that civilians – not Nazis – were being killed by Russian troops. Eight months later, Klokov was sentenced to seven years in prison.

Putin's actions show that he has abandoned the declared goals of his initial aspirations for Russia to join the ranks of Western democracies. The invasion of Ukraine ultimately undid his own work by having the Council of Europe cease the nation's membership in its organization. In his initial rise to power, Putin's declared goals were "decreasing Russian corruption and boosting foreign investment." In reality, his ambitions are, and always have been, twofold: secure his power in Russia and re-establish the Soviet Union. His actions continue to show that he is willing to go to any length to achieve his goals, even, potentially, his own downfall.

Commentary

1. For Vladimir Putin, holding the most influential position in Russian politics comes with its advantages. On December 22, 2020, Putin signed a bill that granted former presidents of Russia lifetime immunity once they leave office. Specifically, the bill gave former presidents and their families immunity from prosecution for crimes committed during their lifetime. They are also exempt from questioning by police or investigators, as well as searches or arrests. The legislation was part of constitutional amendments approved in the summer in a nationwide vote that allowed Putin to remain president until 2036. Before the bill became law, former presidents were immune to protections only for crimes committed while in office.

2. Many of the most influential people in Russia share the same trait – all of them are a part of Putin's inner circle.

Emma Burrrows

Vladimir Putin's Inner Circle: Who's Who, and How Are They Connected?

CNN World (2017)

(reproduced at https://www.cnn.com/2017/03/28/europe/vladimir-putins-inner-circle/index.html)

For information on Putin's inner circle and their roles see image here.

For example, Igor Sechin, the head of one of the world's largest oil companies, Rosneft, worked with Putin in the St. Petersburg mayor's office. After he followed Putin to Moscow, Sechin continued to work closely with his old boss – both as his presidential aide and then as deputy prime minister. In 2014, after Russia annexed Crime from Ukraine and after his stint in Putin's administration, Sechin was put under sanctions by the US treasury, which said he had "shown utter loyalty to Vladimir Putin – a key component to his current standing."

Gennady Timchenko, who is ranked 85 on Forbes' billionaires list, has known Putin for more than 20 years. "When I am asked questions about our friendship, I always say, please turn to Vladimir Vladimirovich. If I call myself a friend of his, it wouldn't look appropriate," says Timchenko. Like other members of Putin's inner circle, Timchenko has been sanctioned, forcing him to ground his private jet in Moscow after Gulfstream refused to service the aircraft. The US Treasury has claimed that "Timchenko's activities in the energy sector have been directly linked to Putin." After being slapped with sanctions, Timchenko is reported to have said, "You have to answer for everything, even for your friendship with the president." As a sign of Timchenko's closeness to Putin, he was gifted a puppy by Putin from his beloved dog Connie, according to Russian media reports.

Vladimir Putin's daughter Katerina is reportedly married to Kirill Shamalov, who is the son of Nikolai Shamalov, Putin's old friend from St. Petersburg. Nikolai Shamalov helped co-found Ozero cooperative – an elite dacha community built near St. Petersburg in the 1990s, of which Putin is also a member. Nikolai's son Kirill is said to be one of Russia's youngest billionaires with a stake in Sibur, a Russian petrochemical processor. Nikolai Shamalov has been sanctioned by the European Union for being a "long-time acquaintance" of Putin and for benefiting from "his links with Russian decision-makers."

Sergei Roldugin, a distinguished concert cellist from St. Petersburg, is notable not only for his musical career but also for his close personal connections with Vladimir Putin. He introduced Putin to his former wife, Ludmila, and is also godfather to Putin's elder daughter, Maria. Roldugin was thrust into the media spotlight in 2016 when leaked documents, dubbed the Panama Papers, alleged he fronted a number of offshore shell companies which saw hundreds of millions of dollars of Russian loans and lucrative contracts pass through their books. Shortly after the Panama Papers were published, Roldugin traveled to Syria to take part in a concert overseen by the Russian Ministry of Defense and the Mariinsky Theater in the ancient ruins of Palmyra.

Vladislav Surkov has been dubbed Putin's "gray cardinal" by the media. He is said to be a powerful decision-maker behind the scenes in Russia and is Putin's presidential aide – a role previously filled by Igor Sechin. He coined the term "sovereign democracy" which proposes a strong state to guard against chaos and stop foreign meddling. In 2014, Surkov was accused by the European Union of directly helping Russia to annex Crimea from Ukraine. After Surkov was sanctioned by the United States, he told one Russian newspaper that this was a "great honor." In 2016, a Ukrainian hacking group claimed to have broken into an email account that belonged to Surkov. The group released a series of emails, which they said detailed Russian attempts to destabilize Ukraine. Commenting on the allegations at the time, Dmitry Peskov, spokesman for Vladimir Putin, said Surkov "does not use email."

Vyacheslav Volodin is the speaker of the State Duma, Russia's parliament. Before he took up the role in 2016, he had spent five years running the Kremlin's domestic policy. Following the 2011 protests, Volodin worked on consolidating the power of the ruling party and on softening Putin's image, according to the Carnegie Moscow Center. Volodin has been sanctioned by the United States, which says Putin's decision to annex Crimea from Ukraine "is believed to have been based on consultations with his closest advisers, including Volodin."

Russian businessman Sergei Chemezov and Vladimir Putin have known each other for more than 30 years. The pair both served as KGB agents in East Germany when their families lived in the same building, and they became "friendly neighbors." Chemezov has worked in the Russian President's administration and has held a series of top posts at state-owned companies. He is under US sanctions and is considered by the United States to be a "trusted ally of President Putin."

Yuri Kovalchuk is Putin's personal banker, according to the US Treasury, which says he is known as one of the Russian President's "cashiers." Kovalchuk, the largest shareholder in Bank Rossiya, was sanctioned by the United States in 2014. Like Putin and Shamalovs, Kovalchuk is also a founding member of the elite Ozero dacha cooperative near St. Petersburg. In 2013, it was reported that he had hosted the wedding of Putin's daughter, Katerine, to Kirill Shalamov at his ski resort near Ozero. Following the introduction of sanctions, Kovalchuk said he had been concerned Bank Rossiya would collapse as people tried to withdraw their money. Instead, he told Russia 24 state TV that Putin opened an account, and "the bank was flooded with people."

According to the Russian newspaper Kommersant, Arkady and Boris Rotenbeg are Putin's childhood friends, having known him for more than 40 years. According to Arkady Rotenberg's

interview, he first met Putin at the age of 12 when they went to the same judo class. The trio has been pictured playing hockey together. Both brothers are on the US sanctions list. The US Treasury says the Rotenbergs have benefited from their closeness to Putin after he awarded them around $7 billion in contracts for the Sochi Winter Olympics. Arkady Rotenberg has said that being on the sanctions list makes him more "concentrated," and that it is a "positive" thing.

3. **For further reading**, *see* (1) Michael Wines, *The World; Russia's Latest Dictator Goes by the Name of the Law*, The New York Times (Jan. 21, 2001); (2) Andy Hayward et al., *Russians Are Snitching on Friends and Family Who Oppose the War in Ukraine*, Vice (Aug. 8, 2022); (3) William Partlett, *Vladimir Putin and the Law*, Brookings Institute (Feb. 28, 2012).

19.4 Prosecuting the People – Sasha (Alexandra) Skochilenko

As discussed in the preceding chapters, the Kremlin has tightened its grip on domestic dissent, targeting anyone who opposes Russia's full-scale invasion of Ukraine. The Russian government has introduced draconian laws that criminalize any attempt at anti-war expression. As a result, many ordinary Russian citizens found themselves caught in the crossfire of state repression.

Among the most poignant cases is that of Sasha Skochilenko, a St. Petersburg-based artist and author. In April 2022, Skochilenko was arrested for replacing supermarket price tags with anti-war messages. Charged under the new law prohibiting "disinformation" about the military[62], she faced a lengthy prison sentence. Her arrest became a symbol of the state's increasingly harsh approach to punishing even the most modest acts of protest.

Skochilenko's case is not an isolated incident but part of a growing list of prosecutions against civilians who have taken a stand against the war. Ordinary people have been detained for social media posts, peaceful protests, and even casual conversations that question the war. President Putin's strategy is clear: crush resistance by making the cost of opposition too high to bear.

This sub-chapter explores how the Russian government uses the law as a weapon to silence its constituents, focusing on the high-profile case of Sasha Skochilenko. It delves into the lives of those who have dared to speak out, examining how the state's repressive tactics not only punish but also seek to instill fear in the broader population. Through these stories, we see the human cost of Russia's campaign to stifle opposition and the resilience of those who continue to resist despite the risks.

19.4.1 Biography and Offending Incident

[62] Article 207.3 of the Criminal Code of the Russian Federation.

Alexandra (Sasha) Skochilenko on painted canvas, is being charged under new 'fake-news law' for replacing store price tags with anti-war messages. See image here. See what the price tags look like here.

Alexandra (Sasha) Skochilenko is a 33-year-old artist and author from St. Petersburg. Prior to March 31, 2022, she was known only for the critically acclaimed comic book she published in 2014 illustrating her struggles with mental health. On that fateful Thursday, Skochilenko walked into a Perekrestok grocery store in her hometown and began replacing the price tags of shelved items with messages condemning Russia's military activity in Ukraine.

An elderly patron reported the tags to supermarket employees. Law enforcement "spent 10 days interrogating supermarket staff and inspecting security camera footage," in order to pinpoint Skochilenko's identity. Ultimately, "instead of arresting her in her home, the police coerced a childhood friend of hers to lure her to his apartment where officers were waiting to detain her. In addition, the police searched her home and interrogated her until the early morning." During the trial, the childhood friend Alexey Nikolaev, testified that law enforcement had "used his Telegram account without his consent" to send the message luring Skochilenko to her capture.

The government charged Skochilenko with "political hatred towards the Russian Federation" for "knowingly distributing false information about the Russian military."

Skochilenko was detained on April 11, 2022, and remained in custody for approximately 20 months. During this time, her health declined, and she lost a substantial amount of weight. Despite knowledge of her celiac disease, prison officials refused to grant her gluten-free meals to accommodate for her condition and, overall, have provided her with "limited access to food packages." Prison officials also repeatedly denied her requests to receive doctor visits. Although Russian and international organizations, as well as her attorney, have demanded Skochilenko's early release or to be switched to house arrest, none of such pleas made any difference to Russian authorities.

Shortly after her detention, Amnesty International classified Skochilenko as a "prisoner of conscience." In an interview with the BBC[63], her sister, Anna, called Sasha "a symbol of everything [Russian] authorities hate" as an "artistic, fragile, lesbian [with] a Ukrainian surname."

19.4.2 Judicial Proceedings

Skochilenko's trial began on December 15, 2022 and lasted for 11 months. The trial began with the prosecution team stating their case, led by assistants to the prosecutor, Irina Nikandrova and Alexander Gladishev. Rather than trying to establish Skochilenko's guilt, the prosecution focused instead on providing expert testimony to substantiate the information in the statements on

[63] from BBC News at http://bbc.co.uk/news

the price tags as false. The team also presented a whole host of irrelevant information, such as the supermarket baker's job description and the security guard's work schedule.

The defense, who was not able to start expressing their position on their client's matter until June, was led by attorney Yury Novolodsky. The rule, he argued, that the court needed to apply to Skochilenko's case was that her actions could only constitute a crime if the prosecution could prove that she "had been aware that the information she had been spreading was false at the moment of dissemination." By presenting the sources Skochilenko had consulted in crafting the statements on the price tags – statements from the St. Petersburg human rights commissioner and excerpts from outlets such as BBC and Meduza – Novolodsky illustrated that Skochilenko "thought the information was accurate because she was reading sources of information that she and many other people trust." The prosecution refuted this argument by classifying Skochilenko's sources as untrustworthy "foreign agents."

Throughout the trial, Skochilenko was denied opportunities to eat and take bathroom breaks. Law enforcement also subjected her to cell searches, confiscated her heart disease medication, and prevented her from replacing the batteries in her ECG machine when they died during one of her hearings.

19.4.3 Courtroom Speech

Following the customary procedures of Russian courtrooms, Skochilenko directly addressed the court before her sentencing. In her speech, she begins by emphasizing how bizarre her case is and how irrational it is to face the severity of charges she faces simply for expressing her opinion. She highlights how the nature of her case led to one of the designated investigators resigning before its conclusion, despite the fact that participating in it "would have propelled him to a wonderful career [and] had already earned him a promotion" because, as he had confided in her counsel, he "'didn't come to work for the Investigative Committee to pursue cases like Sasha Skochilenko's.'" The court's decision to prosecute her, she said, amplified her actions and proclamations more than they ever would have been had she been left alone.

> The state prosecutor repeatedly declared my actions extremely dangerous to society and the state. How fragile must the prosecutor's belief in our state and society be, if he thinks that our statehood and public safety can be brought down by five small pieces of paper?

A key position in her speech stated that, by limiting freedom of expression and the ability to disagree with the establishment, the Russian government is undermining its national strength rather than protecting it as it professes.

Skochilenko repeatedly emphasized the fact that she is a pacifist but, due to her prosecution, she is being treated equally to and housed with violent offenders.

> No one was hurt by my actions, yet I've been incarcerated for over a year and a half now, alongside murders, thieves, statutory rapists, and pimps. Can the supposed harm I caused even be compared to these crimes?
>
> […]
>
> Your verdict, whatever it may be, will be historical. You might be remembered for imprisoning, acquitting, or for a neutral decision like a fine, suspended sentence, or for deeming I've served my time. Everyone sees and knows you aren't trying a terrorist. You are trying a pacifist.

Now facing up to eight years in prison, Sasha Skochilenko while in custody. See image here.

Despite the prosecution's efforts to undermine her, Skochilenko displayed remarkable empathy toward her captors. She also highlighted that, regardless of their differing perspectives, she "would never imprison" those who opposed her merely for expressing their beliefs.

In the final moments of her speech, Skochilenko made a profound declaration:

> Despite being behind bars, I am freer than you. I can make my own decisions, say what I think, quit my job if I'm forced to do something I don't want to. I have no enemies, I'm not afraid of being penniless or even homeless. I'm not scared of not making a brilliant career, appearing ridiculous, vulnerable, or strange. I'm not afraid to be different from others. Perhaps that's why my state is so afraid of me and others like me and keeps me caged like a dangerous animal.

She concluded by asking the judge to rule "through words, love, mercy, compassion, and not through coercion to a so-called truth via a criminal sentence" – a conclusion that is stated in vain.

19.4.4 Sentencing and Aftermath

On November 16, 2023, Sasha Skochilenko was sentenced to seven years in prison and a three-year ban on internet use. The period she spent detained pending her trial resulted in a reduction of sentencing time, as "every day served in a pre-detention centre counts as 1.5 days of time served in a regular penal colony."

Everything changed on August 1, 2024. When the Russian prison guards grabbed Sasha Skochilenko from her call and put her on the plane, her first thought was whether, at just 33 years old, she was about to meet her end. "Am I being taken into a forest for execution?" wondered Skochilenko. Instead, like seven other Russian democracy activists, three American citizens and five German nationals, she was flown out of the country as part of an August 1 prisoner exchange negotiated between Washington, Berlin and Russian President Vladimir Putin.

Like their foreign counterparts, Skochilenko and her compatriots had no say in their participation in the swap, which included the release of eight Russian spies and criminals from Western custody, including Vadim Krasikov, an FSB officer convicted for carrying out an assassination in Berlin. But unlike them, they weren't being flown from home – but away from it. "The hand of the past still reaches into my present," Skochilenko said. Even as they were being flown toward freedom, "no one jumped for joy," she added. "The air was heavy."

Tipped that Skochilenko had been moved to Moscow, her girlfriend, Sonya Subbotina, dashed from St. Petersburg with the medication and food she needed to treat her celiac disease. But in every penal facility she visited, including the notorious Lefortovo prison, she received the same answer: No convict under that name was registered there. In truth, the eight Russians were being held in separate cells in Lefortovo. Given no information during their long journeys to Moscow, each had come up with a version of what was about to happen.

Then, the Russians were seated at the front of the bus. The U.S. and German nationals, some of whom are also Russian citizens, were settled at the rear. Among them were Gershkovich and the U.S. Marine Paul Whelan. Each prisoner was assigned an Alpha agent who the aisle seat next to them. A man in a blazer picked up the microphone: "Hello everyone," he said, confirming what by now seemed obvious: They were about to be part of a prison swap. At the "final destination," they'd get their passports back and other important documents on their release.

Skochilenko's mind was racing. On the bus, her chaperone had threatened to put a bag over her head if she didn't stop talking to her fellow travelers. Who was to say the plane wouldn't plummet to the ground and deliberately kill them all? "After two and a half years in prison, you learn that they lie to you about literally everything: big and small," she recalled. On her way out of prison, the guards had returned her possessions, which included a flute. To soothe herself, Skochilenko took it out and started to play. This time, the FSB officer beside her ignored her; he had earphones in and was playing a game on his phone.

The further the plane flew away from Moscow, the more laid-back the FSB men seemed to get. By the time they were somewhere over Baku, Azerbaijan, they had taken off their masks and were munching on food they'd bought from home: bread, salted pork, boiled eggs and tea,

which they offered to share with the women prisoners (who declined.) The plane landed in the Turkish capital Ankara, where the group was transferred to another bus with tinted windows. From behind the glass, Skochilenko flashed her middle finger at the FSB and told them to "fuck off." "It's something I'd wanted to do for a long time," she said.

Some two hours later, the Russians were brought to a small jet that was departing for Germany. As they rose above the clouds for the second time that day, there were no cheers or popping champagne corks. Instead, they asked, some in silence, some aloud: Why? Others experienced a similar sense of disassociation like they were watching themselves on a screen. "Prison had not let go of us," said Skochilenko.

In an interview after her release, she said all she wanted to do after being reunited with her partner, Sonya Subbotina, in Germany was "to live – to live again here, to be free, to touch the grass, hugging trees, to see the sun, to see the sky, to different people."

In the first year of Skochilenko's imprisonment, Subbotina was unable to visit her in prison because the penal system did not recognize their relationship. Only once was Skochilenko able to touch Subbotina's hand, for less than a minute through the bars of her courtroom cage during a hearing in the summer of 2022. It was their last touch until they were reunited in Germany two years later. "And this was maybe the happiest minute in my life," Skochilenko said of that physical connection. "And at the same time, I was crying because of happiness to touch my loved one and it was also about the pain of not touching this person all that time." "I'm happy we're in Germany now, and we're planning to stay," said Subbotina. "We walk along the street here, and I can just kiss Sasha, and nobody minds. Nobody even pays attention."

Sasha Skochilenko, on the right, with her girlfriend, Sonya Subbotina, on the left, after being released as a part of a Russian prisoner swap.

Source: https://www.themoscowtimes.com/2024/08/16/i-never-believed-i-could-get-on-that-plane-freed-political-prisoner-sasha-skochilenko-a86042

Commentary

1. In Russia, "babushkas" hold a special place in the cultural and social fabric of the nation. The term "babushka," which literally means "grandmother," symbolizes more than just an elderly woman; it embodies wisdom and tradition. However, despite this cultural reverence, elderly people in Russia, including those lovingly referred to as "babushkas," are not immune to the harsh realities of the legal system. The very country that celebrates its babushkas as symbols of strength and continuity also subjects them to prosecution under laws like Article 207.3 of the Criminal Code[64]. This law, which outlaws so-called "disinformation," has been increasingly used to target individuals across the age spectrum, including the elderly. At least 19 people over the age of 60 have been convicted under this statute, including 65-year-old Marina Novikova from the Tomsk region and 64-year-old Igor Baryshnikov from the Kaliningrad exclave. In April 2023, Novikova, a human rights activist, was convicted of spreading "disinformation" about the military and was fined 1 million rubles (approximately $10,500). Unable to pay the fine on her pension, Novikova requested a prison sentence instead. Baryshnikov, who suffers from severe health issues, was sentenced in June 2023 to 7.5 years in prison for posting online about Russia's invasion of Ukraine. He is currently in the medical unit of a pre-trial detention center, where he missed his mother's funeral after being taken into custody. Baryshnikov has been diagnosed with a potentially cancerous prostate tumor, requiring him to live with a suprapubic catheter and necessitating surgery.

Igor Baryshnikov in court on November 21, 2023. See image here.

2. In Russia, age is not a defense or a mitigating factor when it comes to the prosecutions of those opposing the regime. The prosecution of teenagers who oppose the war highlights the alarming crackdown on dissent, targeting even the youngest voices. The case of Arseny Turbin is of particular concern. On April 25, 2023, then 14-year-old Arseny Turbin called the TV Rain channel and said that while he had previously believed propaganda, he was now disappointed in Putin, and the anti-American video that was shown in his class during the "Important Conversations" lesson was "utter nonsense." Arseny posted the recording of the broadcast on his YouTube channel. His mother, Irina Turbina, was called to her son's lyceum because of it. The video had to be deleted.

For image of Arseny Turbin and his mother, Irina Turbina see here.

[64] Discussed in Chapter 18.

3. On June 1, 2023, Arseny emailed the recruiter from the "Freedom of Russia" Legion composed of Russians fighting for Ukraine. In the emails, Arseny stated he was "ready to post leaflets and fight Putin's propaganda" and "had no idea how to liberate Russia from Putin." The recruiter asked him to fill out a questionnaire and send his messaging app contacts. Arseny sent his *WhatsApp* and *Telegram* details. Further, from early June, Arseny was actively managing his *VK* page – commenting on all major events, including the marathon in support of political prisoners, Prigozhin's mutiny, and the drone attack on Moscow. In late July, he changed his profile picture to a cross-out face of Vladimir Putin, and during the holidays, he distributed anti-Putin leaflets he'd found online and printed in May to neighbors' letterboxes to "inform people as elections were approaching." In July 2023, Turbin started his own Free Russia Telegram channel, where he posted opposition videos. Only five people subscribed to it, and the channel has not been deleted. On August 29, 2023, at six in the morning, FSB agents came to the Turbin's residence. A week later, the Turbin's were taken to the Investigative Committee in Oryol for questioning, and Arseny was placed in a temporary detention facility. The Zavodskoy District Court of Oryol placed him under house arrest with permission to attend the lyceum. In early October 2023, the investigator sent Arseny to an outpatient psychiatric examination at a clinic in Oryol. "They kept him there for about four hours. He came out in shock, sat there, didn't say anything. The next day he says: 'You know what this psychologist told me?' – 'People like you need to be shot if martial law is introduced. You're an outcast, you have no right to study at school, let alone university,'" recounts Irina Turbina her son's words. On May 31, 2024, Arseny was released from house arrest with restrictions and allowed to use the phone. After this, posts about Russia's military successes appeared on his *VK* page, and his status reads "nationalist, conservative, patriot." "He intentionally changed all these pictures on VK to prove … Maybe someone will check there, he thought," says Irina Turbina. On June 18, Arseny visited Alexei Navalny's grave with his mother. Turbin did not admit guilt in court. The prosecutor requested eight years in prison. On June 20, 2024, Judge Oleg Shishov sentenced him to five years. The Memorial Human Rights group declared Arseny Turbin a political prisoner.

Arseny Turbin visiting Alexei Navalny's grave on June 18, 2024. See image here.

4. **For further reading**, *see* (1) *Russian Artist Jailed for Seven Years Over Anti-war Price Tag Protest*, Al Jazeera (Nov. 17, 2023); (2) Anna Ilyina, *Price Tags of War*, Novaya Gazeta Europe (Jun. 15, 2023); (3) Robert Coalson, *'Five Tiny Pieces of Paper': St. Petersburg Artist Sasha Skochilenko's Defiant Final Words in Court*, Radio Free Europe/Radio Liberty (Nov. 16, 2023); (4) *"Oh yes, life!" Sasha Skochilenko's Courtroom Speech on the Value of Life and Reconciliation Amidst War and Conflict*, Mediazona (Nov. 16, 2023); (5) Dmitry Moskovsky, *"Even the Smallest Thing Can Make a Difference." Big Interview with Sasha Skochilenko*, Zima Magazine (Oct. 10, 2024); (6) *'We Spent the Last Three Days Searching for Her' Freed Russian Political Prisoners' Loved Ones React to Their Release*, Meduza (Aug. 1, 2024).

19.5 Prosecuting Activists – Vladimir Kara-Murza

The Kremlin's treatment of political dissents has garnered widespread international attention, particularly through the persecution of prominent figures who challenge the government's policies. One such figure is Vladimir Kara-Murza, a Russian opposition activist, journalist, and advocate for democratic reforms, who has faced severe repression due to his outspoken criticism of Vladimir Putin.

This sub-chapter examines the details of Kara-Murza's persecution, the charges leveled against him, and the broader implications of his case for freedom of expression and political activism in Russia.

19.5.1 Biography

On March 29, 2017, Vladimir Kara-Murza and John McCain prepare to testify. See image here.

Vladimir Kara-Murza, son of a prominent Russian journalist with the same name, is a longtime critic of President Putin. As Kara-Murza revealed in a 2017 interview with PBS, he understood Putin's true nature even before his rise to the presidency – pointing to Putin's unveiling of a memorial plaque commemorating Yuri Andropov, a former KGB chief who had created a special task force to suppress political dissent. Kara-Murza served as an adviser to Duma (Russian assembly) opposition leader Boris Nemtsov, who was shot dead in 2015.

Kara-Murza was an ardent advocate for the Magnitsky Act, a piece of U.S. legislation that grants the president "the authority to freeze the U.S. assets of Russian government officials and businessmen accused of gross [human rights] violations and blocks them from accessing U.S. financial markets." The bill passed in 2012, and his efforts earned him a longtime friendship with Arizona Senator, John McCain, who tasked Kara-Murza with the role of pallbearer at his funeral. Kara-Murza's lobbying also led to two near-fatal poisoning attempts: once in 2015 and once in 2017. The incidents left him physically impaired.

Vladimir Kara-Murza in hospital after second poisoning attempt in 2017. See image here.

19.5.2 Speech to Arizona Lawmakers

On March 15, 2022, Kara-Murza addressed the Arizona House of Representatives regarding Russia's invasion of Ukraine. He referred to the conflict as a "war of aggression" and emphasized the duty to speak out against leaders like Putin because, as a historian, he stated, "One thing we definitely know from history is how appeasement of dictators ends. It always ends the same way." He continued that such appeasement led directly to the atrocities being committed against the Ukrainian people. Despite unreasonable prosecutions against dissenters, Kara-Murza

proclaims that the more the Russian people oppose Putin and his regime, the sooner the nation will achieve democracy.

