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War Crimes in Ukraine

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War Crimes in Ukraine

Some Members of Congress have expressed concern about reports and evidence of war crimes and human rights abuses in Ukraine as a result of Russia's 2022 invasion. Ukrainian authorities and international monitors have increasingly accused Russian forces of perpetrating a wide range of war crimes, including the intentional targeting of civilians. The type of war crimes and human rights violations being alleged has shifted as the conflict has evolved, and as more evidence is uncovered. In the 118th Congress, some Members have expressed interest in determining what can be done to deter war crimes, support U.S. and international efforts to collect and preserve evidence of such crimes, and ensure accountability for those responsible.

As of September 29, 2023, Ukrainian authorities in the Office of the Prosecutor General of Ukraine state they have recorded 108,904 potential war crimes committed by Russian forces. The Russian military has been accused of war crimes in previous conflicts, including wars in its breakaway republic of Chechnya and in supporting the Assad regime in Syria. Russia's political leadership denies any role or responsibility for all the alleged crimes.

The U.S. government has led international efforts to ensure criminal accountability for individuals who perpetrate war crimes and other atrocities in Ukraine. It has supported efforts of the Organization for Security and Cooperation in Europe (OSCE), the United Nations, and the European Union to investigate, gather evidence, and report on atrocities committed in the Ukraine conflict. In addition, U.S. authorities have cooperated closely with Ukraine's Office of the Prosecutor General, as well as justice officials in several allied EU and NATO countries, to support current and future investigations and prosecutions for the so-called "core international crimes": war crimes, crimes against humanity, genocide, and aggression. Despite the sometimes difficult relationship between the United States and the International Criminal Court (ICC), the Biden Administration has expressed approval of and has cooperated with the ICC on that court's investigation into the situation in Ukraine, which has produced an arrest warrant naming Russian President Vladimir Putin on suspicion of war crimes. The United States is part of a core group of states working with Ukraine to establish a special international criminal tribunal to prosecute the crime of aggression against Ukraine.

Congress has acted to support accountability efforts in Ukraine, including through appropriating funds for U.S. activities to ensure accountability for perpetrators of atrocities. In December 2022, the 117th Congress loosened restrictions on U.S. support to the ICC and other international criminal justice efforts and authorized the direction of support for accountability in Ukraine. Congress also amended the federal statute criminalizing war crimes, expanding U.S. jurisdiction to include war crimes committed against foreign populations by foreign perpetrators. Since the Russian invasion began, congressional committees have conducted hearings and other oversight regarding U.S. and international efforts to hold perpetrators of atrocities in the Ukraine conflict accountable for their actions.

This report addresses war crimes and other international crimes in Ukraine, U.S. and international responses to those crimes, and associated issues and options for Congress.

For other CRS products related to Russia's invasion of Ukraine, including U.S. policy dimensions, see CRS Report R47054, *Russia's War Against Ukraine: Related CRS Products*.

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Andrew S. Bowen

Analyst in Russian and European Affairs

Matthew C. Weed

Specialist in Foreign Policy Legislation

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Introduction

Russia's 2022 renewed invasion of Ukraine is Europe's largest (by measures including casualties, destruction, and geographic areas involved) armed conflict in decades and has caused sustained destruction and suffering. Parts of southern and eastern Ukraine remain under Russian occupation, and missile strikes continue to occur throughout the country. Tens of thousands of people have been killed or wounded, in addition to the deterioration in economic and humanitarian conditions caused by the continued fighting. Contributing to the damage and loss of life are numerous alleged war crimes and human rights abuses, the "vast majority" of which have been attributed to Russian forces.¹ In response to reports and evidence of Russian complicity in such crimes, the United States has formally accused Russian officials of war crimes and crimes against humanity in Ukraine.²

As of September 29, 2023, Ukrainian authorities in the Office of the Prosecutor General of Ukraine state they have recorded 108,904 potential war crimes committed by Russian forces.³ Ukrainian forces also have been accused of a "small number of violations," but Russian forces have been alleged to commit the majority of crimes.⁴ As of September 24, 2023, the Office of the U.N. High Commissioner for Human Rights (OHCHR) recorded 27,449 civilian casualties (killed and injured), but asserts that the true total is likely far higher.⁵ In March 2023, U.S. Attorney General Merrick Garland stated, "Just over twelve months ago, invading Russian forces began committing atrocities at the largest scale in any armed conflict since the second World War."⁶

As condemnations of Russia's invasion of Ukraine and reports of attacks on civilians quickly began to mount in the days and weeks after the start of the conflict in February 2022, the law enforcement and judicial systems of Ukraine and several other European countries, as well as those of regional and international courts, including the International Criminal Court (ICC), began investigating and documenting alleged atrocities in Ukraine, preserving evidence, and preparing for potential prosecution of alleged perpetrators in the appropriate national or international fora. The Organization for Security and Cooperation in Europe (OSCE), acting under what is known as the "Moscow Mechanism," conducted investigations into alleged atrocities and violations of human rights in Ukraine, finding that Russian forces had committed atrocities. The U.N. Human Rights Council (UNHRC) established the Independent International Commission of Inquiry on Ukraine (IICI); this commission also has reported finding significant evidence of atrocities committed by invading Russian forces. When the U.N. Security Council could not act to condemn Russia's invasion due to Russia's veto power in the Council, the U.N. General Assembly met in a rare Emergency Special Session to adopt resolutions condemning Russia's aggression and demanding an end to the invasion. Ukraine filed cases with the International Court of Justice, alleging Russian violations of the Convention on the Prevention

¹ Independent International Commission of Inquiry on Ukraine, *Report of the Independent International Commission of Inquiry on Ukraine*, A/77/533, October 18, 2022.

² U.S. Department of State, "Crimes Against Humanity in Ukraine," press release, February 18, 2023.

³ Website of the Office of the Prosecutor General of Ukraine, at <https://gp.gov.ua/>.

⁴ United Nations Human Rights Council, *Report of the Independent International Commission of Inquiry on Ukraine*, March 15, 2023.

⁵ OHCHR (U.N. Human Rights Office of the High Commissioner), *Ukraine: Civilian Casualty Update*, September 24, 2023.

⁶ U.S. Department of Justice, "Attorney General Merrick B. Garland Delivers Remarks in Lviv, Ukraine," press release, March 3, 2023.

and Punishment of Genocide, and with the European Court of Human Rights, alleging human rights violations against Ukraine and its citizens.

As the conflict has continued, Ukraine and the international community have taken action to investigate and prosecute reported atrocities in Ukraine. Ukraine's Office of the Prosecutor General (OPG) is investigating tens of thousands of suspected war crimes committed by Russian forces in Ukraine. The OPG has brought a small number of war crimes cases to Ukrainian courts and has secured a handful of convictions. At least 20 other countries have instituted investigations, within their respective national justice systems, of alleged atrocities committed in Ukraine. While not party to the treaty establishing the ICC, Ukraine has agreed to allow the ICC to investigate the situation in the country, and is working in cooperation with the ICC to investigate the most severe cases of atrocities under the court's jurisdiction. On March 17, 2023, the ICC issued warrants for the arrest of Russian President Vladimir Putin and another Russian official for the war crime of transferring Ukrainian children from Ukraine to Russia.

Although the ICC can prosecute the crime of aggression, which punishes the waging of illegal war, it cannot prosecute the crimes in the Ukraine conflict, as Russia is not party to the ICC. Ukraine and many other countries have thus called on the international community to establish a special tribunal for the crime of aggression against Ukraine. Disagreement exists among countries, however, about whether such a tribunal should be a standalone international court or be grounded in the national criminal justice system of Ukraine with "internationalized" elements.

Several different international efforts to document and investigate atrocities and aggression in the Ukraine conflict are underway. Some of these efforts are supported directly by the United States government and are geared toward potential future prosecutions for war crimes and other international crimes. The United States has been working, for example, with the European Union (EU) and the United Kingdom to support Ukraine's atrocity crimes investigations, and has backed the establishment of the International Centre for Prosecution of the Crime of Aggression (ICPA), launched by the EU's Agency for Criminal Justice (Eurojust) in early 2023.

These efforts represent steps toward making accountability for atrocities and aggression possible, but the United States, and in particular Congress, will likely face continuing challenges in the coming months and years in efforts to ensure that those who have committed atrocities are brought to justice. Congress has acted to support Ukrainian and international accountability efforts, strengthened U.S. jurisdiction over war crimes committed in foreign countries, and opened the path to more robust U.S. assistance to international criminal tribunals, including the International Criminal Court. Going forward, Congress might consider accountability for war crimes committed in Ukraine in the context of the broader U.S. foreign policy goals of ending Russia's invasion and preserving Ukrainian independence, as well as promoting U.S. policy regarding international criminal justice broadly.

Reported War Crimes in Ukraine

Several countries, the International Criminal Court (ICC or the "Court"), the United Nations, the Organization for Security and Cooperation in Europe (OSCE), the European Union (EU), think tanks, and human rights organizations have identified instances of potential Russian war crimes and human rights violations in Ukraine.⁷ The United States government has formally accused

⁷ See, for example, OSCE, *Report on Violations of International Humanitarian and Human Rights Law, War Crimes, and Crimes Against Humanity, Committed in Ukraine Since 24 February 2022*, April 13, 2022; United Nations Office of the High Commission for Human Rights (OHCHR), *Killing of Civilians: Summary Executions and Attacks on* (continued...)

Russia of such crimes, with Secretary of State Antony Blinken stating on February 18, 2023, “Based on a careful analysis of the law and available facts, I have determined that members of Russia’s forces and other Russian officials have committed crimes against humanity in Ukraine.”⁸

Previous Accusations of Russian War Crimes and Human Rights Violations

During Russia’s First and Second Chechen Wars beginning in the mid-1990s and in its intervention in Syria since 2015, the Russian armed forces were accused of large-scale war crimes and human rights abuses.⁹ During the Chechen Wars and intervention in Syria, the Russian military relied heavily on concentrated and indiscriminate artillery, bombing, and missile attacks with little regard for collateral damage; in some cases, it intentionally targeted civilian populations and infrastructure. Russian forces often employed artillery and rocket artillery in response to resistance and stagnated Russian ground offensives. Russian forces were also implicated in reported war crimes and human rights abuses against civilian populations, either directly or through the military’s support for local proxy forces.

Chechen Wars. Russia fought two wars (1994-1996 and 1999-2009) against rebels in the Russian republic of Chechnya.¹⁰ During both conflicts, Western governments, humanitarian organizations, and international observers accused Russian forces of human rights abuses, including the killing of civilians, torture and killing of captured combatants, enforced disappearances, indiscriminate bombing and artillery attacks, and the targeting of civilian infrastructure.¹¹ Russian forces relied heavily on artillery, rocket artillery, and unguided bomb strikes, particularly to seize urban centers—including the regional capital Grozny—and after Russian ground offenses stagnated.¹²

Russian forces also relied on indiscriminate violence against civilians to pacify Chechnya. Both regular Russian forces (including Interior Ministry troops and police) and local pro-Russian Chechen proxies engaged in widespread violence, including so called *zachistki* (cleansing or sweeping) operations to clear out insurgents or opponents from the local population.¹³

Syria. During Russia’s intervention in Syria (2015-present), the Russian Aerospace Forces (VKS) conducted extensive air operations, including the use of precision-guided munitions (PGMs), in support of local forces backing Syrian President Bashar al Asad.¹⁴ The VKS’s use of PGMs was highlighted by official Russian media, possibly to demonstrate a modernized VKS. Nevertheless, analysts noted that most VKS operations still appeared to use unguided or “dumb” munitions and that the use of PGMs was exaggerated.¹⁵ International observers accused VKS forces of targeting civilian infrastructure and conducting mass bombings against civilian targets (including hospitals).

Individual Civilians in Kyiv, Chernihiv, and Sumy Regions in the Context of the Russian Federation’s Armed Attack Against Ukraine, December 2022; United Nations Human Rights Council, *Report of the Independent International Commission of Inquiry on Ukraine*, March 15, 2023; BBC, “What War Crimes is Russia Accused Of?,” March 17, 2023.

⁸ U.S. Department of State, “Crimes Against Humanity in Ukraine,” press release, February 18, 2023.

⁹ Max Fisher, “Russia’s Brutality in Ukraine Has Roots in Earlier Conflicts,” *New York Times*, March 22, 2022; Janine Di Giovanni, “Vladimir Putin’s Inhumane Blueprint to Terrorize Civilians in Chechnya, Syria—and Now Ukraine,” *Vanity Fair*, February 23, 2023; Natalia Antonova, “War with Chechnya Brutalized Russian Society, and Ukraine Is Paying the Price,” *Foreign Policy*, April 20, 2023.

¹⁰ Mark Galeotti, *Russia’s Wars in Chechnya, 1994-2009* (New York: Osprey, 2014).

¹¹ Emma Gilligan, *Terror in Chechnya: Russia and the Tragedy of Civilians in War* (Princeton: Princeton University Press, 2010).

