**The Conflict in Ukraine and Genocide**

**Introduction**

Since the beginning of the conflict in Ukraine in 2022 accusations of genocide have been levelled against each other by both sides. In a letter sent to the United Nations Secretary-General that referred to the address of Russian President Putin to the Citizens of Russia, Russia partially justified its attack on the basis that genocide had been committed against Russians in Donbass.[[1]](#footnote-1) Upon such statement, Ukraine seized the International Court of Justice (ICJ)[[2]](#footnote-2) which granted provisional measures requesting Russia to halt its military operations.[[3]](#footnote-3) In its submission, Russia focused on the right to self-defence[[4]](#footnote-4) in contrast to Putin’s speech (annexed to it) that implied a right to humanitarian intervention or possibly a right to protection of nationals abroad.[[5]](#footnote-5) It remains unclear which specific legal arguments Russia relies on to justify its military intervention in Ukraine and why it believes that Ukraine was carrying out genocide. Furthermore, the Organisation for Security and Co-operation in Europe that has been monitoring the situation in the occupied territories since 2014 ‘has never reported anything remotely resembling Russia’s claims.’[[6]](#footnote-6) Accordingly, this article does not investigate whether Ukraine is committing a genocide.

As the conflict in Ukraine intensified, numerous attacks were conducted by the Russian forces against a vast range of civilian buildings, including cultural heritage sites, shelters, schools and hospitals. Following the attack on the maternity hospital in Mariupol, Ukrainian President Zelensky accused Russia of carrying out genocide. Later, in April, US President Biden and the parliaments of Estonia and Latvia qualified the situation in Ukraine as genocide.[[7]](#footnote-7)

Whether Russia’s conduct in Ukraine qualifies as genocide is hotly debated amongst pundits in international law and related disciplines. Some experts argue that Russia is conducting a genocide in Ukraine[[8]](#footnote-8) or that some warning signs are present,[[9]](#footnote-9) others claim the contrary,[[10]](#footnote-10) another group contends that presently there is not enough information to support a claim of genocide,[[11]](#footnote-11) and lastly another group refrains from drawing any clear conclusion.[[12]](#footnote-12)

This article starts by briefly introducing the concept of genocide and then explains the legal consequences for qualifying certain acts as genocide. It then applies the elements of the act of genocide to the situation in Ukraine, drawing the conclusion that at this stage there is not enough conclusive information to state that either the acts of Russia as a State or those of individual soldiers qualify as genocide.

**The Definition of Genocide**

As ‘[g]enocide [is a crime] which particularly shocks the collective conscience’[[13]](#footnote-13), its legal particularities are often misunderstood and the concept used inappropriately. Politicians are lambasted for using it without thinking of the moral and legal consequences of qualifying a situation as genocide whilst others, cautious, are being criticised for stressing that such a characterisation is best left to lawyers.[[14]](#footnote-14) It is often misused, sometimes as a pretext to intervene in the internal affairs of another State, e.g., Putin claiming genocide for the invasion of Ukraine, sometimes as a hyperbole, a way to highlight the magnitude and depravity of crimes committed, e.g., Zelenskyy’s labelling of ongoing atrocities.[[15]](#footnote-15)

Article II of the 1948 Genocide Convention[[16]](#footnote-16) provides the definition of genocide which is also of customary nature.[[17]](#footnote-17) Most importantly, the definition is comprised of acts and an intent.[[18]](#footnote-18) For an act to be considered genocide, three elements must be fulfilled. First, the act must fall within one of the five categories of acts listed in the definition. In fact, the acts as such already include mental elements.[[19]](#footnote-19) Second, the act must be directed at a specific group (again a definite list is provided). Unlike what is often believed, there is no need for mass violence to be perpetrated. Third, the act must be perpetrated with the aim, the specific intent (or *dolus specialis)[[20]](#footnote-20)* to destroy that group. This element clearly distinguishes genocide from other international crimes such as crimes against humanity.[[21]](#footnote-21)

**Legal Consequences of Such Qualification**

Calling a particular situation genocide, which is also commonly cast as ‘the crime of crimes’,[[22]](#footnote-22) has a wide range of consequences. State and individual conduct (whether as perpetrators or victims) in relation to genocide is often couched in both moral[[23]](#footnote-23) and legal terms.