> Every day we hear of new arrests and new detentions and new repressions against our friends. But we know, and we remember that lesson: that night is darkest before the dawn. We know the dawn will come.

Kara-Murza was arrested shortly after returning to Moscow from Arizona.

19.5.3 Judicial Opinion, Sentencing, and Incarceration

The text of the judicial opinion is unintelligible. As mentioned earlier in this chapter, it is evident that the judge copied and pasted statutes without any context and even without any relevance to the case at hand. The main grievances against Kara-Murza seem to be that the court considers his involvement with U.S.-based NGO, the Free Russia Foundation, equates to him being a foreign agent working against his nation's own interests and that his comments to the Arizona legislature criticizing Putin and the Ukraine conflict constitute "disseminating false information about the activities of the authorities in the Russian Federation and the top leadership of the country."[65]

Throughout his pretrial detention, Kara-Murza suffered from health concerns. As previously stated, he already suffered from the lasting impact of being poisoned twice. He lost 37 pounds and experienced numbness in his appendages. He was also diagnosed with a nerve disease called polyneuropathy, which could also have developed as a result of his prior poisonings.

Ahead of sentencing, Kara-Murza exerted his right to deliver final remarks before the court. He expressed his surprise that trials in present-day Russia "ha[ve] surpassed even the 'trials' of Soviet dissidents in the 1960s and '70s." He highlighted how he faced charges purely for his political views, but that he could face lesser sentencing if he repented. He refused to do so, and, instead, doubled down:

> I subscribe to every word that I have spoken and every word of which I have been accused by this court. I blame myself for only one thing: that over the years of my political activity, I have not managed to convince enough of my compatriots and enough politicians in the democratic countries of the danger that the current regime in the Kremlin poses for Russia and for the world.

[65] *Russian Federation v. Kara-Murza* (Translation by Michael Bazyler)

He ended on a hopeful note, one that muses for a better day in Russia's history "when a war will be called a war, and a usurper a usurper." For his own future, however, his outlook was bleak. He stated, "I do not ask this court for anything. I know the verdict."

On April 17, 2023, the court sentenced Kara-Murza to 25 years in prison for high treason, disseminating false information about the armed forces, and making a speech critical of the Ukraine invasion in "carrying out the activities of the undesirable organization." Vladimir Kara-Murza was designated a prisoner of conscience by Amnesty International.

19.5.4 Aftermath

In June 2023, the British government enforced sanctions on seven individuals involved in Kara-Murza's prosecution and extended pretrial detention. Kara-Murza began his prison sentence at IK-6, "a maximum security penal colony in the Siberian city of Omsk," after being moved from the Moscow detention center he was kept in throughout his proceedings. In early 2024, however, lawyers and activists attempting to contact him at the penal colony were told he was no longer there without any clarification as to where or when he had been moved. His lawyers were soon informed that he was moved to another penal colony in Omsk to be kept in solitary confinement for a minimum of four months due to minor disobedience.

In April 2024, the Russian Supreme Court was set to consider whether Kara-Murza's sentence should be appealed. The court denied his request to appear in the proceeding virtually, so he submitted a written statement for consideration. In the piece, Kara-Murza highlights the legal irregularities in his case and how the Criminal Code he was convicted under "directly contradicts Russia's international human rights obligations." He also highlights the fact that the judge who sentenced him "was personally subject to international sanctions under the Magnitsky Act, which [he] helped to implement." Kara-Murza stressed yet again Putin's corruption and authoritarian behavior, as well as the persistence of the Russian people to speak up despite the consequences. He accepts that his legal arguments have no value under the current government, but insinuates that, like oppressive regimes of the past, punishing opposition eventually leads to their downfall.

The U.S. Senator Ben Cardin, who had advocated with Senator McCain in favor of the Magnitsky Act, issued a statement on April 15, 2024, with 80 fellow lawmakers to urge Secretary of State Antony Blinken declare Kara-Murza "Unlawfully and Wrongfully Detained." Two days later, the Russian Supreme Court ordered Kara-Murza to be transported to Moscow during the appeal proceedings despite the arguments that the move would constitute torture due to his polyneuropathy. On May 14, 2024, Russia's Supreme Court upheld a 25-year jail sentence.

The 25-year term expired sooner than anyone could have imagined. "When a group of officers burst into my cell at 3 a.m. on July 28, [2024] and told me to get up and get ready in 10 minutes, my first thought was that I was going to be led out to be executed." "But instead of the

nearby wood, the prison convoy drove me to the airport and escorted me, in handcuffs, onto a plane bound for Moscow. Our destination was Lefortovo, the infamous KGB prison that once held Alexander Solzhenitsyn, Vladimir Bukovsky, Nathan Sharansky and other opponents of the Soviet regime. After my prison in Omsk, it felt like a resort: no time-limits on reading or writing; no prohibition on lying down on the bed; no constant reprimands for imagined 'violations.'"

Only on the morning of August 1, [2024], Vladimir Kara-Murza knew what was coming. "To be precise, at the moment balaclava-wearing operatives of an FSB special unit escorted me onto a bus parked in Lefortovo's internal courtyard, where I saw friends and fellow political prisoners, including opposition politician Ilya Yashin, human rights activist Oleg Orlov, and artist Alexandra Skochilenko – all jailed for their opposition to the war in Ukraine. There could be one reason for us all to be on the same bus." "The movie continued, too quick for the human mind to process – especially after months of solitary confinement. A whirlwind ride through Moscow with a police escort; a Tupolev jet readied in the government wing of Vnukovo airport; the same FSB operatives sitting next to every prisoner on our flight to Turkey." "The exchange itself took less than an hour, with Russian prisoners boarded onto one set of buses, and those Putin was getting from the West in return – his spies, hackers and murderers – walking from another bus onto the Russian plane."

"'Welcome to freedom,' were the first words from Jens Plötner, the German chancellor's national security adviser, who greeted us in the terminal. And just when I thought things couldn't get any more surreal, a diplomat from the U.S. Embassy approached me with a cellphone and told me that the president of the United States was on the line. Alongside him, I heard the voices of my wife and children whom I had been forbidden from calling from prison for more than two years. I don't have the words, in any language, to describe the feeling."

On August 2, 2024, Vladimir Kara-Murza, Ilya Yashin, and Andrei Pivovarov held a press conference in Bonn, Germany. "I didn't sign a condition for a pardon, but I was still pardoned. We never gave our consent [to be expelled from Russia], yet here we are," Kara-Murza said. "I care about my country. I love my country," he said. "And I think Russia deserves a much better future than to be in the hands of an authoritarian, aggressive, murderous, illegitimate dictatorship."

After his release, Kara-Murza began traveling around the world, continuing to speak out against Putin. "I hope when people in the West, that when people in the United States, when people in the free world at large think about Russia, they will remember not only the aggressors and the war criminals who are sitting in the Kremlin, but also those who are standing up for them," he said. "Because we are Russians too."

Vladimir Kara-Murza during the press conference in Bonn, Germany, on August 2, 2024 (left) and Vladimir Bukovsky in 1976 (right). See image here.

Commentary

1. Article 61 of the Constitution of the Russian Federation unequivocally states that the citizens of the Russian Federation may not be deported out of Russia or extradited to another State. Yet, the Kremlin's disregard of its own laws is not unprecedented. Vladimir Kara-Murza recounted the circumstances under which he and other political prisoners crossed the international borders during the historic prisoner exchange of August 1, 2024: "Ilya Yashin, I, and many of our compatriots categorically refused to submit any petition for pardon to President Putin. Yet, here we are, despite Article 61. No one asked for our consent. We were pulled out of prison, put on a bus, loaded onto a plane, and sent to Ankara."[66] Kara-Murza highlighted the irregularities surrounding their departure: "To legally cross the border, an international passport is required. Although we were promised these documents, none were issued. Instead, we entered Germany using standard internal domestic passports, which do not even feature Latin script. At Cologne airport, a special translator had to assist the border officials in deciphering our documents." He emphasized the legal paradox of their situation, noting that "they can neither imprison us according to the law nor release us."[67] This episode underscores a broader pattern of legal and constitutional violations by the Russian state.
2. While 16 political prisoners were released as a part of the August 1, 2024, prisoner exchange, thousands more remain behind bars. One of them is Moscow city deputy Alexei Gorinov, who was the first person to be handed a prison sentence under Moscow's new war censorship law. On March 15, 2022, Gorinov proposed that a moment of silence be observed "for the victims of ongoing military aggression in Ukraine" instead of the usual planning.

   > Tell me, please, how can we talk about a Children's Day drawing contest? About a Victory Day dancing performances?" Gorinov asked his colleagues. "Now children are dying every day. For your information, about a hundred children died in Ukraine. Children become orphans, grandchildren and great-grandchildren of World War II veterans are now in the midst of these hostilities in Ukraine. I believe that all the efforts of civil society should be aimed only at stopping the war and making sure that Russian troops withdraw from the territory of Ukraine. If our agenda included those ideas, I'd happily discussed and voter. But as it is, I am unable to, and the rest is up to you.

   Fellow councilor Elena Kotyonochkina supported him. In April 2022, both were charged with disseminating "fake news," an aggravated charge since they were "acting as a group" and "abusing their power" while being motivated by "hatred." Kotyonochkina left Russia and was arrested in absentia while Gorinov was arrested and sent to the Matrosskaya Tishina pre-trial detention facility. On July 8, 2022, Judge Olesya Mendeleyeva sentenced Gorinov to seven years in prison. She reasoned that "reformation of the defendant is impossible" without imprisonment in a general penal colony. "Gorinov, do you understand the sentence?" she asked. "Yes, but I'm surprised it's so soft," he replied. Gorinov knew that the decision had been written in advance. "She wasn't even listening yesterday, she was messaging online, I was observing carefully. She was on her phone, chatting with someone. It is impossible [to write the verdict] in one night," Gorinov insisted. The wife asked Gorinov not to respond to every one of her letter: she would write to him often and he need not waste his time. In prison,

[66] "They can neither imprison nor release them according to the law." Kara-Murza said that Russia did not ask the political prisoners' consent for the exchange" (Russ.) (translated into English)
[67] *Id.*

Gorinov, who is sixty-three, has spent long stints in solitary confinement. Transferred to a prison hospital, he faced unbearable conditions: labeled "suicide-prone" and deprived of sleep as an "escape risk." Gorinov has a chronic lung condition that has grown more severe; after one visit, his lawyer reported that his skin was blue and that Gorinov did not have the strength to sit in a chair or hold a conversation. Christo Grozev, a highly respected investigator for Bellingcat and the Insider who was involved in the negotiations with the FSB that led to 16 political prisoners being freed from Russian jails on August 1, 2024, said that Gorinov was originally part of the carefully brokered deal. However, Grozev did not reveal why Gorinov wasn't exchanged in the end.

Alexei Gorinov stands with a poster reading "Do you still need this war?" See image here.

3. **For further reading**, *see* (1) Todd Prince, *Who is Vladimir Kara-Murza, The Russian Activist Jailed for Condemning the Ukraine War?*, Radio Free Europe/Radio Liberty (Apr. 17, 2023); (2) Vladimir Kara-Murza, *Vladimir Kara-Murza's Last Statement to Russian Court: A Reckoning Will Come*, The Washington Post (Apr. 10, 2023); (3) Vladimir Kara-Murza, *I am Proud to Have Spoken Out Against Putin's Crimes in Ukraine*, The Washington Post (Apr. 3, 2024); (4) Vladimir Kara-Murza, *My First Thought Was That I Was Going to Be Led Out To Be Executed*, The Washington Post (Aug. 29, 2024); (5) Joshua Keating, *He Thought He Would Die in Putin's Gulag. Now He Has a Message for the World*, Vox (Dec. 1, 2024).

19.6 Prosecuting Political Opponents – Alexei Navalny

Alexei Navalny became the most prominent face of resistance against Russia's political repressions. A lawyer, anti-corruption activist, and outspoken critic of President Putin, Navalny's activism exposed the entrenched corruption within the country's political elite, challenging the status quo in a manner unprecedented in modern Russia. His rise to prominence, however, has come at a high cost, making him a central figure in the Kremlin's broader campaign to silence dissent.

This sub-chapter analyzes Alexei Navalny's role as a central figure in Russia's opposition. It explores how his anti-corruption activism and criticism of President Putin led to a severe crackdown, culminating in his 2021 arrest and imprisonment following a near-fatal poisoning attempt. Most importantly, the case of Alexei Navalny serves as a clear example of Putin's unyielding grip on power and the lengths his government is willing to go to eliminate the opposition.

19.6.1 Biography and Clashes with Putin's Regime

Alexei Navalny, Russian opposition activist dies in prison. See image here.

Alexei Navalny was a Russian lawyer born in Butyn, Russia. His political career began in 2000 as a member of Yabloko, one of the only parties that threatened the pro-Putin majority in the State Duma before it ultimately failed. Navalny was expelled from the party in 2007 for disputed reasons – he contended from disagreements with the party leader, the party contended for "nationalistic activities." He began his own activism the following year, creating a blog exposing

alleged corruption within companies tied to Kremlin-backed stakeholders. His work on the platform was so successful that it led to then-President Dmitry Medvedev's acknowledgment of the "trillion rubles (about $31 billion) being embezzled annually from the state procurement system."

Navalny continued his whistleblowing into the 2010s, first with his embezzlement allegation reporting platform, RosPil, then with his protests following the December 2011 parliamentary elections against Putin's rigged voting. Navalny's rising popularity and influence among the Russian youth continued to rise, partially due to his democratic ideology and partially due to his internet savvy and often humorous way of delivering his message.

Source: https://www.youtube.com/watch?v=ipAnwilMncI

In response to the 2011 protests, Navalny was sentenced to 15 days in prison. This began the activist's lifelong dance in and out of court, and in and out of prison. His home, among others, was raided by law enforcement the following year as a result of Putin seeking criminal punishments for "individuals who participated in unauthorized rallies." "There is a search happening at my home in connection with the mass riots. [The law enforcement] nearly sawed the door down," Navalny posted on Twitter in 2012. He further mentioned that the investigator read the warrant to witnesses and that the law enforcement officers "are seizing everything electronic, even disks with children's photos." The day after Navalny announced his candidacy for the Moscow mayor race in 2013, a court found him guilty of embezzlement, sentencing him to five years in prison. Protests erupted immediately and were so powerful that officials released him the next day. He continued his campaigning, adopting a Western, grassroots style. Unsurprisingly, Putin's ally defeated him in the race but by only a margin of about 30%.

As legal actions continued against Navalny, so too did his political ambitions. Putin reformed the electoral system as a result of Navalny's mayoral election results, and in 2014, the court suspended Navalny's fraud charges for three-and-a-half years. While the Kremlin prevented Navalny's party, the Progress Party, from contesting the 2016 presidential results, Navalny again attempted to challenge Putin. The Kremlin again denied Navalny the ability to run against Putin in the 2018 presidential race, leading Navalny to organize an election boycott. Electoral outcomes remained the same, but Navalny's tactics had enraged Putin enough to challenge his safety. In 2020, while Navalny was campaigning in Siberia, he became seriously ill during an airplane flight. His family gained permission to fly him to Berlin for medical care, where he was induced into a coma. "Test later confirmed that he had been exposed to a Novichok, a complex nerve agent that was developed by the Soviets."

Within weeks of returning to Russia, Navalny was sentenced to three and a half years in a penal colony for "failing to report to [Russian prison officials] during his hospitalization in Germany, constitute[ing] a violation of the terms of his 2014 suspended sentence." He faced additional charges a month after Russia invaded a new claim regarding fraud and contempt. For these new charges, Navalny was sent to "the notorious IK-6 maximum security prison in Melekhovo." In August 2023, he was brought to court yet again, this time sentenced to 19 years in prison for charges of extremism. Throughout his life, Navalny had been sent to prison by the Russian judicial system over 10 times.

On May 24, 2022, Alexei Navalny appears in court on screen during a hearing appeal against his nine-year sentence. See image here.

19.6.2 Death and Aftermath

In December 2023, Navalny was last transported to a maximum security prison in the Arctic Circle reserved for Russia's most dangerous criminals. This transfer (Vladimir – Moscow – Chelyabinsk – Ekaterinburg – Kirov – Vorkuta - Kharp) took almost three weeks, causing a lot of distress among his family, lawyers, and supporters. On January 11, 2024, Navalny appeared before a Supreme Court judge by video link to argue (unsuccessfully) for the right to longer meal breaks and access to more books in prison.

> I am very pleased to be here in the Supreme Court today. I have thought a lot about the Supreme Court recently. And about you, Your Honor, a great deal lately. Because I was transported [from my ex-prison near Moscow] for a long time, 20 days. Hidden away in special sections. I wondered, 'Who would find me?' Then I remembered that Judge Nefedov from the Supreme Court would surely find me. So, on January 11, everyone found out where I was.

The January 11th speech was one of the last moments the public would hear from Navalny. On February 16, 2024, the Russian Federal Penitentiary Service announced Navalny's death. The official statement claimed medical workers failed to revive him after he lost consciousness following a walk at the facility. Navalny's wife, Yulia, and supporters, however, believe the Kremlin is responsible for his death. That same fateful day, Yulia Navalnaya came to a gathering of world leaders in Munich, Germany, to press them to remember her imprisoned husband along with the other thousands of political prisoners in Putin's Russia. However, after hearing the news about the death of her husband, she had to give a completely different speech.

> I don't know whether to believe the news or not, the awful news we receive only from government sources in Russia […] but if this is true, I want Putin and everyone around him, Putin's friends, his government to know that they will bear responsibility for what they have done to our country, to my family, and to my husband. And this day will come very soon.

Putin doesn't even mention his name, anybody in the Kremlin can't mention his name," said Professor Nina Khruscheva of The New School in New York (and daughter of former Soviet ruler Nikita Khruschev) drawing a comparison with the fictional Harry Potter character Voldemort – who is also referred to as "He-Who-Must-Not-Be-Named."[68] "Navalny is a threat to Putin's personal power, Putin's personal reputation of himself. And Putin doesn't really treat his enemies lightly and Navalny unfortunately took this – as they say in Russian – this ticket to be Putin's personal enemy."

Following the news of her son's death, Navalny's mother, Lyudmila, along with members of his legal team traveled to the town of Kharp in the Yamalo-Nenets region, some 1,900 kilometers (1,200 miles) northeast of Moscow. When Lyudmila arrived less than 24 hours later, Russia's Federal Penitentiary Service officials said that her son had died from "sudden death syndrome," said Ivan Zhdanov, the director of Navalny's Anti-Corruption Foundation. Prison employees told Navalny's mother that they did not have her son's body. They said it had been taken into the nearby city of Salekhard, a little over an hour's drive away, as part of a probe into his death. However, when Lyudmila arrived in the town with one of Navalny's lawyers, they found that the morgue was closed. When the lawyer called the morgue, they were told that the politician's body was not there either. On February 20, 2024, Navalny's mother made a direct plea to Vladimir Putin for the release of her son's body. Standing in the snow outside the facility where her son was imprisoned, Lyudmila Navalnaya addressed Putin directly, saying she has not been told where Navalny's body is. "The solution to this problem depends only on you. Let me finally see my son. I demand that Alexey's body be immediately handed over so that I can bury him humanely."

[68] from BBC News at http://bbc.co.uk/news

After an almost surreal week-long ordeal to recover her son's body from Investigative Committee officials, Lyudmila Navalnaya shared that Russian authorities were blackmailing her over the funeral of her son and trying to force her to hold a private burial ceremony without mourners. "They want this to be done secretly, with no farewell. They want to bring me to the outskirts of a cemetery, to a fresh grave and say: 'Here lies your son.' I don't agree to this," said Navalnaya. "[They] started threatening me. Looking into my eyes, they said that if I don't agree to a secret funeral, they will do something to my son's body." She quoted one of the investigators as saying: "Time is not on your side; corpses decompose." "I don't want special conditions," Lyudmila Navalnaya said. "I just want everything to be done according to the law. I demand that my son's body be returned to be immediately."

Finally, on February 24, 2024, nine days after his death, the body of Alexei Navalny was handed to his mother in the Arctic city of Salekhard. "Alexei's body has been handed over to his mother," Navalny's spokeswoman, Kira Yarmysh, said in the statement posted on social media. "The funeral is yet to come. We don't know whether the authorities will interfere with carrying it out in the way the family wants and as Alexei deserves."

On March 1, 2024, under a heavy police pressure, thousands of supporters gathered to bade farewell to Alexei Navalny, chanting, "Putin is a murderer" and "No to war." The crowds who thronged to honor Navalny outside a church and cemetery in a snowy southeastern suburb of the capital turned the funeral into one of the largest recent displays of dissent. But the police did not act against them. At least 91 people were detained at events across Russian in Navalny's memory, said OVD-Info, with most stopped while trying to lay flowers at monuments dedicated to victims of Soviet repression. When his death was announced on February 16, police detained hundreds who tried to leave flowers.

Navalny was buried after a short Russian Orthodox ceremony, with vast crowds waiting outside the church and then streaming to the fresh grave with flowers. Navalny's widow, Yulia, who could not attend the funeral due to being arrested in absentia, has pledged to carry on his work and lovingly thanked him for "26 years of happiness." "I don't know how to live without you, but I will try to do in in a way that you up there are proud of me and happy for me," she wrote on Instagram.

Thousands attend Navalny's funeral to pay respects. Amidst the time of the funeral, Navalny's mother is blackmailed into a private funeral to control bodies of people who supported him. See images here.

Weeks before his death, Navalny announced plans for an anti-Putin protest at polling stations at noon on the day of the election. Another video posted to his YouTube channel titled, "Deciding who to vote for. God will help us. And quantum physics," urged supporters to use an app created by Navalny's team to help decide which candidate to vote for other than Putin. On March 17th, the day of the election, a massive influx of voters arrived at the polls. As one voter

told CNN reporters, "This is the first time in my life I have ever seen a queue for elections. You know why. I think everybody in this queue knows why." Protests also took place outside of Russian embassies around Europe, including Berlin, where Navalny's widow, Yulia, participated.

Navalny's YouTube channel continues to upload content regarding his death, exposing officials for their corruption. In early April 2024, anti-Kremlin hackers infiltrated a database of Russian prisoners with plans of distributing the data "in the hope that somebody can contact them and help understand what happened to Navalny." Though his life was cut short, Navalny's impact remains alive and well among the Russian people and the international community.

Commentary

1. On October 22, 2024, *Patriot*, Alexei Navalny's posthumously published memoir, finally became available to the public. Navalny started writing *Patriot* while recovering in Germany from the Novichok poisoning. "My plan … was not to become brutalizes and bitter and lost my laid-back demeanor; that would mean the beginning of my defeat," Navalny reflects. After his incarceration, his wardens permitted him to keep some notebooks, and he began to document, in meticulous detail, life behind bars. Many of the pages were "moronically confiscated" before he has a chance to smuggle them out. Navalny writes, portentously, that "if they do finally whack me, the book will be my memorial." And so it is. "The book author has been murdered by a villainous president; what more could the marketing department ask for?" he prophesies. "One might expect a work by an anti-corruption activist and political prisoner, serving multiple sentences adding up to more than 30 years, to read like a righteous diatribe. It does not. 'Patriot' reveals less about Navalny's politics than it does about his fundamental decency, his wry sense of humor and his (mostly) cheery stoicism under conditions that would flatten a lesser person," writes David Kortava, an editor at Foreign Affairs.
2. Below are three excerpts from *Patriot*, each written on January 17 to mark the first, second, and third anniversaries of Alexei Navalny's return to Russia in 2021. These t passages explore the reasons behind Navalny's unwavering decision to come back to his homeland after surviving the near-fatal Novichok poisoning. They also highlight Navalny's profound love for both his country and its people, capturing the essence of his commitment to fighting for justice and democracy in Russia. "Navalny often uses the word 'patriot' cynically, to refer to members of Putin's inner circle. Even so, it fits him like a glove," observes Kortava.

January 17th, 2022

> "Having spent my first year in prison, I want to tell everyone exactly the same thing I shouted to those who gathered outside the court when the guards were taking me off to the police truck: Don't be afraid of anything. This is our country and it's the only one we have."

***

January 17th, 2023

"It has been exactly two years since I returned to Russia. I have spent two years in prison. When you write a post like this, you have to ask yourself: How many more such anniversary posts will you have to write? Life and the events around us prompt the answer: However many it make take. Our miserable, exhausted motherland needs to be saved. It has been pillaged, wounded, dragged into an aggressive war, and turned into a prison run by the most unscrupulous and deceitful scoundrels. Any opposition to this gang—even if only symbolic in my current limited capacity—is important.

I said it two years ago, and I will say it again: Russia is my country. I was born and raised here, my parents are here, and I made a family here; I found someone I loved and kids with her. I am a full-fledged citizen, and I have the right to unite with like-minded people and be politically active. There are plenty of us, certainly more than corrupt judges, lying propagandists, and Kremlin crooks. I'm not going to surrender my country to them, and I believe that the darkness will eventually yield. But as long as it persists I will do as all I can, try to do what is right, and urge everyone not to abandon hope. Russia will be happy!"

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January 17th, 2024

"Exactly three years ago, I came back to Russia after treatment following my poisoning. I was arrested at the airport. And for three years I've been in prison. And for three years I've been answering the same question. Prisoners ask it simply and directly. Prison officials inquire about it cautiously, with the recording devices turned off. 'Why did you come back?' Responding to this question, I feel frustrated in two ways. First, there's a dissatisfaction with myself for failing to find the right words to make everyone understand and put an end to this incessant questioning. Second, there's frustration at political landscape of recent decades in Russia. This landscape has implanted cynicism and conspiracy theories so deeply in society that people inherently distrust straightforward motives. They seem to believe [that if] you came back, there must have been some deal you made. It just didn't work out. Or hasn't yet. There's a hidden plan involving the Kremlin towers. There must be a secret lurking beneath the surface. Because, in politics, nothing is as straightforward as it appears.

> But there are no secrets or twisted meanings. Everything really is that simple. I have my country and my convictions. I don't want to give up my country or betray it. If your convictions mean something, you must be prepared to stand up for them and make sacrifices if necessary."