¹² Olga Olikier, *Russia’s Chechen Wars: 1994-2000* (Santa Monica: RAND, 2001).

¹³ Mark Kramer, “Perils of Counterinsurgency: Russia’s War in Chechnya,” *International Security*, vol. 29, no. 3 (2004), pp. 5-63; Jason Lyall, “Are Coethnics More Effective Counterinsurgents? Evidence from the Second Chechen War,” *American Political Science Review*, vol. 104, no. 1 (2010), pp. 1-20; Emil Souleimanov, “An Ethnography of Counterinsurgency: Kadyrovtsy and Russia’s Policy of Chechenization,” *Post-Soviet Affairs*, vol. 31, no. 2 (2015), pp. 91-114.

¹⁴ Dmitry Adamsky, “Russian Lessons From the Syrian Operation and the Culture of Military Innovation,” *Marshall Center*, February 2020; Seth G. Jones et al., *Moscow’s War in Syria*, CSIS, Washington DC, 2020.

¹⁵ The VKS’s poor performance in Ukraine using PGMs and conducting complex air operations indicates that VKS capabilities likely were overstated. Anton Lavrov, *The Russian Air Campaign in Syria*, CNA, Arlington, VA, June 2018; Michael Simpson et al., *Road to Damascus: The Russian Air Campaign in Syria, 2015-2018*, RAND, Santa Monica, CA, 2022.

In March 2020, the United Nations Human Rights Council accused Russia of complicity in war crimes for intentionally targeting civilian areas and infrastructure in Syria.¹⁶

Among other crimes, Russian forces are accused of indiscriminate and mass killings, rape and other forms of sexual violence, the intentional targeting of civilians, the bombing of civilian targets and infrastructure, and the forced “filtration” (interrogation and separation) of civilians and noncombatants—including children—from occupied territories.

On March 15, 2023, the United Nations Human Rights Council released a report, which states

The body of evidence collected shows that Russian authorities have committed a wide range of violations of international human rights law and international humanitarian law in many regions of Ukraine and in the Russian Federation. Many of these amount to war crimes and include willful killings, attacks on civilians, unlawful confinement, torture, rape, and forced transfers and deportations of children.¹⁷

Information continues to mount that at least some of the atrocities in Ukraine are being committed under the direction, or knowledge, of Russian commanders and authorities.¹⁸ On March 17, 2023, the ICC issued arrest warrants for Russian President Vladimir Putin and Russian Commissioner for Children’s Rights Maria Alekseyevna Lvova-Belova 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.”¹⁹

Alleged Atrocities by Russian Military Forces

Ukrainian forces have in many instances found signs of potential Russian war crimes, including mass graves—with both Ukrainian civilians and prisoners of war—in newly liberated territories. Mass graves have been uncovered in the Ukrainian towns and cities of Bucha, Irpin, Izyum, Lyman, Kherson, and Mariupol.²⁰

In some instances, Russian violence against Ukrainian civilians appears indiscriminate, such as reprisals for battlefield losses against the Ukrainian Armed Forces (UAF). In other instances, Russian forces appeared to use more specific or calibrated violence against civilians perceived to pose a threat to Russian control. Many of the alleged Russian activities that may constitute war crimes fall into one of the categories discussed below.

¹⁶ United Nations Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, March 2, 2020.

¹⁷ United Nations Human Rights Council, *Report of the Independent International Commission of Inquiry on Ukraine*, March 15, 2023.

¹⁸ David Cohen, “War Crimes Were Part of Russia’s Master Plan, National Security Advisor Says,” *Politico*, April 10, 2022; U.S. Department of State, “Crimes Against Humanity in Ukraine,” press release, February 18, 2023.

¹⁹ International Criminal Court, “ICC Judges Issue Arrest Warrants Against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova,” press release, March 17, 2023.

²⁰ Zhanna Bezpiatchuk, “Irpin: Russia’s Reign of Terror in a Quiet Neighborhood Near Kyiv,” *BBC*, June 8, 2022; Reuters, “Most People Buried in Mass Grave in Ukraine’s Izyum are Civilians, Police Chief Says,” September 16, 2022; OHCHR, “UN Rights Office Set to Probe ‘Mass Graves’ in Newly Liberated East,” press release, September 16, 2022; Liz Cookman, “Forest of the Dead,” *Foreign Policy*, September 19, 2022; Andrew E. Kramer and Marc Santora, “At Mass Grave Site in Ukraine’s Northeast, a Sign of Occupation’s Toll,” *New York Times*, October 20, 2022; Jeffrey Gettleman, “Russian Retreat Reveals Signs of an Atrocity in a Ukrainian Village,” *New York Times*, December 19, 2022; Michael Biesecker, “How the AP Estimated 10,300 New Graves in Occupied Mariupol,” *Associated Press*, December 22, 2022; Liz Sly, “66,000 War Crimes Have Been Reported in Ukraine. It Vows to Prosecute Them All,” *Washington Post*, February 6, 2023.

Figure I. Uncovered Mass Graves in Ukraine



Source: Information on territorial control from the Institute of the Study of War. For information on locations of uncovered mass graves see footnote 20.

Note: Lines of territorial control are approximate.

Direct Violence Against and Detention of Civilians

Russian forces are alleged to have conducted murder, arbitrary detentions, forced disappearances, interrogations, and reprisals against Ukraine's civilian population. Some violence against civilians appears to have been conducted by individual soldiers and units, while in other instances Russian forces reportedly have conducted systematic and coordinated operations to repress and eliminate opposition to Russian rule in the areas they occupy.²¹ These operations are reportedly overseen by higher-level Russian political and military authorities.²² Media reports and testimony from civilians have provided further details into Russia's operation of these centers and other repression measures.²³ The OHCHR found

²¹ Erika Kinetz Oleksandr Stashevskiy Vasilisa Stepanenko, "How Russian Soldiers Ran a "Cleansing" Operation in Bucha," Associated Press, November 3, 2023; Yousur Al-Hlou et al., "Caught on Camera, Traced by Phone: The Russian Military Unit That Killed Dozens in Bucha," *New York Times*, December 23, 2022; Kevin Freking, "Ukraine's Top Prosecutor Speaks of 'Evil' Russian Atrocities," Associated Press, April 19, 2023; Lilia Yapparova, "I Prayed I Wouldn't be Next": The Secretive Prisons Where Russia Hides and Tortures Ukrainian Civilians," *Meduza*, May 26, 2023

²² Erika Kinetz, "We Will Find You": Russians Hunt Down Ukrainians on Lists," Associated Press, December 21, 2022; Anthony Deutsche, Anna Voitenko, and Olena Harmash, "Scale of Alleged Torture, Detentions by Russian Forces in Kherson Emerges," Reuters, January 12, 2023.

²³ Yaroslav Trofimov, "Electric Shock, Extortion and Slave Labor: How Russia Ran a Detention Camp in Occupied Ukraine," *Wall Street Journal*, September 29, 2022; Chris Livesay, "Torture Chamber, Mass Grave Found in Kherson, (continued...)"

In the cases documented by OHCHR, more than 91 per cent of civilian detainees held by the Russian Federation described subjection to torture and ill-treatment, including sexual violence. In the documented cases, such treatment appeared to be carried out to force the victims to confess to provision of assistance to Ukrainian armed forces, to compel them to cooperate with the occupying authorities, or to intimidate those considered to hold pro-Ukrainian views. In many locations, the conditions of detention were so dire that the conditions of detention could themselves amount to ill-treatment, or in some cases, torture under international law.²⁴

Filtration Camps

The U.S. government and media reports document the existence of “filtration camps,” where Ukrainian civilians are interrogated and forcibly relocated. According to the State Department, Russia has established a network of camps to resettle and control the forced relocation of hundreds of thousands of Ukrainian citizens, including children.²⁵ Russian authorities reportedly have used these camps to document, process, and potentially remove Ukrainian civilians who may present a threat to Russian occupation. Russian officials deny these accusations, alleging that Ukrainian civilians are undergoing what Russian Ambassador to the United Nations Vassily Nebenzia called a “registration rather than filtration procedure.”²⁶

Sexual Violence

Russian forces have been accused of numerous instances of sexual violence against Ukrainian civilians. According to the March 24, 2023, OHCHR report

From February 2022 to 31 January 2023, OHCHR documented 133 cases of CRSV (85 men, 45 women, 3 girls), the majority of which took place in territory occupied by the Russian Federation. 109 cases are attributable to Russian armed forces or Russian law enforcement and penitentiary staff.²⁷

The State Department further describes “a mountain of credible reports of sexual violence committed by Russia’s force against civilians.”²⁸ During testimony before the House Committee on Foreign Affairs, Ukraine’s Prosecutor General Andriy Kostin described how “sexual violence has also been used as a political and military tactic by Russian forces.”²⁹

Abduction of Children

Ukraine, the Biden Administration, the ICC, and the OSCE accuse Russia of the large-scale abduction of Ukrainian children.³⁰ The number of children affected is a moving target and

Ukraine After Russia’s Retreat,” *CBS News*, November 19, 2022; Carlotta Gall, “Shocks, Beatings, Mock Executions: Inside Kherson’s Detention Centers,” *New York Times*, May 29, 2023.

²⁴ U.N. Office of the High Commissioner for Human Rights (OHCHR), *Detention of Civilians in the Context of the Armed Attack by the Russian Federation Against Ukraine, 24 February 2022–23 May 2023*, June 27, 2023.

²⁵ U.S. Department of State, “Russia’s Filtration Operations and Forced Relocations,” August 25, 2022; David Kortava, “Inside Russia’s ‘Filtration Camps’ in Eastern Ukraine,” *New Yorker*, October 3, 2022.

²⁶ RFE/RL, “U.S., UN Demand Access To Russian ‘Filtration’ Sites In Ukraine Amid War-Crimes Fears,” September 8, 2022.

²⁷ OHCHR, *Report on the Human Rights Situation in Ukraine: August 1, 2022-January 31, 2023*, March 24, 2023, p. 2.

²⁸ U.S. Department of State, “Supporting Justice and Accountability in Ukraine,” fact sheet, February 18, 2023.

²⁹ U.S. Congress, House Committee on Foreign Affairs, *Exposing Putin’s Crimes: Evidence of Russian War Crimes and Other Atrocities in Ukraine*, 118th Cong., 1st sess., April 19, 2023.

³⁰ U.S. Secretary of State Antony J. Blinken, “Crimes Against Humanity in Ukraine,” press release, February 18, 2023; (continued...)

difficult to verify, and Ukraine estimates that 16,000 children have been forcibly removed from Ukraine since February 2022. As of February 13, 2023, the Yale University’s Humanitarian Research Lab identified 6,000 children across a network of 43 facilities in Russia.³¹ A March 2023 Human Rights Watch report indicates it is difficult to verify the exact number, and it may be far higher.³² Russian authorities claim Russia is conducting rescues, medical rehabilitation, and adoptions of orphaned or deserted children. Some of these children have been used as part of a campaign to bolster support for the war by depicting Russian forces as rescuers.³³ As noted above, the ICC has indicted Russian President Putin for his role in these crimes, stating

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).³⁴

Treatment of Prisoners of War

Both Russia and Ukraine have been accused of mistreating prisoners of war (POWs), including via execution, torture, malnourishment, and other abuse.³⁵ According to the United Nations Human Rights Council Report, “The Commission has found a widespread pattern of torture and inhuman treatment committed by Russian authorities against people they detained in Chernihiv, Donetsk, Kharkiv, Kherson, Kyiv, Sumy, and Zaporizhzhia regions, in Ukraine, and in the Russian Federation. Torture has been prevalent against certain categories of people. Most victims were men; both civilians and prisoners of war were tortured.”³⁶ In July 2022, a massive explosion ripped through a POW camp housing many of the prisoners from the Ukrainian defense of Mariupol, killing an estimated 50 prisoners. Some observers said it was caused by Russian authorities, either intentionally or inadvertently; Russia alleged it was from a Ukrainian missile strike.³⁷

OSCE, *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.

³¹ Yale Humanitarian Research Lab, *Russia’s Systematic Program for the Re-Education and Adoption of Ukraine’s Children*, February 13, 2023.

³² Human Rights Watch, “Ukraine: Perils of War for Children in Institutions,” March 13, 2023.

³³ Marc Santora and Emma Bubola, “Russia Signals It Will Take More Ukrainian Children, a Crime in Progress,” *New York Times*, March 18, 2023.

³⁴ International Criminal Court, “Situation in Ukraine: ICC Judges Issue Arrest Warrants Against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova,” press release, March 17, 2023.

³⁵ According to the report, “The Government of Ukraine provided OHCHR with full and confidential access to POWs in official places of internment.... Further, the State Penitentiary Service and the Office of the Prosecutor General have actively engaged with OHCHR in relation to concerns raised regarding the treatment of POWs” while “OHCHR has not been granted access to POWs interned by the Russian Federation despite repeated requests.” OHCHR, *Treatment of Prisoners of War and Persons Hors De Combat in the Context of the Armed Attack By the Russian Federation Against Ukraine: February 24 2022- February 23 2023*, March 24, 2023.

