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*Is Russia Promoting a
Genocide in Ukraine?*

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IS RUSSIA PROMOTING A GENOCIDE IN UKRAINE?

*Mariana Ribeiro de Almeida**

Introduction

Since the full-scale military invasion of Ukraine in February 2022, there has been an ongoing academic discussion as to whether illicit acts committed by Russia constitute genocide. As the conflict escalated, several attacks were conducted by the Russian forces against a vast range of civilian buildings, including hospitals, cultural heritage sites, shelters, and schools.¹ Following an attack on a maternity hospital in Mariupol, Ukrainian President Volodymyr Zelenskyy accused Russia of perpetrating a genocide. Later, US President Joe Biden and the parliaments of Estonia and Latvia also labelled the situation in Ukraine as genocide.²

This context gives rise to the research question of this working paper: is Russia promoting a genocide in Ukraine?

The relevance of this research centres on connecting Russia's war in Ukraine to the legal framework of genocide in order to promote state responsibility and individual liability under international law. More than promoting accountability, this "labelling" is essential for triggering States' obligations to prevent genocide under the Genocide Convention,³ which

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¹ Noëlle Quénivet, "The Conflict in Ukraine and Genocide," *Journal of International Peacekeeping* 25, 2 (2022): 142, <https://doi.org/10.1163/18754112-25020004>.

² Kevin Liptak, "Biden Calls Atrocities in Ukraine a 'Genocide' for the First Time", CNN, April 12, 2022, <https://www.cnn.com/2022/04/12/politics/biden-iowa-genocide>; "Statement of the Riigikogu On the War Crimes and Genocide Committed by the Russian Federation in Ukraine", Parliament of Estonia, effective April 21, 2022, <https://www.riigikogu.ee/wpcms/wp-content/uploads/2023/02/21.04.2022-Ukraina-avaldus-eng.pdf>; "Statement of the Saeima of the Republic of Latvia On the aggression and war crimes of the Russian Federation in Ukraine", Latvijas Republikas Saeima, effective April 21, 2022, <https://www.nato-pa.int/download-file?filename=/sites/default/files/2022-04/latvia%20%20-%20Statement%20on%20Ukraine.pdf>.

³ UN General Assembly. Convention on the Prevention and Punishment of the Crime of Genocide (December 9, 1948). <https://www.un.org/en/genocideprevention/documents/atrocity->

does not require UN Security Council (UNSC) authorisation, circumventing the obstacle of the Russian veto power. Acting now is an urgent matter to minimise the loss of life and avoid the same level of atrocities perpetrated in past genocides.

The Genocide Convention establishes that,

Article I

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.⁴

Therefore, states have a right and a duty to employ all means reasonably available to them, to prevent genocide as much as possible, within the limits permitted by international law.⁵

The International Court of Justice (ICJ) has articulated the following with regard to the obligations of States' to prevent genocide:⁶

This obviously does not mean that the obligation to prevent genocide only comes into being when perpetration of genocide commences; that would be absurd, since the whole point of the obligation is to prevent, or attempt to prevent, the occurrence of the act. In fact, a State's obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed. From that moment onwards, if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent (*dolus specialis*), it is under a duty to make such use of these means as the circumstances permit.

Moreover, not only states can be held responsible, but also natural persons. Under international criminal law (ICL), individuals can be held liable for the crime of genocide, both through international criminal tribunals, such as the International Criminal Court (ICC), but as well as through national courts, under the principle of universal jurisdiction.⁷

[crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf](#).

⁴ UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide.

⁵ Quénivet, "The Conflict in Ukraine," 144; "An Independent Legal Analysis of the Russian Federation's Breaches of the Genocide Convention in Ukraine and the Duty to Prevent", New Lines Institute for Strategy and Policy and Raoul Wallenberg Centre for Human Rights, effective May 27, 2022, <https://newlinesinstitute.org/wp-content/uploads/English-Report-2.pdf>, 39.

⁶ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro). Judgment, ¶ 431 (Feb. 26, 2007).

⁷ Quénivet, "The Conflict in Ukraine," 146.

The aim of this working paper is to assess whether the situation in Ukraine meets the genocide threshold, under three different perspectives: (1) the original genocide concept by Raphael Lemkin; (2) the Genocide Convention; and (3) the Rome Statute (the treaty that established the ICC). The analysis will also consider the role that political interests of the states play in the recognition of a genocide.

1. Literature Review

As Shaw observes, there is little controversy over the fact that many of Russia's actions in Ukraine align with acts that may constitute genocide under international law.⁸ The debate primarily centres on *dolus specialis* — the specific intent to destroy Ukrainians as a “national group”, in whole or in part — as many argue that such intent is either absent or, at the very least, not the only possible interpretation. Three main hypotheses are identified:

- a) Some argue that a genocide is happening in Ukraine, or that a substantial risk is present;

The first allegations in this regard came from international politicians, as summarised by Marchuk and Wanigasuriya.⁹ Supporters of this position include former UK Prime Minister Boris Johnson, US President Joe Biden, the Canadian House of Commons, and the parliaments of Ukraine, Lithuania, Latvia, and Estonia — all of whom issued public statements in the months following the full-scale invasion in February 2022.¹⁰

Academic commentators such as Azarov et al. strongly argue that the actions of Russian armed forces and its political and military leadership during the full-scale invasion of

⁸ Martin Shaw, "Russia's Genocidal War in Ukraine: Radicalization and Social Destruction," *Journal of Genocide Research* 25.3-4 (2023): 356.

⁹ Iryna Marchuk and Aloka Wanigasuriya, "Beyond the False Claim of Genocide: Preliminary Reflections on Ukraine's Prospects in its Pursuit of Justice at the ICJ," *Journal of Genocide Research* 25.3-4 (2023): 267-268.

¹⁰ Joseph Lee and Doug Faulkner, "Ukraine War: Bucha Deaths' Not Far Short of Genocide'—PM," *BBC News*, April 6, 2022, <https://www.bbc.com/news/uk-61011022>, Liptak, "Biden Calls Atrocities in Ukraine"; Office of the Seimas of the Republic of Lithuania, "The Seimas has unanimously recognised the war waged by the Russian Federation against Ukraine as genocide of the Ukrainian people," effective of May 10, 2022, http://lrs.lt/sip/portal.show?p_r=35403&p_k=2&p_t=281039; Parliament of Canada, "Journal no. 59," effective of April 27, 2022, <https://www.ourcommons.ca/DocumentViewer/en/44-1/house/sitting-59/journals>; Verkhovna Rada of Ukraine, "Declaration on the Commission of Genocide by the Russian Federation in Ukraine, No. 2188-IX", effective April 14, 2022, <https://zakon.rada.gov.ua/laws/show/2188-20#Text>; "Statement of the Saeima"; "Statement of the Riigikogu".

Ukraine constitute a genocide.¹¹ Ioffe affirms that “the forcible transferring of Ukrainian children to the Russian Federation satisfies the *prima facie* elements of the crime of genocide”.¹² Shaw is also among this group of scholars, but with some nuances, as he argues that Russia is promoting a “genocidal war”, rather than a genocide, as there are different political, military, and genocidal intentions involved in its deliberate large-scale and violent attempt to destroy Ukrainian society.¹³ On the other hand, Moses understands that the situation falls under Lemkin’s concept, but not under current international law standards.¹⁴

b) Others claim that Russia’s illicit acts concern only war crimes and crimes against humanity;

This is the position taken by Quénivet, who does not identify the presence of *dolus specialis*.¹⁵ On the other hand, Schabas and Lowry respectively do not observe that Russia intends to exterminate the Ukrainians, arguing that “[t]he Russians employed basically the same tactics in Chechnya, Syria and Afghanistan before that. This is the Russian way of war”.¹⁶

c) A third group considers there is currently not enough evidence to support a claim of genocide.

This is the position of the United Nations (UN) Independent International Commission of Inquiry on Ukraine. In its August 2023 report, the Commission argued that it was “concerned about allegations of genocide in Ukraine. It has not, based on available evidence, reached a

¹¹ Denys Azarov, Dmytro Koval, Gaiane Nuridzhanian, and Volodymyr Venher. "Understanding Russia's Actions in Ukraine as the Crime of Genocide." *Journal of International Criminal Justice* 21, no. 2 (2023): 233-264.

¹² Yulia Ioffe. "Forcibly Transferring Ukrainian Children to the Russian Federation: A Genocide?" *Journal of Genocide Research* 25, no. 3-4 (2023): 316.