3. The memoir *Patriot* was not the first to feature Alexei Navalny as a central figure. Before this, *Navalny*, an Oscar-winning documentary released in 2022, provided an in-depth portrayal of the Russian opposition leader, focusing largely on a 2020 poisoning attempt on Navalny's life.[69] In one of the film's most striking moments, director Daniel Roher, from behind the camera, poses a sobering question: "If you are killed – if this does happen – what message do you leave behind to the Russian people?" Navalny responds with defiance and dark humor: "Oh, come on, Daniel. No. No way. It's like you are making a movie for the case of my death. […] I am ready to answer your question, but please let it be another movie, Movie No. 2. Let's make a thriller out of this movie." He asked for a thriller, and that's what he got. As the documentary concludes, Roher returns to his earlier question, asking Navalny what message he would leave for the Russian people if he were imprisoned or even killed. "You are not allowed to give up. If they decide to kill me, it means that we are incredibly strong. We need to utilize this power to not give up, to remember we are a huge power that is being oppressed by these bad dudes. We don't realize how strong we actually are. […] The only thing necessary for the triumph of evil is for good people to do nothing. So don't be inactive," answers Navalny. Together, both *Patriot* and *Navalny* capture not only Alexei's life and ideals but also a broader movement, urging current and future generations to continue the fight for justice and democratic rights in Russia.
4. In October 2023, three of Navalny's lawyers—Alexei Lipster, Igor Sergunin, and Vadim Kobzev—were arrested on the changes of "extremism." They each face up to six years in prison. According to Navalny's allies, authorities accused the lawyers of using their position to pass the information from him to his team. At the time, Navalny's team alleged the arrest of the lawyers was an attempt to isolate Navalny even further in prison, where he spent most of the time in solitary confinement. On September 12, 2024, the trial of the three lawyers began in Petushki, a small city northeast of Moscow. The court refused a request to hold the proceedings in the capital, where the three were held in pre-trial detention. The judge in the Petushki District Court ordered the proceedings closed to the public, overruling objections from defense attorneys. Two other Navalny's lawyers, Olga Mikhailova and Alexander Fedulov, are on a wanted list but no longer live in Russia. Mikhailova, who had defended him for a decade, said she was charged in absentia with extremism. Kobzev, Lipster, and Sergunin have been deemed to be political prisoners, according to human rights advocates from Memorial, Russia's most prominent rights group that won the Nobel Peace Prize in 2022. The group demands their immediate release.
5. Alexei Navalny had great hopes for people in Russia, and at times those hopes were justified. On February 20, 2024, just four days after Navalny's death, the Moscow newspaper Sobesednik (Interlocutor) published a two-page spread on Navalny, including a lengthy

[69] *Navalny* documentary is streaming on HBO Max.

obituary and coverage of spontaneous vigils held in his honor across Moscow. The edition featured a front-page photograph of a smiling Navalny with the caption: "… but there is hope!" While this would be considered a standard practice in Western countries, showcasing a nation's opposition leader on the cover of a local newspaper represents an unprecedented level of defiance in Russia. Under President Vladimir Putin, the Kremlin has severely restricted press freedom, closing nearly all independent media outlets or driving them into exile, while directing state media to conform strictly to the government's narrative. Russian state media prohibited are prohibited from mentioning Navalny's name. In fact, before Navalny's death in February 2024, Vladimir Putin himself has never referred to Navalny by name, often labeling him as "the Berlin patient" or simply "that citizen." In an interview with Reuters, Sobesednik's editor-in-chief Oleg Roldugin said the paper was right to run the Navalny cover, given his fame. "There was a newsbreak – a man who is well-known and influential enough had died. Therefore, we did our normal journalistic work, which our colleagues were supposed to do." Shortly after hitting Moscow newsstands, virtually all copies were confiscated, "without any legal justification," said Roldugin, who has led the paper since 2021.

Alexei Navalny featured on the cover of Sobesednik in February 2024, with the caption "…but there is hope!" See image here.See image here.

6. While Navalny's widow, Yulia, never sought the spotlight, she always worked behind the scenes to support her husband and the political movement he built. "She was involved in all political decisions and has always supported Alexei and was part of his cause. Alexei has always relied on her advice," said Sergei Guriev, a Professor of Economics at Science Po close to the Navalny family. However, when asked whether she shared her husband's political ambitions, she answered: "Not at the moment. It's much more interesting to be a politician's wife. Besides, what I do in my place is also politics to some extent." The death of Alexei Navalny marked a turning point, depriving the Russian opposition of its most charismatic and courageous leader and leading to despair and apathy among his supports abroad and at home. On February 19, 2024, just days after her husband's death, Yulia announced that she would "continue the work of Alexei Navalny. To continue to fight for our country. And I call you to stand by my side. I ask you to share this anger with me. Anger, rage, hatred for those who have dared to destroy our future." "This time around – as she clearly explained in her statement – she had no choice [but to step into the spotlight]," explained Guriev. Now, Yulia Navalnaya is one of the most recognizable figures in opposition politics in Russia, seeking to carry the mantle of her late husband's work while establishing a unique political identity. She was named one of the 100 Most Influential People of 2024 by Time Magazine with a profile written by U.S. Vice President Kamala Harris. "Only time will reveal the extent of her impact on the political landscape," wrote Tatiana Stanovaya, a political analyst and founder of R Politik.

Alexei Navalny featured on the cover of Time magazine in February 2022, and Yulia Navalnaya on the cover in April 2024. See images here.

7. **For further reading**, *see* (1) Mikhail Zygar, *Alexei Navalny Is With Us Forever Now*, TIME (Feb. 18, 2024); (2) Alexei Navalny, *Alexei Navalny's Prison Diaries*, The New Yorker (Oct. 11, 2024); (3) Douglas Murray, *Things Worth Remembering: The Last Words of Alexei Navalny*, The Free Press (Nov. 17, 2024); (4) Alexandra Alter, *How Alexei Navalny's Prison Diaries Got Published*, The New York Times (Oct. 20, 2024); (5) Simon Shuster, *'Putin Is My Enemy.' The Revolution of Yulia Navalnaya*, TIME (April 17, 2024); (6) *Exiled Opposition, Unite? Yulia Navalnaya, Vladimir Kara-Murza, and Ilya Yashin Join Forces to Hold Anti-War Demonstration in Berlin*, Meduza (Nov. 15, 2024).

19.7 Conclusion

Much to Putin's chagrin, hope is the thing with feathers. Vladimir Putin has always feared two things: nationwide mass protests and international actions that cripple his wealth and the wealth of his oligarchs. As internal dissent grows due to his war with Ukraine, the Kremlin's actions will continue to escalate. However, the harder Putin fights his own people, the more he acts against his own interests. By stifling criticism and the free expression of thought, Putin inadvertently reveals to his people the value and allure of the one thing he hates the most: Western values. The final sentences of Kara-Murza's address to the court read: "Even today, even in the darkness surrounding us, even sitting in this cage, I love my country and believe in our people. I believe that we can walk this path." Putin can eradicate people, but he cannot eradicate resilience.

Chapter 20

Russification of Crimea and Other Occupied Territories

20.1 Introduction

The dispute over Crimea's status, known as the "Crimean Problem" or "Crimean Question," centers on Russia's illegitimate claim to Crimea. It originated during the breakup of the Soviet Union and escalated after the 2014 Ukrainian revolution, when Russian forces illegally occupied Crimea and seized control of its government infrastructure. Although an internationally unrecognized referendum supposedly showed widespread support for Russian annexation, Crimea remains Ukrainian territory. Nevertheless, Russia has annexed the Crimean Peninsula and established it as two federal entities.

Today, despite international condemnation and the United Nations, Crimea operates as Russian territory, adopting its currency, tax system, time zone, educational system, and legal framework. Ukraine has sought legal recourse through various international fora, challenging Russia's actions and seeking to restore its territorial integrity. As of this writing, it remains uncertain whether Crimea will ever return to Ukraine.

As Serhii Plokhii, a leading expert on the history of Eastern Europe, stated, "The idea of a 'traditionally Russian' Crimea has existed in the world since the Cold War, and this mythology continues to live on." This chapter explores the phenomenon of the "traditionally Russian" Crimea myth, tracing its development from the Soviet era to the present day. It also discusses Russia's occupation of Crimea and other Ukrainian regions in 2014 and 2022, focusing on the broader historical and political implications. Finally, it addresses Ukraine's ongoing resistance and its strategic efforts to "derussify" its lands and reclaim its cultural and territorial sovereignty.

The state of war as of May 2024. To see how it has changed before the invasion up until May 2024 see image here.

20.2 History of Russification of Ukraine

Brief History on Political Status of Crimea

In 1921, the establishment of the Crimean Autonomous Soviet Socialist Republic took place within the boundaries of the Russian Soviet Federative Socialist Republic. During the Soviet era, Crimea experienced significant demographic shifts. The entire Crimean Tatar population was expelled by the Soviet authorities under Stalin during the Second World War stemming from the supposed threat of collaborating with the Nazi Germany. The peninsula was then repopulated predominantly with Russians and Ukrainians. This mass deportation was aimed at facilitating Soviet access to the Dardanelles and possibly annexing territory in Turkey, where the Tatars had ethnic ties, or eliminating minority groups from the border areas of the Soviet Union. The deportation led to the deaths of nearly 8,000 Crimean Tatars, with thousands more dying later due to the severe conditions of their exile, leaving behind approximately 80,000 deserted households and 360,000 acres of unused land.

The region, stripped of its titular nationality, was demoted to an oblast status within the Russian SFSR on June 30, 1945.

On February 19, 1954, the oblast was reassigned by Soviet leader Nikita Khruschev from the Russian SFSR to the Ukrainian SSR, justified by “the unified nature of the economy, geographical closeness, and strong economic and cultural connections between Crimea and the Ukrainian SSR,” and in celebration of the 300th anniversary of Ukraine’s integration with Russia. Khruschev’s gift continues to plague Russia and Ukraine to this very day.

A 1954 Soviet propaganda stamp commemorated the 300th anniversary of Ukraine's reunification with Russia. Source: https://www.reddit.com/r/PropagandaPosters/comments/tgsuvt/soviet_stamp_1954_300_years_since_the_union_of/

Upon the breakup of the USSR in 1991, Crimea became part of independent Ukraine, recognized by the newly independent Russian Federation as a constituent Ukrainian territory. Since 1991, the area has been governed by Ukraine as the Autonomous Republic of Crimea within Ukraine. In 1994, Russia affirmed its commitment to respect the independence, sovereignty, and borders of Belarus, Kazakhstan, and Ukraine through the Budapest Memorandum on Security Assurances.

Following independence by both countries, a contention arose surrounding the ownership of the Black Sea Fleet and its base in Sevastopol, a key port city in Crimea. It was not until 1997 that tensions eased with the signing of the Partition Treaty and the Treaty of Friendship between Russia and Ukraine, which granted Russia the right to maintain a naval base in Sevastopol and Crimea until 2017.

Crimea is home to the largest concentration of ethnic Russians in Ukraine, including a significant number of retired military personnel and workers associated with the Russian Black Sea Fleet, particularly in Sevastopol. The period between 1992 and 1995 saw heightened internal discord due to the unresolved status of the fleet, with Russian political figures making statements that fueled separatist desires.

As discussed in earlier chapters, since gaining independence in 1991, Ukraine, once part of the Soviet Union, has been viewed by Russia as falling within its sphere of influence. Russia has pursued an updated interpretation of the Brezhnev Doctrine regarding This assertion is

supported by Russian leaders' statements indicating that Ukraine's potential integration with NATO would pose a threat to Russia's national security. See Chapter 1 for further discussion of this issue.

The issue gained prominence in the late 2000s. In 2008, Russia's disregard for Ukrainian regulations concerning Sevastopol and the Black Sea Fleet during the Russo-Georgian War led Ukrainian President Yushchenko to announce the non-extension of the lease agreement, and requiring the fleet to vacate Sevastopol by 2017. However, in 2010, his pro-Russian successor President Yanukovych signed the Kharkiv Pact amid gas disputes between Russia and Ukraine. In effect, Russia gave Ukraine an ultimatum: we will cut off delivery of gas if you take away Sevastopol. Ukraine caved, and Sevastopol remained in Russian hands.

In September 2013, Russia cautioned Ukraine against proceeding with an Association Agreement with the EU, warning of repercussions. Russian authorities emphasized that the Russian reaction would not remain neutral, suggesting the potential emergence of separatist movements in the Russian-speaking regions of eastern and southern Ukraine.

Status of Crimea within Ukraine

Following the Crimean Referendum of 1991, which sought to determine whether Crimea should become a signatory of the New Union Treaty (elevating it to the status of a union republic), the Ukrainian SSR reinstated Crimea's autonomous status as the Crimean Autonomous SSR, albeit within the framework of the Ukrainian SSR. The Crimean Oblast Council was renamed the Supreme Council of Crimea and, on September 4, 1991, adopted the Declaration of State Sovereignty of Crimea.

Upon the dissolution of the Soviet Union, the Crimean ASSR rebranded itself as the Republic of Crimea. Initially, the Ukrainian government acknowledged its name change but rejected its claims to statehood. According to Ukrainian legislation passed on April 29, 1992, the Republic of Crimea was recognized as an autonomous part of Ukraine, with the authority to independently interpret and implement Ukrainian laws and the Constitution. Conversely, the Regional Supreme Council asserted that the Republic of Crimea was a fully sovereign entity with supremacy over its natural, cultural, and spiritual heritage, while also acknowledging its status as part of Ukraine and the need for bilateral agreements.

On May 21, 1992, the Russian Supreme Soviet declared the 1954 transfer of Crimea to Ukraine null and void, citing violations of constitutional procedures. However, recognizing subsequent legislation and the 1990 Russo-Ukrainian treaty, Russia emphasized the need for negotiations between Ukraine and Russia to resolve the Crimean issue and taking into consideration the will of Crimean inhabitants. A similar resolution was passed for Sevastopol a year later, eliciting condemnation from Ukraine but resulting in no alterations to the Russian Constitution.

In 1994, following parliamentary and presidential elections in the Republic, the Russian Bloc gained dominance in the Supreme Council and executive branch. After a referendum in the same year, the Supreme Council of Crimea reverted to the original revision of the 1992 Constitution.

In 1995, the Ukrainian Parliament invalidated the 1992 Crimean Constitution, presidency and regional citizenship, and renamed the region from the "Republic of Crimea" to the "Autonomous Republic of Crimea." That same year, the Crimean parliament enacted another constitution, but significant portions of it were rejected by the Ukrainian parliament. This included proposals regarding the republic's name, which was intended to remain as the "Republic of Crimea," and citizenship. The closest analogy is the back-and-forth between the federal government in Canada and the independence-minded Francophone province of Quebec.

Meanwhile, during the drafting of the new Ukrainian Constitution, there was extensive debate surrounding the question of autonomy. Some legislators advocated for its abolition, suggesting a return to either oblast status or a form of autonomy without autonomous republic status. Others proposed incorporating provisions of the 1992 Crimean Constitution (the original May revision) into the new Ukrainian Constitution. However, the final version of the new Constitution of Ukraine did not adopt either extreme approach. Instead, it reaffirmed the autonomous status of the republic while reducing some of its powers, such as the regional Supreme Council's authority to enact legislation in the form of laws ("zakoni"). The Republic was recognized as the "Autonomous Republic of Crimea" while also being acknowledged as an "inseparable constituent part of Ukraine." Subsequently, a new Crimean constitution, aligning with the provisions of the Ukrainian Constitution, was ratified in 1998.

Prior to the 1954 transfer of Crimea, Sevastopol held the status of a "city of republican subordination" within the Russian SFSR, a precursor to its modern designation as a "city of federal importance." Despite this, it functioned administratively as part of the Crimean Oblast. For instance, Sevastopol residents elected representatives to the Crimean Oblast Council, and its institutions, such as local police departments, were under the jurisdiction of oblast authorities, effectively transferring control to them. While the Ukrainian Constitution of 1978 identified Sevastopol as one of its "cities of republican subordination" (alongside Kyiv), the Russian constitution of the same year did not include Sevastopol in this category.

In 1993, the Supreme Soviet of the Russian Federation affirmed Sevastopol's federal status and tasked a parliamentary commission with proposing corresponding constitutional amendments to the Congress of People's Deputies of Russia. However, due to the 1993 Russian constitutional crisis, these amendments were not implemented in the initial revisions of the Constitution of Russia adopted on December 12, 1993. Three years later, the State Duma (successor to the Supreme Soviet legislature) asserted Russia's sovereignty over Sevastopol, although this declaration had no practical effect. In 1997, the Russian and Ukrainian governments reached an agreement allowing the Black Sea Fleet to remain in Sevastopol until 2017, a term later extended by another 25 years until 2042, with the potential for further extension until 2047. As Russia continues to occupy Crimea, the Black Sea Fleet imbroglio is put on hold.

Commentary

1. Nikita Khruschev, who was born in Russia near the border with Ukraine, moved with his family to the Ukrainian city now known as Donetsk in his childhood. His father worked several different jobs in Ukraine, and Khruschev himself worked in Ukrainian mines as a teenager. Some historians speculate that his gift of Crimea to Ukraine was motivated, at least in part, by the great affinity he personally felt towards Ukraine, as well as to atone for the Holodomor caused by Stalin which killed millions of Ukrainians in the early 1930s. Furthermore, the move served to placate inter-Soviet tensions that existed between Ukraine and Russia at the time of the transfer.
2. Amendments to Ukrainian autonomy laws and the Crimean Constitution in 1992 aimed to reconcile differing views, positioning the Republic's status between what was initially proposed and what was outlined in Ukrainian law.
3. The Russian government has gone to great lengths to perpetuate the myth that Crimea has always belonged to Russia. In the words of Vladimir Putin, "in the minds of people, Crimea has always been and still is an inseparable part of Russia." This myth has permeated Western politics as well, with Donald Trump parroting it at the 2018 G7 Summit with his statement that Crimea is Russian because everyone living there speaks Russian. In spite of these assertions, the historical record clearly demonstrates that less than 6% of Crimea's written history has featured Russian control. The Crimean myth has served as a convenient pretext for the Russian annexation of Crimea in 2014, which is especially ironic considering the multiple historical occasions of largescale Russian deportations of truly ethnic Crimeans from their native lands.
4. **For further reading**, *see* (1) Eve Conant, *Russia and Ukraine: The Tangled History that Connects—And Divides—Them*, National Geographic (Feb. 23, 2023); (2) "The Historical Background," Crimea Platform; (3) Oleksandra Gaidai, *Decolonizing Crimean History*, Atlantic Council (Aug. 30, 2022); (4) Alina Horbenko, *Crimean Tatars in the Vortex of War: A Decisive Moment for the Nation*, (5) *Ukraine's Parliament Recognizes 1944 'Genocide' of Crimean Tatars*, Radio Free Europe/Radio Liberty (Nov. 12, 2015); (6) Hanna Andriyevska, *Interview: Crimean Tatar Leader Reflects on Stalin-Era 'Genocide,' Resistance and Resilience*, Radio Free Europe/Radio Liberty (May 17, 2024).

20.3 Russification of Crimea

For an image of Crimea after Putin's illegal annexation in 2014, see image here.

2014: Annexation

On March 16, 2014, a referendum took place within the boundaries of the Autonomous Republic of Crimea and the distinct municipality of Sevastopol. The referendum purportedly resulted in nearly 97% of voters choosing to align with the Russian Federation, with a reported turnout of 83%. However, the referendum's legitimacy is widely contested and marked by significant irregularities, causing it to merely serve as a veneer for Russia's predetermined decision to separate Crimea from Ukraine. On March 18, Moscow formalized the annexation of Crimea, including both the Republic and Sevastopol, into the Russian Federation.

Russian President Vladimir Putin signs the treaty of accession (annexation) with Crimean leaders in Moscow, March 18, 2014.

Source: http://en.kremlin.ru/events/president/news/20604

Source:
https://www.eeas.europa.eu/sites/default/files/r06_russiansanctions_static.inf_2021_en_v1.0.pdf

For Ukraine, the annexation of Crimea carries multifaceted implications, extending beyond geopolitical and military concerns to encompass profound economic repercussions. The loss encompasses valuable state assets situated on the peninsula, particularly in the energy, mining, and port sectors, which are crucial for Ukrainian exporters.

From the perspective of Russian authorities, the acquisition of Crimea represents a domestic propaganda victory, albeit at considerable costs internationally. Acquiring Crimea has served to tarnish Russia's reputation as a reliable actor and has incurred substantial financial burdens, with preliminary estimates indicating the annexation has cost Russia north of $82 billion.

Following the events of Euromaidan, the referendum and its execution occurred in the midst of Russia's military intervention in Crimea. Igor Girkin, a key Russian military leader during the crisis, admitted that the supposed widespread local support for the "self-defense" movement, as reported by Russian media, was fabricated, revealing that a significant portion of the local law enforcement, administrative bodies, and military personnel were actually against the annexation. Girkin disclosed that his forces had to compel local deputies into voting chambers and coerce them into voting for joining Russia.

Ukraine and a significant majority of the international community have not acknowledged the referendum's legitimacy or Crimea's incorporation into Russia. Only Russia and a handful of other countries have accepted these developments. The international rejection primarily stems from the referendum being conducted while Crimea was under Russian military occupation. Various nations, including members of the European Union, the United States, and Canada, have condemned the referendum. Moreover, the Mejlis of the Crimean Tatar People, representing the Crimean Tatars, urged a boycott of the vote. In 2016, Russian authorities in Crimea disbanded the Mejlis, a representative body of Crimean Tatars. The Mejlis were declared an extremist organization.

In response to the crisis, Ukraine established the Ministry of Temporarily Occupied Territories and Internally Displaced Persons on April 20, 2016, to oversee the regions affected by the 2014 Russian military actions, including Donetsk, Luhansk, and Crimea.

In 2021, Ukraine initiated the Crimea Platform, a diplomatic effort aimed at defending the rights of Crimean residents and striving to reverse Crimea's annexation.

Russian Legislation on Crimea

On March 21, 2014, Vladimir Putin signed the "Federal Constitutional Law on Admitting to the Russian Federation the Republic of Crimea and Establishing within the Russian Federation the New Constituent Entities of the Republic of Crimea and the City of Federal Importance Sevastopol." This action followed the controversial referendum held in Crimea on March 16, 2014, and followed his signature on March 18 of the "Federal Law on Ratifying the Agreement between

the Russian Federation and the Republic of Crimea on Admitting to the Russian Federation the Republic of Crimea and Establishing within the Russian Federation New Constituent Entities."

The Federal Constitutional Law defined the borders of the Republic of Crimea and the city of Sevastopol, recognizes the granting of Russian Federation citizenship to citizens of Ukraine and stateless persons permanently residing in Crimea and Sevastopol, and also containing provisions on military service and conscription, forcing military-age men living in Crimea to serve in the Russian Army.

Under the Federal Constitutional Law, Russian courts were established in Crimea and Sevastopol. Rules and procedures were set up to ensure the functioning of the judicial and local government systems, the prosecutor's offices and various chambers of notaries and lawyers.

Below is a list of laws that the Russian Federation has implemented on Crimea.

ANNEXATION

1. *Name of the document:* Agreement between the Russian Federation and the Republic of Crimea on the admission of the Republic of Crimea to the Russian Federation
   Date signed: March 18, 2024

   Date ratified: March 18, 2024

   Issued by: The State Duma

   Who signed: President of Russia, Chairman of the Council of Ministers, Chairman of the State Council, Chairman of the Coordinating Council for the organization of the Sevastopol City Administration for ensuring the vital activity of Sevastopol

   Text of the document: The independent and sovereign state of the Republic of Crimea, in which the city of Sevastopol has a special status, on the basis of the results of the all—Crimean referendum, is part of the Russian Federation, in which new subjects are formed from the date of adoption - the Republic of Crimea and the federal city of Sevastopol.

CITIZENSHIP

1. *Name of the document:* Federal Constitutional Law No. 6-FKZ dated 03/21/2014 (as amended on 07/10/2023) "On the Admission of the Republic of Crimea to the Russian Federation and the Formation of New Subjects within the Russian Federation - the Republic of Crimea and the Federal City of Sevastopol"; Article 4
   Date signed: March 21, 2014

   Issued by: The State Duma

Who signed: President of Russia

Text of the document: From the date of admission to the Russian Federation of the Republic of Crimea and the formation of new subjects within the Russian Federation, citizens of Ukraine and stateless persons permanently residing on that day on the territory of the Republic of Crimea or on the territory of the federal city of Sevastopol are recognized as citizens of the Russian Federation, with the exception of persons who, within one month after that day, declare their the desire to retain their and (or) their minor children's other citizenship or remain stateless.

MILITARY

1. *Name of the document:* Federal Constitutional Law No. 6-FKZ dated 03/21/2014 (as amended on 07/10/2023) "On the Admission of the Republic of Crimea to the Russian Federation and the Formation of New Subjects within the Russian Federation - the Republic of Crimea and the Federal City of Sevastopol"; Article 5
Date signed: March 21, 2014

   Date ratified: March 21, 2014

   Issued by: The Constitutional Court of the Russian Federation (The State Duma and the Federation Council)

   Signed by: President of Russia

   Text of the document: Military personnel undergoing military service under contract and conscription in the military administration bodies and military formations of the Republic of Crimea continue to perform military service duties in accordance with the legislation of the Russian Federation until the issue of including these bodies and formations in the Armed Forces of the Russian Federation, other troops, military formations and bodies or their reformation (disbandment).

2. *Name of the document:* Federal Constitutional Law No. 6-FKZ dated 03/21/2014 (as amended on 07/10/2023) "On the Admission of the Republic of Crimea to the Russian Federation and the Formation of New Subjects within the Russian Federation - the Republic of Crimea and the Federal City of Sevastopol"; Article 12
Date signed: March 21, 2014

   Date ratified: March 21, 2014

   Issued by: The State Duma and the Federation Council

   Text of the document: In the territories of the Republic of Crimea and the federal city of Sevastopol, there are documents, including those confirming civil status, education,

ownership, right of use, right to receive pensions, allowances, compensations and other types of social benefits, the right to receive medical care, as well as customs and permits (licenses, except for licenses for the implementation of banking operations and licenses (permits) for the activities of non-credit financial organizations) issued by state and other official bodies of Ukraine, state and other official bodies of the Autonomous Republic of Crimea, state and other official bodies of the city of Sevastopol, without limitation of their validity period and any confirmation by state bodies of the Russian Federation, state bodies of the Republic of Crimea or state bodies of the city of federal significance of Sevastopol, unless otherwise provided by Article 12.2 of this Federal Constitutional Law, as well as if nothing else follows from the documents themselves or the substance of the relationship.