³⁶ United Nations Human Rights Council, *Report of the Independent International Commission of Inquiry on Ukraine*, March 15, 2023.

³⁷ Some observers dismissed Russia’s explanation, citing a lack of evidence. Joyce Sohyun Lee et al., “What We Know About the Blast that Killed Ukrainian POWs in Olenivka,” *Washington Post*, August 6, 2022.

Strikes on Civilian Targets

Since the initial invasion of Ukraine, the Russian military has relied on artillery and rocket artillery, which increased during summer 2022 potentially to compensate for the Russian military's personnel losses and shortages.³⁸ According to Russian military doctrine, Russian artillery relies on overwhelming fire to compensate for the lack of precision, magnifying the destruction in an urban environment.³⁹ Ukrainian cities and towns, such as Mariupol and Bakhmut, have suffered collateral damage and civilian casualties due to the concentrated and often indiscriminate nature of Russian artillery.⁴⁰

In addition to rocket and artillery strikes that appear to be launched without regard to collateral damage, Russia continues to launch cruise missiles and other precision guided missiles (PGMs) to strike civilian targets across Ukraine, including a sustained strike campaign to damage and destroy Ukraine's critical infrastructure, such as key energy and transportation centers.⁴¹ These strikes also hit residential and non-military areas, possibly to create chaos and confusion, or as a result of the poor performance of Russian PGMs. In instances, hospitals (according to one report, one in 10 Ukrainian hospitals has been damaged), theaters, civilian railway stations, shopping centers, and civilian apartment blocks have been hit by Russian strikes.⁴² For example, the United Nations Human Rights Council found

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.⁴³

In July 2023, after a second attack by Ukrainian forces on the bridge connecting mainland Russia with its occupied Crimea region, Russia launched several days of strikes targeting residential and port facilities in Odesa and Mykolaiv.⁴⁴ In addition, the Russian defense ministry stated it would consider striking any Ukraine-bound civilian shipping.⁴⁵ In a statement to the media, White

³⁸ Russia reportedly was firing 20,000-30,000 artillery rounds a day during the summer of 2022. Mykhaylo Zabrodskyi et al., *Preliminary Lessons in Conventional Warfighting from Russia's Invasion of Ukraine: February–July 2022*, RUSI, London, November 30, 2022, pp. 38-39.

³⁹ David M. Glantz, *Soviet Conduct of Tactical Maneuver: Spearhead of the Offensive* (Portland, Oregon: Frank Cass, 1991); Lester W. Grau and Charles Bartles, *The Russian Way of War: Force Structure, Tactics, and Modernization of the Russian Ground Forces* (Fort Leavenworth, KS: Foreign Military Studies Office, 2016); Michael Kofman et al., *Russian Military Strategy: Core Tenants and Operational Concepts*, CNA, Arlington, VA, 2021, pp. 78-80.

⁴⁰ Max Rust et. al, "Photos Chronicle the Devastation of Mariupol," *Wall Street Journal*, March 27, 2022; RFE/RL, "Bakhmut From The Air Reveals Devastation As Russia Pounds Ukrainian City Into Dust," April 27, 2023; Roman Olearchyk, "Ukraine's Civilian Death Toll Mounts as Russia Strikes Kherson," FT, August 13, 2023.

⁴¹ For more information, see Ian Williams, *Putin's Missile War: Russia's Strike Campaign in Ukraine*, CSIS, May 2023.

⁴² Keith Collins et. al, "Russia's Attacks on Civilian Targets Have Obliterated Everyday Life in Ukraine," *New York Times*, March 23, 2022; Jim Garamone, "Russia Continues Attacks on Ukraine Civilian Targets," *DoD News*, October 31, 2022; Ivana Kottasova, "Kramatorsk Restaurant Strike Shows that in Ukraine, Death Can Come at Any Time, Anywhere," *CNN*, June 28, 2023; Illia Novikov and Dasha Litvinova, "Russia Launches Nationwide Missile Attack on Ukraine as Putin Speaks at Security Conference," Associated Press, August 15, 2023.

⁴³ United Nations Human Rights Council, *Report of the Independent International Commission of Inquiry on Ukraine*, March 15, 2023.

⁴⁴ David L. Stern and Robyn Dixon, "Russia Pummels Odessa with Airstrikes," *Washington Post*, July 19, 2023; Jared Malsin and Laurence Norman, "Russian Drone Strikes Target Ukraine Grain Export Ports, Infrastructure," *Wall Street Journal*, August 2, 2023.

⁴⁵ Matthew Mpoke Bigg and Joe Rennison, "Ships Bound for Ukraine Will Be Considered Hostile, Russia Says—Wheat Prices Spike After Russia Raises Tensions in the Black Sea," *The New York Times*, July 26, 2023.

House National Security Council spokesman Adam Hodge stated, “Our information indicates that Russia laid additional sea mines in the approaches to Ukrainian ports.... We believe that this is a coordinated effort to justify any attacks against civilian ships in the Black Sea and lay blame on Ukraine for these attacks.”⁴⁶

Russian occupation of key energy locations continues to cause concern due to the potentially grave effects of improper supervision. The International Atomic Energy Agency (IAEA) remains “very concerned” by the Russian military’s occupation and supervision of the Zaporizhia Nuclear Power Plant, the largest nuclear plant in Europe.⁴⁷ Some analysts argue that attacks on nuclear power plants could be considered a war crime under international law.⁴⁸ On June 6, 2023, the Kakhovka dam on the Dnipro River in southern Ukraine failed, flooding areas in the Kherson region and causing widespread humanitarian and ecological damage. Both Ukraine and Russia accused the other of destroying the dam, but U.S. officials were reportedly unable to determine the exact cause.⁴⁹

Russian Leadership Complicity

In some instances, alleged war crimes appear to be random acts by individual soldiers or units. In others, they appear to be part of a systemic and organized application of violence with links to higher-level Russian authorities.⁵⁰ Some crimes, including the targeting of civilian infrastructure, treatment of POWs, and the abduction of children, are possible only with the direction and knowledge of the Russian military and political leadership. The State Department has stated that “the United States has information that officials from Russia’s presidential administration are overseeing and coordinating filtration operations. We are further aware that Russian presidential administration officials are providing lists of Ukrainians targeted for filtration.”⁵¹

Russian authorities deny accusations of war crimes, often labelling evidence as “fabricated” and even awarding honors to units accused of crimes.⁵² To date, Russian authorities have appeared

⁴⁶ Associated Press, “White House Says Russia is Preparing for Attacks on Civilian Ships in Black Sea,” July 19, 2023.

⁴⁷ “IAEA ‘Very Concerned’ Over Nuclear Plant’s Safety as Ukraine Counterattacks - Grossi,” Reuters, June 13, 2023.

⁴⁸ For more information, see CRS Insight IN11883, *Russian Military Actions at Ukraine’s Nuclear Power Plants*, by Mark Holt and Mary Beth D. Nikitin; George M. Moore, “How International Law Applies to Attacks on Nuclear and Associated Facilities in Ukraine,” *Bulletin of the Atomic Scientists*, March 6, 2022; Reuters, “IAEA ‘Very Concerned’ Over Nuclear Plant’s Safety As Ukraine Counterattacks,” June 13, 2023.

⁴⁹ Nandita Bose and Andrea Shalal, “US Cannot Conclusively Determine Cause of Ukrainian Dam Destruction,” Reuters, June 6, 2023; Edith M. Lederer, “UN Aid Chief Says Ukraine Faces ‘Hugely Worse’ Humanitarian Situation After the Dam Rupture,” Associated Press, June 9, 2023.

⁵⁰ For example, the U.S. State Department has identified Russia’s 76th Guards Air Assault Division, its subordinate 234th Guards Air Assault Regiment, and the 64th Separate Motorized Rifle Brigade as involved in war crimes in Bucha. U.S. State Department, “Targeting Russia’s War Machine, Sanctions Evaders, Military Units Credibly Implicated in Human Rights Abuses, and Russian Federation Officials Involved in Suppression of Dissent,” fact sheet, June 28, 2022; Erika Kinetz, “‘Kill Everyone’: Russian Violence in Ukraine Was Strategic,” Associated Press, October 27, 2022.

⁵¹ U.S. Department of State, “Department Press Briefing,” September 7, 2022. Also see U.S. State Department, “Accountability for War Crimes and Other Atrocities in Ukraine: Recent Reporting and the Commitment of Additional Funding,” press release, August 25, 2022. For more on Russia’s Presidential Administration, see CRS Report R46761, *Russia: Foreign Policy and U.S. Relations*, by Andrew S. Bowen and Cory Welt, pp. 3-4.

⁵² RFE/RL, “Russian Brigade Accused of Bucha War Crimes Awarded Honorary Title,” April 18, 2022; Jade McGlynn and Ian Garner, “Russia’s War Crime Denials Are Fuel for More Atrocities,” *Foreign Policy*, April 23, 2022; Francesca Ebel, “Putin Admits Attacks on Civilian Infrastructure, Asking: Who Started It?” *Washington Post*, December 8, 2022.

unwilling to take steps to stop further atrocities or to hold those accused of violations accountable, including refusing to communicate with the ICII.⁵³

Criminal Accountability for Atrocities and Aggression in the Ukraine Conflict

Prohibitions and Criminalization of Certain Conduct in Armed Conflict

Countries engaging in armed conflict are constrained by international law designed to prohibit certain harmful actions and to require the preservation and protection of those people and objects that should not be targeted during war. Multilateral conventions, including the Geneva Conventions of 1949, require the prevention and punishment of actions in violation of the law of armed conflict, and international criminal tribunals such as the ICC, established by treaty, operate to investigate and prosecute individuals for atrocities committed during or related to armed conflict.

Law of Armed Conflict

The unlimited and unregulated use of force in armed conflict can cause undue suffering amongst civilians and combatants alike, and severe violations of human rights and other mistreatment often increase during conflict, especially at the hands of military personnel. International Humanitarian Law (IHL), also known as *jus in bello*, is intended to limit harm and suffering caused by parties to an armed conflict. IHL does not aim to prevent or criminalize armed conflict, nor does it prohibit the use of force to defeat an enemy in war. The basic principles of IHL include (1) the distinction between civilians and combatants; (2) the prohibition of attack on those not participating in armed conflict (*hors de combat*); (3) the prohibition against infliction of unnecessary suffering; (4) the principle of necessity, which permits military action only when necessary to weaken the military capacity of an enemy; and (5) the principle of proportionality, which prohibits military action that will cause injury or death to civilians or damage to civilian objects that is excessive in relation to the military advantage gained.⁵⁴

The foundational sources of modern IHL are the four Geneva Conventions of 1949, which provide protections for sick, wounded, and shipwrecked military personnel, prisoners of war, and civilians in armed conflict, as well as the three 1977 Additional Protocols to the conventions.⁵⁵ Both Russia and Ukraine are states parties to the Geneva Conventions and Additional Protocol I. Numerous other treaties, including certain 1907 Hague Conventions concerning the method and means of warfare and other conventions regulating certain weaponry, as well as customary international law, also inform IHL.⁵⁶ Certain IHL treaties are in some cases themselves considered

⁵³ “The Commission regrets that all communications addressed to the Russian Federation remain unanswered.” UNHRC, “Oral Update of the Independent International Commission of Inquiry on Ukraine,” September 25, 2023.

⁵⁴ See International Committee of the Red Cross, *Fundamentals of IHL*, at https://casebook.icrc.org/law/fundamentals-ihl#d_iii.

⁵⁵ See International Committee of the Red Cross, *The Geneva Conventions of 1949 and their Additional Protocols*, October 29, 2010, at <https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>.

⁵⁶ See International Committee of the Red Cross, *Treaties, States Parties and Commentaries*, at <https://ihl-databases.icrc.org/ihl>.

restatements of customary international law, meaning their provisions might be considered obligations binding all states, including non-states parties. Among other things, IHL

- prohibits attacks on civilians and threats designed to terrorize the civilian population;
- prohibits murder, use of human shields, torture, cruel or degrading treatment, mutilation or medical experimentation, rape and other sexual violence, forced labor, hostage-taking, disappearance, collective punishment, and forced displacement;
- prohibits attacks on civilian objects, including dwellings, schools, hospitals, places of worship, and so forth;
- prohibits attacks or rendering useless objects indispensable to the civilian population's survival;
- prohibits the use of starvation and protects civilian access to humanitarian relief;
- prohibits the destruction or pillage of the private property of an adversary;
- prohibits attacks on anyone who is (1) captured by an adverse party, (2) defenseless as a result of wounds or other condition, or (3) clearly indicating the intention to surrender;
- protects medical personnel, units, facilities, and transport, as well as religious personnel, humanitarian relief personnel, and U.N.-sanctioned peacekeeping personnel, from attack;
- prohibits indiscriminate attacks, in which no distinction is made between combatants and civilians, including use of methods and weapons of warfare that do not permit sufficient distinction, such as bombardment of cities that destroy urban or other settled areas rather than discrete military objectives;
- prohibits the use of weapons that by nature cause superfluous injury or unnecessary suffering;
- protects cultural property, including culturally important buildings, from attack;
- prohibits methods or means of warfare intended to cause severe and long-term damage to the natural environment; and
- prohibits transfer of a conflict party's population into the territory of another conflict party, or territory occupied by another conflict party.⁵⁷

The Geneva Conventions also require states parties to take necessary action to prosecute or extradite for prosecution individuals who commit grave breaches of the Conventions, known as war crimes.⁵⁸

Prohibition on Crimes Against Humanity

First prosecuted in the criminal cases against German, Japanese, and other Axis-power officials after World War II, crimes against humanity have been prohibited through the development of customary international law, including by falling under the jurisdiction of several international criminal tribunals, including the International Criminal Court (ICC). Crimes against humanity

⁵⁷ International Committee of the Red Cross, *IHL Database: Customary IHL*, at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul.