¹³ Shaw, "Russia's Genocidal War," 368.

¹⁴ Dirk Moses, "The Ukraine Genocide Debate Reveals the Limits of International Law," *Lawfare*, May 16, 2022, www.lawfareblog.com/ukraine-genocide-debate-reveals-limits-international-law.

¹⁵ Quénivet, "The Conflict in Ukraine".

¹⁶ William A. Schabas, "Genocide and Ukraine: Do Words Mean What We Choose them to Mean?," *Journal of International Criminal Justice* 20, no. 4 (2022): 843-57. ; Lowry Rich, "Russia Is Not Committing Genocide in Ukraine" *Politico*, April 14, 2022. <https://www.politico.com/news/magazine/2022/04/14/russia-not-committing-genocide-ukraine-biden-harmful-00025329>.

conclusion whether there is genocide in Ukraine. The Commission's investigations are an ongoing process. Certain allegations raise issues under the Genocide Convention".¹⁷

In its March 2024 report, the Commission had not yet come to a conclusion on the matter, emphasising that investigations are ongoing:¹⁸

The Commission has previously expressed concerns about allegations of genocide in Ukraine. Its investigations are an ongoing process. It has examined allegations that raise issues under the Genocide Convention, in particular whether the rhetoric transmitted in Russian state and other media constitutes direct and public incitement to commit genocide. The Commission has reviewed many public statements using dehumanizing language and calls for hate, violence, and destruction. It is concerned with statements by individuals supporting the Russian full-scale invasion of Ukraine calling for the killing of a large number of persons. The Commission recommends continued investigations into this important matter and underlines the responsibility of States to prevent such utterances.

This working paper begins with the hypothesis that there are indicators suggesting genocide is being committed in Ukraine, as the requirements of the Genocide Convention — related to prohibited acts, protected groups, and specific intent — appear to be fulfilled.

2. Methodology

The research methodology of this working paper follows a qualitative approach, relying primarily on secondary sources, including academic literature such as journal articles, scholarly papers, theses, and dissertations. Additionally, primary sources are examined, such as reports on the conflict in Ukraine produced by UN agencies, non-government organisations (NGOs) and independent organisations. Relevant case law concerning genocide and key legal instruments such as the Genocide Convention and the Rome Statute are analysed. This research is based on sources available in English while untranslated Ukrainian or Russian materials are not examined. Furthermore, the paper primarily focuses on the direction of Russian policy rather than on a fully realised genocide, given that the war is ongoing and its outcomes are not yet determined.

¹⁷ UN Human Rights Council, Conference room paper of the Independent International Commission of Inquiry on Ukraine, A/HRC/52/CRP.4 (August 29, 2023), para. 774, https://www.ohchr.org/sites/default/files/2023-08/A_HRC_52_CRP.4_En%20%28003%29.pdf.

¹⁸ UN Human Rights Council, Report of the Independent International Commission of Inquiry on Ukraine, A/HRC/55/66 (March 18, 2024), para. 97, <https://docs.un.org/en/A/HRC/55/66>.

3. Empirical Discussion

In order to assess whether Russia is committing genocide in Ukraine, first, it is necessary to understand what genocide is. In this section, the concept of genocide will be explored through three different perspectives: (1) its historical definition by Raphael Lemkin; (2) its legal definition according to the Genocide Convention and the respective cases before the ICJ; and (3) according to the Rome Statute and the respective case before the ICC. Through each of these perspectives, it will be assessed whether Russian acts in Ukraine fulfil the given criteria. Then, a final analysis will be made about the political interests of states and how they influence in the recognition — or denial — of a genocide by bringing double standards to international law.

3.1. Genocide according to its historical concept by Raphael Lemkin

The term “genocide” was first conceived by the Polish Jewish jurist Raphael Lemkin in the early 1940s. In his own words:¹⁹

I took the liberty of inventing the word, “genocide”. The term is from the Greek word *genos* meaning tribe or race and the Latin *cide* meaning killing.

[...]

The term does not necessarily signify mass killings although it may mean that. More often it refers to a coordinated plan aimed at destruction of the essential foundations of the life of national groups so that these groups wither and die like plants that have suffered a blight. The end may be accomplished by the forced disintegration of political and social institutions, of the culture of the people, of their language, their national feelings and their religion. It may be accomplished by wiping out all basis of personal security, liberty, health and dignity. When these means fail the machine gun can always be utilized as a last resort. Genocide is directed against a national group as an entity and the attack on individuals is only secondary to the annihilation of the national group to which they belong.

According to Lemkin, genocide can be achieved through the following techniques: political, social, cultural, religious, moral, economic, biological, and physical.²⁰ He coined genocide as having two phases: (1) the destruction of the national pattern of the oppressed group; and (2) the imposition of the national pattern of the oppressor. The attack is perceived

¹⁹ Raphael Lemkin, “Genocide – A Modern Crime”, *Free World* 9, no. 4 (April 1945): 39-43, 39.

²⁰ Lemkin, “Genocide – A Modern Crime”, 40-42.

against the national group as an entity, as the victims are not considered in their individual capacity, but as members of the national group.²¹

3.1.1. Does the situation in Ukraine fulfil Lemkin's definition?

In its 2024 report, *Human Rights Situation during the Russian Occupation of Territory of Ukraine and its Aftermath*, the UN Office of the High Commissioner for Human Rights (OHCHR) noted that “[a]s the occupying authorities imposed Russian political, legal, administrative, educational and social systems, residents faced intensifying pressure to demonstrate allegiance to the Russian Federation” and that “Russian authorities carried out deliberate efforts to suppress expressions of Ukrainian cultural identity”.²² The report brings evidence of detention, violence and repression against Ukrainian civilians opposing or perceived as opposing the occupation, who are regarded by the Russian forces as “not human beings”.²³

Civilians interviewed by OHCHR provided detailed accounts of the Russian armed forces' use of violence and repression during the initial stages of the occupation. This included killings, torture and ill-treatment, sexual violence, enforced disappearances, arbitrary detention, random violence, and intimidation, targeting a wide circle of civilians perceived to be assisting Ukrainian forces or opposing the occupation. Other measures included suppressing peaceful protests, restricting free expression, imposing strict controls over movements, as well as conducting frequent searches and invasive collection of personal data. Widespread pillage also ensued in the first months of the armed attack. These acts occurred in an atmosphere of impunity and resulted in the Russian armed forces' control over the population.

The OHCHR's report also emphasises that Russia imposed its systems of governance and administration on the occupied territory, through the following steps: (1) using violence and intimidation to compel public workers to continue working in key positions; (2) upon its illegal annexation of occupied territory, applying Russian law and administrative systems in all spheres of political, social, cultural and economic life; and (3) obliging the

²¹ Raphael Lemkin. *Axis Rule in Occupied Europe; Laws of Occupation, Analysis of Government, Proposals for Redress* (Carnegie Endowment for International Peace, Division of International Law, 1944), 79.

²² UN Office of the High Commissioner for Human Rights. “Human Rights Situation during the Russian Occupation of Territory of Ukraine and its Aftermath. 24 February 2022 – 31 December 2023”, 10. Effective March 20, 2024. <https://www.ohchr.org/en/documents/country-reports/human-rights-situation-during-russian-occupation-territory-ukraine-and->

²³ UN Office of the High Commissioner for Human Rights, “Human Rights Situation”, 10.

population to demonstrate allegiance to the new Russian institutions by acquiring Russian passports.²⁴

These findings significantly resemble the political technique of genocide described by Lemkin:²⁵

Local administrations were replaced by German administrative organization. The legal system was recast on the German model. Special Commissioners for the strengthening of Germanism, attached to each administration, coordinated the activities designed to foster and promote Germanism. They were assisted by local habitants of German origin.

[...]

Where the people, such as the Poles, could not achieve the dignity of embracing Germanism, they were expelled from the area and their territory (western Poland) was to be Germanized by colonization.

According to Lemkin, the social technique of genocide involves the weakening of sources of leadership and spiritual resources for the society (intellectuals, clergy and resisters), which can also be identified in Russian policy towards the occupied territories in Ukraine.²⁶ The OHCHR's 2024 report, published two years after the full-scale invasion, provides substantial evidence of acts consistent with Lemkin's broader concept of genocide, at least in the occupied territories.