OFFICIAL LANGUAGES

1. *Name of the document:* The Constitution of the Republic of Crimea
Date issued: April 11, 2014

   Date ratified: April 12, 2014

   Issued by: The State Council of the Republic of Crimea

   Who signed: Head of the Republic of Crimea

   Text of the document: The official languages of the Republic of Crimea are Russian, Ukrainian and Crimean Tatar.

REAL ESTATE

1. *Name of the document:* The Law of the Republic of Crimea dated 07/31/2014 No. 38-ZRK "On the specifics of Regulating property and land relations in the territory of the Republic of Crimea"; Article 2.2
Date signed: July 30, 2014

   Date ratified: July 31, 2014

   Issued by: The State Council of the Republic of Crimea

   Who signed: Head of the Republic of Crimea

   Text of the document: The right of ownership of land plots and other objects of

   immovable property, which arose before the entry into force of the Federal

   Constitutional Law, in the territory of the Republic of Crimea for individuals and

legal entities, including foreign citizens, stateless persons and foreign legal entities, remains.

EDUCATION

1. *Name of the document:* The Law of the Republic of Crimea on the functioning of the state languages of the Republic of Crimea and other languages in the Republic of Crimea; Article 3.1, 3
   Date signed: April 11, 2014

   Date ratified: April 12, 2014

   Text of the document: The official languages of the Republic of Crimea are Russian, Crimean Tatar and Ukrainian. The language of interethnic communication in the Republic of Crimea is Russian.

10 Years of Crimean Occupation

The Tatars, a Turkic Muslim minority, are traditionally recognized as the native inhabitants of Crimea. During the time when both the peninsula and Ukraine were part of the Soviet Union, they faced persecution, most notably under the regime of Joseph Stalin, who ordered their mass deportation from Crimea in 1944.

It wasn't until the late 1980s and early 1990s, coinciding with Ukraine's move towards independence, that the Crimean Tatars were permitted to return to their homeland. They were prominent among the groups that resisted the annexation of Crimea by Russia in 2014, with human rights organizations highlighting the subsequent persecution by Russian authorities against them. This pattern of persecution has only intensified and become more aggressive following Russia's comprehensive military assault on Ukraine in February 2022.

The takeover of Crimea by Russia commenced in 2014, immediately following the Maidan Revolution in Ukraine. This period saw a rise in pro-Russian feelings within Crimea - a region that had been part of the Russian Soviet Federative Socialist Republic until 1954, hosted Russia's Black Sea Fleet at Sevastopol, and was already more aligned with Moscow than other Ukrainian regions - sparking protests and confrontations.

As Kyiv's political leaders were endeavoring to maintain national unity after the abrupt exit of President Viktor Yanukovich on February 22, amidst a backdrop of political instability and demonstrations, Moscow turned its attention to Crimea. Russian military personnel, who wore uniforms but no identification and were nicknamed "little green men," began to appear outside key buildings and military installations, despite Moscow's denials of any involvement.

In the ensuing chaos, numerous Ukrainian soldiers chose to barricade themselves within their bases, surrounded by the unidentified soldiers. Russian helicopters were observed entering Ukrainian territory, and two senior Ukrainian naval officials switched allegiances.

The dismantling of Ukrainian governance structures and the suppression of opposing voices began swiftly after the referendum. Residing in Crimea without a Russian passport has been rendered virtually unfeasible. Without a Russian passport, one cannot access to any of the social services: healthcare, pensions, travel, and education. As a result, Ukrainians in Crimea have sought Russian passports.

Crimea has served as a model for the other four Ukrainian areas that are currently under full or partial control by Russia. Irina Volk, a representative for the Russian interior ministry, stated that 90% of the inhabitants in these four regions—Donetsk, Luhansk, Kherson, and Zaporizhzhia—now possess Russian passports. Volk mentioned that within less than a week following the retreat of Ukrainian forces from the eastern town of Avdiivka, the initial group of residents had already applied for Russian passports.

Regarding Crimea, Russia has attempted to conceal its suppression behind a facade of public investment and patriotism at the 10th anniversary of its annexation, with billboards and posters celebrating the improvements to life in Crimea. For example, some posters showed Crimea draped in the Russian flag, while others showed Russian President Vladimir Putin with captions like: “The West doesn’t need Russia. We need Russia.”

A woman poses in front of a map of Crimea in Russian colors days before its annexation in Simferopol, March 13, 2024. See image here.

Reports from Russian state media and local outlets supportive of Russia often emphasize developments like new road constructions and the building of public facilities, including sports centers and mosques in some instances. The Kerch Bridge, which links Crimea with the Russian mainland and was opened in 2018, stands as a significant point of pride for Moscow and plays a central role in its propaganda efforts. Its symbolic and strategic value is a key reason why it has been a target for Ukraine multiple times throughout the conflict.

Source: https://www.bbc.com/news/world-europe-66484640

"Image © 2022 Planet Labs PBC"

A Decade of Russian Rule of Crimea: How Crimea Has Changed

Amnesty International reported, marking the decade since Russia's illegal annexation of Crimea, that Russia has been actively altering the demographic composition of the peninsula and oppressing the Ukrainian and Crimean Tatar communities. The organization's latest publication details these developments on the anniversary of the annexation.

According to Patrick Thompson, Amnesty International's Ukraine Researcher, "Russia has systematically sought to eradicate Ukrainian and Crimean Tatar identities by disrupting, restricting or banning the use of Ukrainian and Crimean Tartar languages in education, media, national celebrations and other spheres of life, and oppressing religious and cultural practices that do not conform to those endorsed by Moscow. It has also forcibly transferred population out of Crimea and transferred the Russian civilian population in."

Thompson added, “Russia must end its practices of suppression and eradication of non-Russian identities in the territories it occupies and stop its violations of international humanitarian and human rights law.”

Following the annexation, Russia swiftly enforced its educational curriculum within Crimean schools, leading to indoctrination and potential reprisals against educators, students, and their families who resisted. Concurrently, Russian authorities have methodically eradicated Ukrainian language education. Additionally, the enforced application of restrictive Russian laws has led to the suppression of freedoms concerning expression, peaceful assembly, cultural engagements, and religious practices.

“For years, we have been ringing the alarm bell over Russia’s suppression of human rights in Crimea. A decade later we can take stock of what this has done to the peninsula as Russia seeks to suppress non-Russian identities, including Ukrainian and Crimean Tatar cultures. Alarmingly, it looks like this is Russia’s blueprint for the other Ukrainian territories it has occupied,” said Patrick Thompson, reflecting on the situation’s severity.

In Crimea, Russia has significantly curtailed religious freedoms, implementing laws that render praying, preaching, or distributing religious materials outside approved locations or without governmental authorization punishable offenses. As reported by the freedom of religion watchdog Forum 18, by 2023, numerous administrative cases have been initiated for “illegal” missionary activities, with over 50 individuals facing substantial fines for these infractions.

In April 2017, the Supreme Court of Russia labeled Jehovah’s Witnesses as “extremist” and prohibited their activities throughout Russia and Russian-occupied Crimea, leading to the deregistration of all 22 congregations in Crimea, impacting approximately 8,000 adherents. Subsequently, at least 12 believers in Crimea have received sentences of six years or longer for peacefully practicing their right to freedom of religion or belief.

Furthermore, the Ukrainian Orthodox Church of the Kyiv Patriarchate, renamed the Orthodox Church of Ukraine post-2018, declined to re-register under Russian legislation. Several clergy members resisted obtaining Russian citizenship and were consequently compelled to depart from Crimea. Within the first year of the occupation, the church witnessed the dissolution of 38 out of its 46 parishes, with all parishes ceasing by the present. In May 2023, the de facto authorities forcefully expelled it from its main cathedral in Simferopol, the regional capital.

Occupying authorities have systematically targeted independent media and journalists. In the initial days of the occupation, several journalists were abducted by pro-Russian paramilitaries, marking the beginning of a violent campaign against pro-Ukrainian activists. By March 2014, Ukrainian-language television and radio broadcasts were discontinued and substituted with Russian media. Following the annexation, all media entities in Crimea were required to re-register under Russian legislation within ten months, accompanied by warnings against engaging in “provocative acts.” Access to online media outlets, previously banished from Crimea, has been unduly restricted without judicial authorization.

Commentary

1. The Russian judiciary remains one of the most powerful weapons in Putin's arsenal. There were at least 446 Russian court decisions centered around novel 'fake news laws' between 2022 and 2023, demonstrating that Russian judges are actively aiding in the construction of a falsified narrative about the so-called "special military operation" in Ukraine. Rather than serve as impartial administrators of justice, Russian judges instead disseminate official Russian propaganda and oblige Russian citizens to stay informed by watching official Russian state media and base public statements therefrom.
2. In criminal cases involving the dissemination of "fake news", there is a heavy presumption of guilt and assumption that such defendants maliciously disseminated fake news to mislead others due to their political, ideological or national hatred of the Russian army and Putin. This demonstrates that the Russian judiciary and Russian legislature are simply enforcement mechanisms for Putin's agenda, rather than the independent bodies that exist to promote the objectives and outcomes that ordinary Russian citizens seek (as they pretend to be).
3. Russian citizens accused of criminal offenses are now being offered the opportunity to fight in Ukraine in exchange for their charges being dropped. Due to legislation passed in March of 2024, the Russian judicial system has begun granting criminal defendants the chance to have their prosecutions stopped and their cases permanently closed upon conclusion of the Russo-Ukrainian War. This legislation serves the objective of refilling the Russian military's vastly depleted ranks with accused criminals, even those potentially accused of crimes such as murder, at the expense of justice for the Russian populace and victims of crimes. There is insufficient data to date to show how many putative defendants have taken up this offer; however, approximately 17,000 Russian prisoners were killed between July 2022 and June 2023 – well before this legislation was enacted.
4. **For further reading**, *see* (1) "Russia/Ukraine: 10 Years of Occupation of Crimea," Amnesty International (Mar. 2024); (2) Vasco Cotovio, Clare Sebastian, and Yulia Kesaieva, *Ten Years Since Its Illegal Annexation, Crimea Is a Template for Newly Occupied Parts of Ukraine*, CNN (Mar. 18, 2024); (3) Amanda Paul & Marta Zakrzewska, *Occupied Crimea: Europe's Grey Zone*, EPC (Oct. 10, 2018); (4) Remarks of Ambassador Michael R. Carpenter: The Russian Federation's Ongoing Aggression Against Ukraine (Mar. 7, 2024); (5) Dinara Khalilova, *How Has Crimea Changed After 10 Years of Russian Occupation?*, The Kyiv Independent (Feb. 24, 2024).

20.4 Russification of Other Occupied Territories

The campaign of russification in occupied territories began before the annexation of Crimea, with notable examples in Abkhazia and Transnistria. Following the dissolution of the Soviet Union, these regions saw a gradual integration into the Russian sphere through cultural, educational, and political means. Since 2014, this process has intensified in Ukraine's occupied territories, employing similar strategies to promote Russian language and historical narratives. This sub-chapter examines these multifaceted efforts, highlighting their impact on local identities and the ongoing resistance movements. By understanding the dynamics of russification across these regions, we gain insight into the broader geopolitical implications and the future of contested territories in the post-Soviet space.

20.4.1 Other Ukrainian Territories

Donetsk/Luhansk

"Since 2014, the Russian Federation has been issuing passports of the so-called LPR and DPR in the temporarily occupied territories of the Donetsk and Luhansk regions, which it uses as a means of pressure and manipulation. People have had no choice but to accept them, and the Russian authorities later took advantage of this. The terrorist state of the Russian Federation itself does not recognize the legal force of these 'passports', but forces people to obtain 'citizenship'. The Russian Federation literally uses this 'document' to destroy Ukrainians. For example, it is primarily men with 'LPR' passports who are subject to mobilization in the temporarily occupied territories of the Luhansk region."

In March 2024, for the first time, the inhabitants of Donbas took part in a Russian presidential election, as did the inhabitants of other Ukrainian areas partially occupied by the Russian army such as Zaporizhzhia and Kherson, under strong pressure from the new authorities.

"Russification began in 2014. They changed the textbooks. They simply killed or imprisoned or drove away all those who were pro-Ukrainian. We mustn't forget that there are nearly a million Donbas inhabitants who fled to Ukraine during the occupation of Donbas by pro-Russian and Russian forces,'" explains historian Galina Ackerman.

Zaporizhzhia/Kherson

Local pseudo-authorities have been set up in these regions, with pro-Ukrainian resistance harshly repressed. The demographic composition of these regions has changed with the arrival of thousands of Russians, who are gradually replacing the 60,000 or so inhabitants (of 150,000) who fled Melitopol after the large-scale offensive. After the occupation of Kherson, Russian troops started patrolling the Kherson market with weapons, raiding the homes of activists and Ukrainian soldiers, and taking locals away for extrajudicial questioning. As a result, many people have physical and psychological trauma, others have died, and some remain unaccounted for to this day.

Furthermore, Russian occupiers removed all of the Ukrainian books from a local library's collection and prepared them for destruction. One worker from the Dniprova Chaika Kherson Oblast' Children's Library talked about an attempt to destroy Ukrainian books: "After Kherson was liberated by the Ukrainian Armed Forces, the library was checked for bombs, and I finally went there. In the book depository I found two large boxes on which was written 'literature of dubious content.' There were books about Ukrainian statehood, the Holodomor, the history of Ukraine, the EU, and so on."

20.4.2 Occupied Territories Other Than Ukraine

For details on Russia's Occupation Playbook, visit The Institute For the Study of War here.

Abkhazia

"It is 'independent', but in effect it is a Russian puppet state."

In 1992, a civil war erupted between Abkhazians and Georgians over the control of Abkhazia, a region located between the Black Sea and the Caucasus Mountains. Initially, the Georgian military was able to push the Abkhazian fighters out of the region, but the tide shifted after Russia aided the Abkhazians with a large-scale counterattack which ultimately resulted in tens of thousands of deaths.

Following this conflict, Russia began a widespread campaign of ethnic cleansing in Abkhazia to undermine Georgian independence efforts and assert geopolitical control over the South Caucasus region. During the mid-late 1990s, Abkhazia's population dropped from 525,000 to 216,000, and the number of ethnic Georgians in this region dropped from 240,000 to 46,000. Altogether, estimates suggest that over 200,000 people, mostly ethnic Georgians, were displaced from their familial lands and have yet to return.

Because of the Russification efforts of the last 30 years, Abkhazia today strongly resembles a Soviet time capsule. Much of the old Soviet architecture has crumbled into varying states of disrepair, with Russian economic investments concentrated primarily on the purchase of real estate and the promotion of tourism in the region. Abkhazia, which is only officially recognized as a sovereign nation by five countries (Russia, Venezuela, Nicaragua, Nauru, and Syria), is heavily dependent on Russian financial aid, continues to use the ruble as its local currency, and various state assets have been sold or leased to Russian companies. Now, Abkhazia has been transformed into a cheap vacation destination for Russians, with as many as a million Russian tourists visiting Abkhazia annually (drawing obvious parallels to what is being seen in Crimea with a large influx of Russian tourism since 2014). Russian paratroopers and other military forces continue to control the Abkhazian borders, demonstrating that this region is still firmly under Russia's grasp (notwithstanding their recognition as a sovereign nation by Russia itself). Ultimately, the Russification efforts seen in Abkhazia over the last 30 years have turned this region into a shell of its former self all the while promoting Russian geopolitical and economic interests in the region, all at the expense of innocent people who had lived in the region for generations.

Transnistria

Transnistria, a small breakaway state located between the Dniester River and the Moldova-Ukraine border, has been subject to Russification policies since Soviet times. This region, parts of which have historically belonged to both Romania and Ukraine, was forcefully assimilated into the newly created Moldovan Soviet Socialist Republic in 1940. That same year, Soviet authorities began a process of Sovietization, arresting and otherwise eliminating 1,122 former administrators, gendarmes, and other persons suspected of loyalty to the old Romanian government in one week.

After periods of Axis control during WW2, the Soviet Army regained control of this region in 1944. Once again, Soviet authorities immediately began executing and deporting local residents who were seen as a threat against the Stalinist government, especially wealthy peasants and influential local figures.

Under Soviet rule, there was a widespread policy of both Sovietization and Russification. As part of these policies, the Soviet government sought to aggressively isolate the region from the Romanian cultural sphere by imposing the Cyrillic alphabet for the Romanian language, and by ensuring that the Moldovan language was seen as inferior to Russian in all aspects of daily life. While many Moldovans wanted to secure independence from the Soviet Union in the late 1980s and early 1990s, there was "a strong tendency for the preservation of the Soviet Union and of 'Socialist values" in this region, bolstered by the presence of a largely introduced Slavic population and Slavic leadership.

Today, Transnistria is heavily dependent on Russian financial and military support, with approximately 2,000 Russian soldiers permanently stationed in the region. Access to Western media continues to be heavily limited, as the region continues to perpetuate an isolationist and pro-Russian mentality. In spite of the fact that no UN-member nation, including Russia, recognizes Transnistria as a sovereign nation, Russia continues to maintain its sphere of influence over Moldova by sending financial support and maintaining a permanent garrison in the area. Furthermore, this region serves as another strategically important area for Russia's geopolitical ambitions, as control of this area would give Russia key access to the border regions of southern Ukraine.

Commentary

1. Even in areas further removed from the War such as Kyiv, many citizens struggle with the seemingly omnipresent reminders of Russian influence. There have been large-scale efforts all over Ukraine to remove Soviet and Russian Imperial statues and monuments, as well as countless instances of Russia-related street names being changed to Ukrainian ones. In a sense, this can be compared to the sentiment that many modern residents of the American South feel towards statues and other tributes to Confederate figures from the American Civil War.
2. Most Russification efforts in occupied regions such as Abkhazia, Transnistria, and Southern Ossetia share key similarities. Russia seeks to implement regimes of domestic education that further its political and sociological agendas, moves Russian citizens into these regions, and removes locals that are either deemed a threat to the Russian regime or seen as irredeemably loyal to the West or to their historical governments. All of these Russification efforts are ultimately geared towards both maintaining the Russo-Soviet sphere of influence over the people living there, and over the countries to which these regions have historically belonged. Just as Russia struggles to maintain control over ethnic minorities within their own borders, Russia's international struggles to maintain influence in these ethnically diverse regions leads to forced assimilation, depopulation, and leaves these areas a shell of their former selves, locked in post-Soviet frozen conflicts.
3. In some former Soviet nations in Central Asia, there have been recent efforts to mitigate the effects of Russification. In 2023, Kyrgyzstan enacted legislation mandating all state employees to pass a language proficiency test in Kyrgyz, demonstrating the desire of the Kyrgyz government to emphasize the primary role their native language should hold in that nation. Furthermore, there have been reported trends of Central Asian migrant workers leaving Russia in large numbers, both due to hostility by Russian officials and to economic instability in the face of the Russo-Ukrainian War. Should these trends continue, it is plausible to imagine that future generations of Central Asians will feel less inclined to learn Russian, further loosening the grip of Russification in that region. Additionally, many citizens of countries such as Kazakhstan and Uzbekistan directly blame Russia for the economic problems faced in those countries, potentially signaling that Central Asian nations will look elsewhere for close-knit economic relationships such as those historically enjoyed with Russia.
4. **For further reading**, *see* (1) Katya Alexander, *It's Getting Harder and Harder to Hide*, Meduza (Sept. 5, 2024); (2) Liliia Didukh and Myroslava Tanska-Vikulova, *Kharkiv's Burned Books.*, The Counteroffensive with Tim Mak (June 13, 2024); (3) US to Pause $95 Million Assistance to Georgian Government over 'Foreign Agent' Law, Reuters (Aug. 1, 2024); (4) "Art as Armor: The Role of Ukrainian Culture in National Defense," YouTube (Oct. 22, 2024); (5) Emil Avdaliani, *Abkhazia: It's Not All Laughs as a Russian Colony*, CEPA (Sept. 13, 2024); (6) Ievgen Afanasiev et al., *Ukraine Agonizes over Russian Culture and Language in Its Social Fabric*, NPR (June 2, 2022).

20.5 Ukraine's Path to Derussification

Despite Vladimir Putin's stated objectives to "demilitarize" and "denazify" Ukraine, he achieved the unexpected – he brought the Ukrainian nation together and, in doing so, made Ukrainians take pride in their identity, despite the deep historical and cultural connections to Russia. This sub-chapter examines Ukraine's resurgence of its national identity through the process

of "derussification." It begins by analyzing the laws Ukraine introduced in response to Russia's occupation of Crimea and its subsequent full-scale invasion of Ukraine, outlining the legislative actions taken to assert Ukraine's sovereignty and protect its national identity. Next, it delves deeper into the practical implementation of these laws, exploring how they have influenced various aspects of Ukrainian life. This includes examining the impact on language policies, educational curricula, the removal and renaming of monuments and streets, transformations within the church, and even changes in the country's culinary traditions. Lastly, this sub-chapter focuses on Ukraine's efforts to prosecute collaborators, a phenomenon of magnitude comparable to that seen during World War II.

20.5.1 Derussification Laws

In the wake of Russia's annexation of Crimea in 2014 and the full-scale invasion in 2022, Ukraine responded not only on the battlefield but also through a series of legislative measures aimed at reclaiming its national identity. These laws, six of which are discussed in this section, were designed to reduce Russian cultural, linguistic, and political influence, which had been deeply embedded during centuries of imperial and Soviet rule.

By examining these laws and their implementation, we gain a clearer understanding of how Ukraine has not only resisted external threats but also laid the groundwork for a renewed and unified national identity. The legal strategies behind derussification reflect the country's determination to reclaim its cultural and historical autonomy, preserve the Crimean Tatars' heritage, and strengthen its ties with the European Union.

Laws After the 2014 Occupation of Crimea

On the Condemnation of the Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and the Prohibition of Propaganda of Their Symbols

(Bulletin Vidomosti Verkhovnoi Rady Ukrainy (BVR), 2015, No. 26, Art. 219)

[…]

Article 2. Condemnation of Communist and National Socialist (Nazi) Totalitarian Regimes

1. The communist totalitarian regime of 1917-1991[70] in Ukraine is recognized as criminal and as having implemented a policy of state terror, characterized by numerous human rights violations in the form of individual and mass murders, executions, deaths, deportations, torture, the use of forced labor and other forms of mass physical terror, persecution on ethnic, national, political, class, social and other grounds, religious, political, class, social and other motives, the infliction of moral and physical suffering through the use of psychiatric measures for political purposes, violations of freedom of conscience, opinion, expression, freedom of the press and the absence of political pluralism, and in this regard is condemned as incompatible with fundamental human and civil rights and freedoms.

2. The National Socialist (Nazi) totalitarian regime is recognized in Ukraine as criminal and as having implemented a policy of state terror, characterized by numerous human rights violations in the form of individual and mass murders, executions, deaths, torture, the use of forced labor and other forms of mass physical terror, persecution on racial and ethnic grounds, violations of freedom of conscience, opinion, expression, freedom of the press and lack of political pluralism, and in this regard, based on the facts established by the Nuremberg International Military Tribunal of 1945-1946, condemns it as incompatible with fundamental human and civil rights and freedoms.

Article 3. Prohibition of Propaganda of Communist and National Socialist (Nazi) Totalitarian Regimes and Their Symbols

1. Propaganda of the communist and/or national socialist (Nazi) totalitarian regimes and their symbols is recognized as an outrage to the memory of millions of victims of the communist totalitarian regime and the national socialist (Nazi) totalitarian regime and is prohibited by law.

[The remainder of the law is omitted.]

Article 4. Prohibition of the Use and Propaganda of Symbols of Communist and National Socialist (Nazi) Totalitarian Regimes.

[70]Referring to the period when Ukraine was a constituent republic of the Union of Soviet Socialist Republics (USSR).

1. The production, distribution, and public use of symbols of the communist totalitarian regime, symbols of the national socialist (Nazi) totalitarian regime, including in the form of souvenirs, and the public performance of the anthems of the USSR, the Ukrainian SSR (Ukrainian SSR), other union and autonomous Soviet republics or their fragments throughout Ukraine are prohibited.

[The remainder of the law is omitted.]

On Supporting the Functioning of the Ukrainian Language as the State Language

(Bulletin Vidomosti Verkhovnoi Rady Ukrainy (BVR), 2019, No. 21, Art. 81)

Section I

General Principles

Article 1. The Status of the Ukrainian Language as the Only State Language in Ukraine

1. The Ukrainian language shall be the only State (official) language in Ukraine.
2. The status of the Ukrainian language as the only State language stems from the state-building self-determination of the Ukrainian nation.
3. The State status of the Ukrainian language is an integral element of the constitutional system of Ukraine as a unitary state.

[…]

7. The status of the Ukrainian language as the only State language implies its mandatory use throughout Ukraine in the exercise of powers by government authorities and local self-government authorities, as well as in other common spheres of public life determined by this Law.

8. The Ukrainian language as the only State language functions as the language of interethnic communication, is a safeguard for the protection of human rights for every Ukrainian citizen, regardless of his ethic origin, and is a factor in the unity and national security of Ukraine.

Article 3. Purposes of the Law

1. Purposes of this Law include:

1) protection of the State status of the Ukrainian language;

2) establishment of the Ukrainian language of interethnic communication in Ukraine;

3) ensuring the functioning of the State language as an instrument of consolidation of the Ukrainian society, a means of strengthening the state unity and territorial integrity of Ukraine, its independent statehood and national security;

[…]

5) ensuring the development of the Ukrainian language to strengthen national identity, preserve national culture, traditions, customs, historical memory, and to ensure its continued functioning as a state-building factor for the Ukrainian nation.

[The remainder of the law is omitted.]

Section II

The Ukrainian Language and Ukrainian Citizenship

Article 6. The Duty of a Ukrainian Citizen to Be Proficient in the State Language

1. Each citizen of Ukraine is required to be proficient in the State language.

2. The State provides each citizen of Ukraine with opportunities for mastering the State language through a system of preschool, secondary general, extramural, occupational (vocational), professional pre-higher education, and adult education institutions, as well as by supporting non-formal and informal education aimed at studying the State language.

3. The State organizes free Ukrainian language courses for adults and provides an opportunity to master the State language freely for those Ukrainian citizens who did not have this opportunity.