⁵⁸ Geneva Convention I of 1949, Articles 49-50; Geneva Convention II of 1949, Articles 50-51; Geneva Convention III of 1949, Articles 129-130; Geneva Convention IV of 1949, Articles 146-147.

comprise any “widespread or systematic attack directed against any civilian population,” and include the use of murder or extermination, sexual violence, torture, forced deportation, forced disappearance, and other mistreatment.⁵⁹ Unlike war crimes and genocide, no comprehensive multilateral convention for crimes against humanity has come into force, although such a treaty is currently being developed under the auspices of the U.N. General Assembly.⁶⁰ Crimes against humanity are nevertheless generally recognized as a “peremptory norm” or *jus cogens*, meaning that all states are obligated to prevent and punish the crime.⁶¹ Unlike war crimes, crimes against humanity can be committed outside the context of armed conflict.

Prohibition on Genocide

Shortly after World War II, the international community concluded the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Both Russia and Ukraine became parties to the Convention in 1954. The convention defines genocide as “acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group,” and requires states parties to prevent the commission of genocide, as well as to prosecute perpetrators of genocide before “a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.”⁶² Like crimes against humanity, genocide can be committed without the existence of a related armed conflict.

Prohibition on Aggressive War

The crime of aggression, which prohibits the unlawful decision of one state to use force against another state, has been developed through intermittent international decision-making and practice. In October 1945, the United Nations (U.N.) Charter entered into force, establishing the United Nations and enshrining certain principles of international peace and security as obligations under the treaty. Article 2(4) of the U.N. Charter expressly prohibits 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 U.N. General Assembly adopted a formal definition of aggression in 1974, incorporating the language of Article 2(4) and enumerating several examples of aggression.⁶³ This definition applied to state responsibility rather than individual criminal accountability.

International criminal tribunals have defined the crime of aggression. In 1945, the Allied powers established two international criminal tribunals⁶⁴ to prosecute Axis-power officials for, among other offences, “crimes against peace,” defined as 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.”⁶⁵ The Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC) agreed in 2010 to a definition of the crime of aggression, which involves the “use of armed force

⁵⁹ See Rome Statute of the International Criminal Court, Article 7(1).

⁶⁰ Global Justice Center, *Factsheet: Moving Towards a Treaty on Crimes Against Humanity*, April 2023.

⁶¹ See M. Cherif Bassiouni, “International Crimes: ‘Jus Cogens’ and ‘Obligatio Erga Omnes,’” *Law and Contemporary Problems*, vol. 59, no. 4 (Autumn 1996).

⁶² Convention on the Prevention and Punishment of the Crime of Genocide arts II & VI, December 9, 1948.

⁶³ U.N. General Assembly Resolution 3314 (XXIX), December 14, 1974, A/RES/3314.

⁶⁴ These were the International Military Tribunal at Nuremberg (IMT), to investigate and prosecute German officials, and the International Military Tribunal for the Far East (IMTFE), which prosecuted Japanese officials.

⁶⁵ Charter of the International Military Tribunal, Article 6(a).

by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations,” “by a person in a position effectively to exercise control over or to direct the political or military action of a State.”⁶⁶

Avenues for Prosecuting War Crimes, Other Atrocities, and Aggression

Based on the prohibitions and criminalization of war crimes, crimes against humanity, genocide (together, referred to as “atrocities crimes”), and aggression (together with the atrocities crimes, “core international crimes”), states have created avenues to prosecute perpetrators of these crimes through both national and international justice systems. Each of these avenues is available to address accountability for alleged atrocities in the Ukraine conflict, and some are already being utilized (see “Accountability Efforts in the Ukraine Conflict,” below).

National Justice Systems

The national justice system of a state can prosecute these crimes, usually when such crimes occur on the territory of or are perpetrated by a national of that state. Such prosecutions might be unavailable if a state has not enacted provisions in its criminal code to precisely prosecute these crimes. Certain states have increasingly prosecuted these crimes under provisions in national criminal codes exercising “universal jurisdiction” over core international crimes, meaning any competent court or tribunal can try a person for the crime, even if the crime and the alleged perpetrator have no specific connection to the country where the court is situated.⁶⁷

International Criminal Court

The ICC, as a permanent international court, has limited jurisdiction to prosecute individuals for these crimes.⁶⁸ Cases may be referred to the ICC by states parties or by the U.N. Security Council, and the ICC Prosecutor may, on the Prosecutor’s own initiative, request authorization to investigate possible ICC crimes. The ICC was created upon entry into force of the Rome Statute of the International Criminal Court (the Rome Statute), on July 1, 2002. There are 123 states parties, but this number does not include Russia, Ukraine, or the United States.⁶⁹ The ICC can investigate and prosecute atrocity crimes committed on the territory or by the nationals of a state that has submitted to its jurisdiction, including nonparty states that submit ad hoc declarations of acceptance of ICC jurisdiction. ICC jurisdiction over the crime of aggression, however, is limited to states that have specifically agreed to its aggression provisions. The ICC is a so-called “court of last resort,” and therefore can exercise jurisdiction only when competent national judicial authorities either cannot or will not investigate and prosecute alleged atrocities, under the principle of “complementarity.”

⁶⁶ Rome Statute of the International Criminal Court, Article 8*bis*(1), (2).

⁶⁷ See International Committee of the Red Cross, *Rules of Customary International Humanitarian Law* (Rule 157. Jurisdiction over War Crimes), at <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule157>.

⁶⁸ See the **Appendix**, “Crimes Within the Jurisdiction of the International Criminal Court.”

⁶⁹ Assembly of States Parties to the Rome Statute, *The States Parties to the Rome Statute*, at <https://asp.icc-cpi.int/states-parties>.

Ad Hoc or Hybrid Tribunals

The U.N. Security Council has twice established ad hoc international criminal tribunals to investigate and prosecute atrocity crimes under international humanitarian law.⁷⁰ Ad hoc international tribunals base their legitimacy on the recognition of the international nature of certain crimes and the imprimatur of the international community. In addition, so-called “hybrid” criminal tribunals have been established to investigate and prosecute atrocity crimes. Hybrid tribunals possess both a national and international character, established by agreement between a state and an international organization to jointly undertake a specified judicial process for accountability. National legislation often supports or directly authorizes the operation of these tribunals.⁷¹

Accountability Efforts in the Ukraine Conflict

A multitude of actors and lines of effort have emerged to report, investigate, and prosecute atrocities and aggression in the Ukraine conflict. Ukraine’s prosecutors and justice system are leading the way with a number of cases already tried, and other countries are conducting their own investigations. The Prosecutor of the ICC has opened a formal investigation into the situation in Ukraine. International consultations are ongoing to establish a special international tribunal for the crime of aggression against Ukraine. A number of international organizations, including the United Nations and the European Union, have instituted investigative initiatives to observe and report evidence of atrocity crimes in Ukraine. The United States, with its allies and partners, is working with the Ukraine Office of the Prosecutor General (OPG) to provide resources and coordinate efforts for accountability.⁷²

Ukrainian and Other Countries’ Criminal Investigations and Prosecutions

Ukraine is investigating atrocity crimes committed on its territory, with the OPG reportedly documenting tens of thousands of alleged atrocity crimes.⁷³ Ukraine’s domestic law criminalizes war crimes and the crime of aggression, among other related crimes. The OPG has approximately 200 prosecutors working on war crimes and related crimes, including teams dedicated to investigating and prosecuting overall alleged crimes of aggression and genocide.⁷⁴ Other teams are tasked with prosecuting certain major war crimes incidents, such as the destruction of the Kakhovka dam in Southern Ukraine, which is now the focus of a case involving the crime of

⁷⁰ The U.N. Security Council by resolution established the International Criminal Tribunal for Rwanda (ICTR) in response to the genocide perpetrated against the Tutsi in that country in 1994. It also by resolution established the International Criminal Tribunal for the former Yugoslavia (ICTY) in response to atrocities committed during armed conflicts that erupted after the breakup of Yugoslavia in the 1990s.

⁷¹ Some hybrid tribunals, such as the Special Court for Sierra Leone and the Special Tribunal for Lebanon, have been established with the approval of U.N. Security Council resolutions. The Extraordinary Chambers in the Courts of Cambodia (ECCC), however, were established by agreement between Cambodia and the U.N. Secretary-General, and approved by a resolution of the U.N. General Assembly. U.N. General Assembly Resolution 57/228B, *Khmer Rouge Trials*, A/RES/57/228B (2003). The Kosovo Specialist Chambers were created as a hybrid judicial section of the Kosovo national courts by agreement between Kosovo and the EU. See Republic of Kosovo, Law 04/L-274, on ratification of the international agreement between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo, at https://www.scp-ks.org/sites/default/files/public/04-l-274_a.pdf.

⁷² Department of State, “Supporting Justice and Accountability in Ukraine,” fact sheet, February 18, 2023.

⁷³ Website of the Office of the Prosecutor General of Ukraine, at <https://gp.gov.ua/>; Lauren Baillie, *Ukraine: Justice for War Crimes Must Begin with Evidence*, United States Institute of Peace, April 7, 2022; Valerie Hopkins, “Investigators of War Crimes in Ukraine Face Formidable Challenges,” *The New York Times*, July 3, 2022.

⁷⁴ Franck Petit, “Yuriy Belousov: ‘We Can’t Lose Ukraine’s Legal Battle,’” JusticeInfo.net, July 11, 2023.

“ecocide” under the Ukrainian criminal code and alleging Russian “use of means of warfare likely to cause ‘widespread, long-term and severe’ damage to the environment.”⁷⁵

Several commentators have discussed the difficulty of conducting war crimes trials against enemy soldiers while a conflict is ongoing. However, these commentators have remarked that such trials are not contrary to international humanitarian law and that Ukraine’s legal system has so far exhibited the ability to operate for the most part effectively and transparently during these trials.⁷⁶ Reports have stated that it seems that defendants have effective recourse to appeals of verdicts, both in Ukraine and before the European Court of Human Rights.⁷⁷ The OPG has prosecuted a small number of these alleged crimes and has secured a number of convictions; given ongoing armed conflict, Ukraine has apprehended a fraction of the alleged perpetrators.⁷⁸ A handful of trials have been in absentia proceedings, meaning the accused was not present at trial. Many convicted Russian soldiers have been released and sent back to Russia as part of prisoner-of-war exchanges.⁷⁹ In addition to its war crimes investigations, Ukraine is investigating a large number of Russian military officers and government officials to whom personal immunity from foreign prosecution arguably does not attach, including high-ranking executive officers such as Defense Minister Sergei Shoigu and members of the Russian Federation Council and State Duma, for the crimes of aggressive war against Ukraine and violating the territorial integrity of Ukraine.⁸⁰

Several countries have opened their own investigations under provisions in their respective criminal codes incorporating the concept of universal jurisdiction, which holds that any state possesses jurisdiction to prosecute atrocity crimes, no matter where they occur.⁸¹ Since the first weeks of Russia’s February 2022 invasion of Ukraine, some Eastern European countries, including Lithuania, Latvia, Estonia, Poland, Romania, and Slovakia, have opened various criminal investigations for war crimes, crimes against humanity, and aggression. Some Western European countries, including Germany, Sweden, Spain, and Switzerland, as well as Canada, also have undertaken investigations within their national justice systems.⁸²

⁷⁵ Franck Petit, “Kakhovka Dam: Ukraine Pioneers Prosecution for Ecocide,” JusticeInfo.net, July 10, 2023.

⁷⁶ See, for example, Sergei Vasiliev, “The Reckoning for War Crimes in Ukraine Has Begun,” *Foreign Policy*, June 17, 2022; Céline Bardet, *Ukraine: The Risk of Judging War Crimes During War*, Justiceinfo.net, May 30, 2022; Masha Gessen, “The Prosecution of Russian War Crimes in Ukraine,” August 1, 2022.