As for the part of Ukrainian territory that is not under Russia's occupation, other genocidal techniques mentioned by Lemkin are also recognised, such as: *cultural genocide*, by imposing the oppressor's culture regarding the language, place names, personal names, public signs and artistic expression; *economic genocide*, by degrading the economic foundations of national groups to lower the standards of living and to sharpen the struggle for existence, that no energies might remain for a cultural or national life; *biological genocide*, through every means to decrease the birth rate among the oppressed group, such as chronic undernourishment; and even *physical genocide* (arbitrary executions, mass

²⁴ UN Office of the High Commissioner for Human Rights, "Human Rights Situation", 19-20.

²⁵ Lemkin, "Genocide – A Modern Crime", 40.

²⁶ Lemkin, "Genocide – A Modern Crime", 40.

starvation, and exposure to disease and exhaustion).²⁷ The Russian acts in Ukraine that illustrate those techniques will be examined in more detail in section 4.2.1.1.

However, there is a distinctive feature in this case. Russia's policy towards Ukraine appears to be much more directed to destroying a distinct Ukrainian society, rather than physically exterminating Ukrainians *en masse* — although physical destruction is also present. As Shaw elaborates, "[h]ow far actual violence would go was not fully specified in the invasion plans but would depend on how the Russification of Ukraine progressed".²⁸ According to his hypothesis, Russia's initial aims with its "special military operation" seemed to consist of targeting key figures from the Ukrainian national elite for physical elimination, killing some civilians through invasion "casualties", and weakening the general population through brutal coercion and suppression of national institutions, language, and culture. This approach reflects well-established methods of colonisation and imperial rule previously employed by the Soviet regime in Ukraine and other regions.²⁹

This raises an important debate: does the "destruction of the members of the group" mean *physical* destruction? This is important because for at least part of the Ukrainians, meaning part of the protected group, Russia's war policy gives them the chance to survive if they cooperate with the new regime and agree to be "Russified". This mindset was illustrated by American historian Timothy Snyder: "We exterminate all the ones who think they're Ukrainians until we get to the point where the remaining people understand: they are Russians."³⁰ Ioffe elaborates that: "Russian authorities keep threatening to kill more people if they refuse to re-educate and accept that they are not Ukrainians. Most recently, Anton Krasovsky, the head of Russian-language broadcasting for the state-owned RT channel, stated that Ukrainian children who refuse to accept their Russian identity should be drown and burnt alive".³¹

²⁷ Lemkin, "Genocide – A Modern Crime", 40-42.

²⁸ Shaw, "Russia's Genocidal War," 363.

²⁹ "Ukraine War: Kyiv Likens Russian 'Genocidal' Tactics to Soviet-Era 'Holodomor' Famine," *Ukrainska Pravda*, November 26, 2022, <https://news.yahoo.com/russias-genocidal-war-against-ukraine-074704897.html>.

³⁰ Timothy Snyder. "Russia intends to commit genocide in Ukraine, six ways to prove it." *European Pravda* 23 (2022).

³¹ Ioffe, "Forcibly Transferring Ukrainian Children", 345.

This is the case, for instance, of Ukrainian children who are forcibly transferred to Russia. If they cooperate and accept that they are “Russians”, they can survive. Maria Lvova-Belova herself, the children’s Ombudswoman from Russia, indicted by the International Criminal Court, has “adopted” a 15-year-old boy from Donbas, a Russian-occupied region in Ukraine.³² Moreover, as discussed above, Ukrainians in areas of territory controlled by Russia may have their lives spared if they cooperate with the occupation.

Therefore, it seems that Russia’s intentions also include the “conversion” of Ukrainians into Russians, among other violent war strategies. In a comparison with another ongoing genocide — in the case of Palestine — Israel has never attempted to convert Muslim Palestinians into Jews while their intent is to segregate, through an apartheid regime, and then to displace, remove, and eliminate individuals and communities.

In comparison to a past genocide — Nazi Germany — the situation is more complex. Although the Nazi rule never attempted to convert Jews into Aryan Germans, as they directly segregated, persecuted, discriminated, and then eliminated that protected group; the same did not apply to other ethnicities, whose lives could be spared if they surrender to the so-called “Germanization” process. As Raphael Lemkin explains in his analysis of Nazi policy, “[s]ome groups — such as the Jews — are to be destroyed completely. A distinction is made between peoples considered to be related by blood to the German people (such as Dutchmen, Norwegians, Flemings, Luxemburgers), and peoples not thus related by blood (such as the Poles, Slovenes, Serbs). The population of the first group are worthy of being Germanized”.³³

It can be inferred that Putin’s initial plan and mindset differ from some historical examples of genocide, as it leaves some space for assimilation, rather than immediate elimination, in which the latter occurs if conversion or identity erasure proves unsuccessful, at least for part of the protected group.

³² “Russian Children’s Ombudswoman ‘adopts’ child from Donbass.” *Christian Network Europe News*, February 20, 2023. <https://cne.news/article/2604-russian-children-s-ombudswoman-adopts-child-from-donbass>.

³³ Lemkin, *Axis Rule in Occupied Europe*, 81-82.

Does it make any difference? How does this influence genocidal labelling? Is forcible conversion equally genocidal as direct elimination? Or does it mean that it is not genocide, because the *physical* destruction of the group is not occurring?

International law appears to require physical destruction itself. In the Bosnian genocide case, which is going to be properly examined in section 4.2.2.2, the ICJ adopted the position that the destruction of the social, economic, cultural and political life of the protected group is not genocidal in itself, but only when it is intended to cause actual physical destruction, which may take place through direct killing but also through indirect means, such as starvation and transfer of children to another group.³⁴

However, such understandings are not reasonable or sociologically coherent, nor do they translate to Lemkin's concept, as physical destruction is one of many genocidal techniques mentioned in his work, along with physical violence, coercion, and political, social, and cultural control.³⁵ Lemkin had already clarified that the imposition of the national pattern of the oppressor may be made upon the oppressed population which is allowed to remain in the territory. He also explained that:³⁶

Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups.

Lemkin also emphasised that a genocidal attack is "a serious threat either to life, liberty, health, economic existence or to all of them".³⁷ Therefore, genocide does not necessarily require a threat to life itself, as long as the offender intends to destroy or degrade a national, religious or racial group. In a modern interpretation of Lemkin's work, Shaw also agrees

³⁴ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment (Feb. 26, 2007); Shaw, "Russia's Genocidal War," 358.

³⁵ Shaw, "Russia's Genocidal War," 358.

³⁶ Lemkin, *Axis Rule in Occupied Europe*, 79.

³⁷ Lemkin, "Genocide – A Modern Crime", 43.

that “the destruction of a group’s culture, institutions, social networks, ways of life and territorial presence is considered genocidal in itself, rather than simply as means to physical destruction”.³⁸ Therefore, the current evidence in Ukraine appears to fulfil Lemkin’s original conception of genocide.

3.2. Genocide according to the United Nations

Following the Holocaust in the Second World War, the UN General Assembly in 1948 approved the Genocide Convention, which entered into force in 1951.³⁹ According to Shaw, its definition of genocide is very different from Lemkin’s original conception, adopting a much narrower approach by identifying it more with *physical* destruction and excluding *cultural* genocide as a specific dimension.⁴⁰

In verbis:

Article II

In the present Convention, 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 III

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

It is important to emphasise that acts such as killing members of a particular group, inflicting conditions likely to bring about the destruction of that group, and forcibly transferring children to another group, overlap with other war crimes or crimes against

³⁸ Shaw, "Russia's Genocidal War," 358.

³⁹ UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide.

⁴⁰ Shaw, "Russia's Genocidal War," 362.

humanity. These offences fall under distinct legal framework outside the Genocide Convention, raising the possibility of double criminalisation. Nonetheless, what distinguishes the crime of genocide from any other is *dolus specialis* — the special intent to destroy a particular group wholly or partially.⁴¹

3.2.1. Does the situation in Ukraine meet Genocide Convention requirements?

For an act to be considered genocide under the Genocide Convention,⁴² three elements must be fulfilled. First, the act must fall within one of the five categories of acts listed in the definition, which already include mental elements. Second, the act must be directed at a specific group captured by the Convention. Unlike what is generally believed, there is no need for mass violence to be perpetrated. Third, the act must be perpetrated with the specific intent of destroying that group, a *dolus specialis* that clearly distinguishes genocide from other international crimes.⁴³

There is little debate over whether the acts committed by Russia in Ukraine align with those that may constitute genocide in international law. Scholars who argue that genocide charges are unlikely to succeed before international courts do not dispute the factual basis of the allegations or the status of Ukrainians as a protected group under the Genocide Convention. The main point of contention relates to whether the atrocities perpetrated by Russia demonstrate an intention to destroy Ukrainians as a group, in whole or in part.⁴⁴ Nonetheless, each of the required elements will be examined in the proceeding sections.