Section IV

Use of the State Language in the Operation of Government Authorities, Authorities of the Autonomous Republic of Crimea, Local Self-Government Authorities, State- and Community-Owned Enterprises, Institutions and Organizations

Article 12. The Working Language in the Operation of Government Authorities, Authorities of the Autonomous Republic of Crimea, Local Self-Government Authorities, State- and Community-Owned Enterprises, Institutions, and Organizations

1. The working language in the operation of government authorities, authorities of the Autonomous Republic of Crimea, local self-government authorities, State- and community-owned enterprises, institutions and organizations, including the language of conferences, events, meetings and the day-to-day communication language, shall be the State language.

[The remainder of the law is omitted.]

Section V

Use of the Ukrainian Language as the State Language in the Public Sphere

Article 21. The State Language in the Field of Education

1. The language of the educational process in educational institutions shall be the state language. The State guarantees every citizen of Ukraine the right to receive formal education at all levels (preschool, secondary general, occupational (vocational), professional pre-higher and higher), as well as extramural and postgraduate education in the State language at the State and communal educational institutions.

[…]

2. Educational institutions, including occupational (vocational), professional pre-higher and higher education institutions, shall provide for mandatory study of the State language to the extent that would allow for professional activity to be pursued in the selected field using the State language.

[…]

5. At educational institutions, according to their curricula, one or more disciplines may be taught in two or more languages – the State language, English or other official language of the European Union.

[The remainder of the law is omitted.]

Article 23. The State Language in the Field of Culture

1. The State ensures the use of the State language in the field of culture.

2. The language of cultural and artistic, recreational, and entertainment events shall be the State language.

[…]

6. The language of film distribution and screening in Ukraine shall be the State language.

[The remainder of the law is omitted.]

Article 24. The State Language in the Field of Television and Radio Broadcasting

1. Television and radio organizations shall broadcast in the State language. The mandatory (minimum) amount of broadcasting in the State language for certain categories of television and radio organizations is determined by the Law of Ukraine on Television and Radio Broadcasting.

Article 26. The State Language in the Field of Book Publishing and Distribution

1. A publisher entered in the State Register of Publishers, Manufacturers and Distributors of Publishing Products shall be required to publish in the State language at least 50 percent of all book titles published by it in the respective calendar year. This requirement shall not apply to publishing products published in the Crimean Tatar language, other languages of indigenous peoples or national minorities of Ukraine with the funds from the State and/or local budgets under the law on the procedure for the exercise of rights of indigenous peoples and national minorities of Ukraine.

2. The percentage of book publications in the State language must be at least 50 percent of the total number of book titles available for the sale at each bookshop or at other book distribution facilities.

[The remainder of the law is omitted.]

Article 32. The State Language in the Field of Advertising

1. The language of advertising in Ukraine shall be the State language.

2. In the print mass media published in one of the official languages of the European Union, advertising shall be allowed in the language in which such print mass medium is published.

3. The language of advertising on television and radio shall be the State language. The language of advertising disseminated by television and radio organizations broadcasting to foreign countries or by television and radio organizations broadcasting in one or more of the European Union's official languages may include, in addition to the State language, the European Union's official languages.

[The remainder of the law is omitted.]

On Indigenous Peoples of Ukraine

(Bulletin Vidomosti Verkhovnoi Rady Ukrainy (BVR), 2021, No. 38, Art. 319)

Article 1. The Concept of the Indigenous People of Ukraine

1. The indigenous people of Ukraine is an autochthonous ethnic community that was formed on the territory of Ukraine, is a carrier of an original language and culture, has traditional, social, cultural, or representative bodies, self-identifies as the indigenous people of Ukraine, constitutes an ethnic minority within its population and does not have its own state formation outside Ukraine.

2. The indigenous people of Ukraine, which were formed on the territory of the Crimean peninsula, are the Crimean Tatars, Karaites, and Krymchaks.

[The remainder of the law is omitted.]

Laws After the 2022 Full-Scale Invasion of Ukraine

On the Prohibition of Propaganda of the Russian Nazi Totalitarian Regime, the Armed Aggression of the Russian Federation as a Terrorist State Against Ukraine, and the Symbols of the Military Invasion of Ukraine by the Russian Nazi Totalitarian Regime

(2022, No. 2265-IX)

Article 1. Definitions

1. In this Law, the following terms are defined as follows:

[…]

1) The ideology of the "Russian world" is a Russian neocolonial doctrine based on chauvinistic, Nazi, racist, xenophobic, religious ideas, images, and goals, the destruction of Ukraine, the genocide of the Ukrainian people, and the non-recognition of the sovereignty of Ukraine and other states, which aims at the violent expansion of the Russian supranational imperial space as a way of exercising the special civilizational right of Russians to mass murder, state terrorism, military invasion of other states, occupation of territories, and expansion of the canonical

territory of the Russian Orthodox Church beyond the territory of the Russian Federation.

[…]

4) Symbols of the military invasion of Ukraine by the Russian Nazi totalitarian regime – symbols that, in particular, include:

a) the Latin letters "Z", "V" used as symbols of the military invasion of Ukraine in the manner and in accordance with the signs defined in Article 2 of this Law;

b) official or unofficial symbols (emblems) of the armed forces of the Russian Federation, including its ground forces, air and space forces, navy, strategic missile forces, airborne troops, special operations forces, other armed formations and/or bodies of the terrorist state (aggressor state).

Article 2. Prohibition of Propaganda of the Russian Nazi Totalitarian Regime, Armed Aggression of the Russian Federation as a Terrorist State Against Ukraine

1. The Russian Federation is a terrorist state whose political regime aims at genocide of the Ukrainian people, physical destruction, mass murder of Ukrainian citizens, international crimes against civilians, use of prohibited methods of warfare, destruction of civilian objects and critical infrastructure, artificial creation of a humanitarian catastrophe in Ukraine or its regions.

2. The political regime of the Russian Federation is Nazi in nature and practice and ideologically imitates the National Socialist (Nazi) totalitarian regime.

3. Propaganda of the Russian Nazi totalitarian regime and the armed aggression of the Russian Federation as a terrorist state against Ukraine is prohibited. The use of symbols of the military invasion of Ukraine by the Russian Nazi totalitarian regime in accordance with the conditions defined in this Article is a separate type of propaganda of the Russian Nazi totalitarian regime, the armed aggression of the Russian Federation as a terrorist state against Ukraine.

4. The use of the symbols of the military invasion of Ukraine by the Russian Nazi totalitarian regime, in particular, is

1) the use of the Latin letters "Z", "V" separately (without a legitimate context or in the context of justifying armed aggression against Ukraine or other military

actions) or by replacing the Cyrillic letters “З”, “С”, “В”, “Ф” or other letters with these letters in certain words with a visual emphasis on these letters;

2) the use of symbols of the armed forces of the Russian Federation, including its ground forces, aerospace forces, navy, strategic missile forces, airborne troops, special operations forces, other armed formations and/or bodies of the terrorist state (aggressor state).

[The remainder of the law is omitted.]

On the Condemnation and Prohibition of Propaganda of Russian Imperial Policy in Ukraine and Decolonization of Place Names

(Bulletin Vidomosti Verkhovnoi Rady Ukrainy (BVR), 2023, No. 65, Art. 221)

In order to protect national interests, national security, rights, freedoms and legitimate interests of Ukrainian citizens, society and the state,

Given the full-scale aggressive war that the Russian Federation has unleashed and is waging against Ukraine and the Ukrainian people in violation of international law, committing crimes against humanity

Considering that the purpose of the armed aggression of the Russian Federation is to deprive the Ukrainian people of their independence and sovereignty and to return them to a state of dependence, as it was during the times of the Russian Empire and the Union of Soviet Socialist Republics

Recognizing that the centuries of Russian domination of Ukrainian lands were accompanied by systematic measures aimed at assimilating the Ukrainian people, banning and eradicating the Ukrainian language and culture, destroying its traditions, spiritual culture and ethnic identity, as well as systematic mass repression, which resulted in the destruction of millions of people, […]

The Verkhovna Rada of Ukraine adopts this law.

[…]

Article 2. Definitions

1. In this Law, the following terms shall have the following meanings:

[…]

3) Russification is a component of Russian imperial policy aimed at imposing the use of the Russian language, promoting Russian culture as superior to other national languages and cultures, displacing the Ukrainian language from use, and narrowing the Ukrainian cultural and information space;

[The remainder of the law is omitted.]

Article 3. Condemnation of Russian Imperial Policy

1. Russian imperial policy is recognized as criminal and is condemned.

Article 4. Prohibition of Propaganda of Russian Imperial Policy

1. Propaganda of Russian imperial policy and its symbols is prohibited.

2. The assignment of names to geographical objects, legal entities and objects of property rights that glorify, perpetuate, promote or contain symbols of Russian imperial policy, as well as the terrorist state (aggressor state) or its prominent, memorable, historical and cultural places, settlements, dates, events is prohibited.

[…]

Article 8. Final and Transitional Provisions

[…]

4) The Law of Ukraine "On Geographical Names" (Vidomosti Verkhovna Rada of Ukraine, 2005, No. 27, p. 360, as amended) shall be revised to read as follows:

It is prohibited to assign names to geographical objects that:

are the names of persons who held senior positions in government and administration, political organizations, parties, armed formations of the Russian Kingdom (Moscow Kingdom), the Russian Empire, the Russian Republic, the Russian State, the Russian Socialist Federative Soviet Republic, the Russian Soviet Federative Socialist Republic, the Union of Soviet Socialist Republics, the Russian Federation, territorial entities, administrative-territorial units, including unrecognized ones, created during the implementation of the

are the names of persons who publicly, including in the media, in literary and other artistic works, supported, glorified or justified Russian imperial policy, called for Russification or Ukrainophobia (except for persons associated with the protection of political, economic, cultural rights of the Ukrainian people, the development of Ukrainian national statehood, science, culture);

contain symbols of Russian imperial policy, are related to the implementation of Russian imperial policy, glorify and/or justify Russian imperial policy, in particular names in honor of the Russian Kingdom (Moscow Kingdom), the Russian Empire, the Russian Republic, the Russian State, the Russian Socialist Federative Soviet Republic, the Russian Soviet Federative Socialist Republic, the Union of Soviet Socialist Republics, the Russian Federation;

[…]

Renaming of geographical objects shall be conducted in the following cases:

the need to bring the name of the geographical object in line with the requirements of the Law of Ukraine “On Condemnation of Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of Propaganda of Their Symbols”;

the need to bring the name of the geographical object in line with the requirements of the Law of Ukraine “On Condemnation and Prohibition of Propaganda of Russian Imperial Policy in Ukraine and Decolonization of Toponymy”;

the need to bring the name of a geographical object in line with the standards of the state language.

[The remainder of the law is omitted.]

On the Protection of the Constitutional Order in the Field of Religious Organizations (2024, No. 3894-IX)

Section I

Peculiarities of the Activity of Foreign Religious Organizations in Ukraine

[…]

Article 3. Foreign Religious Organizations Whose Activities Are Prohibited in Ukraine

1. Considering that the Russian Orthodox Church is an ideological continuation of the regime of the aggressor state, an accomplice to war crimes and crimes against humanity committed on behalf of the Russian Federation and the ideology of the "Russian world", the activities of the Russian Orthodox Church in Ukraine are prohibited.

[…]

Article 5. Peculiarities of the Termination of a Religious Organization on the Grounds of Propaganda of the "Russian World" Ideology

1. The use of religious organizations for propaganda of the Russian World ideology, including the popularization of such ideology in any way and/or by any means that contradicts the interests of national and public security, territorial integrity of Ukraine, is prohibited.

When applying the provisions of paragraph one of this part, the facts of dissemination of propaganda of the Russian World ideology shall be taken into account both directly by a religious organization and by its statutory or other governing bodies, other persons acting on their behalf on their behalf by assignment

or with permission or in accordance with another method of approval, regardless of the form of such approval.

2. Consideration of the issue of confirming the facts of using a religious organization to propagate the Russian World ideology is carried out by the central executive body that implements state policy in the field of religion in accordance with the procedure established by the Cabinet of Ministers of Ukraine. The review may use the conclusions of religious studies expertise, information from other central executive bodies, data from public electronic registers, as well as information received from individuals and/or legal entities, the media and other open sources.

[The remainder of the law is omitted.]

20.5.2 Application of the Laws – Case Studies

The following case studies offer a focused exploration of the practical application of the laws previously discussed, highlighting key areas such as language, school curricula, street names, monuments, the church, and cuisine. While these examples are intended to illustrate broader trends and the challenges inherent in enforcing these laws, they represent only a small subset of the many instances that could be considered. Given the complexity and scale of Ukraine's legislative efforts, it is impossible to cover all relevant cases within the scope of this chapter. Nevertheless, the selected examples shed light on the diverse ways in which Ukraine is navigating its path toward derussification and the reinforcement of its national identity.

Language

While many Ukrainians continue to use both languages in everyday life, despite the resentment toward Russia sparked by the invasion, a noticeable transition from Russian to Ukrainian is evidence throughout the country. This shift can be seen in the streets, on social media, in bookstores, and, perhaps most significantly, in private spaces.

Case Study 1: Yedyni[71]

[71] Yedyni (Ukrainian: єдині) means "united," emphasizing solidarity and national unity among Ukrainians.

"I always spoke Russian before the invasion," explained Iryna Savinova, 56, a Kyiv native. "But since the Russians say they've come here to save the Russian speakers, I've decided to switch to Ukrainian. That way, I won't let them have that excuse anymore." Following this decision, Iryna joined Ukrainian language classes offered by the non-profit organization "Yedyni", launched in April 2022 to help people learn or improve their Ukrainian proficiency. However, fostering a supportive environment at war is not without challenges. According to Ivanna Arestanova, 20, a volunteer with the Yedyni, tension often arises during classes. "It's very stressful. Those who speak Russian are criticized by those who speak Ukrainian, and when there is an altercation, the Russian-only speakers don't come back."

Yet, Ukrainian language courses has been steadily increasing, both domestically and internationally. "We see a great demand for Ukrainian language courses and various language marathons. A lot of people have chosen the Ukrainian identity. They are switching to the Ukrainian language because they need a community where they feel comfortable switching to the Ukrainian language," explains Ivanna Kobeleieva, Ukrainian poet and co-founder of the NGO "Yedyni" and the "Teach in Ukrainian" initiative.

Duolingo, a famous language app, also has a Ukrainian course. According to the 2022 Duolingo Language Report, Ukrainian was Duolingo's fastest-growing language in the UK in 2022, with users rising by 1,254% -- and that it had grown by a remarkable 2,229% in the Republic of Ireland. In the UK, there was a spike for Ukrainian learning in February and March, and then another in May. The overall trend is similar in other countries receiving refugees – Poland, Germany, the Netherlands and the Czech Republic all saw spikes in Ukrainian learning since the invasion. But there have been sharp rises in Japan, Vietnam, and Latin America too, and "in just about every country on Earth" that uses the app, according to Cindy Bianco, one of Duolingo's learning scientists, many of them receiving few or no refugees.

Source: https://blog.duolingo.com/2022-duolingo-language-report/#language-learners-rally-behind-ukraine

Case Study 2: Robimo Vam Nervy[72]

Giving up one's native language can be painful. Worried that the country was "losing its identity," 18-year-old Heorhii Tsurkan, who was born and raised in Odesa, stopped speaking Russian in May 2022. "It's very sad because it was a huge part of my childhood and adolescence. It's like I've lost my memories and a part of myself," he sighed.

The non-profit organization "Robimo Vam Nervy" was established after the invasion with a mission to "rebuild Ukrainian culture in Odesa," a port city in the south of the country dominated by Russian influence. Operating like soldiers on the language front, the members of the organization, supported by the state language protection commissioner's representative for the south of the country, actively combat linguistic encroachments–a matter the authorities deem critical to a national security in the face of Kremlin propaganda.

[72]Robimo Vam Nervy (Ukrainian: Робимо Вам Нерви) meaning "we get on your nerves" or "we will make you nervous," is a famous Odesa saying that reflects the city's characteristic wit and defiance, often used in a playful or provocative context to express a sense of resilience or to challenge authority.

Every day, the group of volunteers patrols the city to identify violations of the language law, enacted in 2019 to curtail Moscow's influence. This law requires shopkeepers, among other regulations, to greet customers in Ukrainian, and it prohibits signs in Russian. On their TikTok page, "Robimo Vam Nervy" shares videos confronting business owners about the continued use of the "language of the enemy." Violators are given 30 days to comply or face fines ranging from 3,500 to 11,000 hryvnias ($85 to $265). In 2023, the organization recorded 1,345 infractions in Odesa.

"There are a lot of people who speak Russian here, so it's difficult to spread Ukrainian," admitted Kateryna Musiienko, its founder. "People say they feel under pressure and that it's their private life." Each time, she retorts that "Russian didn't appear here by chance" and that "it's a weapon used by Russia in its hybrid war against Ukraine."

Case Study 3: Syayvo Knyhy[73]

Every week, Syayvo Knyhy, one of Kyiv's oldest and biggest bookstores, collects approximately two tons of Russian-language books to for recycling, with the proceeds directed to support the Ukrainian Armed Forces. "There were weeks when we were collecting some seven tons and had to carry boxes of books out several times per day," explained Hlib Malych, the bookstore's 27-year-old director. He further noted that the steady influx of donations from people of all ages and backgrounds demonstrates a growing consensus among Ukrainians that Russian-language materials are not only irrelevant but also potentially dangerous to Ukraine's cultural identity and national security.

Part of the population is convinced that soon, no one will speak Russian in the country. Others are more cautious. "It all depends on how this war ends," noted Ivanna Arestanova. "It's always the winner who writes history." In the event of Ukraine's defeat, history could once again be written in Russian.

School Curricula

As of December 2024, Russian is not officially banned in Ukraine, but school instruction is now conducted exclusively in Ukrainian. However, this policy may evolve in the foreseeable future. In October 2024, Verkhovna Rada of Ukraine introduced draft law No. 12086, which provides for the prohibition of teachers and students from speaking Russian during both educational activities and private conversations within school premises. The Ministry of Education and Science of Ukraine has expressed its support for the measure, endorsing the restriction of Russian language use in educational settings. Ukrainian MP Nataliya Pipa, the proponent of the

[73]Syayvo Knyhy (Ukrainian: Сяйво Книги) means "light of the books."

law, clarified that the legislation is not intended to be punitive. Rather, it aims to empower students and school administrators to address language use constructively, fostering an environment where the language associated with the enemy is discouraged in schools.

While the proposed law has garnered attention, the concept is not entirely new. Similar practices have already been implemented in certain educational institutions. The example of Kyiv-Mohyla Academy provided below is illustrative.

Case Study: Kyiv-Mohyla Academy

In January 2023, Kyiv-Mohyla Academy, one of Ukraine's oldest and most esteemed universities, banned the use of the Russian language on its premises. Teaching at the university has been conducted in Ukrainian and English for over thirty years; thus, the new ban concerned private conversations between students, teachers, and administration. "We did not expect it to cause such resonance," responded Serhey Kvit, the university's president, referring to a wave of both supportive and critical reactions that swept through social media. According to Kvit, the ban should be viewed in the context of the damage that the ongoing war imposes upon Ukraine's culture and the Kyiv-Mohyla Academy. "Some of the university's students and lecturers remain [at home in areas] under occupation. Some have joined the army. Eleven students and graduates have been killed since the invasion began," he said. In the university's old buildings, the walls of corridors dating back to the 17th century are covered with posters urging students to obtain a military education.

Kvit argues that there should be no place for Russian language in Ukraine, calling it "an imperial relic," and "a weapon of the Russian state." At the same time, he noted that, despite the ban, Russian books are to remain in the university's library. "We must defend ourselves, but we are not going to burn books. We are not Russians, and we see freedom as central to our political culture," he said. When asked about the university's readiness for potential lawsuits regarding the language policies and new regulations, Kvit confidently responds, "We are ready for anything."

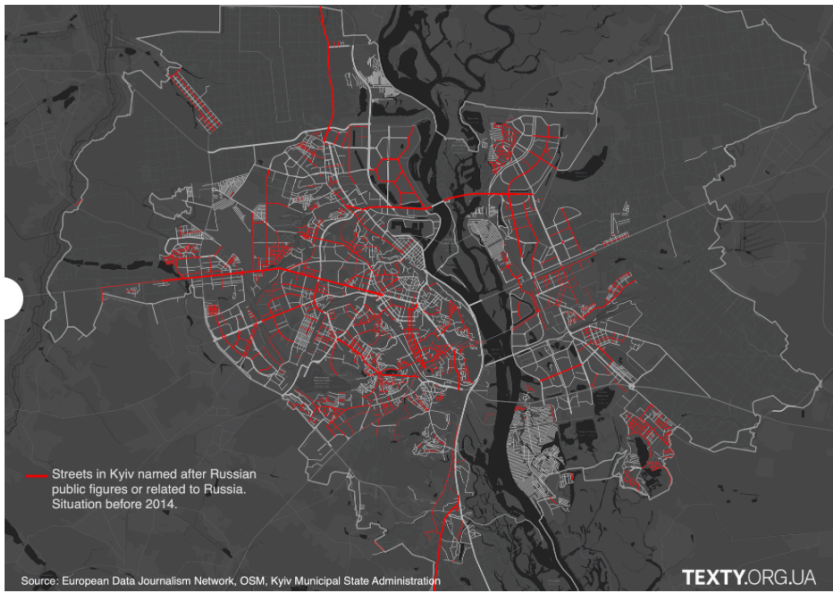
Street Names

In 2015, Ukraine began renaming cities and streets as part of its decommunization efforts. This policy primarily focused on removing Soviet-era symbols and names but did not extend to those associated with Russia. However, with the onset of the full-scale Russian invasion, this process gained renewed significance and urgency. The following examples demonstrate the process of derussification through the renaming of streets in four distinct regions of Ukraine, moving clockwise: the northern-central area of Kyiv, the eastern city of Izyum, the southern port city of Odesa, and the western city of Lviv.

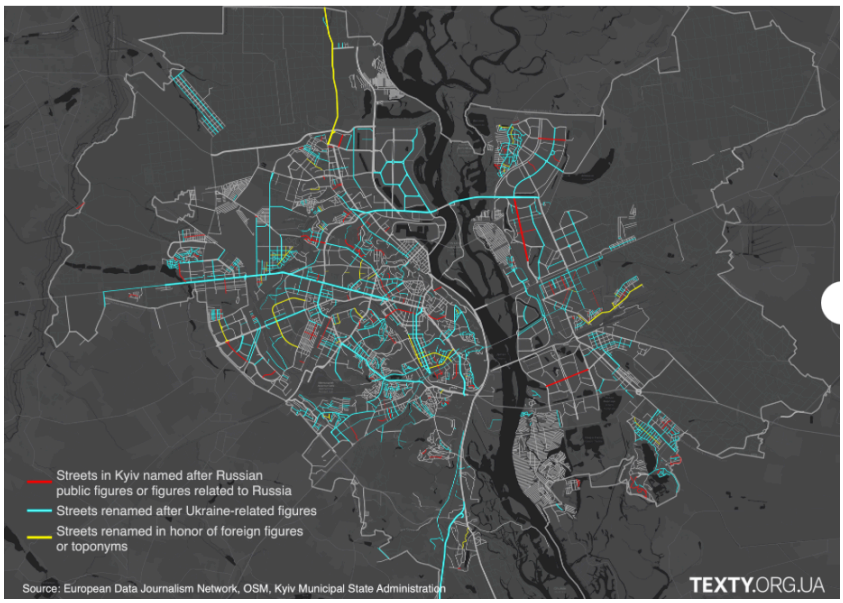
Case Study 1: Kyiv

About five hundred streets in Kyiv have been renamed since 2014, with a significant portion of these changes implemented following the full-scale invasion in 2022. One notable example is the renaming of "Reunification Avenue," which previously referenced Ukraine's unification with Russian within the Soviet Union. It is now called "Sobornost Avenue" ("Unity"), commemorating the unification of eastern and western Ukraine in 1919. Streets formerly named after Russian cities–such as Magnitogorsk, Taganrog, Orlovka, Pskovska, Baikalska, Volzska, and Novorossiyska–have been rebaptised with the names of Ukrainian cities: Khersonskyi, Skadovskyi, Oleshkivska, Pochayivska, Melitopolska, and Chernihivska Streets.

Many new street names resurrect the memory of Ukrainian history, culture, and science. Others honor the modern-day heroes who lost their lives in the war against Russia, such as Maksym Levin, Oleksandr Makhov, Yulia Zdanovska, Roman Ratushnyi, Volodymyr Brozhko, Denis Antipov, Yuriy Popravka, Serhiy Berehovoi, and others.



Source: https://www.europeandatajournalism.eu/cp_data_news/kyiv-s-street-names-are-being-heavily-de-russified/



Source: https://www.europeandatajournalism.eu/cp_data_news/kyiv-s-street-names-are-being-heavily-de-russified/

Case Study 2: Izyum[74]

At the close of 2022, shortly following the city's liberation, the local authorities established a toponymic commission tasked with renaming several streets. Among the changes, Pushkinskaya Street was renamed to Stepan Bandera Street, and Moskovskaya Street to Ivan Mazepa Street. "While Pushkin may have produced significant literary works, it is no longer tenable to remain within a shared toponymic and cultural framework with a nation whose objective is the destruction of our country and which has already inflicted devastation upon our cities," says Vladimir Matsokin, Deputy Mayor of Izyum.

The process of derussification also extended to Putiinaya Street, which was renamed not due its Russian origins, but because of its phonetic similarity to Vladimir Putin's last name. The names of notable Russian authors such as Gorky, Turgenev, and Yesenin were removed from the city's cartography. Lomonosov Street was renamed in honor of Roman Ratushnyi, a prominent Kyiv activist who perished in a battle near Izyum. The street previously named after the 60th Guards Division was renamed to commemorate the Azov regiment. Additionally, a new street was established in memory of Volodymyr Vakulenko, a local children's writer who was kidnapped and killed by Russian troops.

[74]The Russian army occupied Izyum, Kharkiv Oblast, in April 2022, following a prolonged period of intense shelling. In September 2022, during a subsequent counteroffensive, the Ukrainian military successfully liberated the city.