⁷⁷ One of the verdicts against a Russian soldier that had been criticized was later overturned in part by a Ukrainian appeals court. Vadim Shishmarin’s conviction was reduced on appeal from life imprisonment to 15 years. See Kai Ambos, “Ukrainian Prosecution of ICC Statute Crimes: Fair, Independent and Impartial?,” *EJIL: Talk!*, June 10, 2022; Dan Bilefsky, “A Ukrainian Appeals Court Reduces the Life Sentence of a Russian Soldier Tried for War Crimes,” *The New York Times*, July 29, 2022.

⁷⁸ Justiceinfo.net, *Map of War Crimes Trials in Ukraine*, December 6, 2022, at <https://www.justiceinfo.net/en/109654-map-of-war-crimes-trials-in-ukraine.html>.

⁷⁹ Irina Saliu, *Ukraine: Four Russian Soldiers Convicted for Torture*, Justiceinfo.net, January 23, 2023, at <https://www.justiceinfo.net/en/111468-ukraine-four-russian-soldiers-convicted-for-torture.html>. Reportedly, these convictions were the result of guilty pleas in which the defendants already knew that they would be exchanged after conviction.

⁸⁰ Ukraine Office of the Prosecutor General, *List of Suspects in the Main Case of “24th February,”* at <https://gp.gov.ua>.

⁸¹ Christopher Miller, “Ukraine’s Zelenskyy fires top spy chief and prosecutor general,” *Politico*, July 17, 2022. According to Yuriy Belousov, head of the War Crimes Department in the Office of the Prosecutor General of Ukraine, 24 total foreign countries have begun investigations of alleged war crimes in Ukraine. Franck Petit, “Yuriy Belousov: ‘We Can’t Lose Ukraine’s Legal Battle,’” JusticeInfo.net, July 11, 2023.

⁸² See Julia Crawford and Thierry Cruvellier, *Ukraine Responds to Warfare with “Lawfare,”* JusticeInfo.net, March 25, 2022, at <https://www.justiceinfo.net/en/89266-ukraine-responds-to-warfare-with-lawfare.html>.

ICC Investigation into the Situation in Ukraine

Ukraine is not a state party to the Rome Statute, the convention that established the ICC, but it has submitted two ad hoc declarations accepting the ICC's jurisdiction lodged in 2014 and 2015. The second ad hoc declaration is open-ended and therefore would encompass the current war in Ukraine.⁸³ On February 28, 2022, ICC Prosecutor Karim A.A. Khan announced that he would seek to open a formal investigation into the situation in Ukraine, which has been the subject of a preliminary examination since 2014. The ICC Prosecutor stated that he is required to ask the ICC Pre-Trial Chamber for approval to open this investigation, but he made clear that he would welcome a referral from one of the states parties to the Rome Statute, as it would allow him to bypass application to the Pre-Trial Chamber.⁸⁴ On March 2, 2022, the ICC Prosecutor confirmed that 39 states parties had referred the situation in Ukraine to his office, and that he had commenced a formal investigation.⁸⁵

This investigation cannot result in indictments for the crime of aggression, however. Under amendments to the Rome Statute that added the crime to the ICC's jurisdiction, a state must affirmatively submit to the ICC's aggression jurisdiction in order for its nationals to be tried for the crime, something neither Russia nor Ukraine has done. Due to this limitation, there have been calls for the creation of a standalone tribunal to prosecute Russian officials for aggression.⁸⁶

The ICC Office of the Prosecutor (OTP) has positioned dozens of personnel in Ukraine since March 2022 and has concluded an agreement with Ukraine to open an ICC country office in Ukraine.⁸⁷ The OTP is coordinating with Ukrainian and international justice efforts. On March 17, 2023, the ICC announced that warrants had been issued for the arrest of Russian officials President Vladimir Putin and Commissioner for Children's Rights Maria Lvova-Belova.⁸⁸ Based on the application of the ICC Prosecutor, an ICC Pre-Trial Chamber found "reasonable grounds to believe" that the two suspects are responsible for the war crime of unlawful deportation of Ukrainian children from occupied territory in Ukraine to Russia.⁸⁹ Khan stated that his office

⁸³ Minister of Foreign Affairs of Ukraine Pavlo Klimkin, "Ad hoc Declaration of Ukraine's Acceptance of International Criminal Court Jurisdiction Over the Situation in Ukraine Since February 20, 2014," September 8, 2015, at https://www.icc-cpi.int/sites/default/files/iccdocs/other/Ukraine_Art_12-3_declaration_08092015.pdf.

⁸⁴ ICC, "Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: 'I Have Decided to Proceed with Opening an Investigation,'" February 28, 2022.

⁸⁵ ICC, "Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation," March 2, 2022. Two more states later added their referrals, bringing the total to 41. ICC, "Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Additional Referrals from Japan and North Macedonia; Contact Portal Launched for Provision of Information," March 11, 2022.

⁸⁶ See, for example, Parliamentary Assembly of the Council of Europe, "PACE Calls for the Setting up of an ad hoc International Criminal Tribunal to Hold to Account Perpetrators of the Crime of Aggression Against Ukraine," April 28, 2022; "In Brussels, Ukraine Seeks Backing for Special War Crimes Tribunal," Reuters, September 5, 2022. See "Possible Establishment of a Special Tribunal to Prosecute the Crime of Aggression Against Ukraine" below.

⁸⁷ ICC, *ICC Prosecutor Karim A. A. Khan KC Concludes Fourth Visit to Ukraine: "Amidst This Darkness, the Light of Justice is Emerging,"* March 7, 2023, at <https://www.icc-cpi.int/news/icc-prosecutor-karim-khan-kc-concludes-fourth-visit-ukraine-amidst-darkness-light-justice>.

⁸⁸ ICC, *Situation in Ukraine: ICC Judges Issue Arrest Warrants Against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova*, March 17, 2023.

⁸⁹ Under the Rome Statute, states parties must take action to apprehend individuals under ICC arrest warrants. Rome Statute of the International Criminal Court, Article 59. This requirement might have been put to a test if President Putin had decided to travel to South Africa, a party to the Rome Statute, for the BRICS Summit in August 2023. See "BRICS Summit to be 'Physical' Despite Putin Warrant: S. Africa," *Agence France-Presse*, July 9, 2023. South African President Cyril Ramaphosa reportedly requested permission not to arrest Putin under Article 97 of the Rome Statute, (continued...)

continues to investigate alleged atrocity crimes in Ukraine and would “submit further applications for warrants of arrest when the evidence requires us to do so.”⁹⁰

Determining Questions of Genocide in the Ukraine Conflict

Some Russian officials and other Russians have made repeated statements denying the existence of Ukraine as a legitimate sovereign state with a distinct Ukrainian people and culture, and have called for or suggested that all or part of the Ukrainian population must be eliminated, removed, or reeducated in some way.⁹¹ These statements, coupled with reported widespread Russian military attacks on and mistreatment of the Ukrainian civilian population, have led to discussion about whether Russian officials are committing not only war crimes and crimes against humanity, but also genocide. A person is subject to individual criminal responsibility generally for crimes under ICC jurisdiction if that person commits, orders, solicits, induces, assists, or contributes to the commission of such crimes, and specifically for genocide if that person directly and publicly incites others to commit genocide.⁹²

Genocide is typically a more difficult crime to prosecute than war crimes and crimes against humanity, because proving the crime of genocide requires showing special intent: the alleged perpetrator must be shown to have attempted to carry out atrocities described in the definition of genocide, as well as to have taken those actions with the specific intent of destroying a protected group. Evidence of genocidal intent and evidence of genocidal actions might exist alongside each other, but they must be connected to show that specific intent produced that specific pattern of behavior. Genocide’s narrow and specific definition means that many horrific atrocities fail to meet the legal standard for genocide. Since the ICC’s establishment in 2002, one case has included a charge of genocide.⁹³

In the context of Russia’s war against Ukraine, the Russian military has been accused of many actions that might fall within the definition of genocide, including the forcible transfer of Ukrainian children to Russia. Putin’s statements and the statements of other Russian officials have been characterized by some observers as reflecting genocidal intent and planning.⁹⁴ News and opinion in Russian state-run media, which might be expected to include only government-approved information, have published statements that call for “liquidation,” “concentration camps,” and “reeducation” of the Ukrainian population, including children. These statements, if describing Russian military and government behavior, could be considered evidence of the intent to commit genocide in Ukraine.⁹⁵ To convict an individual of genocide, prosecutors must show that these statements are linked to specific decisions made with genocidal intent leading directly to genocidal actions against the Ukrainian population.

U.S. Actions Related to the ICC’s Ukraine Investigation

The U.S. government has expressed support for Ukrainian and international efforts to investigate and prosecute atrocity crimes committed during the conflict in Ukraine, including the ICC’s investigation. President Biden has stated that the ICC’s issuance of the Putin warrant was “justified,” while at the same time noting U.S. opposition to the exercise of ICC jurisdiction over

which allows states parties to claim problems preventing execution of a request from the ICC. Carien du Plessis, “South Africa Asks ICC to Exempt it from Putin Arrest to Avoid War with Russia,” Reuters, July 18, 2023. South Africa later announced that Putin would not attend the BRICS summit. Nomsa Maseko and Kathryn Armstrong, “Putin Will Not Attend Brics Summit - South African Presidency,” *BBC News*, July 19, 2023.

⁹⁰ ICC, *Statement by Prosecutor Karim A. A. Khan KC on the Issuance of Arrest Warrants Against President Vladimir Putin and Ms Maria Lvova-Belova*, March 17, 2023. Ukraine is reportedly cooperating closely with the ICC, as well as other countries, and has indicated that it welcomes decisions of the ICC Prosecutor to prosecute certain cases and is willing to suspend its own prosecutions in those cases. Petit, “Yuriy Belousov: ‘We Can’t Lose Ukraine’s Legal Battle.’”

⁹¹ See Clara Apt, “Russia’s Eliminationist Rhetoric Against Ukraine: A Collection,” *Just Security*, September 13, 2023.

⁹² Rome Statute, Article 25(3)(a)-(e).

⁹³ See International Criminal Court, *Al Bashir Case*, at <https://www.icc-cpi.int/darfur/albashir>.

⁹⁴ See Jonathan Leader Maynard, “Is Genocide Occurring in Ukraine? An Expert Explainer on Indicators and Assessments,” *Just Security*, April 6, 2022; U.S. Congress, Senate Committee on Foreign Relations, *U.S. Efforts to Support Ukraine Against Russian Aggression*, 117th Cong., 2nd sess., May 12, 2022 (testimony of U.S. Ambassador-at-Large for Global Criminal Justice Beth Van Schaack).

⁹⁵ See Clara Apt, “Russia’s Eliminationist Rhetoric Against Ukraine: A Collection,” *Just Security*, February 14, 2023.

nonparty state nationals.⁹⁶ In hearing testimony, Secretary of State Antony Blinken said that states that are party to the Rome Statute (the treaty that established the ICC) should comply with their obligations to arrest Putin on their territory.⁹⁷ U.S. assistance for Ukraine accountability efforts has included diplomatic support in bilateral meetings and international fora for the ICC's efforts, as well as funding for parallel evidence gathering and law enforcement cooperation efforts that might benefit ICC investigations and prosecutions regarding the situation in Ukraine.

The United States is not party to the Rome Statute, and since the ICC's inception, U.S. law and policy has limited U.S. support for ICC investigations and prosecutions generally. The American Servicemembers' Protection Act of 2002 (ASPA; Title II of P.L. 107-206) is designed to protect members of the U.S. armed forces and certain other persons from ICC prosecution, as well as detention or imprisonment arising therefrom. It prohibits most U.S. government cooperation with the ICC, restricts U.S. participation in certain U.N. peacekeeping operations due to possible ICC prosecution, and authorizes the President to free members of the U.S. armed forces and other individuals detained or imprisoned by or on behalf of the ICC.⁹⁸ ASPA also provides limited authority for the President to waive certain restrictions on assistance to the ICC, as well as exceptions to such prohibitions, including the provision known as the Dodd Amendment, which states that nothing in the act prohibits the United States from providing assistance to international accountability efforts.⁹⁹ In general, the executive branch has interpreted the law to allow U.S. support for the ICC on a case-by-case basis, when investigations do not involve U.S. or allied persons, and when it is in the foreign policy and national security interest of the United States.¹⁰⁰

At the end of 2022, the 117th Congress amended ASPA and related provisions in order to increase the availability of certain U.S. support to accountability efforts, including those of the ICC. These amendments empowered the United States to provide "assistance to the International Criminal Court to assist with investigations and prosecutions of foreign nationals related to the Situation in Ukraine, including to support victims and witnesses," and limited the application of existing ICC funding prohibitions in U.S. law. The changes also created an exception to ASPA's ban on ICC officials conducting any investigative or prosecutorial work in the United States for work related to "foreign persons for crimes within the jurisdiction of the International Criminal Court related to the Situation in Ukraine."¹⁰¹

Despite this general support from Congress and the Biden Administration for the ICC's accountability efforts in Ukraine, overall U.S. policy toward the ICC remains limited due to ongoing concerns about the possibility of prosecutions of U.S. military personnel and officials.