3.2.1.1. Does the act fall within one of the five categories of acts listed in the definition?

Several acts perpetrated by Russian agents appear to fall within the definition of acts of genocide, particularly the forcible transfer of children, as specified below.⁴⁵

3.2.1.1.1. Killing members of the group

⁴¹ Martin McKee, Amir Attaran, and Jutta Lindert. "How can the international community respond to evidence of genocide in Ukraine?." *The Lancet Regional Health–Europe* 17 (2022): 1.

⁴² UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide.

⁴³ Quénivet, "The Conflict in Ukraine," 144.

⁴⁴ Shaw, "Russia's Genocidal War," 5.

⁴⁵ Quénivet, "The Conflict in Ukraine," 147; Shaw, "Russia's Genocidal War," 5.

Massive killing, indiscriminate shelling of cities and residential areas, as well as targeted killings such as summary executions have been widely reported in Ukraine, marked by a pattern of common killing methods — hands tied, tortured, and shot in the head at close range.⁴⁶

In one highly publicised case in Bucha, which, upon being recaptured by the Ukrainian forces, showed the widespread destruction of the town with dozens of civilian corpses with hands tied behind their backs filling the streets; around 1,000 bodies buried in shallow graves — among which around 650 were shot dead in massive executions.⁴⁷

After more than two years since the full-scale invasion, the most recent report from the Independent International Commission of Inquiry on Ukraine highlights a pattern of disregard by Russian armed forces for civilian harm. It documents many indiscriminate attacks in violation of international humanitarian law, resulting in significant civilian casualties.⁴⁸ As of February 2024, the Office of the United Nations High Commissioner for Human Rights (OHCHR) had recorded 10,582 civilians killed and 19,875 injured, but the actual number is likely higher.⁴⁹

3.2.1.1.2. Causing serious bodily or mental harm to members of the group

Beatings, torture, sexual violence, and rape are examples of serious harm founded to be committed by Russian agents in Ukraine. Furthermore, the detention and “filtration” of people who were potentially hostile to the Russian occupation also fits into this category.⁵⁰

The most recent report from the Independent International Commission of Inquiry on Ukraine finds that torture used by Russian authorities in Ukraine has been widespread and

⁴⁶ Quénivet, "The Conflict in Ukraine," 147; "An Independent Legal Analysis", 1-2.

⁴⁷ Shpend Kursani, "Beyond Putin's Analogies: The Genocide Debate on Ukraine and the Balkan Analogy Worth Noting," *Journal of Genocide Research* 25.3-4 (2023): 5.

⁴⁸ UN Human Rights Council, Report of the Independent International Commission of Inquiry on Ukraine, A/HRC/55/66 (March 18, 2024), 1.

⁴⁹ UN Human Rights Council, Report of the Independent International Commission of Inquiry on Ukraine, A/HRC/55/66 (March 18, 2024), para. 09.

⁵⁰ Quénivet, "The Conflict in Ukraine," 147.

systematic, including through rape and other sexual violence committed against women, as detailed below.⁵¹

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

This act encompasses an umbrella to cover methods that do not immediately kill members of the group, but indirectly causes their physical destruction, as encirclement, shelling, starvation, deportation, expulsion, lack of proper housing, clothing and hygiene or excessive work or physical exertion — all of which have been officially reported in Ukraine.⁵² For instance, when Russia razed Mariupol, it destroyed housing, workplaces, and health and social facilities while killing a significant minority, drove out the majority of its inhabitants, detained, filtered and transferred many of the remaining population to Russia, suppressed Ukrainian culture and institutions, and rendered much of the city uninhabitable.⁵³ This almost complete destruction of local society was repeated to a greater or lesser extent in other occupied areas, demonstrating to Ukrainians the near impossibility of living under Russian occupation.⁵⁴

Moreover, Russia launched many successive waves of missile and drone attacks to disable or destroy electricity, water and heating systems in Ukrainian cities just as winter intensified.⁵⁵ These attacks were strategic measures designed to destroy individual Ukrainians' and communities' physical capacities to survive the winter of 2022/2023.⁵⁶

3.2.1.1.4. Imposing measures intended to prevent births within the group

In the case *Prosecutor v. Krstić*, the International Criminal Tribunal for the Former Yugoslavia (ICTY) found that the mass execution of military-aged Bosnian Muslim men by

⁵¹ UN Human Rights Council. Report of the Independent International Commission of Inquiry on Ukraine. A/HRC/55/66 (March 18, 2024), 1.

⁵² Quénivet, "The Conflict in Ukraine," 147.

⁵³ Shaw, "Russia's Genocidal War," 366.

⁵⁴ Shaw, "Russia's Genocidal War," 366.

⁵⁵ UN Human Rights Council. Human rights situations that require the Council's attention. Report of the Independent International Commission of Inquiry on Ukraine. A/HRC/52/62 (March 15, 2023), paras. 40-43. https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A_HRC_52_62_AUV_EN.pdf.

⁵⁶ Shaw, "Russia's Genocidal War," 365.

Bosnian Serb forces against the backdrop of forced transfer of Bosnian Muslim women, children and the elderly, amounted to the crime of genocide.⁵⁷

In October 2022, the Special Representative of the UN Secretary General on Sexual Violence in Conflict stated that rape was part of Russia's military strategy in Ukraine.⁵⁸ In liberated Bucha, women who were subjected to systematic sexual violence testified that during the occupation, they had been threatened by Russian soldiers to be raped to the point where they would refuse "sexual contact with any man in the future to hinder them from having Ukrainian children".⁵⁹ Considering that most of the victims of murder and executions by Russian forces are Ukrainian civilian men, a common genocidal policy is identified: mass murder of military-aged men in combination with sexual violence against women and children.⁶⁰

Moreover, Russian forces' consistent attacks against perinatal centres and maternity hospitals are particularly probative of genocidal intent, as they prevent Ukrainian women from safely giving birth. As of May 2022, the World Health Organization (WHO) has documented 248 attacks against Ukraine's health care system.⁶¹ The most recent report from the Independent International Commission of Inquiry on Ukraine also emphasises that as early as 9 March 2022, Russian armed forces conducted an indiscriminate air attack that hit Maternity Hospital No. 3 in Ukraine.⁶²

3.2.1.1.5. Forcibly transferring children of the group to another group

The unlawful deportation and transfer of population attributed to Putin and Lvova-Belova by the ICC has been reported by several human rights' bodies, especially the Humanitarian

⁵⁷ Prosecutor v. Radislav Krstić, Case No. IT-98-33-T, Judgement, ¶ 31 (International Criminal Tribunal for the Former Yugoslavia Aug. 2, 2001).

⁵⁸ Philip Wang, Tim Lister, Josh Pennington and Heather Chen. "Russia using rape as 'military strategy' in Ukraine: UN envoy". *CNN*, October 15, 2022. <https://edition.cnn.com/2022/10/15/europe/russia-ukraine-rape-sexual-violence-military-intl-hnk>.

⁵⁹ Marchuk and Wanigasuriya, "Beyond the False Claim of Genocide", 271.

⁶⁰ Quéniwet, "The Conflict in Ukraine," 147; Azarov et al., "Understanding Russia's Actions", 255.

⁶¹ "An Independent Legal Analysis", 30.

⁶² UN Human Rights Council. Report of the Independent International Commission of Inquiry on Ukraine. A/HRC/55/66 (March 18, 2024), para. 18.

Research Lab at the Yale School of Public Health.⁶³ According to that institution, the Russia government has been operating a large scale, systematic network of at least 43 camps and other facilities, which have held over 6,000 children, aged from four months to 17 years, from Ukraine within Russia-occupied Crimea and “mainland” Russia since the full-scale invasion.⁶⁴

The operation draws significant attention due to its purpose, geographic scale, indefinite duration, logistical complexity, broad involvement of state institutions, and the large number of children affected.