Case Study 3: Odesa

Renaming streets in wartime Ukraine is more than logistical challenge or a source of confusion for residents accustomed to old names. It raises a question of priorities, costs, and authority–issues that have sparked significant tensions, particularly in culturally significant cities like Odesa. There, military administrators, tasked with overseeing the renaming process, have clashed with local officials, leading to heated public disputes over decisions that resonate deeply with cultural and historical identity.

In Odesa, the renaming of 85 streets became a particularly divisive issue. Once the fourth-largest city of the Russian Empire, Odesa was cosmopolitan hub, home to a significant Jewish diaspora and a magnet for creative minds from across the empire. Among its most celebrated figures was Isaac Babel, a Jewish writer whose "Odesa Stories" vividly depicted the city's life during the political turmoil of 1904-1919. These stories, widely taught and read, made Babel synonymous with Odesa's cultural legacy. However, Babel's "Red Cavalry," his account of fighting with the Bolsheviks against the Poles, is less celebrated. The heroes in his stories are primarily Jewish, and Babel himself was tortured and murdered during Stalin's purges in 1939.

The decision to rename the street honoring Babel ignited fierce controversy. For many, it symbolized an obliteration of the city's rich and layered history. Odesa City Mayor Gennady Trukhanov voiced strong opposition, sending an open appeal to UNESCO, signed by 150 cultural and political figures from around the world. In his letter, Trukhanov urged to "deter the ill-timed decisions about Odesa's cultural heritage until the end of the war when public consultations can take place." Amid Russia's destruction of Ukraine, the forced name changes and removal of statues "strikes out against Odesa's cultural memory and its legendary identity as a haven of cosmopolitan freedom," the letter said. Odesa's city center is under UNESCO protection, and dismantling monuments goes against the global cultural body's principles, it added.

Case Study 4: Lviv

Lviv, in contrast to Odesa, has historically adopted a more pro-Ukrainian stance, shaped by its geographical distance from Russia and its unique historical context. This pro-Ukrainian position is reflected in the local government's approach to the derussification of street names. "We are defending our country, also on the cultural front lines," said Andriy Moskalenko, the deputy mayor in Lviv and the head of the committee that has reviewed the names of each of the city's more than 1,000 streets. "And we don't want to have anything in common with the killers."

Among the newly named streets in Lviv is Taras "Hammer" Bobanych Street, honoring a civic activist and youth mentor who volunteered for the war and lost his life in Kharkiv in April 2022. Similarly, Nekrasov Street in the Lychakiv district was renamed to honor Yurii Ruf, a

distinguished poet, scholar, and leader in the festival movement. Academic Filatov Street was rededicated to Igor Dashko, a border guard who sacrificed his life defending a radio station near Mariupol. Other new street names, such as Heroes of Mariupol Street, Hostomel Street, Kherson Street, Chernobayiv Street, and Angels Square, commemorate the resilience of Ukrainians and serve as enduring reminders of the events linked to Russian aggression.

Despite these efforts, the renaming process in Lviv has not been without controversy. The legacy of certain cultural figures, such as Pyotr Tchaikovsky, has sparked debate. While Tchaikovsky's family roots trace back to modern-day Ukraine, and some of his compositions are believed to be inspired by Ukrainian folk music, his inclusion remains contested. "Maybe we should keep some classical writers or poets if they are from other periods. I'm not sure," says Viktor Melnychuk, owner of a sign-making factory a few miles from Lviv. "We can't reject everything completely. There was some good there."

Monuments

Ukraine's public squares and parks serve as the most visible arenas for the ongoing process of derussification. Statues of Russian poets and Soviet generals are being dismantled or defaced, while public art and propaganda murals are systematically covered or removed. This erasure of the past has sparked a complex debate, paralleling similar discussions in the United States about how to reconcile with the physical monuments of a contentious history. In the U.S., public discourse revolves around whether to preserve monuments of enslavers and Confederate generals. In Ukraine, the focus is on reevaluating the legacy of Soviet and Russian figures once regarded as integral to the nation's historical narrative. The cases of the Friendship Arch monument, along with that of Empress Catherine the Great, provide illustrative examples of this reassessment.

Case Study 1: The Friendship Arch

For decades, a prominent titanium arch has stood in central Kyiv, overshadowing a sculpture depicting two workers holding a medal symbolizing the Soviet Union's Order of Friendship of Peoples. Officially named the People's Friendship Arch, the rainbow-shaped structure was gifted to Ukraine by the Soviet government in 1982 to symbolize the relationship between Russia and Ukraine. Over the years, the monument has become increasingly contentious, reflecting the growing tensions between the two nations. Following Russia's annexation of Crimea in 2014, activists marked the arch with a large painted crack, symbolizing the fractured ties between the countries.

On April 27, 2022, a few months after the full-scale invasion, the bronze statue of the workers was dismantled under the supervision of Serhiy Myrhorodsky–one of the tree architects who helped design the original monument. "I feel joy. Finally the friendship with Russia is over"."

Myrhorodsky told a Ukrainian television channel that day. The statue of the workers, he explained, had become a symbol of the enmity between Ukraine and Russia: "And to have a monument to enmity is a sin" On May 14, 2022, the arch was officially renamed the Arch of Freedom of the Ukrainian people.

In April 2024, Ukraine's Ministry of Culture officially removed the monument formerly known as the Peoples' Friendship Arch from the state register of monuments of national importance, indicating that the monument "may be dismantled." In an April 17, 2024, press release, the Ministry stated, "The myth of 'reunification' of the two 'fraternal' peoples embodied in the monument does not correspond to historical realities." The statement further emphasized that this narrative has been "actively used to justify territorial claims by [Russian President Vladimir] Putin." As of December 2024, no decision on the arch's potential dismantling has been made.

Case Study 2: Empress Catherine the Great

On November 30, 2022, the city council in Odesa decided to remove and relocate a monument dedicated to Empress Catherine the Great of Russia, who founded the city in 1794. The statue, located in the heart of the city, has been defaced with red paint multiple times. Since the February 24 invasion of Ukraine, the monument has become a target of repeated vandalism, reflecting a broader rejection among many Ukrainians of their country's historical connections to Moscow.

Although the decision to dismantle the monument was made by Odesa residents through electronic voting, it remains controversial. "In my opinion, it is not the best time to deal with that [statue] and spend resources on it. It's better to give this money to the Ukrainian armed forces," said one the respondents. Notwithstanding this perspective, on December 29, 2022, the statue, formerly known as the "Monument to the Founders of Odesa," was dismantled. It was subsequently moved to temporary storage and later relocated to a museum.

The pedestal that once supported the statue of Catherine the Great now displays the Ukrainian flag, symbolizing a profound shift in the nation's identity and ideals. This act represents not only a break from the past but also a strong affirmation of Ukraine's sovereignty and its disavowal of imperial Russian influence. The flag's presence in place of the statue highlights the broader cultural and political transformations occurring within Ukraine, serving as a visual testament to the country's commitment to redefining its national narrative in response to Russian aggression.

For an image of the pedestal that once supported the statue of Catherine the Great, see image here.

Religion

Ukraine's derussification efforts have extended into the religious sphere, as the country seeks to assert its independence from Russian influence. The following example provides a pertinent illustration of this shift.

Case Study: Christmas

Ukraine will now celebrate Christmas on December 25, instead of January 7, following a law ratified by President Zelensky. This change marks another significant step by Kyiv in its ongoing effort toward derussification. "For a long time, the Ukrainian people were subjected to Russian ideology in almost all aspects of life, including the Julian calendar and the celebration of Christmas on January 7," said the explanatory note of the bill passed by lawmakers in July 2023. "The strong rebirth of the Ukrainian nation continues. The constant and successful battle of their own identity contributes to the awareness and desire of every Ukrainian to live their own life, with their own traditions, own holidays," the text says. A limited number of Orthodox Churches worldwide, including those in Russia and Serbia, still adhere to the Julian calendar for the observance of religious holidays, rather than adopting the more widely used Gregorian calendar.

Cuisine

Although not immediately apparent, Ukraine's derussification efforts have also extended to the culinary realm. As part of a broader cultural and political redefinition, certain aspects of Ukrainian cuisine have been emphasized as distinct from Russian traditions. One notable example of this is discussed below, illustrating how food has become a powerful tool in asserting Ukraine's national identity and independence.

Case Study: Borscht

Borscht is a traditional Eastern European soup, typically made from beets, cabbage, and a variety of other vegetables, often with meat or vegetable stock. While it is a staple dish in Ukraine, it is also widely associated with Russian cuisine. The dish has deep historical roots in the region, with both countries claiming it as part of their culinary heritage. In recent years, however, borscht has become a point of contention as Ukraine seeks to distinguish its cultural identity from Russia's, particularly in the context of the ongoing war.

On July 1, 2022, this dispute has officially ended when UNESCO recognized Ukrainian borscht as an element of Ukraine's intangible cultural heritage. "Victory in the war for borscht is ours!" Ukraine Culture Minister Oleksandr Tkachenko said. "The armed conflict has threatened the viability of the element […] as people are unable not only to cook or grow local vegetables" for the dish, "but also to come together to practice the element, which undermines the social and cultural well-being of communities." "We will win both in the war of borscht and in this war." "We will happily share borscht and its recipes with all civilized counties. And with uncivilized ones too, so that they have at least something good, tasty and Ukrainian," added Tkachenko.

Russian foreign ministry spokeswoman Maria Zakharova ridiculed the move. "Our borscht has no need of safeguarding but should be subject to immediate and complete destruction on the plate," she wrote on Telegram. "Humus and plov (pilau) have been declared the national dishes of several nations. But as I understand it everything is subject to Ukrainization. What's next? Will pork now be declared a Ukrainian national food?"

20.5.3 Prosecuting Collaborators

The following is an original essay by Ukrainian human rights lawyer Ivanna Ilchenko, a PhD student at the University of Galway/Irish Centre for Human Rights and an expert on legal reform affiliated with the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine), established at the invitation of the Ukrainian authorities in 2014.

Ivanna Ilchenko,

Criminal Liability for Collaborative Activities of the Civilians in the Occupied Territories

(2024)

Background

Since the beginning of the Russian Federation's full-fledged invasion against Ukraine on February 24, 2022, the two states have been involved in an international armed conflict against each other triggering the applicability of International Humanitarian Law (IHL). The main IHL provisions applicable to conflicts of an international character, including belligerent occupation, are to be found in the Four Geneva Conventions of 1949 and their Additional Protocol I (AP I) to which both the Russian Federation and Ukraine are parties, as well as the relevant rules of Customary IHL. Ukraine and the Russian Federation are both parties to several core human rights

treaties setting forth International Human Rights Law (IHRL) norms that remain generally applicable in situations of armed conflict. As of August 2024, 44,000 kilometers of occupied territories have been deoccupied, and 66,000 kilometers remain under occupation.

I. Summary

Since the full-fledged invasion, Ukraine has faced widespread collaboration of the civilian population in the occupied territories with the forces of the aggressor state. Although international law has broadly adopted a permissible stance when it comes to the voluntary wartime collaboration by protected civilians in occupied territories, when and how an alleged collaborator should be punished is up to domestic authorities to decide as directed by society. The scope of penalization is an indispensable part of a coherent and consistent state policy for transitional justice.

Thus, shortly after the invasion in March of 2022, the Ukrainian Parliament introduced criminal liability for collaborative activities as a domestic crime against the national security of Ukraine in order to tackle collaboration with the enemy, protect the national security of the state, and to serve justice in order to prevent any feeling of impunity and/or extrajudicial executions and reprisals following it.

Ukraine is not the first and likely will not be the last country to encounter this phenomenon; however, in Europe, such scale of collaboration was last observed in World War II, such as the collaboration by the Vichy Regime during the Nazi occupation of France, as well as by local citizens in Norway. It is not surprising that national and international experts have mixed feelings and ambivalent views on the way forward for social cohesion and the restoration of state authority in the deoccupied territories.

There are different types of collaboration: military, economic, political or administrative, cultural or spiritual, and domestic. Collaboration can be voluntary or forced. All types of collaborationism can be observed in Ukraine right now. Most of it is bureaucratic or administrative collaboration, where civil servants, officials, or communal services providers (such as educational institutions, hospitals and their administrative staff) remain on their posts or succeed those of colleagues who decided to evacuate.

There is no doubt that at the time of the unprovoked and aggressive full-fledged invasion of Ukraine by Russia, collaboration with the enemy contributed to the enemy advantage and thus deserves condemnation.

At the same time, it can be equally stated that not all types of collaboration present the same danger to national security, nor are there two identical cases in to be prosecuted in identical ways. Therefore, the liability for different types of collaboration should be different, and each case should be charged on a case-by-case basis. It is evident that the application of penal law should be consistent and should not create the perception of selective justice.

However, since the adoption of the penal law on collaborative activities, the practical application of the newly adopted provisions has revealed a number of significant problems due to inconsistent interpretations of overlapping provisions.

II. Perception of the Collaborative Activities by the Society (Social Surveys)

In June 2024, the Kharkiv Institute for Social Research NGO published the result of the social survey "Human Rights in the Process of Overcoming the Consequences of the War: Survey Results 2024," with support from the United States Agency for International Development (USAID). Key findings on the "Attitudes Towards Residents of Temporarily Occupied Territories" ('TOT') are that the majority of respondents (57%) noted that they harbor positive and sympathetic feelings towards TOT residents. 15% indicated that their attitude is more positive than negative. Only 6% of respondents indicated a totally negative attitude, and another 7% expressed a relatively negative attitude towards the TOT residents. According to the respondents, taking leadership (71%) or any (61%) governance positions in the TOT, service in the TOT law enforcement and judicial bodies (67%), and military service in the TOT (59%) should be considered cooperation with the occupation administrations, for which there should be criminal liability. A mere 7% of respondents believed that criminal liability might occur simply for living in the TOT.

The survey on "Justice in the Context of Russian Armed Aggression" conducted by Swisspeace and the Institute for Peace and Common Ground (IPCG) found that Ukrainian society is roughly divided into halves, with 52% of the population believing that there should be criminal responsibility for cooperation with occupation administration under any circumstances, and 47% believing that only cooperation which leads to serious consequences and crimes should be criminally punished. 58% of the population believed that teachers, doctors and social workers who resided in occupied territories and were found to collaborate with the enemy should receive amnesties, 33% of the population supported granting amnesties to heads of local municipal institutions (schools, hospitals, and other municipal enterprises). Nearly 90% of respondents believed that along with judicial proceedings, additional mechanisms for ensuring justice should be applied, such as lustration commissions, establishing the truth about war events, and compensating victims' damages. The priority for Ukrainian authorities and society in ensuring justice for the victims should be to hold the guilty accountable (50%), to remove/prevent from power those who collaborated with the occupiers (43%), and to find the missing and return deported individuals (33%). The belief in the importance of obtaining financial compensation has also increased: 30% now see it as a priority for ensuring justice, compared to 23% last year.

III. Penal Law of Ukraine on Collaborative Activities

In March-April 2022, directly following the unprovoked and unjustified full-fledged invasion by the Russian Federation (hereinafter 'aggressor state'), the Ukrainian parliament

reacted rapidly and introduced three new articles to the Criminal Code of Ukraine (CCU) under Section I 'Crimes Against National Security', which provided criminal liability for collaborative activities by a citizen of Ukraine with the aggressor-state. Furthermore, two articles under Section I, Article 111-1 "*Collaboration Activities*" and Article 111-2 "*Aiding and Abetting the Aggressor State*", and one Article 436-2 "*Justification, Recognition as Legitimate, Denial of the Armed Aggression of the Russian Federation against Ukraine, Glorification of its Participants*" in Section XX, "*Crimes Against Peace, Security of Mankind, and International Legal Order.*"

The current wording of Article 111-1 of the CCU consists of eight paragraphs: seven separately standing *corpus delicti,* and another eighth paragraph listing punishments, such as life imprisonment for the aggravated commission of paragraphs 5-7 which resulted in the death of people or other serious consequences. According to Article 111-1 of the CCU, collaborative activities are:

1) Public denial of the armed aggression against Ukraine
2) Voluntary occupation of a position not related to the performance of organizational-administrative or administrative-economic functions in illegal authorities created in the temporarily occupied territory
3) Propaganda in educational institutions, regardless of the types and forms of ownership
4) Transfer of material resources to illegal armed or paramilitary formations
5) Voluntary occupation of a position related to the performance of organizational-administrative or administrative-economic functions
6) Organization and conduct of political events, information activities in cooperation with aggressor state
7) Voluntary occupation by a citizen of Ukraine of a position in illegal judicial or law enforcement bodies created in the temporarily occupied territory, as well as voluntary participation of a citizen of Ukraine in illegal armed or paramilitary formations created.

Punishments for the above-listed crimes vary from deprivation to hold a governmental position (¶1 Article 111-1), all the way up to fifteen years or life imprisonment (¶7 Article 111-1.) Crimes outlined in ¶¶2-7 may be accompanied by an additional punishment: confiscation of property.

However, the practical application of the newly adopted provisions of the CCU revealed a number of significant problems with an inconsistent interpretation of overlapping norms of Article 111 of the CCU 'High Treason' and Articles 111-1, 111-2, and 436-2 of the CCU, which led to arguable adjudications of some cases in recent jurisprudence. It is possible that two persons who committed the same act could be sentenced under different articles, with one imprisoned for a dozen years and the other only sentenced to a ban from occupying certain positions. Such incongruous outcomes likely result in feelings of the selective justice and double standards in Ukrainian society. To remedy the situation, sixteen legislative initiatives were registered in the Ukrainian parliament in July of 2024. However, none of the draft laws have yet met the requirements of IHL and legal certainty.

The Principle of Legal Certainty

While international law has been generally permissive towards cooperation with an occupying state, at least when voluntarily undertaken, domestic law can take the opposite approach where collaboration with an enemy invariably is treated as a criminal offense. However, in doing so, a state must comply with the principle of legality; specifically, its requirements of strict interpretation of penal statutes, the non-retroactivity of criminal law, and the proportionality of punishments to the public danger posed by impugned acts.

Pursuant to Articles 50 and 65 of the CCU, a person who has committed a criminal offense shall be given a punishment that is necessary and sufficient to correct and prevent the commission of new criminal offenses. This punishment must comply with the principles of legality, reasonableness, justice, proportionality, and individualization.

The principle of legal certainty is not defined in the applicable Criminal Code of Ukraine of 2014. However, Article 1.2.2 of the Draft Criminal Code of Ukraine (which is currently under preparation) defines the principle of legal certainty similarly to the notion of the ECtHR:

> *1. The provisions of this Code shall comply with the requirements for availability, stability, sufficient clarity, consistency, and predictability to allow a person to know in advance whether a certain action constitutes a criminal offense, which criminal sanctions apply to criminal offenses, and what the grounds and conditions of the application or non-application of such sanctions are.*

The ECtHR has a well-established practice on 'legal certainty' and the 'proper administration of justice', and it mandates qualities such as inherent clarity, foreseeability, and precision in domestic penal law systems.

There are nine other articles in the Criminal Code of Ukraine whose dispositions of the corpus delictum overlap in one or another way with the ones of Article 111-1. Those are:

i. Article 109: Coup d'état
ii. Article 111: High treason
iii. Article 111-2: Assistance to the aggressor state
iv. Article 114-2: Dissemination of information of the transfer, movement of weapons, armaments, and military supplies etc.
v. Article 258-2: Public calls to commit a terrorist act
vi. Article 260: Creation of illegal paramilitary or armed formations
vii. Article 436: Propaganda of war
viii. Article 436-1: Production, distribution of communist and Nazi symbols and propaganda

ix. Article 436-2: Justification and glorification of Russian Federation aggression

The overlapping articles may endanger one of the founding principles of a fair and just legal system of a democratic state: *legal certainty*. The principle of legal certainty requires that the law must be clear, precise, and unambiguous, and its legal implications foreseeable. The legal framework on collaboration should guarantee that any substantive grounds for criminal liability, arrest, or detention are described by law and defined with sufficient precision to avoid arbitrary application and to enable individuals to behave accordingly.

Insufficient "quality of law*"* concerning the definition of the offence and the applicable penalty may constitute a breach of Article 7 of the European Convention on Human Rights and Fundamental Freedoms (ECHR).

The principle of legality requires the offences and corresponding penalties to be clearly defined. The concept of "law" within the meaning of Article 7 of the ECHR dictates that "no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed." Article 7 and other Articles comprise qualitative requirements, such as those of accessibility and foreseeability. These qualitative requirements must be satisfied with regards to both the definition of an offense and the penalty the offense in question carries. Insufficient "quality of law" concerning the definition of the offense and the applicable penalty constitutes a breach of Article 7 of the ECHR.

As described earlier, the wording of the "collaboration activities" legislation is vague and imprecise in its terms, and individuals are therefore left without sufficient indication as to the circumstances and conditions under which the Ukrainian authorities are entitled to bring charges of "collaborationism" against them.

The crime of high treason in the form of switching to the enemy's side is a grave crime as it strikes at the very foundation of the State and its social organization. The factual requirements of high treason (Article 111 of the CCU) capture many acts of collaboration, although the offence of treason is broader and not always limited to assisting the state's enemies, as it might also include "*attempting by force of arms or other violent means to overthrow the organs of government."*

Proportionality of Sanctions

Overall, the criminal law of Ukraine provides quite severe punishments for crimes due to a punitive justice system originating back to Soviet times. The criminal liability for collaborative activities is likewise harsh and may result in life imprisonment.

The principle of proportionality consists of four subparts, which must coexist to be lawful. Punishments must be suitable to achieve the desired objective and must be adequate, necessary, and proportional in a strict sense. In the context of criminal law, the principle of proportionality requires that punishment of a certain crime should be in proportion to the severity of the crime itself. Currently, there are collaborative activities cases in Ukraine, where drivers or cleaning ladies

at police stations in the de-occupied territory are prosecuted and jailed under these laws, as well as those who work in the occupant law enforcement bodies.

While the existing Ukrainian legal framework on collaboration lacks proportionality, the purpose of punishing collaborators is proper, suitable, necessary, and (at least to a certain extent) adequate, as the CCU does not provide enough fair and balanced options for the punishment of collaborative actions. Thus, the Ukrainian legal framework on collaboration activities does not adequately address the question of whether these alleged collaborative actions have resulted in any negative consequences for the State or harm to its people.

Statistics on the "Collaborative Activities" Cases

According to statistical data available at the official website of the Ukrainian Office of the Prosecutor General, between May 2022 and June 15, 2024, there were 1,392 verdicts on different types of collaboration activities, of which only 159 were misdemeanors (¶1 of Article 111-1), with the remaining 1,233 being crimes that carry a potential life sentence. Investigations were ongoing in approximately 7,000 cases as of October 2023. In total, over 10,000 civilians have been or are to be prosecuted under Article 111-1 for the commission of collaborative activities in the occupied territories.

Furthermore, there are cases under nine other articles with overlapping corpus delictum: Article 109 – Coup d'état, Article 111 – High Treason, Article 111-2 – Assistance to an Aggressor State, Article 114-2 – Dissemination of Information on the Transfer or Movement of Weapons, Armaments, and Military Supplies, Article 258-2 – Public Calls to Commit a Terrorist Act, Article 260 – Creation of Illegal Paramilitary or Armed Formations, Article 436 – Propaganda of War, Article 436-1 – Production and Distribution of Communist and Nazi Symbols and Propaganda, and Article 436-2 – Justification and Glorification of the Aggression of the Russian Federation.

Table of statistical data (for the period between March 2022 and October 2023)

January 2022 through October 2023	Art. 109 Coup d'état	Art. 111 (high treason)	Art. 111-1 (collaboration)	Art. 111-2 Assistance to the aggressor state	Art. 114-2	Art. 258-2 Public calls to commit a terrorist act	Art. 436 "Propaganda of War"	Art. 436-1 "Production, distribution of communist and Nazi symbols and propaganda"	Art. 436-2 Justification and glorification of RF aggression

Ongoing criminal investigations	**215**	**2624**	**6872**	**938**	**372**	**3**	**72**	**599**	**2587**
Notices of suspicion	**111**	**1018**	**2236**	**175**	**209**	**1**	41	**332**	**1308**
Indictments	**88**	**532**	**1311**	**78**	**151**	**0**	**32**	**295**	**1094**

In comparison to the period between May 2022 - November 2023 (18 months), there were almost 1,000 verdicts, demonstrating the continuity of the trend towards a policy of deterrence and intensive prosecution, with another 500 sentences handed down in less than seven months.

99% of the cases have resulted in a guilty verdict, and there have only been two acquittals thus far. In some cases, individuals were charged with conduct which may be regarded as the lawful maintaining of functional educational and care facilities for children, as well as medical establishments. The vagueness of the legal norm might lead to cases when persons could be sentenced under different, possibly overlapping, articles, as it is challenging for prosecutors and judges to apply laws with vague langue and without lack of sufficient training and guidance from higher courts. Therefore, the trials based on the current legal framework on collaborative activities might have resulted in selective justice and double standards in application of provisions on collaborative activities.

IV. International Humanitarian and Criminal Law

Criminalization of Collaboration as an Instrument of Transitional Justice

The punishment of collaborative activities has been the subject of transitional justice processes in some post-conflict countries, while other countries have resorted to transitional justice tools other than criminal trials to address collaborationism. Research shows that countries emerging from a conflict prioritize the rebuilding of a functioning state over punishment and retaliation for wartime behavior, except in the most heinous cases.

International law does not instruct states on whether and how to prosecute collaboration. Instead, it provides a framework which offers guidance on transitional justice, which gives various legal tools and instruments for states to overcome and settle problems arising from collaboration that occurred during a conflict.

There is a long list of both successful and less successful instruments and ways on how post-conflict countries have rebuilt trust and peace amongst the population: reconciliation

councils, truth commissions, administrative purge commissions (lustration), and national and international trials prosecuting collaborators for aiding in the commission of international crimes.

Regarding truth commissions, there are several examples to note, the most famous one being the Truth and Reconciliation Commission for South Africa. Other examples are the Sierra Leone Truth Commission, Guatemala's Commission for Historical Clarification, and the Community Reconciliation Process in Timor-Leste. However, the processes have not always been successful.

Judicial accountability for wartime collaboration and punishment of those betraying the homeland became a domestic law practice after the Second World War. Hundreds of thousands were prosecuted at the time. France alone saw 25,000 collaborators prosecuted for their actions during the time of occupation. A new legal term for collaboration, *quisling,* was coined after the trial of Mr. Vidkun Quisling in Norway, one of the Second World War's most notorious collaborators. However, Mr. Quisling was sentenced to death for high treason, not for collaboration.