⁹⁶ Jeff Mason and Simon Lewis, "Biden says Putin committed war crimes, calls charges justified," Reuters, March 18, 2023.

⁹⁷ U.S. Congress, Senate Appropriations Subcommittee on State, Foreign Operations and Related Programs, hearing on fiscal year 2024 budget request for the State Department, 118th Cong., 1st sess., March 22, 2023 (testimony of Secretary of State Antony Blinken).

⁹⁸ Sections 2004-2006 of the American Servicemembers' Protection Act of 2002 (ASPA; Title II of P.L. 107-206; 22 U.S.C. §§7423-7425). Congress previously enacted two provisions that prohibited funding support to the ICC until the United States had become a party to the Rome Statute through Senate consent to ratification, as well as the use of funds for extradition of U.S. citizens to a foreign country that is obligated to surrender persons to the ICC. Sections 705 and 706 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (Division A of H.R. 3427 [106th Cong.], enacted as Appendix G by Section 1000(a)(7) of Division B of P.L. 106-113; 113 Stat. 1501A-460-61).

⁹⁹ Section 2015 of ASPA (22 U.S.C. §7433).

¹⁰⁰ See American Society of International Law, *ASIL Task Force on Policy Options for U.S. Engagement with the ICC*, April 2021.

¹⁰¹ Section 7073 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2023 (Division K of P.L. 117-328).

For example, in the Ukraine context, it has been reported that the Department of Defense has refused to consent to sharing with the ICC evidence of atrocity crimes gathered by U.S. intelligence agencies, to avoid “setting a precedent that might help pave the way for [the ICC] to prosecute Americans.”¹⁰² On March 24, 2023, a group of Senators sent a letter to President Biden to express their support for allowing such evidence to be shared with the ICC, stating that Congress’s recent amendments to U.S. law were designed to permit and encourage such assistance.¹⁰³ On July 26, 2023, it was reported that President Biden had overridden objections to evidence sharing with the ICC concerning atrocity crimes in Ukraine and ordered the release of such evidence to the ICC.¹⁰⁴

Possible Establishment of a Special Tribunal to Prosecute the Crime of Aggression Against Ukraine

Aggression, unlike the three atrocity crimes discussed above, refers to the *jus ad bellum*, regarding the legality of the initiation and continued use of armed force by a state against another state constituting a “manifest violation” of the U.N. Charter. The ICC cannot prosecute cases of aggression in the situation in Ukraine, because the court can exercise jurisdiction over aggression only when the accused is a national of a state party to the Rome Statute that has also specifically accepted the court’s jurisdiction over the crime of aggression.¹⁰⁵ Neither Russia nor Ukraine is such a state party. National justice systems could undertake aggression prosecutions, but immunity for heads of state and other high-ranking foreign officials (including Russian President Putin, Prime Minister Mikhail Mishustin, and Foreign Minister Sergei Lavrov) could protect them from prosecution in other countries.¹⁰⁶

Ukraine has thus called on the international community to establish a special international tribunal to prosecute the crime of aggression against Ukraine. Such a tribunal could be established in a similar fashion as other international criminal tribunals, through an international agreement between Ukraine and the Secretary-General of the United Nations.¹⁰⁷ The tribunal could be based on Ukraine’s national criminal jurisdiction or established by agreement of U.N. member states and the Secretary-General, creating an independent specialized international criminal tribunal, with either structure requiring the subsequent approval of the General Assembly by resolution. Ukraine has pushed for an international tribunal independent of the Ukrainian justice system, arguing that the international community must punish aggression crimes, and that such an independent tribunal would provide the greatest chance for accountability.¹⁰⁸ Some

¹⁰² Charlie Savage, “Pentagon Blocks Sharing Evidence of Possible Russian War Crimes With Hague Court,” *The New York Times*, March 8, 2023.

¹⁰³ See letter from Senator Richard J. Durbin et al. to President Joseph R. Biden, March 24, 2023. In July 2023, the Senate Appropriations Committee reported a bill to the full Senate that includes a provision stating that “the President shall provide information to the International Criminal Court to assist with investigations and prosecutions of foreign nationals related to the Situation in Ukraine.” Section 7049(c)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2024 (S. 2438 [118th Cong.]).

¹⁰⁴ Charlie Savage, “Biden Orders U.S. to Share Evidence of Russian War Crimes With Hague Court,” *The New York Times*, July 26, 2023.

¹⁰⁵ The ICC can hear cases of aggression for nationals of non-states parties if the relevant situation is referred to the Court by U.N. Security Council resolution. Because Russia can veto such Security Council resolutions, this avenue to aggression prosecutions is not available from a practical perspective.

¹⁰⁶ See International Crisis Group, *A New Court to Prosecute Russia’s Illegal War?*, March 29, 2023.

¹⁰⁷ Such an agreement established, for examples, the Special Court for Sierra Leone (SCSL) and the Extraordinary Chambers in the Courts of Cambodia (ECCC).

¹⁰⁸ Victoria Kim and Christopher F. Schuetze, “Zelensky addresses The Hague as he pushes for a special tribunal for Russia,” *The New York Times*, May 4, 2023.

observers have noted that under Ukrainian law, the creation of an “internationalized” tribunal in the Ukrainian justice system might be considered unconstitutional, as the constitution of Ukraine states, “The establishment of extraordinary and special courts shall not be permitted.”¹⁰⁹

It is unclear whether such a tribunal would enjoy widespread support in the international community overall. The tribunal would likely face significant challenges to ensuring accountability for such high-ranking individuals, other than by convicting in absentia, and some countries seem reluctant to create another standalone tribunal that might require expending resources but could produce few results regarding accountability. According to some observers, “Global South” countries have shown relatively little enthusiasm for the tribunal due to a perceived lack of consistency in prosecuting previous military invasions.¹¹⁰ There is also disagreement over whether the U.N. General Assembly, rather than the Security Council, is the only U.N. body that can effectively approve the establishment of an aggression tribunal.¹¹¹

Calls for the tribunal’s establishment, however, continue in the wake of the ICC’s war crimes warrants. Convened by the Ukraine Prosecutor General, a “Core Group” of 37 states, made up of mostly European Union and G7 states (including the United States), is meeting periodically to consider establishing a special aggression tribunal.¹¹² On March 27, 2023, Ambassador-at-Large for Global Criminal Justice Beth Van Schaack announced U.S. support for the creation of a tribunal to prosecute the crime of aggression in Ukraine that would be “rooted in Ukraine’s judicial system” but possess “significant international elements—in the form of substantive law, personnel, information sources, and structure.”¹¹³ The European Union, France, Poland, and the Baltic states publicly support the tribunal’s creation.¹¹⁴

On July 3, 2023, the European Union Agency for Criminal Justice Cooperation (Eurojust), with cooperation from multiple countries, including the United States, as well as the ICC, formally launched the International Centre for Prosecution of the Crime of Aggression (ICPA), located in The Hague.¹¹⁵ The ICPA is tasked with preserving and coordinating evidence of the crime of aggression allegedly perpetrated by Russian officials against Ukraine, and preparing for eventual criminal prosecutions. Ukrainian prosecutors have begun work at the ICPA with other countries, including Latvia, Estonia, Lithuania, and Poland, and are expected to detail personnel to the

¹⁰⁹ Constitution of Ukraine Article 125; see also Alexander Komarov and Oona Hathaway, “Ukraine’s Constitutional Constraints: How to Achieve Accountability for the Crime of Aggression,” *Just Security*, April 5, 2022.

¹¹⁰ See Ido Vock, “Putin on Trial,” *The New Statesman*, May 18, 2023.

¹¹¹ See, for example, Nick Schiffrin, “The roadblocks to holding Putin and his high command accountable for war crimes in Ukraine,” *PBS Newshour*, May 15, 2023. Russia’s veto power in the Security Council makes the tribunal’s establishment through Council resolution impractical.

¹¹² “Core Group of 37 states meets in Tallinn to advance work on Special Tribunal for Russia’s aggression,” *Interfax-Ukraine*, May 12, 2023.

¹¹³ See Ambassador-at-Large for Global Criminal Justice Beth Van Schaack, remarks at the Nuremberg Principles Meeting, March 27, 2023, at <https://www.state.gov/ambassador-van-schaacks-remarks/>.

¹¹⁴ See Masood Farivar, “Calls Grow for Tribunal for Russia’s ‘Crime of Aggression,’” *Voice of America*, February 21, 2023; Heather Ashby, Lauren Baillie, and Mary Glantz, *How the ICC’s Warrant for Putin Could Impact the Ukraine War*, U.S. Institute of Peace, March 23, 2023.

¹¹⁵ European Union, press release, *Ukraine: International Centre for the prosecution of Russia’s crime of aggression against Ukraine starts operations today*, July 3, 2023.

Centre.¹¹⁶ The United States has also pledged to detail a prosecutor to the ICPA.¹¹⁷ While the creation of the ICPA has been hailed as a significant step in holding those responsible for aggression accountable,¹¹⁸ its existence, unattached to any specific judicial forum, highlights the fact that no court currently can effectively exercise jurisdiction over the crime of aggression against Ukraine, and that no consensus in the international community exists as to the form of aggression tribunal to be established.

Other International Judicial Proceedings Related to the Ukraine Conflict

International Court of Justice. Often referred to as the “World Court,” the International Court of Justice (ICJ) was established alongside the United Nations and exercises jurisdiction over states and international organizations in a wide variety of international disputes.

Russia has claimed that Ukraine has committed genocide against Russian speakers in the Donetsk and Luhansk regions of Ukraine. Ukraine has filed an application to the ICJ under Article IX of the Genocide Convention to challenge Russia’s claims of genocide allegedly committed by Ukraine in Donetsk and Luhansk, claiming that Russia has distorted and misused the Convention’s provisions to justify its aggressive war against Ukraine.¹¹⁹ In a March 16, 2022, preliminary ruling, the ICJ ruled in favor of Ukraine’s request for “preliminary measures,” requiring, among other things, that Russia immediately suspend its military operations in Ukraine.¹²⁰ The ICJ permits states parties to intervene in cases involving interpretation of a convention to which an intervening state is party; several states parties, including the United States on September 7, 2022, have intervened in the Genocide Convention case brought by Ukraine.¹²¹

European Court of Human Rights. The European Court of Human Rights (ECtHR) was established in 1959 by the member states of the Council of Europe to deal with applications by states or individuals alleging violations of the European Convention on Human Rights (ECHR) of 1950.¹²² Like the ICJ, the ECtHR decides responsibility and compliance of states, not individuals. It is not a criminal court.

On February 28, 2022, Ukraine asked the ECtHR to take preliminary action requiring Russia to cease alleged human rights violations in connection with Russia’s invasion of Ukraine. On March 1, 2022, the ECtHR “indicated interim measures,” directing “the Government of Russia to refrain from military attacks against civilians and civilian objects.”¹²³ The ECtHR has already exercised jurisdiction over Russia and Ukraine regarding several other disputes, including a decision to indicate interim measures against Russia concerning Russia’s 2014 invasion and

¹¹⁶ Eurojust, *International Centre for the Prosecution of the Crime of Aggression Against Ukraine*, at <https://www.eurojust.europa.eu/international-centre-for-the-prosecution-of-the-crime-of-aggression-against-ukraine>; Margherita Capacci, “The ICPA, New Kid on the Block in the World Capital of International Justice,” JusticeInfo.net, July 7, 2023.

¹¹⁷ See Eurojust, “The Joint Investigation Team Garners Further Support for the ICPA and Agrees to Investigate Genocide Crimes in Ukraine,” press release, April 14, 2023.

¹¹⁸ See generally, Eurojust, “History in the Making – the International Centre for the Prosecution of the Crime of Aggression Against Ukraine Starts Operations at Eurojust,” press release, July 3, 2023.

¹¹⁹ Pursuant to Article IX of the Genocide Convention, a member state can bring a case in the ICJ against another member state concerning a dispute over the “interpretation, application, or fulfilment” of the convention’s provisions. Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, December 9, 1948.

¹²⁰ International Court of Justice, “Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Request for the indication of provisional measures,” Summary 2022/2, March 16, 2022.

¹²¹ *Declaration of Intervention Under Article 63 of the Statute Submitted by the United States of America in Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, September 7, 2022. The ICJ ruled on June 5, 2023, that the interventions of 32 states were admissible during the preliminary stage of the case but found the U.S. intervention to be inadmissible due to preexisting U.S. restrictions on ICJ jurisdiction. International Court of Justice, “The Court decides on the admissibility of the declarations of intervention,” press release, June 9, 2023.

¹²² The Council of Europe is a wholly separate and independent institution, and is not an organ of or to be confused with the European Union. See generally Council of Europe, *Who We Are*, at <https://www.coe.int/en/web/about-us/who-we-are>.