Children are typically transported to Russia or Russian-occupied Crimea for four claimed reasons: (1) to attend nominally ‘recreational’ camps; (2) for ostensible evacuation from fighting in frontline areas; (3) for apparent medical evacuation; or (4) for adoption by or placement with foster families in Russia.⁶⁵ The so-called “integration program” is aimed to promote pro-Russian education of Ukrainian children, through school curriculum, field trips to cultural or patriotic sites throughout the country, lectures from Russia’s veterans and historians, and military activities.⁶⁶ One child was told he could not return home due to his “pro-Ukrainian views”, which reinforces the aim of cultural, political, and national destruction of Ukraine as a war objective.⁶⁷

As this is an ongoing situation during an international armed conflict, an array of sources presents differing data on the matter. A data collection system maintained by the Government of Ukraine indicated that 16,221 children had been deported to the Russian Federation as of the end of February 2023.⁶⁸ The United States estimated in October 2022 that Russia’s authorities have taken 260,000 children from Ukraine to Russia.⁶⁹ According to the Humanitarian Research Lab at Yale School of Public Health, more than a thousand

⁶³ Kaveh Khoshnood, Nathaniel A. Raymond, and Caitlin N. Howarth. *Russia's Systematic Program for the Re-Education & Adoption of Ukraine's Children*. Humanitarian Research Lab at Yale School of Public Health, 2023.

⁶⁴ Khoshnood, Raymond, and Howarth, *Russia's Systematic Program*, 4.

⁶⁵ Khoshnood, Raymond, and Howarth, *Russia's Systematic Program*, 4.

⁶⁶ Khoshnood, Raymond, and Howarth, *Russia's Systematic Program*, 14.

⁶⁷ Khoshnood, Raymond, and Howarth, *Russia's Systematic Program*, 12.

⁶⁸ UN Human Rights Council. Human rights situations that require the Council’s attention. Report of the Independent International Commission of Inquiry on Ukraine. A/HRC/52/62 (March 15, 2023), para. 95.

⁶⁹ Khoshnood, Raymond, and Howarth, *Russia's Systematic Program*, 10.

“orphans” transferred to Russia are pending adoption; 350 of Ukraine’s children already re-homed; 14,700 of Ukraine’s children officially documented as “deported”; and closer to several hundred thousand children are actually displaced or deported.⁷⁰

According to the report presented by the Independent International Commission of Inquiry on Ukraine to the UN, in none of the situations which the Commission has examined, transfers of children appear to have satisfied the requirements set forth by international humanitarian law, as the transfers were not justified by safety or medical reasons; there is no indication that it was impossible to allow the children to relocate to territory under Ukrainian Government control; it does not appear that Russian authorities sought to establish contact with the children’s relatives or with Ukrainian authorities; and parents or legal guardians encountered several obstacles in establishing contact, achieving family reunification, and returning the children to Ukraine.⁷¹ Furthermore, parents and relatives encountered considerable logistical, financial, and security challenges in retrieving their children in-person from the camps.⁷²

This operation is centrally coordinated by Russia’s federal government and involves every level of government, engaged in the logistical coordination, raising funds, collecting supplies, direct camp management, and promoting the program within Russia and occupied Ukraine.⁷³ In May 2022, President Vladimir Putin signed a decree streamlining the process for orphans and children without parental care from Ukraine to obtain Russian Federation citizenship.⁷⁴ Therefore, it appears that this specific act could trigger not only Putin’s individual accountability — which is already pursued by the ICC — but also as a ground for holding the Russian Federation accountable under state responsibility.

After two years of the full-scale invasion, the most recent report from the Independent International Commission of Inquiry on Ukraine found additional evidence concerning the

⁷⁰ Khoshnood, Raymond, and Howarth, *Russia’s Systematic Program*, 9.

⁷¹ UN Human Rights Council. Conference room paper of the Independent International Commission of Inquiry on Ukraine. A/HRC/52/CRP.4 (August 29, 2023), para. 721.

⁷² Khoshnood, Raymond, and Howarth, *Russia’s Systematic Program*, 16.

⁷³ Khoshnood, Raymond, and Howarth, *Russia’s Systematic Program*, 5.

⁷⁴ Khoshnood, Raymond, and Howarth, *Russia’s Systematic Program*, 17.

unlawful transfer of children to areas under Russian control.⁷⁵ In November 2023, a Ukrainian authority informed the Commission that except for isolated cases, most children had not yet returned to a territory under Ukrainian Government control.⁷⁶

3.2.1.2. Is the act directed at a specific group captured by the Convention?

To qualify as genocide, the acts analysed above must be perpetrated against a national, ethnical, racial or religious group. This is almost undisputed in this case, as the Ukrainian national group is recognised domestically, internationally, and expressly by Russia in formal interstate relations — despite the paradox of denying a Ukrainian autonomous identity to justify its aggression. Furthermore, the Ukrainian national group falls within the scope of protection under the Genocide Convention. The category of an ethnical group category is also applicable, given the shared elements of culture, language, and historical identity among Ukrainians.⁷⁷

3.2.1.3. Is the act perpetrated with the specific intent (*dolus specialis*) of destroying that group?

Most scholars who contend the non-genocide position support their point on the absence of *dolus specialis*.⁷⁸ It is what makes the crime of genocide unique, and it also is the most challenging element to fulfil, as it requires proof of intention, in the sense that the acts are committed with the specific goal of destroying all or part of a group.⁷⁹ This destruction can be demonstrated by both physical destruction and the eradication of its culture and identity resulting in the eventual extinction of the group as an entity distinct from the remainder of the community.⁸⁰

As McKee et al. emphasise, “[e]vidence of genocidal intent to destroy Ukrainian identity can be found in the words of President Vladimir Putin and his advisers, where they say that

⁷⁵ UN Human Rights Council. Report of the Independent International Commission of Inquiry on Ukraine. A/HRC/55/66 (March 18, 2024), paras. 95-97.

⁷⁶ UN Human Rights Council. Report of the Independent International Commission of Inquiry on Ukraine. A/HRC/55/66 (March 18, 2024), para. 96.

⁷⁷ “An Independent Legal Analysis”, 1-2; Quénivet, “The Conflict in Ukraine,” 148.

⁷⁸ Quénivet, “The Conflict in Ukraine,” 150-152; Lowry, “Russia Is Not Committing Genocide in Ukraine”.

⁷⁹ Douglas Irvin-Erickson, “Is Russia Committing Genocide?,” *Opinio Juris*, April 24, 2022, <https://opiniojuris.org/2022/04/21/is-russia-committing-genocide-in-ukraine>; Schabas, “Genocide and Ukraine,” 848.

⁸⁰ Quénivet, “The Conflict in Ukraine,” 149-150.

‘There is no Ukraine’ and Russians and Ukrainians ‘are one people’”.⁸¹ In fact, the following quotations from an essay that Putin published just months before the full-scale invasion demonstrate the intent of destroying Ukraine’s cultural heritage and nationality, as follows:⁸²

During the recent Direct Line, when I was asked about Russian-Ukrainian relations, I said that Russians and Ukrainians were one people – a single whole.

First of all, I would like to emphasize that the wall that has emerged in recent years between Russia and Ukraine, between the parts of what is essentially the same historical and spiritual space, to my mind is our great common misfortune and tragedy.

When the USSR collapsed, many people in Russia and Ukraine sincerely believed and assumed that our close cultural, spiritual and economic ties would certainly last, as would the commonality of our people, who had always had a sense of unity at their core.

And we will never allow our historical territories and people close to us living there to be used against Russia.

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

As explained by Etkind, Putin’s genocidal rhetoric is upheld by four pillars:⁸³

- (1) presenting the captured territory as *terra nullius*, a virgin land with no people or pattern to talk about;
- (2) presenting the current genocide as a symmetric response to a previous genocide committed by the other side;
- (3) distorting the memory of the previous pattern so that the imposed order could be presented as new and different;

⁸¹ McKee, Attaran, and Lindert, "How can the international community respond", 1.

⁸² Vladimir Putin, "On the Historical Unity of Russians and Ukrainians," *President of Russia*, July 12, 2021, <http://www.en.kremlin.ru/events/president/news/66181>.

⁸³ Etkind 2023, 400.

(4) denigrating the previous order and stretching the perceived differences and planned changes that would match the declared ambitions.