The scope of penalization is an indispensable part of a coherent and consistent state policy for transitional justice. Otherwise, a state might face either extrajudicial executions and reprisals ('popular justice'), or harsh prosecutions without the possibility of any amnesties hindering the rehabilitation and reconciliation processes in liberated territories.

Reconciliation and amnesty for wartime collaboration is not in contradiction with international law unless such activities involved complicity in international crimes. Specifically, amnesties are inappropriate where the rights and interests of victims would be harmed by granting amnesty to perpetrators.

The practices of post-conflict countries such as Timor-Leste, Sierra Leone, South Korea, and South Africa demonstrate that the selective prosecution of alleged collaborators has led to stigmatization of not only those suspected of crimes, but also their families and their descendants. Descendants have also faced various forms of social discrimination and prejudice. Such stigma invariably arises in any conflict or post-conflict context and the consequences of such stigma can endure for decades.

Unfortunately, a similar tendency can be already observed in Ukraine. For example, according to Article 2, ¶3 of the Law of Ukraine "On Compensation for Damage and Destruction of Certain Categories of Real Property as a Result of Hostilities", neither the persons convicted under Article 111-1, nor their descendants have a right to compensation for their private property destroyed during the Russo-Ukrainian War.

The Interest of the National Security Versus Human Rights of the Civilians in the Occupied Territories

The national security of Ukraine is protected by the Constitution of Ukraine and the Criminal Code of Ukraine (CCU).

According to Article 17 of the Constitution of Ukraine, the protection of the sovereignty and territorial indivisibility of Ukraine and the ensuring of Ukrainian economic and informational security are the most important functions of the State and a matter of concern for all Ukrainian people.

Furthermore, the key objectives of the CCU are to secure the protection of the constitutional order of Ukraine against criminal encroachment, and to secure peace and safety of mankind. There objectives are listed next to the legal protection of the rights and liberties of every human being and citizen of Ukraine (Article 1 of the CCU).

A special part of the CCU contains a whole section (I) dedicated to the crimes against the national security of Ukraine, to which Article 111-1 of the CCU '*Collaborative Activiti*es' and Article 111-2 of the CCU "*Aiding and Abetting the Aggressor State"* were timely added between March and April of 2022. At the same time, Article 436-2 of the CCU '*Justification, Recognition as Legitimate, Denial of the Armed Aggression of the Russian Federation against Ukraine, Glorification of its Participants"* was inserted under CCU Section XX '*Criminal Offenses Against Peace, Security of Mankind and Internal Legal Order'.*

According to Article 9 of the Constitution of Ukraine, international treaties are ratified by the Verkhovna Rada of Ukraine. Properly ratified treaties are part of the national legislation of Ukraine and must always be complied with even during times of war, so long as derogation from the provisions has not been authorized.

The regulation of the rights of protected civilian persons in times of war was initiated during the Second Hague Conference in 1907. The Convention respecting the Laws and Customs of War on Land of October 18, 1907 (hereinafter 'Fourth Hague Convention'), set forth the basic IHL principles related to the occupation, which in 1949 were clarified by the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (hereinafter 'Fourth Geneva Convention') and in two Additional Protocols. According to unanimous opinion among the international community, the Fourth Hague Convention's rules on occupation are regarded as part of international customary law.

The Fourth Hague Convention states that should the authority of the legitimate power having de facto governance control over a sovereign nation pass into the hands of an occupant, the occupant shall take all measures in their power to restore and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country (Fourth Hague Convention, Article 43). The occupying state, as an administrator, is only entitled to benefit from the use of public buildings, real estate, forests, and agricultural estates which are situated in the occupied country and belong to the occupied state, i.e., Ukraine in the current circumstances. The occupying state must safeguard the capital of these properties and administer them in accordance with the rules of usufruct (Fourth Hague Convention, Article 55).

The aforementioned IHL principles oblige the occupying state to ensure public order and safety, keeping life going on in the occupied territories. While the occupying power does not acquire sovereignty over the occupied territory, it is required to maintain life in the occupied territory as normally as possible. Consequently, the civilians under the occupation are entitled to rights and have obligations to cooperate with the occupying power within the limits imposed by Fourth Hague Convention.

In addition, on August 12, 1949, the Fourth Geneva Convention adopted protections dedicated to the matters of occupied territories. The Fourth Geneva Convention enshrines the following rights of the civilians under occupation:

1. To maintain the right for paid employment or to be supported by the occupied power. (Article 39)[75]
2. To ensure the continuous functioning of the institutions or government of the occupied territories for the provision of key support to the protected civilians under occupation. (Article 47)[76]
3. To ensure the proper function of all institutions devoted to the care and education of children. (Article 50)
4. To not alter the status of public officials or judges in the occupied territories, or in any way have sanctions applied against them, to refrain from any coercive measures or discrimination against them should they abstain from fulfilling their functions for reasons of conscience. (Article 54)
5. To provide for medical and hospital establishments and services, public health, and hygiene in the occupied territory. Medical personnel of all categories must be permitted to carry out their duties. (Article 56)

To provide an effective administration of justice, penal laws of the occupied territory must remain in force, with the exception that they may be repealed or suspended by the occupying power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention. The tribunals of the occupied territory shall continue to function with respect to all offences covered by the said laws (Article 64).

It is worth noting that the Office of the High Commissioner for Human Rights' (OHCHR) has issued two reports on the human rights situation in Ukraine, which expressed strong criticisms over the quality of the law on collaboration activities and its lack of compliance with International Humanitarian Law.

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[75] Article 39 of Fourth GC: 'Where a Party to the conflict applies to a protected person methods of control which result in his being unable to support himself, and especially if such a person is prevented for reasons of security from finding paid employment on reasonable conditions, the said Party shall ensure his support and that of his dependents.'

[76] Article 47 of Fourth GC: 'Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.'

In particular, the law on collaboration activities covers individuals who carry out uncoerced work for the occupying authorities, which could include educational and medical workers and others providing key services. This provision is not in line with the principles underlying the law of occupation under IHL, compliance with which presumes a certain level of cooperation between the occupying and local authorities. In addition, Articles 50 and 56 of the Fourth Geneva Convention explicitly permit the cooperation of national and local authorities with the occupying power to ensure the functioning of medical establishments as well as educational and care facilities for children.

Moreover, OHCHR rightfully pointed out "the apparent lack of proportionality between offences and applicable penalty." In addition, the broad language of the law, which *de facto* criminalizes all employment and business activities in the occupied territory, may impact the enjoyment of the rights to work and to an adequate standard of living for residents in Russian-occupied territories. Indeed, many people may be forced to stop working in occupied territories out of fear that they may receive harsh punishments for collaboration activities. This, in turn, may result in the loss of their income and ultimately could limit their and their families' access to adequate food, clothing, housing, heating, and other living necessities. The OHCHR is concerned that the law may have a far-reaching impact not only on the rights of individuals living in occupied territories, but also on social cohesion and ultimately on future reintegration efforts.

Collaboration Under Domestic Law Versus Collaboration as Complicity in International Crime

International humanitarian law applicable in armed conflicts does not expressly forbid collaborating activity or the recruitment of collaborators. It does, however, prohibit the use of coercion for such purposes, specifically against prisoners of war or civilians in occupied territories.

Article 45 of the Fourth Hague Convention prohibits compelling the local population to take an oath of allegiance to an occupying power. As the International Military Tribunal for Nuremberg stated in its judgment of October 1, 1946, the text of the Hague Convention constituted codification of the *customary rules* which, in 1939 – by the time the war broke out – "were recognized by all civilized nations."

Both the Geneva Convention relative to the Treatment of Prisoners of War (POWs) and the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War unambiguously prohibit physical and mental coercion towards both POWs and protected persons (noncombatants).

Thus, while the international law has broadly adopted a permissive stance when it comes to wartime collaboration, it condemns both coercion and the ill-treatment and abuse that is frequently meted out to alleged collaborators during situations of armed conflict.

It is worth noting that collaboration with an adversary during an armed conflict might constitute either complicity, such as to war crimes or crimes against humanity, or an offence under national

law, such as racketeering, organized crime, extortion, or homicide. These crimes are regarded most widely by the public and CSOs as atrocities in the form of international crimes committed by collaborators.

As an example of case of complicity in international crimes, John Demjanjuk was a Ukrainian national who had served in the Red Army but worked as a guard in several German concentration and extermination camps after he was taken prisoner by the Germany Army. Mr. Demjanjuk was found guilty as an accessory to the murder of 28,060 Jews at the Sobibor death camp and sentenced to five years imprisonment.

Even though 'collaboration' is not codified as an international crime, a collaborator may play a supportive role in the commission of an international crime. By doing so, the collaborator's action may make him 'complicit' in an international crime under the theories of aiding, abetting, assisting or being an accessory to the planning or commission of such crimes. In such cases, the statute of limitations is generally not applicable. A person aiding or otherwise assisting usually faces the same criminal penalties as the main perpetrator of an international crime.

Prohibition of Coercion

The Human Rights Council of the United Nations pointed out in its fact-finding mission on the Gaza conflict that collaboration with the enemy during an armed conflict is not always freely undertaken, reflecting the propensity of parties to an armed conflict to force civilians and prisoners of war to provide valuable information or contribute in other ways to their military and security efforts.

Coercion was widely used as a defense strategy during the post-Second World War's international and domestic trials on collaboration, with defendants trying to prove that such actions were coerced under duress or by the necessity of the circumstances.

However, in case of coercion, international law practice requires that a kind of 'necessity and proportionality' test should be undertaken to determine whether the element of 'imminent threat' was present. Pétain in France and Quisling in Norway argued unsuccessfully that by their collaboration they were in some ways shielding their countries from the Nazis.

Article 31(d) of the Rome Statute provides that criminal responsibility does not arise where the conduct which constitutes a crime within the jurisdiction of the Court was caused by duress resulting from the threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided.

Replicating international norms, Article 40 of the CCU prohibits physical and mental coercion. ¶1 of Article 40 states: "A person's act or omission that caused harm to legally protected

interests shall not be deemed a criminal offence, where that person acted under direct physical coercion that rendered him unable to be in control of his actions."

The question of a person's criminal liability for causing harm to legally protected interests is subject to Article 39 of the CCU. If a person acted under circumstances of extreme necessity (to prevent an imminent danger to a person or legally protected rights of that person, other persons, or the state), the person cannot be charged with a criminal offense, so long as this danger could not have been prevented by other means and where the limits of extreme necessity were not exceeded.

Thus, each and every case of a civilian in the occupied territories suspected of committing collaborative activities be afforded an efficient and conclusive investigation. Each person must subsequently be afforded a fair trial in order to exclude the possibility that an alleged suspect in collaboration is actually a war crime victim, as criminalizing coerced collaboration by both civilians and POWs is prohibited by international humanitarian law, and the right to a fair trials is an indispensable part of international human rights law and must be observed even during times of war.

The Principle of Non-Retroactivity of Law

As described above, collaboration is not an international crime and is not covered by customary international law. Thus, collaboration activities of perpetrators committed in the past are not covered by new legislation adopted post-factum.

Accordingly, the principle of non-retroactivity from Article 11 of the Universal Declaration of Human Rights applies:

> *"No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed.*
>
> *Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."*

Contrary to this fundamental principle, during the "l'épuration légale" (French for "legal cleansing"), liberated France prosecuted hundreds of thousands of Vichy collaborators for crimes committed between 1939 and 1945, applying ordinances adopted in 1943-1944. This cannot be the case in Ukraine, a democratic nation on its way to EU accession.

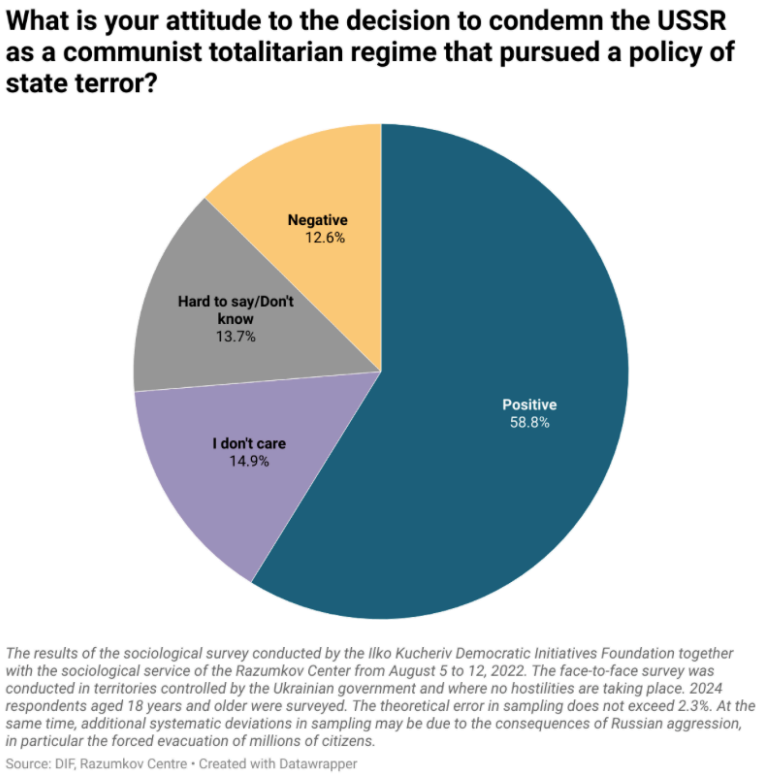
Therefore, any legislation on collaboration adopted in the future may not apply retroactively in terms of holding someone criminally liable for behavior which was not punishable

at the time when the act was committed. Likewise, there may not be imposition of more serious punishment than was permitted at the time the act was committed.

On the other hand, legislation adopted in the future may be applied retroactively to the advantage of the defendant in order to mitigate the punishment or to release them from criminal liability. In that sense, future legislation can remedy certain injustices due to inconsistent application of the legislation currently at force.

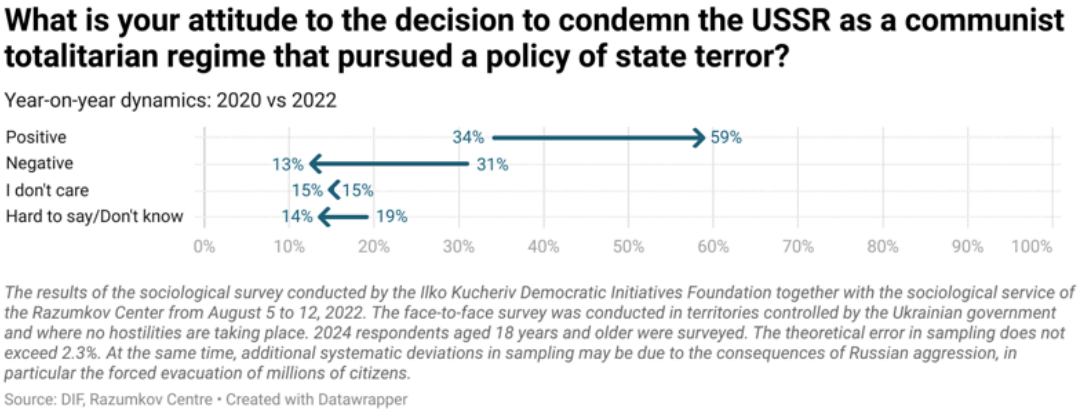
Commentary

1. In April 2015, President Pet ro Poroshenko signed four controversial decommunization laws, including the legislation "*On Condemnation of the Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of Propaganda of Their Symbols*." In addition to this, the laws "*On Access to the Archives of Repressive Bodies of the Communist Totalitarian Regime of 1917 – 1991*," "*On the Immortalization of the Victory Over Nazism in the Second World War of 1939 – 1945*," and "*On the Legal Status and Memory of Fighters for Independence of Ukraine in the Twentieth Century*" were also signed into law. These laws marked a significant step in Ukraine's effort to confront its totalitarian past and reshape its national identity. "I think the state is within its rights – I don't think everyone will agree with it but they want to say the communist regime is bad, and the people who fought for independence, they want to acknowledge them somehow," said Oxana Shevel, an associate professor in post-Soviet comparative politics at Tufts University. At the same time, opponents of the laws were concerned that the laws will further divide the country by replacing one officially sanctioned version of history with another. According to an all-Ukrainian opinion poll conducted in April 2021 by the Ilko Kucheriv Democratic Initiatives Foundation together with Razumkov Centre Sociological Service, 62% of Ukrainians viewed Joseph Stalin's role in relation to Ukraine negatively. Additionally, 43% of Ukrainians supported the ban on the public use and display of the black-and-orange-striped St. George ribbon, a symbol commonly associated with World War II victory celebrations in post-Soviet countries. The 2022 full-scale invasion further amplified the trend toward decommunization, with 59% of Ukrainians in August 2022 supporting the condemnation of the USSR as a communist totalitarian regime.



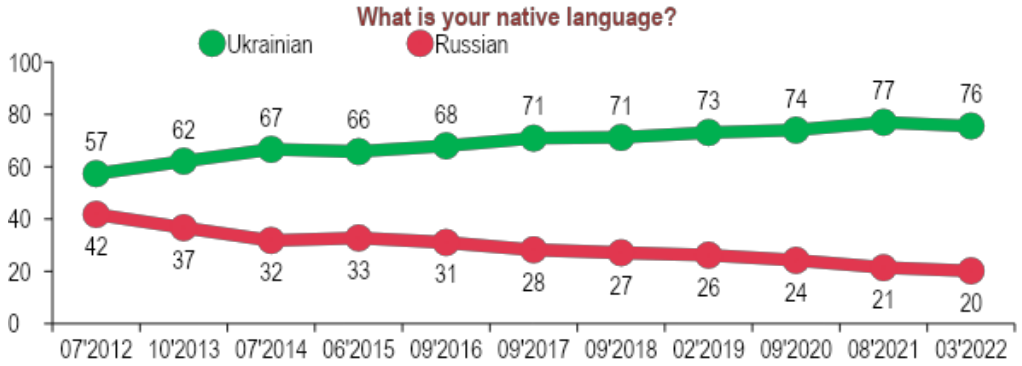
Source: https://dif.org.ua/en/article/how-ukrainian-society-will-look-like-de-sovietization-democracy-new-symbols-of-freedom

Support for condemning the USSR as a totalitarian, repressive regime has increased by 25% since 2020. Over the past two years, the percentage of respondents opposing this decision at the central government level has decreased by 19%. The South remains the most divided, with opinions evenly split among supporters, opponents, those indifferent, and undecided. However, the study suggests that Russia's targeted attacks on southern Ukrainian regions are likely to foster a more unified national consensus.



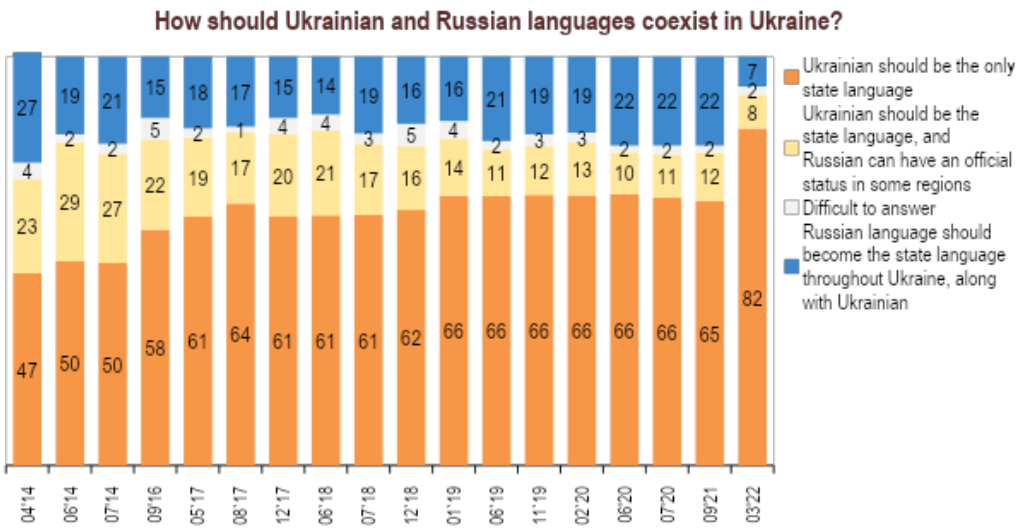
Source: https://dif.org.ua/en/article/how-ukrainian-society-will-look-like-de-sovietization-democracy-new-symbols-of-freedom

2. Most Europeans view fluency in their country's language as essential to national identity, and Ukrainians are no exception. Language is widely regarded as a cornerstone of national identity. Over the past decade, there has been a significant rise in the number of people identifying Ukrainian as their native language, increasing from 57% in 2012 to 76% in 2022. The share identifying Russian as their native language declined from 42 to 20% over the same period. Notable shifts in language use occurred between 2012-2016 and again 2022. Key factors driving this change include: a) societal reactions to government experiments with language policy; b) events of the Revolution of Dignity; and c) Russia's aggression against Ukraine in 2014, including the annexation of Crimea and occupation of parts of Donetsk, Luhansk, Zaporizhia and Kherson regions. Additionally, attitudes toward Ukrainian as the native language have changed in central, southern, and eastern Ukraine.



Source: https://euromaidanpress.com/2022/03/29/absolute-majority-supports-ukrainian-being-the-only-state-language-in-ukraine-poll/

According to a nationwide survey conducted on March 19, 2022, 83% of Ukrainians favor Ukrainian being the only state language in Ukraine. This marks an 18% increase from 2021, before the full-scale Russian invasion. This view prevails across all regions, ages, and language groups. Further, nearly a quarter supported granting Russian language official status before the war; today, that figure has dropped to only 7%. Historically, residents of southern and eastern Ukraine have been more likely to advocate for Russian as a second official language. However, even in these regions, only about a third of the population held this view, and that number has now nearly halved.



Source: https://euromaidanpress.com/2022/03/29/absolute-majority-supports-ukrainian-being-the-only-state-language-in-ukraine-poll/

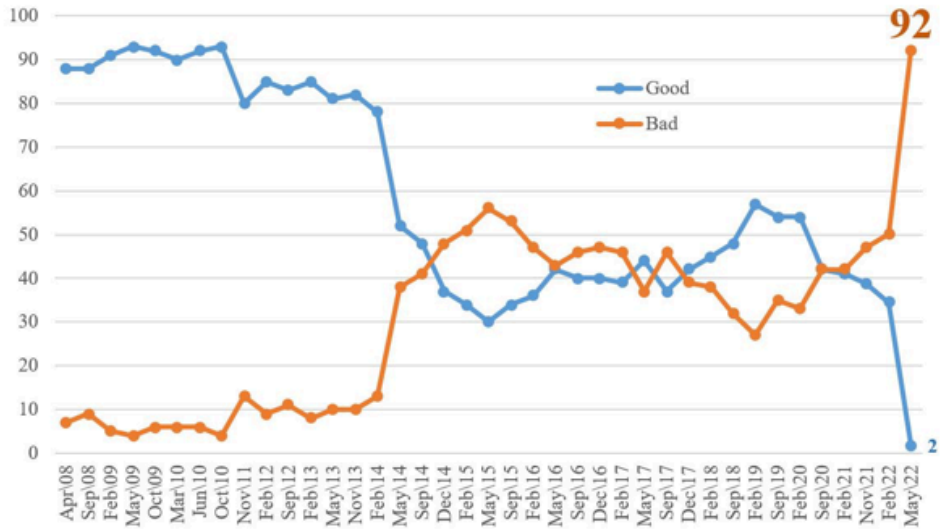
The number of Ukrainians using the Ukrainian language in their daily lives is steadily increasing, and the ongoing war is expected to further accelerate this shift, presenting a significant challenge for society as a whole. As the Ukrainian language becomes more deeply ingrained in everyday life, it is also strengthening its role as a fundamental pillar of the nation's statehood. The growing use of Ukrainian across different regions and communities highlights the diminishing divides on this issue, as the lines of opposition continue to fade, with more people embracing the language as an essential part of Ukraine's identity and future.

3. On June 8, 2021, the State Dume of the Russian Federation issued a statement condemning the adoption of the law "On Indigenous Peoples of Ukraine" because Russians in Ukraine are not recognized as natives of Ukraine. Members of the State Duma called this legislative initiative "an insult to historical memory and a blatant provocation aimed at escalating tensions and conflicts in Ukraine and abroad." Around the same time, Vladimir Putin said in an interview with a correspondent of the Rossiya-24 TV channel that the above-mentioned Ukrainian law "does not comply with the norms of international humanitarian law" and that "[Kyiv's] idea to declare Russians non-indigenous inhabitants of Ukraine deals a powerful and very serious blow to the Russian people." According to him, the adoption of this law could be "compared to a weapon of mass destruction." To speak of Russians as a non-indigenous people in Ukraine is "not just incorrect, but also ridiculous and stupid, it contradicts historical facts," Putin said. "Division into indigenous, first-class, second-class categories of people and so on – this completely smacks of the theory and practice of Nazi Germany," the Russian President proceeded. Representatives of the Russian Orthodox Church, which is in full solidarity with the course of the Russian authorities, said that the adoption of this law "may undermine the stability and integrity of Ukraine." Commenting on Putin's statement, the Minister of Foreign Affairs of Ukraine Dmytro Kuleba said that the bill is "fully in line with the [United Nations] Declaration on the Rights of Indigenous Peoples and the Constitution of Ukraine, and has nothing to do with the subjective interpretations of the Russian President Vladimir Putin." The

Kremlin's statements, made six months before Russia's full-scale invasion of Ukraine, were clearly designed to influence Russian public opinion in anticipation of the war. They also appeared to be an attempt to provoke anti-government protests or, at the very least, to generate support among ethnic Russians in Ukraine.