The notion evokes emotions and reminds us of the Holocaust and the ‘never again’ call that led to the adoption of the Genocide Convention whose aim is ‘to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality’.[[24]](#footnote-24) The ‘tarring effect of the term genocide’causes reputational damage to the State, which explains why Ukraine requested a negative declaratory judgment from the ICJ.[[25]](#footnote-25) Moreover, political negotiations with an alleged ‘genocidaire’ are nearly impossible for moral reasons.[[26]](#footnote-26) If Russia is indeed conducting a genocide in Ukraine, it would become very difficult to engage in meaningful negotiations with it.

More fundamentally, there is a moral duty ‘to do something’, a call that could be transformed into a concomitant *legal* obligation by States to act, especially considering Article I of the Genocide Convention. As the Parliamentary Assembly of the Council of Europe recalls, ‘[a]s interpreted by the ICJ, this obligation and a corresponding duty to act arise at the instant that one has learnt of, or should normally have learned of, the existence of a risk that genocide would be committed.’[[27]](#footnote-27) Although several UN[[28]](#footnote-28) and NGO[[29]](#footnote-29) mechanisms have been established to detect potential genocides, this does not automatically mean that States can use force to abide by their obligation,[[30]](#footnote-30) this nevertheless does not mean that States can use force to abide by their obligation: States have a right and a duty to ‘employ all means reasonably available to them, so as to prevent genocide so far as possible […] within the limits permitted by international law’.[[31]](#footnote-31)

The UN Charter refers to two exceptions to the use of force: the right to individual and collective self-defence under Article 51 and collective security measures under Chapter VII. That being said, since the deployment of NATO forces in Kosovo, the concept of responsibility to protect has been brandished to enable States to intervene in a State should it be unable or unwilling to protect its people. First articulated in the report of the International Commission on Intervention and State Responsibility,[[32]](#footnote-32) the term found its way, albeit formulated slightly differently, into the 2005 World Summit Outcome Document[[33]](#footnote-33) and was further developed in the 2009 report on Implementing the Responsibility to Protect.[[34]](#footnote-34) Whilst some States such as the US seem to believe that it is an exception to the use of force,[[35]](#footnote-35) the majority of States (and academics) would maintain that the notion is devoid of any *separate legal* meaning as, after all, under the latest iteration of the responsibility to protect, only the UN Security Council is able to authorise an intervention (which it could already do under Chapter VII).

Irrespective of whether there is such a right, international law clearly prohibits genocide.[[36]](#footnote-36) Such prohibition is enforced via two mechanisms: State responsibility and individual liability. International State responsibility is the mechanism whereby a State is held accountable for a violation of international law. For a State to be held responsible two elements must be present. First, there must be an internationally wrongful act or omission. Not only does the Genocide Convention prohibit genocide, it also obliges States to prevent and punish genocide.[[37]](#footnote-37) Second, that breach must be attributable to the State, usually via its organs or agents. Genocide can thus be a violation of international law attributable to a State.

Under international criminal law, individuals can be held liable for the crime of genocide. Under the ICC Statute,[[38]](#footnote-38) it must be established that they committed any of the five listed acts, the victim belonged to a specific group, the perpetrator intended to destroy that group and the act either took place in the context of a pattern of similar conduct or could in itself effect such destruction. Moreover, the individual must also be criminally responsible and liable for punishment under Article 25 of the ICC Statute. The crime of genocide can be prosecuted both in international criminal tribunals as well as in national courts.

**Genocide in Ukraine**

To assess whether Russia has breached the prohibition of genocide or whether individuals can be held liable for the crime of genocide, this article now attempts to map the information gleaned in the press and from official documents[[39]](#footnote-39) against the definition of genocide.

*Acts*

Acts must fall within one of the five categories:

1. ‘killing members of the group’: Massive killing, indiscriminate shelling of cities and residential areas as well as targeted killings such as summary executions have been widely reported in Ukraine.
2. ‘causing serious bodily or mental harm to members of the group’: Beatings, torture, sexual violence and rape are examples of acts falling within that category. Forcible transfer can in some circumstances be an underlying act that causes such harm. Again, these acts have been reported in Ukraine.
3. ‘Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part’: this covers methods that do ‘not immediately kill the members of the group, but, which, ultimately, seek their physical destruction’.[[40]](#footnote-40) Encirclement, shelling and starvation, deportation and expulsion, lack of proper housing, clothing and hygiene or excessive work or physical exertion qualify under this heading. Official reports refer to such situations.
4. ‘Imposing measures intended to prevent births within the group’: the ICTR considered that ‘rape can be a measure intended to prevent births when the person raped refuses subsequently to procreate’[[41]](#footnote-41) and thus report of rapes in Ukraine could fall under this heading.
5. ‘Forcibly transferring children of the group to another group’: Ukraine has reported that orphans are taken out of Ukraine to be adopted in Russia.