Naturally, aside from the genocidal intentions, there are also political and military concerns that lead Russia to engage in a deliberate large-scale, violent destruction of Ukrainian society, expressing Putin's aims of militarily defeating the Ukrainian state and eliminating Ukrainians — whether by killing them, displacing them or converting them into Russians.⁸⁴ His goal as Russian leadership seems to be possessing Ukraine under the undivided power of Russia, as it used to be in the former USSR.⁸⁵

If other military and political policies are taken together with the wider pattern of attack of the national culture and violent cultural destruction, as well as the social and political “Russification” of occupied areas, the intent to destroy a protected group is identified.⁸⁶ This is evidenced by the large number of civilian victims, the gravity of the inflicted violence, the cruel, deliberate and repetitive manner of the killings, the policy of eliminating leaders of Ukrainian society, and the use of hate speech directed towards Ukrainians as a nation.⁸⁷ For instance, in Mariupol, the bombings of the theatre and maternity ward were devoid of any military objectives.⁸⁸ Similarly, the destruction of 95 per cent of city's residential buildings and the obstruction of humanitarian corridors — which impeded the evacuation of thousands of civilians — leaving many effectively condemned to death.⁸⁹

Despite the strong evidence of *dolus specialis*, some authors still do not recognise it, arguing that “there is no evidence of a plan to destroy Ukrainians as a group” and that “the shelling of civilians and civilian infrastructure is indiscriminate rather than targeted at a group and thus tends to demonstrate that the Ukrainian group is not the object of attack”.⁹⁰

However, the available evidence suggests the contrary. Although only one act must be recognised for the crime to amount to a genocide, the concomitant fulfilling of all the five

⁸⁴ Shaw, “Russia's Genocidal War,” 368.

⁸⁵ Azarov et al., “Understanding Russia's Actions”, 243.

⁸⁶ Shaw, “Russia's Genocidal War,” 365.

⁸⁷ Azarov et al., “Understanding Russia's Actions”, 254.

⁸⁸ Marchuk and Wanigasuriya, “Beyond the False Claim of Genocide”, 271.

⁸⁹ Marchuk and Wanigasuriya, “Beyond the False Claim of Genocide”, 271.

⁹⁰ Quénivet, “The Conflict in Ukraine,” 150-152.

acts — as it occurs in the case of the Russia-Ukraine war — indicates the genocidal intent when viewed in their totality, composing a systematic pattern of atrocities targeting the protected group.⁹¹

Moreover, the quoted statements above demonstrate that Russia's political leadership do not recognise the existence of the Ukrainian nation, its right to self-determination and statehood, but rather they consider Ukraine part of Russian territory while invoking the justification of denazification for its invasion of Ukraine with the view of dehumanizing Ukrainians; the use of derogatory language against Ukrainians; and portraying Ukrainians as an existential threat to Russia.⁹²

Further evidence can be found in the editorial titled "What Russia Must Do with Ukraine", published by RIA Novosti, Russia's main state-owned news agency.⁹³ Ioffe describes this as "the most comprehensive plan for genocide that the Russian Federation has issued", who further elaborates:⁹⁴

The editorial explicitly declares that the process of denazification inevitably involves de-Ukrainization, which refers to "the rejection of the large-scale artificial inflation of the ethnic component in the self-identification of the [Ukrainian] population". According to this plan, Ukrainian "Nazis" must be destroyed, where "Nazis" are not only high-ranking Ukrainian officials, but also "a significant number of common people" who are "guilty of being passive Nazis and Nazi accomplices". The plan also advocates for re-education of the Ukrainian population and the imposition of stringent censorship on the political sphere, culture, and education.

Moreover, in this specific context, attacks on cultural heritage are also another sign of *dolus specialis*.⁹⁵ In *Prosecutor v. Krstić*, the ICTY observed that "where there is physical or biological destruction there are often simultaneous attacks on the cultural and religious

⁹¹ "An Independent Legal Analysis", 1-2.

⁹² Azarov et al., "Understanding Russia's Actions", 245; Marchuk and Wanigasuriya, "Beyond the False Claim of Genocide", 277.

⁹³ Timofey Sergeytsev, "What Russia Must Do with Ukraine" [English translation], RIA Novosti, April 4, 2022, https://medium.com/@kravchenko_mm/what-should-russia-do-with-ukraine-translation-of-a-propaganda-article-by-a-russian-journalist-a3e92e3cb64.

⁹⁴ Ioffe, "Forcibly Transferring Ukrainian Children", 342.

⁹⁵ Marchuk and Wanigasuriya, "Beyond the False Claim of Genocide", 272.

property and symbols of the targeted group as well, attacks which may legitimately be considered as evidence of an intent to physically destroy the group”.⁹⁶

This understanding applies to the present case, as Russian’s armed forces have targeted Ukrainian museums, historical monuments and places of worship.⁹⁷ In January 2023, UNESCO stated that 236 cultural objects were completely or partially destroyed as a result of war.⁹⁸

Finally, it must be emphasized that for *dolus specialis* to be established, it is not necessary that the perpetrator’s aims are fully accomplished. As explained by the ICTY in *Prosecutor v. Krstić*, “the offence of genocide does not require proof that the perpetrator chose the most efficient method to accomplish his objective of destroying the targeted part. Even where the method selected will not implement the perpetrator’s intent to the fullest, leaving that destruction incomplete, this ineffectiveness alone does not preclude a finding of genocidal intent”.⁹⁹

Therefore, the fact that “had the Russian military succeeded in occupying larger swathes of Ukrainian territory, the above number of Ukrainian victims targeted for destruction would have been immeasurably higher”, and the perception that “the Ukrainian armed forces have impeded Russia from carrying out genocide on a larger scale against Ukrainians” are not obstacles to the recognition of a genocidal intent.¹⁰⁰ In any case, what matters is the *intent* to destroy the protected group, noting this includes “attempt[s] to commit genocide”, under Art. III (d) of the Genocide Convention.¹⁰¹

3.2.2. Genocide cases at the International Court of Justice

The ICJ is part of the UN structure, as a venue for the peaceful settlement of disputes between states. Two cases concerning the Genocide Convention are particularly relevant

⁹⁶ *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Judgement, ¶ 580 (International Criminal Tribunal for the Former Yugoslavia Aug. 2, 2001).

⁹⁷ Azarov et al., “Understanding Russia’s Actions”, 251.

⁹⁸ Azarov et al., “Understanding Russia’s Actions”, 251.

⁹⁹ *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Judgement, ¶ 32 (International Criminal Tribunal for the Former Yugoslavia Aug. 2, 2001).

¹⁰⁰ Marchuk and Wanigasuriya, “Beyond the False Claim of Genocide”, 273.

¹⁰¹ UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide.

for this research: an ongoing dispute instituted by Ukraine regarding Russia's false claims of genocide; and a concluded case which Bosnia-Herzegovina had filed against Serbia, claiming that the latter had committed a genocide against a Bosnian protected group.

3.2.2.1. *Ukraine v. Russian Federation*

On 26 February 2022, Ukraine filed an application instituting proceedings against the Russian Federation at the ICJ on the basis of the Genocide Convention. By an Order dated 16 March 2022, the Court indicated the following provisional measures:¹⁰²

- (1) The Russian Federation shall immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine;
- (2) The Russian Federation shall ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of the military operations referred to in point 1 above;
- (3) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

Although the provisional measures seemed optimistic for Ukraine, the Judgement issued on 2 February 2024 substantially limited the material scope of the dispute. The ICJ clarified that “even if the Russian Federation had, in bad faith, alleged that Ukraine committed genocide and taken certain measures against it under such a pretext — which the Respondent contests — this would not in itself constitute a violation of obligations under Articles I and IV of the Convention”.¹⁰³ Even the judge *ad hoc* appointed by Ukraine, Yves Daudet, ruled against Ukraine on this specific point.¹⁰⁴

¹⁰² Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation). Order, ¶ 86 (Mar. 16, 2022).

¹⁰³ Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Judgement, ¶ 142 (Feb. 2, 2024).

¹⁰⁴ Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Separate opinion of Judge *ad hoc* Daudet, ¶ 24 (Feb. 2, 2024).

The ICJ also declared that it is out of its material jurisdiction to determine whether Russia's actions towards Ukraine go beyond the limits of international law:¹⁰⁵

Thus, in the present case, assuming — for the sake of argument — that by recognizing the DPR and LPR and by launching the “special military operation”, the Russian Federation sought to implement its obligations under the Convention, and that the acts in question are contrary to international law, it is not the Convention that the Russian Federation would have violated but the relevant rules of international law applicable to the recognition of States and the use of force. These matters are not governed by the Genocide Convention and the Court does not have jurisdiction to entertain them in the present case.

It is important to emphasise that this quote must be read with caution, considering its context. It should not be interpreted that Ukraine claimed that Russia is promoting a genocide in its territory and the Court denied this claim. Rather, as Ukraine filed its application right after the full-scale invasion in 2022, its claim regarded the use of the genocide excuse by Russia to justify its military aggression. The claim that the military operation violated other rules from international law came from the Ukrainian application itself — clearly referring to the UN Charter and *jus ad bellum* — since there was no substantial evidence to support a case alleging genocide on 26 February 2022.