¹²³ European Court of Human Rights, “The European Court Grants Urgent Interim Measures in Application Concerning Russian Military Operations on Ukrainian Territory,” press release ECHR 068 (2022), March 1, 2022.

annexation of Crimea. Russia has been found liable for violations of the European Convention on Human Rights due to military action before, specifically in connection with its 2008 invasion of Georgia.¹²⁴

The Council of Europe decided to expel Russia from the ECHR on March 16, 2022, such expulsion taking effect on September 16, 2022. The ECtHR has ruled that the court retains jurisdiction over all applications involving Russia filed by that date, including Ukraine's cases related to Russia's invasion.¹²⁵ According to the ECtHR, 16,730 applications alleging Russia's violation of the ECHR remain pending before the court.¹²⁶

International Investigation and Coordination Efforts

Several international efforts are seeking to record, preserve, and investigate evidence of possible atrocity crimes committed in Ukraine. The OSCE, for example, created an expert monitoring and investigative mission in Ukraine in direct response to the current Russian invasion,¹²⁷ and has released reports documenting IHL violations in the conflict.¹²⁸ As a participating state, the United States has supported the OSCE's efforts in Ukraine since 2014, including this new investigative mandate and the related operations of the OSCE Office for Democratic Institutions and Human Rights (ODIHR). On March 4, 2022, the U.N. Human Rights Council adopted a resolution establishing the Independent International Commission of Inquiry on Ukraine.¹²⁹ The commission released a report in October 2022 that detailed war crimes and other violations of IHL and international human rights law that it found occurred during February and March 2022 in the areas of Ukraine that it has investigated.¹³⁰

Some countries have built law-enforcement and judicial-system capabilities to more robustly investigate and prosecute atrocity crimes. Ukraine, six EU countries (Lithuania, Poland, Estonia, Latvia, Slovakia, and Romania), and the ICC have established a Joint Investigative Team (JIT), coordinated through and supported by the European Union Agency for Criminal Justice

¹²⁴ *Ukraine v. Russia (II) (GC)*, Eur. Ct. H.R. 38263/08, January 21, 2021.

¹²⁵ Council of Europe, "Russia Ceases to be a Party to the European Convention on Human Rights on 16 September 2022," March 23, 2022, at <https://www.coe.int/en/web/portal/-/russia-ceases-to-be-a-party-to-the-european-convention-of-human-rights-on-16-september-2022>.

¹²⁶ European Court of Human Rights, "Latest Rulings by the European Court Set Out the Procedure for Future Processing of Applications Against Russia," press release, February 3, 2023.

¹²⁷ This mission was created by OSCE states under the so-called 1991 "Moscow Mechanism," which provides for the establishment of monitoring and fact-finding missions to OSCE member countries, including Russia and Ukraine, "to facilitate resolution of a particular question or problem relating to the human dimension of the CSCE." Adopted by OSCE in Moscow, 1991, available at <https://www.osce.org/files/f/documents/5/e/20066.pdf>.

¹²⁸ "Invocation of the OSCE Moscow Mechanism to Address Russia's Invasion of Ukraine: Joint Statement," speech by Canadian Ambassador Jocelyn Kinnear, March 3, 2022, at <https://www.gov.uk/government/speeches/invocation-of-the-osce-moscow-mechanism-to-address-russias-invasion-of-ukraine-joint-statement>; OSCE, *Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine Since 24 February 2022*, April 12, 2022; Organization for Security and Co-operation in Europe, *Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine (1 April – 25 June 2022)*, July 14, 2022; OSCE, *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.

¹²⁹ United Nations Human Rights Council, *List of HRC-mandated Commissions of Inquiries / Fact-Finding Missions & Other Bodies (as of March 2022)*, at <https://www.ohchr.org/EN/HRBodies/HRC/Pages/ListHRCMandat.aspx>; U.N. document, A/HRC/RES/40/1, Situation of human rights in the Ukraine stemming from the Russian Aggression, March 4, 2022. For more information on the role of the U.N. Human Rights Council in addressing human rights violations, see CRS Report RL33608, *The United Nations Human Rights Council: Background and Policy Issues*, by Luisa Blanchfield and Michael A. Weber.

¹³⁰ See Independent International Commission of Inquiry on Ukraine, *Report of the Independent International Commission of Inquiry on Ukraine*, A/77/533, October 18, 2022.

Cooperation (Eurojust), to coordinate investigative and prosecutorial efforts regarding alleged international crimes in Ukraine.¹³¹ On July 14, 2022, representatives of 45 countries convened the Ukraine Accountability Conference in The Hague with the purpose of ensuring that the multiple lines of investigation are coordinated and coherent.¹³² In February-March 2023, Eurojust, in coordination with Ukraine and other supporting countries, established the Core International Crimes Evidence Database (CICED) and announced the launch of the above-discussed ICPA. Both efforts are designated to collect and preserve evidence of atrocity and aggression crimes and to prepare for prosecutions in appropriate national and international fora.¹³³

U.S. Support for Accountability Efforts

Ambassador-at-Large for Global Criminal Justice Beth Van Schaack, the U.S. lead on atrocity crimes accountability efforts, stated before the U.N. Security Council in April 2022 that the United States supports both Ukraine's and the international community's accountability efforts. She explained that the United States has played a role in the creation of many of the international, multilateral mechanisms and actions to hold accountable those responsible for atrocity crimes in Ukraine, including the investigative mechanisms established by the OSCE and the U.N. Human Rights Council.¹³⁴ She noted in congressional testimony that the United States has voted in the U.N. Security Council and General Assembly to hold Russia accountable, supporting resolutions that demand an end to the conflict and the investigation and prosecution of atrocity crimes.¹³⁵

Congress has provided additional funding to facilitate U.S. efforts to ensure accountability for atrocity crimes in Ukraine, including a portion of supplemental international security assistance “to document and collect evidence of war crimes and crimes against humanity committed by the Government of the Russian Federation in Ukraine,”¹³⁶ and bilateral economic assistance to “promote accountability for Russian human rights violations” in Ukraine. Ambassador Van Schaack explained that the additional funding allows her office to coordinate sustained efforts to

document what we're seeing coming out of Ukraine in all sources, from open source investigations to our partners to intelligence sources and that we continue to subject that to rigorous analysis so that we have a full understanding of what is happening. And all of that

¹³¹ See Eurojust, *Eurojust and the war in Ukraine*, at <https://www.eurojust.europa.eu/eurojust-and-the-war-in-ukraine>; Mike Corder, “3 nations join international team probing Ukraine war crimes,” Associated Press, May 31, 2022. In September 2022, Eurojust and the ICC published guidelines for preserving usable evidence of core international crimes. International Criminal Court, “ICC Prosecutor and Eurojust Launch Practical Guidelines for Documenting and Preserving Information on International Crimes,” press release, September 21, 2022. The EU also operates the European Network for investigation and prosecution of genocide, crimes against humanity, and war crimes, providing legal assistance and best practices both within and outside the EU. See Eurojust, *Genocide Network*, at <https://www.eurojust.europa.eu/judicial-cooperation/practitioner-networks/genocide-network>.

¹³² Government of the Netherlands, *Ukraine Accountability Conference: a step towards justice*, <https://www.government.nl/latest/news/2022/07/14/ukraine-accountability-conference>.

¹³³ Eurojust, “International Centre for the Prosecution of the Crime of Aggression made official at United for Justice Conference in Ukraine,” press release, March 5, 2023; Eurojust, “Start of Operations of Core International Crimes Evidence Database and new International Centre for Prosecution of the Crime of Aggression to be Based at Agency,” press release, February 23, 2023.

¹³⁴ Ambassador Beth Van Schaack, *Remarks at a UN Security Council Arria-Formula Meeting on Ensuring Accountability for Atrocities Committed by Russia in Ukraine*, Department of State, April 27, 2022.

¹³⁵ U.S. Congress, Senate Committee on Foreign Relations, hearing on efforts to support Ukraine, 117th Cong., 2nd sess., May 12, 2022 (testimony of Ambassador Beth Van Schaack).

¹³⁶ Title V of the Additional Ukraine Supplemental Appropriations Act, 2022 (P.L. 117-128; 136 Stat. 1220).

can then be shared with domestic, international, foreign prosecutors who are able to open cases.¹³⁷

The United States participates in several international efforts seeking to record, preserve, and investigate evidence of possible atrocity crimes committed in conflict and other crises. In May 2022, the United States, the United Kingdom, and the EU announced the establishment of the Atrocity Crimes Advisory Group (ACA) for Ukraine, tasked primarily with coordinating support for the efforts of the Office of the Prosecutor General (OPG) of Ukraine to prosecute atrocity crimes committed on Ukrainian territory during the conflict. The ACA provides “strategic advice and operational assistance” to the OPG and other relevant Ukrainian officials through its Advisory Group to the OPG, made up of “experienced senior war crimes prosecutors, investigators,” and other experts, and its Mobile Justice Teams, deployed to Ukraine to “increase the capacity of the OPG War Crimes Unit and regional prosecutors.”¹³⁸ The U.S. Department of Justice in June 2022 announced the creation of the War Crimes Accountability Team, working in coordination with Eurojust and other partners, “to centralize and strengthen the Justice Department’s ongoing work to hold accountable those who have committed war crimes and other atrocities in Ukraine.”¹³⁹ This team continues to assist the OPG with investigatory and evidence-gathering efforts and capabilities as the number of alleged atrocity crimes continues to increase.¹⁴⁰

To bolster documentation efforts, the Department of State in May 2022 announced the creation of the Conflict Observatory, housed at Yale University and funded by the United States through its European Democratic Resilience Initiative (EDRI), “to capture, analyze, and make widely available evidence of Russia-perpetrated war crimes and other atrocities in Ukraine.”¹⁴¹ The Conflict Observatory released a report on August 25, 2022, for example, focused on documentation of Russia’s “filtration” operations in Ukraine, and on June 9, 2023, published a report on the effects of the destruction of the Kakhovka dam in Southern Ukraine.¹⁴²

Expanding Jurisdiction Over War Crimes Under U.S. Law

Russia’s attack on Ukraine and its alleged atrocities against the Ukrainian people gave momentum to legislative efforts to update U.S. law to punish war crimes.¹⁴³ As previously codified, Section 2441 of Title 18, *U.S. Code*, made war crimes punishable under federal criminal law but limited U.S. courts’ jurisdiction over the crime by requiring a U.S. person to be the perpetrator or victim of such crime. In December 2022, Congress took up consideration of S.

¹³⁷ U.S. Congress, Senate Committee on Foreign Relations, hearing on efforts to support Ukraine, 117th Cong., 2nd sess., May 12, 2022 (testimony of Ambassador Beth Van Schaack).

¹³⁸ U.S. Department of State, “Joint Statement from the European Union, the United States, and the United Kingdom on the establishment of the Atrocity Crimes Advisory Group (ACA) for Ukraine,” May 25, 2022.

¹³⁹ U.S. Department of Justice, “Attorney General Merrick B. Garland Visits Ukraine, Reaffirms U.S. Commitment to Help Identify, Apprehend, and Prosecute Individuals Involved in War Crimes and Atrocities,” June 21, 2022.

¹⁴⁰ Glenn Thrush, “Justice Dept. Embraces Supporting Role in Pursuing War Crimes in Ukraine,” March 21, 2023. This team reportedly has also collected evidence of war crimes against Americans, providing an available jurisdictional basis for war crimes prosecutions in U.S. courts, although the prospect of such trials is apparently unlikely in the near future.

¹⁴¹ U.S. Department of State, *Promoting Accountability for War Crimes and Other Atrocities in Ukraine*, May 17, 2022. The EDRI was established in March 2022. See White House, “The Biden Administration Announces New Humanitarian, Development, and Democracy Assistance to Ukraine and the Surrounding Region,” press release, March 24, 2022.

¹⁴² Conflict Observatory, *Mapping the Filtration System in Donetsk Oblast*, August 25, 2022; Conflict Observatory, *Rapid Assessment: Impact of the Kakhovka Hydroelectric Station Destruction*, June 9, 2023.

¹⁴³ For more information, see Paras Shah, “Congress Passes Justice for Victims of War Crimes Act,” *Just Security*, December 22, 2022.

4240 (117th Congress), which proposed to change the U.S. war crimes statute to expand the jurisdiction over war crimes to include offenders who are “present in the United States, regardless of the nationality of the victim or offender.” Congress adopted these changes to the war crimes statute and President Biden signed the bill into law on January 5, 2023 (P.L. 117-351). This change allows U.S. prosecutors to bring charges against foreign nationals, including those accused of war crimes in the current Ukraine conflict that are committed after enactment of the act.

Issues for Congress

Some Members of Congress have expressed concern over Russian aggression against Ukraine and the potential of continued war crimes. Congress has expressed interest in supporting efforts to gather, preserve, and eventually prosecute those responsible. In addition to holding multiple hearings, Congress has introduced several bills (such as H.R. 2885 and S. 1320, the Ukraine Human Rights Policy Act of 2023) to ensure the United States is supporting the documentation and potential prosecution of war crimes in Ukraine. As discussed above, the 117th Congress also enacted changes to the ASPA to facilitate greater U.S. support for the ICC’s efforts to ensure accountability in Ukraine.