Consequently, many acts perpetrated by Russian agents and individuals appear to fall within the definition of acts of genocide.

*‘National, Ethnical, Racial or Religious Group’*

To qualify as genocide, these acts must also be perpetrated against ‘a national, ethnical, racial or religious group’. Yet, there are no accepted definitions of these terms and each of them must be assessed in light of the political, social, and cultural context.[[42]](#footnote-42)

Ukrainians could be deemed a ‘national’ group as it ‘is defined as a collection of people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties’.[[43]](#footnote-43) In relation to the ‘ethnical’ group category, it must be proven that members share a similar culture, language, history, etc.[[44]](#footnote-44)

International criminal courts have used two approaches, objective and subjective, to assess whether such groups exist. The former requires using objective and scientific criteria. In relation to the situation in Ukraine, the ‘national’ group would include all those with Ukrainian nationality but sets aside stateless persons and those with Russian nationality, and the ‘ethnical’ group would encompass those with a shared Ukrainian ethnicity, language and culture but might leave out ethnic Russian and Russian speakers who embrace Ukrainian culture. In cases where the two groups (perpetrator and victim) share the same markers, the distinguishing test of ‘stable’ group whose membership is determined ‘by birth, in a continuous and often irremediable manner’[[45]](#footnote-45) can be used. The question whether the groups of Ukrainians and Russians fulfil the ‘stability’ and ‘permanence’ requirements can be answered in the positive.

According to the subjective approach, the determination of membership to a group is in the eyes of the perpetrator: the members self-identify with a group and identify others as being different. Some Russians seem to view Ukrainian culture, history, etc as an artificial construct, a deviation from the Russian nation, [[46]](#footnote-46) which would seem to indicate that they see them as Russians, though inferior to them. Likewise, it can be argued that some believe that Ukrainians have their own identity as they must be ‘de-Ukrainized’.[[47]](#footnote-47) A combination of these attitudes is also reported.[[48]](#footnote-48) As case-law combines the objective and subjective approaches,[[49]](#footnote-49) it can tentatively be concluded that there is a distinct Ukrainian group though such determination is best left to experts in Ukrainian and Russian history, language, culture, society, etc.

The Genocide Convention does not include political groups. It was left out from Lemkin’s original proposal as many States were against their inclusion on the basis that the crime of genocide should only cover stable, permanent groups.[[50]](#footnote-50) In his speech, Putin extensively refers to Ukraine as being run by far-right nationalists and Nazis and claims that there is a junta in government.[[51]](#footnote-51) A RIA Novosti article also mentions the de-nazification of Ukraine.[[52]](#footnote-52) However, political groups such as fascists and Nazis (if one follows Putin’s logic) are not protected groups. The claim made that de-nazification and de-ukrainization are tautological in Russia’s state of mind[[53]](#footnote-53) would warrant further investigation, though under national/ethnical group.

*‘Acts committed with Intent to Destroy, in Whole or in Part’*

‘The crime of genocide is unique because of its element of dolus specialis (special intent)’[[54]](#footnote-54) and it is this element that is most challenging to fulfil: there must be proof of extermination (or an attempt at it) and of the acts being committed with the goal of destroying all or part of a group.

Both the 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’[[55]](#footnote-55) can be used to expose the destruction of a group. Usually, case-law points out that a considerable number of individuals must have been affected by the genocidal acts.[[56]](#footnote-56) However, the *Krstić* case is telling as the International Criminal Tribunal for the Former Yugoslavia (ICTY) stated that whilst a high number of casualties in different places over a broad geographical area might not qualify as genocide, ‘the killing of all members of the part of a group located within a small geographical area, although resulting in a lesser number of victims, would qualify as genocide if carried out with the intent to destroy the part of the group as such located in this small geographical area.’[[57]](#footnote-57) Accordingly, the number of casualties in Ukraine or Medvedev’s threat that Ukraine will face the same fate as Germany might not be characterised as genocide whereas the physical destruction of, for example, Ukrainians in the Donbass region might.