If Ukraine wants the ICJ verdict about the main question — is Russia promoting a genocide? — then a new application must be filed in with this scope.¹⁰⁶ Considering the stage of the *Ukraine v. Russian Federation* case as of July 2025, it is not possible for the Court to rule on this question—neither to confirm a genocide nor to deny it—since the Court is not assessing whether Russia is committing a genocide in this case. Instead, the question concerned is whether Ukraine committed genocide in Donbas, as alleged by Russia.

3.2.2.2. Bosnia: does genocide have to be the only reasonable explanation?

A final argument rests on a comparison of the Russia-Ukraine war with the Bosnian war (1993-1995). Considering that even the situation in Bosnia-Herzegovina was not qualified as genocide by the ICJ and the ICTY (except for Srebrenica), scholars consider it difficult to

¹⁰⁵ Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (*Ukraine v. Russian Federation*), Judgement, ¶ 146 (Feb. 2, 2024).

¹⁰⁶ Iryna Marchuk and Aloka Wanigasuriya, “The Curious Fate of the False Claim of Genocide: On the ICJ’s Preliminary Objections Judgment in *Ukraine v. Russia* and Beyond,” *VerfBlog*, February 24, 2024, <https://verfassungsblog.de/the-curious-fate-of-the-false-claim-of-genocide/>.

qualify the current situation in Ukraine as genocide, and even those who recognise an ongoing genocide in Ukraine admit that the expectations to have the ICJ upholding this recognition are not optimistic.¹⁰⁷

However, it must be emphasised that ICJ's and several of ICTY's rulings acknowledge that genocide has been committed during the conflicts of the dissolution of former Yugoslavia – it is just that no state actor has been considered responsible for it.¹⁰⁸

Furthermore, it was at least partly for political reasons that the ICJ found it necessary to deny a tight connection between Srebrenica and the earlier pattern. As Shaw explains, the judgement tried to partially fulfil both sides' interests.¹⁰⁹ While Bosnia–Herzegovina would gain the recognition that genocide had been committed in Srebrenica, Serbia would come out of it only with an attribution of mere indirect responsibility, for its failure to prevent the Bosnian- Serbian army from committing the massive killings, an excuse that would not work for earlier massacres committed by forces more closely controlled by the Serbian state. Serbia had been backed by Russia in the war, and the Serbian government in 2007 was under the Western orbit, therefore, a wider genocide legal finding against Serbia would have been unwelcome to the Western powers and Russia, whose support was essential to international courts.

A similar restrictive approach was also present in some of the ICTY cases, including against the Serbian leader Radovan Karadžić, in which inferences of genocidal intention were required to be the “only reasonable inference”, a requirement as high as inadequate.¹¹⁰

The very strict criteria established by the ICJ and ICTY in the Bosnian case seems to ignore, perhaps on purpose, that genocidal and military intentions are usually intertwined, as it is

¹⁰⁷ Quénivet, "The Conflict in Ukraine", 153; Marchuk and Wanigasuriya, "Beyond the False Claim of Genocide", 276; Ioffe, "Forcibly Transferring Ukrainian Children", 343.

¹⁰⁸ Kursani, "Beyond Putin's Analogies," 8.

¹⁰⁹ Shaw, "Russia's Genocidal War," 360.

¹¹⁰ Prosecutor v. Radovan Karadžić, Case No. IT-95-5/18-T, Public Redacted Version of Judgement, ¶¶ 2605 and 2612 (International Criminal Tribunal for the Former Yugoslavia Mar. 24, 2016); Ioffe, "Forcibly Transferring Ukrainian Children", 343.

the case with the Russia-Ukraine war, in which the genocidal elements of the conflict are closely connected to its military logic.¹¹¹

Even with unfavourable precedents, it may be still worth filing a new Genocide application at the ICJ, as the jurisprudence of international courts keep evolving, and this time the political context might influence the Court in favour of Ukraine, instead of the political motivation against the Bosnian claim when the precedent was established.¹¹²

3.2.3. Subsidiary argument: incitement to genocide (Art. III, c, Genocide Convention)

As a subsidiary argument, in case a court of law rules that Russia's war is not a genocide, an alternative is to frame Russia's act as at least an incitement to genocide, which is a distinct crime recognised by Art. III (c) of the Genocide Convention,¹¹³ whether or not genocide follows. The commission of the crime is demonstrated by the following actions of Russia's agents: the denial of the existence of a Ukrainian identity; accusation in a mirror (accusing the targeted group of committing atrocities like those the speaker envisions against them, framing the putative victims as an existential threat and making violence against them seem defensive and necessary); the reference to "denazification" and dehumanization, posing Ukrainians as an existential threat; and lastly, conditioning the Russian audience to commit or condone atrocities.¹¹⁴

This argument is further corroborated by the UN Independent International Commission of Inquiry on Ukraine. In its August 2023 report, it argued that "some of the rhetoric transmitted in Russian state and other media may constitute direct and public incitement to commit genocide", a conclusion that was reinforced in its March 2024 report too.¹¹⁵

3.3. Genocide according to the Rome Statute

¹¹¹ Shaw, "Russia's Genocidal War," 355; Ioffe, "Forcibly Transferring Ukrainian Children", 343.

¹¹² Ioffe, "Forcibly Transferring Ukrainian Children", 343.

¹¹³ UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide.

¹¹⁴ "An Independent Legal Analysis", 1-2.

¹¹⁵ UN Human Rights Council, Conference room paper of the Independent International Commission of Inquiry on Ukraine, A/HRC/52/CRP.4 (August 29, 2023), para 774; UN Human Rights Council, Report of the Independent International Commission of Inquiry on Ukraine, A/HRC/55/66 (March 18, 2024), para. 97.

The Rome Statute establishes the ICC's jurisdiction over war crimes, crimes against humanity, genocide, and aggression. In Article 6, the Statute reproduces the Genocide Convention's definition of genocide, already detailed in section 4.2.

3.3.1. The ICC's arrest warrant against Putin: what are the repercussions of genocide labelling, if any?

Ukraine is not a State Party to the Rome Statute, but it has twice exercised its prerogatives to accept the ICC's jurisdiction over alleged international crimes occurring on its territory, pursuant to article 12(3) of the Rome Statute. The first declaration encompasses the period between 21 November 2013 and 22 February 2014, and the second declaration extended this time period on an open-ended basis to cover crimes committed from 20 February 2014 onwards.¹¹⁶ This declaration enables the Court, pursuant to article 12(2) of the Rome Statute, to exercise its jurisdiction over any alleged acts of war crimes, crimes against humanity or genocide committed on Ukraine's territory or by its nationals.

The situation in Ukraine was referred to the ICC by 43 States Parties, and on 2 March 2022, the Court opened investigations on the alleged crimes committed in that context since 21 November 2013.¹¹⁷ On 17 March 2023, the ICC Pre-Trial Chamber II issued warrants of arrest for two individuals in the context of the situation in Ukraine: Vladimir Vladimirovich Putin, President of the Russian Federation, and Maria Alekseyevna Lvova-Belova, Commissioner for Children's Rights in the Office of the President of the Russian Federation.¹¹⁸

The Pre-Trial Chamber II considered that there are reasonable grounds to believe that each suspect bears responsibility for the war crime of unlawful deportation of population (children), and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation, in prejudice of Ukrainian children under articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute.¹¹⁹

¹¹⁶ International Criminal Court. "Situation in Ukraine: ICC-01/22". Accessed on July 24, 2025. <https://www.icc-cpi.int/situations/ukraine>.

¹¹⁷ International Criminal Court. "Situation in Ukraine: ICC-01/22".

¹¹⁸ International Criminal Court. "Situation in Ukraine: ICC-01/22".

¹¹⁹ International Criminal Court. "Situation in Ukraine: ICC-01/22".

The full text of the arrest warrant is not public, as the judges decided only to disclose the suspects' names and their alleged crimes and modes of liability. Although the Prosecutor did not seek to charge Putin or Lvova-Belova for genocide in relation to the deportation and unlawful transfer of Ukrainian children, it does not mean that it will not occur. Following additional investigations, the Court can add new charges at a later date, as it did in the case of former Sudanese President Omar al-Bashir, regarding the genocide in Darfur.¹²⁰ Therefore, the ICC ongoing investigation gives Ukraine an optimistic perspective, and the findings of that Court may be used to support new cases to be filled at the ICJ or even in national proceedings through universal jurisdiction.