4. The Kremlin refers to its invasion of Ukraine as a "special military operation," claiming it is aimed at disarming Ukraine and protecting it from alleged fascist threats. In stark contrast, as noted above, Ukraine has legally defined Russia as a National Socialist (Nazi) totalitarian regime, framing Russia's actions as a "genocide of the Ukrainian people." While legal scholars may debate the appropriateness of such language, the terminology reflects the prevailing attitudes within Ukraine toward Russia's military aggression. Far from gratitude and welcome that Russian forces expected from Ukrainians–whom they anticipated would be "denazified" in a matter of days–many Ukrainians now view Russian soldiers as embodying the very fascism they sought to eliminate, casting them as Nazis in the eyes of the Ukrainian public. According to the all-Ukrainian public poll conducted in May 2022 by the Kyiv International Institute of Sociology, in 2022, when the law 2265-IX was enacted, only 2% of Ukrainians expressed a favorable view of Russia, while 92% held a negative opinion. A comparison of public sentiment before and after Russia's invasion provides valuable insights. Notably, the shift in the attitudes of those who previously held a positive or uncertain view of Russia is particularly striking. Among those who once viewed Russia favorably, 80% have since developed a negative opinion. Fewer than 10% of respondents maintained a positive outlook, while another 12% chose to categorize their views as "undecided." Meanwhile, among those who had previously been uncertain about Russia, an overwhelming 97% reported a negative stance following the 2022 invasion.

Graph 1. Dynamics of good and bad attitude of the population of Ukraine to Russia



Source: https://www.kiis.com.ua/?lang=eng&cat=reports&id=1112&page=2

What is your attitude toward Russia in general now?

(% among all respondents)

100% in the column Region: where lived until February 24, 2022	Ukraine as a whole	West	Center	South	East
Very good	0	0	0	0	0
Mostly good	2	1	1	1	4
Mostly bad	10	9	10	11	13
Very bad	82	85	85	79	72
DIFFICULT TO SAY (DO NOT READ)	6	5	3	7	10
REFUSAL TO ANSWER (DO NOT READ)	1	0	0	2	1

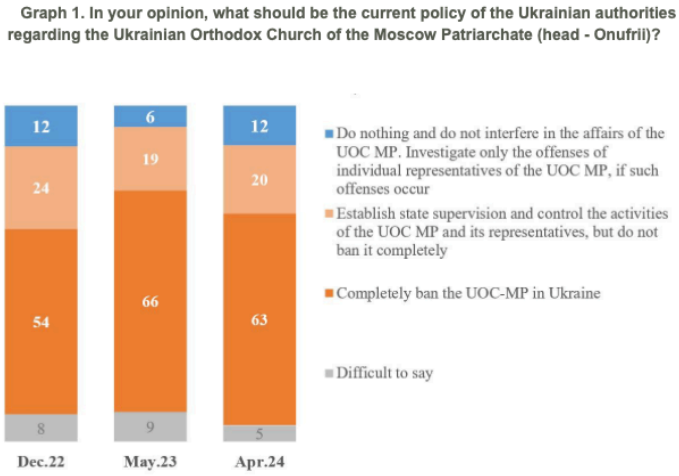
[1] *The composition of macroregions is as follows: Western macroregion - Volyn, Rivne, Lviv, Ivano-Frankivsk, Ternopil, Zakarpattia, Khmelnytskyi, Chernivtsi regions; Central macroregion - Vinnytsia, Zhytomyr, Sumy, Chernihiv, Poltava, Kirovohrad, Cherkasy, Kyiv regions, Kyiv city, Southern macroregion - Dnipropetrovsk, Zaporizhzhia, Mykolaiv, Kherson, Odesa regions, Eastern macroregion - Donetsk, Luhansk and Kharkiv regions.*

Source: https://www.kiis.com.ua/?lang=eng&cat=reports&id=1112&page=2

Following the enactment of law 2265-IX, both Lithuania and Latvia–countries that were forcibly incorporated into the Soviet Union–similarly enacted bans on public displays of the Russian military's "Z" and "V" symbols. "Condemning Russia's hostilities in Ukraine, we must take a firm stand that symbols glorifying Russian military aggression, such as the letters 'Z', 'V' or other symbols used for this purpose, have no place in public events," said the chair of parliamentary Human Rights committee Artuss Kaimins.

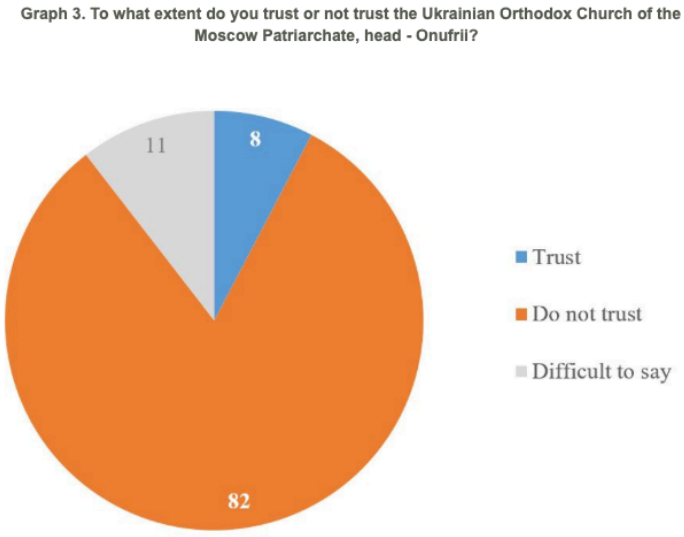
5. According to the all-Ukrainian public poll conducted in April 2022 by the sociological group "Rating," over 65% of Ukrainians support renaming streets that carry Russian or Soviet names, a move reflecting the desire to break from Russia's historical influence and affirm a distinct Ukrainian identity. Similarly, 71% back the dismantling of Russian-associated monuments, signaling a rejection of Russian imperialism and an effort to reclaim public spaces as symbols of national resistance. Cultural policies also reflect this trend, with 62% supporting a ban on Russian music on radio and television, viewed as a way to limit Russian cultural influence and promote Ukrainian national culture. However, the proposal to remove Russian literature from school curricula has sparked more controversy: 35% support it, 30% oppose it, and 31% are neutral, reflecting a more complex debate over Ukraine's cultural ties to Russia. The issue of World War II monuments is also divisive. While 40% oppose their removal, 19% support it, and 36% are neutral. This division reflects the complicated legacy of Ukraine's involvement in the war and differing views on Soviet-era monuments. Overall, these trends illustrate Ukraine's ongoing efforts to redefine its national identity amidst the war, with public opinion evolving as the conflict continues.
6. It is hardly surprising that it took the Ukrainian government over two years after the invasion to pass a law banning the Russian Orthodox Church in Ukraine. After all, the Ukrainian Orthodox Church of the Moscow Patriarchate (UOCMP), founded in 1990 as a self-governing

entity under the canonical jurisdiction of the Russian Orthodox Church (ROC), is the largest religious institution in the country. Nevertheless, the continued presence of an organization with formal ties to Moscow has sparked resentment among patriotic Ukrainians and raised suspicions within the government. While President Zelensky had shown little interest in religious policy before the war, he strategically utilized the church as a tool to rally Ukrainian nationalists and strengthen patriotic sentiment. For example, President Zelensky's decision to sign the law on Ukrainian Independence Day was seen as a symbolic gesture aimed at resonating with Ukrainian patriots. This move was not merely a political maneuver; it was informed by public opinion. According to the all-Ukrainian public poll conducted in April 2024 by the Kyiv International Institute of Sociology 63% of Ukrainians support a ban on the UOCMP, while 82% express lack of trust in its leader, Metropolitan Onufrii.[77]



Source: https://www.kiis.com.ua/?lang=ukr&cat=reports&id=1404&page=1

[77] Anton Hrushetskyi, *What Should Be the Government's Policy and Trust in the Ukrainian Orthodox Church (Moscow Patriarchate)*, Kyiv International Institute of Sociology (May 7, 2024) https://www.kiis.com.ua/?lang=eng&cat=reports&id=1404&page=1.



Source: https://www.kiis.com.ua/?lang=ukr&cat=reports&id=1404&page=1

The UOCMP remains a significant religious institution in Ukraine. As of May 2024, it had 10,587 parishes in Ukraine, compared to the 8,075 of the Orthodox Church of Ukraine (OCU). Despite the ongoing war, this disparity has persisted. Between February 2022 and May 2024, only 685 UOCMP transitioned to the OCU, with the majority located in central and western Ukraine. The legal pressures exerted on the UOCMP through the new legislation could inadvertently create a martyr organization. If forced underground, the UOCMP will become an organization deeply hostile to Kyiv, thereby becoming more suspectable to infiltration and influence by Russian interests.

7. A blanket amnesty or a total failure to prosecute perpetrators may create a sense of impunity and raise demands for justice and accountability at times. During the Sierra Leonean Civil War, the Sierra Leonean government granted "absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives." In countries like Sierra Leone and Timor-Leste, the failure of state authorities to deliver justice often pushed people towards '*popular justice*', which was often found to be arbitrary, disserving of individual due process, and tended to foment further unrest and extrajudicial retributions against those suspected of collaborative activity.
8. Despite the ongoing horrifying existential war against Ukraine, the measures aiming to protect national security interests should not infringe on the fundamental rights of Ukraine's own citizens. Civilians protected under international law in occupied Ukrainian territories should not be criminally punished for taking measures solely to ensure their own survival.
9. **For further reading**, *see* (1) Velvl Chernin, *Concerning the Law "On the Indigenous Peoples of Ukraine": the Inevitable Conflict After the War*, The Begin-Sadat Center for Strategic Studies Bar-Ilan University (Feb. 14, 2024); (2) Emmanuel Grynszpan, *Odesa, the Story Behind the Myth*, Le Monde (April 20, 2022); (3) Konstantin Skorkin, *Ukraine's Ban on Moscow-Linked Church Will Have Far-Reaching Consequences*, Carnegie Endowment for International Peace (Sept. 4, 2024); (4) Aleksander Palikot, *'It Will Perish When I'm Gone':*

Russian Language Usage Plunges in Wartime Ukraine, Radio Free Europe/Radio Liberty (May 20, 2023); (5) Faustine Vincent, *Ukrainian as a Language of Resistance: 'When I Hear Russian, It Makes Me Want to Vomit'*, Le Monde (Feb. 26, 2024); (6) Mariia Patoka, *From Being Neglected to Becoming a Weapon: How Ukrainians' Attitudes Toward the Ukrainian Language Have Changed*, Svidomi (Feb. 13, 2024); (7) Aleksander Palikot, *In the Second Summer of War, a Rash of Russian Attacks Unites Odesa in Anger*, Radio Free Europe/Radio Liberty (July 28, 2023); (8) Erika Solomon, *Goodbye, Tchaikovsky and Tolstoy: Ukrainians Look to 'Decolonize' Their Streets*, The New York Times (June 7, 2022); (9) *Wartime Collaborators: A Comparative Study of the Effect of Their Trials on the Treason Law of Great Britain, Switzerland and France*, The Yale Law Journal, Vol. 56, No.7 (Aug. 1947); (10) *Report on the Human Rights Situation in Ukraine*, United Nations Human Rights Office of the High Commissioner (Dec. 12, 2023).

20.6 Conclusion

Russification of Crimea and other territories of Ukraine and other regions of the former USSR continues. How likely these regions will be able to derussify, if ever, is unknown. The post-Soviet space remains highly Russified, even after independence.

Following the dissolution of the USSR, the Baltic states took on an aggressive campaign to derussify. The results have not always been positive, with ethnic Russians and native Russian speakers forced to give up using Russian in official settings and dealings with their governments. In the days of the USSR, the *lingua franca* of the multi-national, multi-ethnic and multi-religious USSR was Russian. This extended to the Communist people's republics in Eastern Europe. Today, for many, Russian is the language of the enemy and disfavored in post-Soviet space. Schoolchildren are no longer obliged to take Russian beginning in grammar school, with English taking the place of Russian. The long-term impact of Putin's neo-Russification of parts of post-Soviet Ukraine as of this writing is yet unknown. Yet, language is neutral. German is the same whether spoken by Hitler or Goethe. Russian is the same, whether the words come from Putin or Pushkin.

Conclusion

After three years of war, there is no shortage of pundits predicting how the Russo-Ukrainian War will end. Almost all agree that fighting will stop soon with some kind of a peace deal or an armistice. We begin with an essay by Ambrose Evans-Pritchard, the World Economy Editor of the (London) *Daily Telegraph*. This essay first appeared in the December 10, 2024 issue of the paper. The essays that follow are by other commentators, each trying to predict what will happen next.

Putin's regime may be closer to a Soviet collapse than we think
Ambrose Evans-Pritchard[78]
December 10, 2024

Ukraine is slowly losing the three-year conflict on the battlefield. Russia is slowly losing the economic conflict at a roughly equal pace. The Kremlin's oil export revenues are too low to sustain a high-intensity war and nobody will lend Vladimir Putin a kopeck.

Russia's overheated, military-Keynesian war economy looks much like the dysfunctional German war economy of late 1917, which had run out of skilled manpower and was holed below the waterline after three years of Allied blockade – as the logistical failures of the Ludendorff offensive would later reveal.

Putin's strategic victory in Ukraine was far from inevitable a fortnight ago and it is less inevitable now after the Assad regime collapsed like a house of cards, shattering Putin's credibility in the Middle East and the Sahel. He could do nothing to save his sole state ally in the Arab world.

"The limits of Russian military power have been revealed," said Tim Ash, a regional expert at Bluebay Asset Management and a Chatham House fellow. Turkey is now master of the region. Turkish forces had to step in to rescue stranded Russian generals. Even if Putin succeeds in holding on to his naval base at Tartus – a big if – this concession will be on Ottoman terms and sufferance. "Putin now goes into Ukraine peace talks from a position of weakness," said Mr Ash.

When Trump won the US elections in 2016, corks of Golubitskoe Villa Romanov popped at the Kremlin. There were no illusions this time. Anton Barbashin from Riddle Russia says Donald Trump imposed 40 rounds of sanctions on Russia, belying his bonhomie with Putin before the cameras. He has since warned that Putin will not get all of the four annexed (but unconquered) oblasts of Donetsk, Luhansk, Kherson and Zaporizhia.

The Kremlin had banked on a contested election outcome in the US, followed by months of disarray that would discredit US democracy across the world. The polite interregnum has been a cruel disappointment.

Barbashin says Russia's leaders expect Trump to issue ultimatums to both Kyiv and Moscow: if Volodymyr Zelensky balks at peace terms, the US will sever all military aid; if Putin drags his feet, the US will up the military ante and carpet-bomb the Russian economy.

That economy held up well for two years but this third year has become harder. The central bank has raised interest rates to 21pc to choke off an inflation spiral. "The economy cannot exist like this for long. It's a colossal challenge for business and banks," said German Gref, Sberbank's chief executive.

[78] Reprinted with permission.

Sergei Chemezov, head of the defence giant Rostec, said the monetary squeeze was becoming dangerous. “If we continue like this, most companies will essentially go bankrupt. At rates of more than 20pc, I don’t know of a single business that can make a profit, not even an arms trader,” he said.

The resurrection of the Soviet military industrial complex – to borrow a term from Pierre-Marie Meunier, the French intelligence analyst – is cannibalising the rest of the economy. Some 800,000 of the young and best-educated have left the country. The numbers slaughtered or maimed in the meat grinder are approaching half a million.

Russia’s digital minister says the shortage of IT workers is around 600,000. The defence industry has 400,000 unfilled positions. The total labour shortage is near 5m.

Anatoly Kovalev, head of Zelenograd Nanotechnology Centre, said his industry was crippled by lack of equipment and could not replace foreign supplies. “There is a shortage of qualified specialists: engineers, technologists, developers, designers. There are practically no colleges and technical schools that train personnel for the industry,” he said.

Total export earnings from all fossil fuels were running at about $1.2bn (£940m) a day in mid-2022. They have fallen for the last 10 months consecutively and are now barely $600mn. The Kremlin takes a slice of this for the budget but it is far too little to fund a war machine gobbling up a 10th of GDP in one way or another.

Oil tax revenues slumped to $5.8bn in November, based on a Urals price averaging near $65 a barrel. That price could fall a lot further. Russia is facing an incipient price war with Saudi Arabia in Asian markets.

Putin is raiding the National Wealth Fund to cover the shortfall. Its liquid assets have fallen to a 16-year low of $54bn. Its gold reserves have dropped from 554 to 279 tonnes over the last 15 months. The fund is left with illiquid holdings that cannot be crystallised, such as an equity stake in Aeroflot.

The long-awaited rally in oil prices keeps refusing to happen. JP Morgan said excess global supply next year would reach 1.3m barrels a day due to rising output from Brazil, Guyana, and US shale. Rosneft’s Igor Sechin has told his old KGB friend Putin to brace for $45-$50 next year. Adjusted for inflation, that matches levels that bankrupted the Soviet Union in the 1980s.

The purpose of the G7’s convoluted oil sanctions was – until a month ago – to eat into Putin’s revenue without curtailing global oil supply and worsening the cost of living shock in the West. This has been a partial success. Russia had to assemble a shadow fleet of tankers and ship oil from Baltic and Black Sea ports to buyers in India and China, who pressed a hard bargain.

The International Energy Agency estimates that the discount on Urals crude has averaged $15 over 2023 to 2024, depriving Putin of $75m a day in export revenues.

Russia can get around technology sanctions but its systems are configured to western semiconductors. These chips cannot easily be replaced by Chinese suppliers, even if they were willing to risk US secondary sanctions, which most are not. The chips are bought at a stiff premium on the global black market and are unreliable.

Ukrainian troops have noticed that Russian Geran-2 drones keep spinning out of control. The Washington Post reports that laser-guided devices on Russia’s T-90M tanks have “mysteriously disappeared”, greatly reducing capability.

The industry ministry has been trying to develop analogues to replace chips from Texas Instruments, Aeroflex and Cypress but admitted in October that all three tenders had failed. Alexey Novoselov from the circuits company Milandr said Russia could not obtain the insulator technologies needed to make chips of 90 nanometers or below. It is the dark ages.

The US tightened the noose three weeks ago, imposing sanctions on Gazprombank and over 50 Russian banks linked to global transactions. This has greatly complicated Russia's ability to trade energy and buy technology on the black market. It briefly crashed the ruble, now hovering at around 100 to the dollar.

Chinese banks have stopped accepting Russian UnionPay cards. The Chinese press says exporters have pulled back from Russian e-commerce sites such as Yandez or Wildberries because payment fees through third-parties no longer cover thin profit margins. Some have been unable to extract their money from Russia and are facing large losses.

Few foresaw the sudden and total collapse of the Soviet regime, though all the signs of economic decay and imperial overreach were there to see by 1989.

Putin's regime is not yet at this point but it would only take one more change in the Middle East to bring matters to a head. If the Saudis again decide to flood the world with cheap crude to recoup market share – as many predict – oil will fall below $40 and Russia will spin out of economic control.

The Ukraine war may end in Riyadh.

For further reading, *see* (1) Rajan Menon, *Four Scenarios for Ukraine's Endgame*, The New York Times (Dec. 16, 2024); (2) Michael McFaul, *How Trump Can End the War in Ukraine*, Foreign Affairs (Dec. 12, 2024) (former US Ambassador to Russia); (3) Eliot A. Cohen, *How Trump Could End the War in Ukraine*, The Atlantic (Dec. 9, 2024) (political science professor and former diplomat); (4) George Grylls, *Trump Will Find Ukraine Deal Impossible, Ex-Minister Warns*, The (London) Times (Dec. 15, 2024) (quoting former Ukraine Foreign Minister Dmytro Kuleba); (5) Michael J. Kelly & Craig Martin, *Trump's Endgame for the War in Ukraine*, Just Security (Dec. 17, 2024); (6) Timothy Snyder, *Gratitude to Ukraine (2024)*, Thinking About (Dec. 16, 2024). Kremlin-aligned media also gave their take: here is one by RT quoting Putin ally Dimitry Medvedev.

We end the book with the quote by Winston Churchill that began our study, but this time giving the fuller version of what Churchill wrote in 1930 after his experiences in the Boer War and the Great War. It bears repeating here.

> Let us learn our lessons. Never, never, never believe any war will be smooth and easy, or that anyone who embarks on that strange voyage can measure the tides and hurricanes he will encounter. The statesman who yields to war fever must realize that once the signal is given, he is no longer the master of policy but the slave of unforeseeable and uncontrollable events. Antiquated War Offices, weak, incompetent or arrogant Commanders, untrustworthy allies, hostile neutrals, malignant Fortune, ugly surprises, awful miscalculations – all take their seat at the Council Board on the morrow of a declaration of war.

Acknowledgements

In April 2022, two months after Russia's full-scale invasion of Ukraine, I created with Chapman University Fowler School of Law 1L students Laura Evans and Sasha Seagull a working group of law student volunteers to help fleeing Ukrainian refugees — mothers and children, the elderly, and sometimes entire families — to legally enter the United States on an emergency basis.

My motivation was personal. My parents Jenny Bazyler (née Gasner) and Ben Bazyler were child Holocaust survivors. Growing up, my mom shared with me the horrors of her teenage years fleeing the Nazi invasion of her native Ukraine. Suddenly, her nightmares were being repeated as millions of Ukrainians were doing the same, this time fleeing an invasion from their Russian neighbor to the east. Her nightmares also became my nightmares. Law professor Martha Minow suggested I start helping Ukrainians fleeing the war to find shelter in the United States. Martha then put me in touch with law professor Stacey Steinberg at U. Florida, also interested in doing the same.

Our project soon morphed into an informal "pop-up" pro bono immigration group. The first crop of law students came from Chapman, U. Florida (recruited by Stacey), Harvard (recruited by Martha), Mitchell-Hamline (recruited by Ellen Kennedy), UCI ((recruited by David Kaye), and Stetson. Soon, students from other law schools joined. Our first success was in April 2022 helping a Ukrainian who fled to Mexico and sought to enter the US at the San Ysidro border between California and Mexico to reunite with his American family in Nevada.

We called ourselves the *Ukrainian Mothers and Children Transport Initiative (UMAC Transport or UMACT)*, evoking the memory of the famous Kindertransport in 1938-1939 when 10,000 Jewish children were allowed to enter Britain from Nazi-occupied Europe. For the last three years, UMAC Transport volunteers have assisted over three dozen Ukrainian families fleeing the war to either enter or remain in the United States as humanitarian parolees, refuges or under another immigration category. UMAC Transport also aided Russians who opposed the war and fled their country following the invasion. Our work was featured in the *ABA Journal*, the *National Jurist*, the *LA Times* and other media outlets. Laura received the *National Jurist's Law Student of the Year* award for her work.

At the end of the academic year, Chapman University law school deans Marissa Cianciarulo and Jenny Carey proposed that I teach a new full-year Practicum course for the 2023-2024 academic year dedicated to legal issues arising from Russia's invasion of Ukraine. Over 20 students enrolled in our Ukraine War Law Practicum over the two semesters.

This Handbook is the product of this effort. Joining me as co-authors are Ukrainian jurists and US law graduates Ashot Agaian and Lydia Korostelova and British law professor and international law scholar Noelle Quénivet. I am solely responsible for the entire content of the book, and all errors. Ashot and Lydia worked on Part I and Noelle handled Part III.

The students listed on the book cover as Chapman University researchers and editors did the heaviest lifting in bringing this Handbook to fruition. Here is a full list of the Chapman students who enrolled in the course (with an * for those enrolled both semesters) or took it for directed research: Mccoy Bradley*, Iliana Castaneda, Aleko Culp, Aidan Eldridge, Gwen Fabish*, Lindsey Hagen*, Darian Nourian, Sahar Pezeshki, Victoria Rodrigues, Jacob Rodriquez, Inga Romm (originally from Odesa, Ukraine), Sasha Seagull, Valeria Salceda, Morgan Sielski, Yahya Stith-Stewart, Tiara Smith, Christian Sutphin and Rod Viduetsky (originally from Vinnytsia, Ukraine).

I make special mention of the following UMACT volunteers and/or researchers from other law schools: Anne Copeland (Stetson), Ella Cornwall (UK and Texas LLM), Ross Hiller (Mitchell-Hamline) Noelle Musolino (Harvard), Jackie Schaeffer (Stanford), Brent Schneider (Stetson), and Jillian Wolf (Penn). Lika Kolesnikov (LLM, Loyola Law School – LA) wrote much of the text on the Russification of Crimea in Part V of the book.

The devotion of these law students (with many now lawyers) to this project and to helping our new Ukrainians friends fleeing the war made this Handbook possible. All of us are grateful to McKenna Brown, Chapman BA'24, without whose assistance we could not have completed this Handbook.

Ukraine lawyers Andrei Bogancha and Oleksandr Gladushko, now sheltering in California with their families, provided helpful suggestions to the Handbook. Candy and Greg Dawson became our "mom and dad" during our weekly check-in Zoom calls. In an incredible twist of fate, Greg's mom Zhanna Arshanskaya Dawson was saved in 1941 by a Ukrainian family in Kharkiv who hid the Jewish 14-year-old and her sister from the Nazis. In 2007, Prokofyi and Yevdokia Bogancha were recognized by Israel as one of the "Righteous Among the Nations," gentiles who saved Jews during the Holocaust. Eighty-one years later, their grandson Andrei and his family had to flee themselves from war, helped by UMACT and Greg and Candy in Florida and LA resident Marina Orlovetsky, originally from Kharkiv. Marina met Zhanna and Greg at a Holocaust Remembrance Day event at Chapman University back in 2017. Marina then reached out to the family in Ukraine, and they stayed connected over the years. The *LA Times* featured a story about the family titled "Courage and compassion help change war refugee's 'destiny': Decades after a Ukrainian family hid a girl from Nazis, a community of strangers repays kindness." See also ABC-TV News clip here.

Immigration attorney Mark Ivener of Los Angeles was the stand-by expert during our weekly Zoom meetings. Other volunteer immigration attorneys included Sabrina Damast in Los Angeles and Genevieve Maciel at the US Immigration Law Group in Santa Ana, California. Cindy Zapata, Assistant Director at the Harvard Immigration and Refugee Clinical Program and Juan Caballero, Director of the Immigration Law Clinic at U. Florida, held Zoom training sessions for our students. A special shout-out goes to dear friend and law professor colleague Michael Kelly at Creighton, for all his support and contribution to this study.

We are deeply grateful to Carolina Academic Press and editors Bill Hall and David Herzig for taking on this project and agreeing to publish the book as an open-source E-book. As always, I thank Keith Sipe, the founder of CAP. This is my third project with CAP, one of the leading publishers of law texts in the US. As we write these words, the war in Ukraine is entering its fourth year. The future of the largest war in Europe since the Second World War is now even more

uncertain. CAP's agreement to publish this work on their E-book platform (and make it freely available to all) allows us to make continued updates to the work. We invite comments as we add further materials and analysis.

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