Two methods can be employed to ascertain intent: direct intent in specific circumstances and a ‘persuasive and consistent evidence for a pattern of atrocities’*.*[[58]](#footnote-58) In relation to direct intent, as clear indications of such intent are rarely obvious it can only be established by inferences. Whilst pinpointing at a plan is useful as evidential purposes, the existence of a plan or policy or an organisation or system is not necessary though it is difficult to corroborate intent if the acts are not backed by an organisation of system. So far, there is no ‘evidence of a plan to destroy Ukrainians as a group.’[[59]](#footnote-59)

In an armed conflict, it is often difficult to distinguish between acts in violation of international humanitarian law and acts of genocide.[[60]](#footnote-60) Evidence used to show genocidal intent includes killings after checking IDs, propaganda campaigns overtly calling for the killing of the group, existence of lists of group members to be eliminated provided they follow from a precise logic of destruction, psychological preparation of the population masterminded by the media, the concealment of bodies in mass graves, etc. At the moment in Ukraine as ‘[b]ombs are falling on civilians and their infrastructure regardless of their identity’[[61]](#footnote-61) it can be argued that they are ‘not consistently so intense as to suggest an attempt […] to wipe out or even deplete the civilian population’.[[62]](#footnote-62) Likewise 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. The situation of besieged cities does not necessarily substantiate a claim of intent as encirclement, shelling and starvation can be a way to force individuals to flee but is not aimed at destroying the group.[[63]](#footnote-63) Similar issues arise with deportations and expulsions.[[64]](#footnote-64) Whilst the case of an open Ukrainian passport strewed on the ground next to the person who had his hands tied behind his back and had been summarily executed[[65]](#footnote-65) could be used as evidence of intent, more such instances would need to be reported. The problem lies in the fact that the ICJ in the *Genocide* case offered not only a very narrow interpretation of the level and type of evidence necessary to demonstrate genocidal intent but also explained that ‘[i]t is not enough that the members of the group are targeted because they belong to that group, that is because the perpetrator has a discriminatory intent. Something more is required. The acts listed in Article II must be done with intent to destroy the group as such in whole or in part. The words “as such” emphasize that intent to destroy the protected group’.[[66]](#footnote-66) Following the *Krstić* and *Blagojević* cases, it only accepted that the later part of the siege of Srebrenica and especially the ensuing events qualified as genocide as the aim was to eliminate the Bosnian Muslim communities living there and the Bosnian Serb forces ‘not only knew that the combination of the killings of the men with the forcible transfer of the women, children and elderly, would inevitably result in the physical disappearance of the Bosnian Muslim population of Srebrenica, but clearly intended through these acts to physically destroy this group.’[[67]](#footnote-67) The application of such standards to, for example, the siege of Mariupol is unlikely to conclude that a genocide has been carried out.

With regard to individuals, the *Stakić* case is a useful source to assess genocidal intent. The ICTY acknowledged that ‘evidence of intent to destroy may be inferred from an accused’s actions or utterances vis-à-vis the targeted group.’[[68]](#footnote-68) Ethnic bias does not prove genocidal intent; rather, ethnic slurs and calls for ethnic cleansing must be assessed in the relevant context. Stakić’s use of hateful terminology, statement that the victim group was an artificial creation and advocacy for the removal (rather than elimination) of Muslims was not enough to demonstrate the *dolus specialis.* Applied to the situation in Ukraine, although some experts point out genocidal intent by referring to the hate speech and dehumanising language in newspapers and on TV that undoubtedly create a toxic environment rubbing off on Russian soldiers,[[69]](#footnote-69) it is in light of the *Stakić* jurisprudence difficult to argue that such utterances expose genocidal intent even if accompanied by violence.