On 5 March 2024, ICC Pre-Trial Chamber II issued additional warrants of arrest for two other individuals, indicted for war crimes and crimes against humanity.¹²¹

3.4. Political interests of the states and double standards in international law

As mentioned by Raphael Lemkin, Hitler himself recognised that the practice of “exterminating the enemy”, rather than “only” conquering them, was long established before the Second World War. Hitler affirmed that “[n]atural instincts bid all living human beings not merely conquer their enemies but also destroy them. In former days it was the victor’s prerogative to destroy tribes, entire peoples”.¹²² That statement already introduces the idea that war and genocide are intertwined, as extensively argued by Shaw, and apparently denied by the international courts, which seem to require an exclusive genocidal intent, as already discussed.¹²³

On the other hand, Lemkin himself agrees with the idea: “Hitler was right. The crime of the Reich in wantonly and deliberately wiping out whole peoples is not utterly new in the world. It is only new in the civilized world as we have come to think of it”.¹²⁴ He further concludes that “Germany has transformed an ancient barbarity into a principle of

¹²⁰ Rebecca Hamilton, “The ICC Goes Straight to the Top: Arrest Warrant Issued for Putin,” *Just Security*, March 17, 2023, <https://www.justsecurity.org/85529/the-icc-goes-straight-to-the-top-arrest-warrant-issued-for-putin/>.

¹²¹ International Criminal Court. “Situation in Ukraine: ICC-01/22”.

¹²² Lemkin, “Genocide – A Modern Crime”, 39.

¹²³ Shaw, “Russia’s Genocidal War,” 364.

¹²⁴ Lemkin, “Genocide – A Modern Crime”, 39.

government by dignifying genocide as a sacred purpose of the German people”.¹²⁵ Attention to the use of the word “civilized” in the first quote, as if the non-Western peoples who had suffered with brutal colonial practices were not civilized — a Eurocentric paradigm that is still widely believed. Even nowadays, the term “genocide” is almost by instinct traced back to the Holocaust, ignoring older genocidal colonial practices, including those applied by Western States in their former colonies in the Global South.

It connects with the criticism that the war in Ukraine is receiving an “exceptional” reaction from the international community, in terms of repercussion and financial and political support for defence, in comparison to other conflicts. The main reasons for this include: the fact that the war is happening in Europe, in a state that borders member states of the European Union — raising security concerns and fears of Russian expansionism; the targeted group being attacked is predominantly white and European; and the political interests of Western states, particularly the United States, whose geopolitical influence would be affected should Ukraine lose the war.

El-Affendi critiques the fact that Raphael Lemkin’s celebrated “awakening of international conscience” was short-lived, as little was done about genocide between the Nuremberg trials and the ICTY, with both sides of the Cold War aiding and abetting much genocidal violence around the world, as in Syria, for instance.¹²⁶ And more recently, in Gaza, we have the world’s “major democracies” either as active participants of the genocide, or at least condoning, funding, and championing the “crime of the crimes” — including, I must emphasize, Western nations that so harshly condemn Russia’s genocidal war against Ukraine. As Zarbiyev observes, “[m]ost of those countries continue to supply weapons that possibly contribute to Israel’s actions, and the US financially and militarily supports Israel, while repeatedly vetoing cease-fire resolutions at the UN Security Council until recently”.¹²⁷

Political interests motivated the United States — a state that so harshly accuses Russia of committing a genocide — not to join the ICC, whose mandate includes prosecuting

¹²⁵ Lemkin, “Genocide – A Modern Crime”, 39.

¹²⁶ El-Affendi, Abdelwahab. “The futility of genocide studies after Gaza.” *Journal of Genocide Research* (2024): 4-5.

¹²⁷ Fuad Zarbiyev. “Damaged Beyond Repair? International Law after Gaza.” *EJIL:Talk!*, March 26, 2024. <https://www.ejiltalk.org/damaged-beyond-repair-international-law-after-gaza/>.

genocide. Although Ukraine itself only became a signatory to the Rome Statute in 2025, it had previously accepted the jurisdiction of the ICC for the specific situation of the crimes alleged committed by Russia since 2014.¹²⁸

The political interests of states also influence the decisions taken by international courts, as demonstrated by the Bosnia-Herzegovina case at the ICJ.

Another perception of bias comes from the comparison between the levels of engagement in the two ICJ genocide cases: *Ukraine v. Russian Federation* and *The Gambia v. Myanmar*, which gives rise to criticisms of Eurocentric bias. While 42 states expressed their support for Ukraine's case at the ICJ and signalled their intention to intervene in the proceedings, the Myanmar case did not get any near this level of support. Also, the majority of states intervening in the Ukrainian case come from European and "Western" states, with a notable absence of states from the Global South, which do not see themselves included in this portrayal of the conflict that is framed as "the West against Russia". The lack of Western interventions in the Myanmar case reinforces the idea that Western states are less concerned with atrocities and war crimes perpetrated in non-Western states.¹²⁹ It is also interesting to note that the Brazilian Head of State, Lula, openly criticised the genocide in Gaza, comparing it to the Holocaust, while publicly stating that Putin could attend G-20 meeting in Brazil and he would not be arrested — despite the fact that Brazil is a State-party to the Rome Statute and is obliged to enforce the ICC's arrest warrant against Putin.

In light of this geopolitical situation, what can be inferred is that in terms of genocide, the legal and the political aspect are equally important, as it seems that recognition only occurs when a sufficient degree of legal and political interest arises. Although the claim of genocide in Ukraine is strongly supported by powerful Western countries, even scholars who agree with the existence of an ongoing genocide admit that "apart from political statements, Ukraine cannot rely on any criminal cases, either in the national context or at the

¹²⁸ International Criminal Court. "Situation in Ukraine: ICC-01/22".

¹²⁹ Marchuk and Wanigasuriya, "Beyond the False Claim of Genocide," 262.

international level (i.e. ICC), that can strengthen its claim of the commission of genocide by Russia".¹³⁰

Nonetheless, dealing with genocide solely through the lens of national self-interest is a perilous game not only for states, but for humanity as a whole. As Raphael Lemkin reflects:¹³¹

Why should genocide be recognized as an international problem? Why not treat it as an internal problem of every country, if committed in time of peace, or as a problem between belligerents, if committed in time of war?

The practices of genocide anywhere affect the vital interests of all civilized people. Its consequences can neither be isolated nor localized. Tolerating genocide is an admission of the principle that one national group has the right to attack another because of its supposed racial superiority. This principle invites an expansion of such practices beyond the borders of the offending state, and that means wars of aggression.

Except for the out-dated term "civilized", this quote remains just as relevant as it did in 1945.

Conclusion

As established in the preceding sections, Russia's war in Ukraine fulfils the genocidal threshold of the Genocide Convention, the Rome Statute, and aligns with the original concept by Raphael Lemkin. Nonetheless, it will be challenging to reach this recognition from international courts, since precedents by the ICJ and ICTY require that genocidal intent must be the only reasonable inference behind the perpetrator's acts, but in this case, Russia's genocidal aims are intertwined with other political and military goals.

This demonstrates that legal discourse on genocide has departed from its original socio-historical understanding.¹³² This bar set by the Courts is astoundingly high and defies the original conception of genocide. Nevertheless, there is an opportunity for jurisprudence to evolve and accept that genocidal intent can co-exist alongside other belligerent goals.

¹³⁰ Marchuk and Wanigasuriya, "Beyond the False Claim of Genocide," 276.

¹³¹ Lemkin, "Genocide – A Modern Crime", 42.

¹³² Shaw, "Russia's Genocidal War," 369.

Genocide may have been encapsulated into a legal concept, but its recognition — even by courts of law — is political. And now, states must use their political influence, and the international legal community must use its power to promote accountability (for both the State and the individuals), and trigger States' obligations to prevent genocide under the Genocide Convention — not only for Ukraine, but also in response to any other genocide unfolding before our eyes.

As Zarbiyev observes, “[i]nternational law may well be an ideological tool in the hands of powerful states, but that does not prevent it from being a tool in the service of more broadly valued purposes as well”.¹³³ This dissertation calls upon the international community, particularly international courts, to employ international law for the prevention and promotion of accountability for genocide, and for uphold humanity as a whole, as opposed to the facilitation of self-interested politics that often triggers or exacerbates humanitarian crises.

¹³³ Zarbiyev, “Damaged Beyond Repair?”.

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