The road to accountability for perpetrators of core international crimes in the Ukraine conflict is likely to be long. The question of accountability is intertwined with other U.S. priorities to bring a successful end to the armed conflict in Ukraine. Conditions for effective action on accountability will likely continue to evolve, as could U.S. policy on support for international criminal justice generally. Below are selected issues that Congress might consider in moving forward with potential support for accountability in Ukraine.

Peace Versus Justice. As Congress considers options to support accountability efforts, Members may consider how war crimes would likely be addressed in any potential diplomatic resolution of the conflict, including what affect these crimes and accountability efforts might have on future U.S.-Russia relations, specific measures such as sanctions or legislation restricting normalization of relations, and the precedent set for holding the Russian leadership accountable.¹⁴⁴ Some argue that Russia’s actions are so egregious that any settlement would have to include accountability for those responsible, regardless of diplomatic implications.¹⁴⁵ Given the alleged involvement of the Russian leadership in war crimes—either through commission or omission—it is uncertain whether those leaders would agree to a settlement that could lead to their eventual prosecution.¹⁴⁶

Sustaining U.S. Support. International efforts have proliferated since Russia’s February 2022 invasion of Ukraine to hold Russian officials and personnel accountable for what is seen by some to be illegal aggression and commission of war crimes, and resources have already been dedicated to investigative and prosecutorial action.¹⁴⁷ As noted above, Ukraine has concluded and is conducting several prosecutions for core international crimes in the midst of fighting an armed conflict, and the ICC has issued arrest warrants for a sitting head of state on perhaps the most

¹⁴⁴ Robbie Gramer, “Holding Russia Accountable for War Crimes Is Harder Than It Looks,” *Foreign Policy*, May 19, 2023.

¹⁴⁵ See, for example, Oona A. Hathaway, “Russia’s Crime and Punishment: How to Prosecute the Illegal War in Ukraine,” *Foreign Affairs*, January 17, 2023.

¹⁴⁶ Janine di Giovanni, “Russia’s Smoking Guns: How to Prove the Putin Regime’s War Crimes in Ukraine,” *Foreign Affairs*, July 5, 2023.

¹⁴⁷ Cf. Yola Verbruggen, *How Russia’s Aggression is Revitalising International Criminal Justice*, International Bar Association, May 22, 2023.

accelerated timeline in the history of the court. Accountability at this point in the Ukraine conflict dovetails with other foreign policy positions of the United States and its allies on Ukraine.

Yet, if history is a guide, verdicts in criminal prosecutions of those responsible for atrocities and other core international crimes in the Ukraine conflict will likely take years and stretch well beyond the end of the conflict. Given the necessary impartial system of international criminal justice, the ICC and other judicial systems might eventually put Ukrainian individuals on trial.¹⁴⁸ Enforcement of arrest warrants and decisions of international and foreign courts is uneven and spotty, as courts rely on government authorities that might not cooperate for reasons of national interest, frustrating accountability. For these reasons, Congress might call for the executive branch to explain precisely and to update regularly to Congress the expected and unexpected paths to accountability supported by U.S. resources. By identifying the timelines and potential pitfalls of international criminal justice efforts, Congress might be better prepared to sustain executive branch policies and activities to achieve accountability for potential crimes committed in the Ukraine conflict.

The U.S.-ICC Relationship. As discussed above, the United States has a complicated relationship with the ICC, and this complexity extends to the ICC investigation into the situation in Ukraine. Unlike many U.S. allies, the United States remains generally opposed both to becoming party to the Rome Statute of the ICC and to accepting the ICC's jurisdiction over U.S. and allied individuals. While existing U.S. legislation restricts U.S. cooperation with the ICC and permits action to stop the ICC from exercising jurisdiction over U.S. and allied persons, that same legislation permits the executive branch to provide support to the court on a case-by-case basis. Despite maintaining the general position that the ICC should not be able to prosecute nationals of countries that are not party to the Rome Statute, the Biden Administration has supported, through public statements and concrete resources, the ICC's investigation of, and issuance of arrest warrants for, the nationals of Russia, a nonparty country.

At the same time, these cooperative U.S.-ICC relations with respect to the situation in Ukraine follow U.S. actions in 2019 and 2020 to revoke the visas of and sanction ICC personnel after possible ICC investigations of U.S. and Israeli personnel in the respective situations in Afghanistan and Palestine.¹⁴⁹ The Department of Defense's reported reluctance to share evidence with the ICC regarding atrocities committed in Ukraine, perceived by some analysts to stem from fear that such cooperation might increase the likelihood of ICC prosecutions of U.S. personnel in the future, is an example of the difficulties the United States faces in dealing with the court. Congress will likely continue to face the challenge of striking a balance with relevant authorities and appropriations between supporting ICC and other international criminal justice efforts and ensuring U.S. personnel are not the subject of those efforts.

Momentum for Increasing Universal Jurisdiction Prosecutions. Concerns about preventing the ICC from prosecuting U.S. individuals might be overtaken by the growing willingness of individual countries to try alleged perpetrators of international crimes under the concept of

¹⁴⁸ See, for example, Organization for Security and Cooperation in Europe, *Third Interim Report on Reported Violations of International Humanitarian Law and International Human Rights Law in Ukraine*, July 17, 2023; United Nations Human Rights Council, *Report of the Independent International Commission of Inquiry in Ukraine*, March 15, 2023.

¹⁴⁹ ICC Prosecutor Karim A. A. Khan, who took office in June 2021, limited the focus of the Afghanistan investigation to actions by the Taliban and has been characterized as deprioritizing the Palestine investigation. See Janet Anderson, "Afghanistan: A War of Positions at the ICC," JusticeInfo.net, October 21, 2021; Janet H. Anderson, "The Ten Obstacles the ICC Prosecutor Faces in Investigating Palestine," JusticeInfo.net, March 23, 2021. On April 2, 2021, President Biden revoked the order and lifted other restrictions on ICC officials. Proposed legislation in the 118th Congress would reinstitute such actions against ICC personnel if the ICC investigates U.S. or allied persons in the future. Illegitimate Court Counteraction Act of 2023 (S. 224; 118th Cong.).

universal jurisdiction (UJ). The Ukraine conflict seems to have encouraged some national systems of justice to embrace the exercise of extraterritorial jurisdiction when atrocity crimes are involved, adding to an already increasing number of UJ prosecutions in Europe and elsewhere.¹⁵⁰ Ukraine has reportedly welcomed the willingness of other countries to try alleged atrocities in justice systems outside Ukraine. Executive branch officials have expressed approval for some UJ convictions in the courts of European countries, and Congress has integrated UJ concepts into federal criminal statutes, such as the recent expansion of U.S. jurisdiction over war crimes. But as UJ prosecutions proliferate, concern over possible foreign prosecutions of U.S. personnel, officials, and other individuals might grow. This concern might engender new legislative proposals akin to those applicable to the ICC to protect U.S. persons from foreign prosecution for alleged atrocity or aggression crimes.

International Tribunals and Prosecuting Aggression. Despite continued calls from Ukraine and several Eastern European countries for the establishment of a special tribunal for the prosecution of the crime of aggression against Ukraine operating fully under international law, the United States has maintained its position that any such tribunal should be established within the Ukrainian justice system with “internationalized” elements, such as the adoption of internationally defined elements of the crime and international prosecutors, judges, and support personnel. A “hybrid” court within the Ukrainian national justice system, however, might run into immunity problems that would prevent prosecution of Putin and other high-level Russian officials. An ad hoc international tribunal could potentially overcome the immunity problem, but U.S. insistence that such a tribunal receive approval from the Security Council would place the international community’s decision to prosecute Russian aggression in the hands of Russia itself, which, like the United States, holds veto power in the Council. The United States is also unlikely to support a third option: creation of an ad hoc international aggression tribunal through U.N. General Assembly approval. While such a result in the Ukraine situation might be palatable, empowering the General Assembly, a body that at times acts in opposition to U.S. interests, might be seen as setting a precedent for the Assembly’s authority to possibly create further tribunals for future prosecutions of U.S. and allied personnel and officials.

Congress might wish to closely monitor the development of U.S. policy and any international efforts, in a special tribunal or otherwise, to prosecute the crime of aggression, given the somewhat still nascent nature of global efforts to punish the crime. Criminal prosecutions for the crime of aggression have been rare in the history of international criminal justice. Allied prosecutions of German and Japanese officials after the end of World War II for “crimes against peace” represent the only instances of an international tribunal prosecuting illegal war. The Rome Statute in 1998 made aggression an ICC crime but delayed the activation of the court’s jurisdiction, with member states granting it finally, and with limited scope, in 2018. The ICC Prosecutor has not instituted an aggression prosecution in any situation under ICC investigation. As efforts to prosecute Russian officials for aggression against Ukraine advance, the United States, a country that uses military force regularly, might justifiably fear that U.S. officials might someday be charged with aggression in an international or foreign forum stemming from a use of military force in one of the many environments of danger and confrontation where U.S. armed forces operate. U.S. policymakers and Members of Congress might consider whether the international solutions for prosecuting aggression will remain discrete to the Ukraine conflict and a Russian invasion that many see as a clear case of the crime of aggression.

Advancement of International Criminal Justice. The plethora of accountability efforts for core international crimes in the Ukraine conflict is taking place in a time of meaningful development

¹⁵⁰ See Julia Crawford and Thierry Cruvellier, “Philip Grant: ‘Ukraine Is Accelerating a Revival of Universal Jurisdiction,’” JusticeInfo.net, November 29, 2022.

of international criminal justice in general. In May 2023, 68 states, including the United States, adopted the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes. This convention was developed over 12 years to create detailed obligations of states to provide mutual legal assistance and to allow extradition for investigation and prosecution of core international crimes within national justice systems. The convention is expected to enter into force in 2024.¹⁵¹ In addition, through the work of the International Law Commission and the Sixth Committee (Legal) of the U.N. General Assembly, U.N. member states in April 2023 began a two-year process of debating and finalizing draft articles for an international treaty on crimes against humanity.¹⁵² The Senate and Congress as a whole will likely be called upon in coming years to consider U.S. ratification of and participation in these treaties, and the course of accountability for core international crimes in Ukraine could have implications for U.S. positions in negotiating and joining these international agreements.

¹⁵¹ The Ljubljana-The Hague Convention will be opened for signature in January 2024 and will enter into force three months after the third state deposit of ratification. Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes, Article 90(1).

¹⁵² See the “Prohibition on Crimes Against Humanity” section.

Appendix. Crimes Within the Jurisdiction of the International Criminal Court

Article 6

Genocide

For the purpose of this Statute, “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.

Article 7

Crimes against humanity

1. For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
 - (a) Murder;
 - (b) Extermination;
 - (c) Enslavement;
 - (d) Deportation or forcible transfer of population;
 - (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - (f) Torture;
 - (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
 - (i) Enforced disappearance of persons;
 - (j) The crime of apartheid;
 - (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
2. For the purpose of paragraph 1:
 - (a) “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any

- civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- (b) “Extermination” includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
 - (c) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
 - (d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
 - (e) “Torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
 - (f) “Forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
 - (g) “Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
 - (h) “The crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
 - (i) “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.
3. For the purpose of this Statute, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.

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:
 - (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
 - (i) Wilful killing;
 - (ii) Torture or inhuman treatment, including biological experiments;
 - (iii) Wilfully causing great suffering, or serious injury to body or health;

- (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
 - (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
 - (vii) Unlawful deportation or transfer or unlawful confinement;
 - (viii) Taking of hostages.
- (b) 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:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
 - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (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;
 - (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
 - (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
 - (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
 - (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
 - (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

- (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
 - (xii) Declaring that no quarter will be given;
 - (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
 - (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
 - (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
 - (xvi) Pillaging a town or place, even when taken by assault;
 - (xvii) Employing poison or poisoned weapons;
 - (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
 - (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
 - (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;
 - (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
 - (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
 - (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
 - (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
- (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (iii) Taking of hostages;
 - (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- (d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - (v) Pillaging a town or place, even when taken by assault;
 - (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
 - (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
 - (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (ix) Killing or wounding treacherously a combatant adversary;
 - (x) Declaring that no quarter will be given;
 - (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

- (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
 - (xiii) Employing poison or poisoned weapons;
 - (xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
 - (xv) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.
- (f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.
3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or reestablish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

Article 8 bis

Crime of aggression

1. For the purpose of this Statute, “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.
2. For the purpose of paragraph 1, “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:
 - (a) 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;
 - (b) 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;
 - (c) The blockade of the ports or coasts of a State by the armed forces of another State;
 - (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
 - (e) 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;
 - (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

- (g) 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.

Author Information

Andrew S. Bowen
Analyst in Russian and European Affairs

Matthew C. Weed
Specialist in Foreign Policy Legislation

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