Genocidal intent can also be inferred from a pattern of atrocities, by highlighting that other unlawful acts are committed against the group. In this case there is no need to look at each single incident or to go through the list of allegations as it is sufficient to look at facts that help ascertain the intent or illustrate the existence of a pattern.[[70]](#footnote-70) Elements to consider are documents, [[71]](#footnote-71) the number and nature of forces, the standardised code language used by units, the scale of executions, the invariability of the killing methods, [[72]](#footnote-72) etc. Presently, there are no official documents that could be interpreted as planning a genocide of Ukrainians though it could be argued that Medvedev has called for the extermination of the Ukrainian radicals though not all Ukrainians.[[73]](#footnote-73) The forces deployed by Russia are ‘classic’ armed forces rather than special forces deployed with a specific task. Whilst summary executions are being perpetrated and individuals forcibly disappeared (in e.g., Bucha)[[74]](#footnote-74) there are unlikely to reach the scale required (though this might change with the continuation of the conflict).[[75]](#footnote-75) Also, although a pattern of killing, e.g., civilians of fighting age are killed whereas others are spared,[[76]](#footnote-76) seems to emerge[[77]](#footnote-77) it is unclear whether they form part of a *genocidal* pattern. In *Krstić* the ICTY took into account that ‘men of military age were systematically massacred’[[78]](#footnote-78) but combined it with the forcible transfer of the population to show the intent to destroy the group.[[79]](#footnote-79) Bearing in mind that even the situation in Bosnia-Herzegovina was not qualified as genocide using the pattern approach (with the exception of Srebrenica),[[80]](#footnote-80) it is difficult to qualify the current situation in Ukraine as genocide.

Under international criminal law, a link between the attitude of the perpetrator and the pattern of violence must also be adduced. The act of the individual is part of the wider-ranging intention to destroy the group,[[81]](#footnote-81) which means that the perpetrator must share the goal of destroying the group. This additional requirement is sometimes difficult to prove as the case of *Jelisic,* an individual who had proclaimed his hatred for the protected group,demonstrates. As the ICTY explained, mere hatred for the targeted group[[82]](#footnote-82) and random, arbitrary acts of violence against individual members of the group do not show the destruction of the group ‘as such’.[[83]](#footnote-83)

**Conclusion**

Based on current information on the situation in Ukraine, it seems difficult to argue that a genocide is being committed as, so far, no *dolus specialis,* i.e., the intent to destroy Ukrainians as a national or ethnical group as such, can be identified. Yet, such a conclusion could change with information acquired in the next few weeks/months. Moreover, such conclusion does not minimise the atrocities perpetrated by Russia and Russian troops. They still can be pursued as violations of international (humanitarian) law as well as prosecuted as war crimes and crimes against humanity.

1. Letter dated 24 February 2022 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General, 24 February 2022, UN Doc S/2022/154. [↑](#footnote-ref-1)
2. ICJ, *Application Instituting Proceedings – Dispute Relating to Allegations of Genocide (Ukraine v Russian Federation)*, 26 February 2022. [↑](#footnote-ref-2)
3. ICJ, *Allegations of Genocide under the Convention of the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation),* Order, 16 March 2022. [↑](#footnote-ref-3)
4. Document (with annexes) from the Russian Federation Setting out its Position Regarding the Alleged ‘Lack of Jurisdiction’ of the Court in the Case Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation), 7 March 2022. [↑](#footnote-ref-4)
5. See J Green J, C Henderson and T Ruys, ‘Russia's Attack on Ukraine and the *jus ad bellum*’ (2022) 9(1) *Journal on the Use of Force and International Law* 4-30 [↑](#footnote-ref-5)
6. Tweet, U.S. Mission to OSCE, 16 February 2022. The Tweet is accompanied by a reference to the daily and sport reports from the Mission. [↑](#footnote-ref-6)
7. K Liptak, ‘Biden Calls Atrocities in Ukraine a “Genocide” for the First Time’ *CNN*, 12 April 2022; Statement of the Riigikogu, On the War Crimes and Genocide committed by the Russian Federation in Ukraine, 21 April 2022; Statement of the Saeima of the Republic of Latvia, *On the Aggression and War Crimes of the Russian Federation in Ukraine*, 21 April 2022. [↑](#footnote-ref-7)
8. See D Irvin-Erikson, ‘Is Russia Committing Genocide?’, *Opinio Juris,* 24 April 2022; See also E Finkel, ‘What’s Happening in Ukraine is Genocide. Period.’, *The Washington Post,* 5 April 2022, [↑](#footnote-ref-8)
9. D Fraser and J McIntyre, ‘The Duty to Prevent Genocide in Ukraine’, *The Interpreter,* 20 April 2022; A Oler, ‘Portending Genocide in Ukraine?’, *Articles of War,* 21 March 2022 [↑](#footnote-ref-9)
10. KC Priemel, ‘Why Cry “Genocide”? The Second World War Still Looms Large in Russia’s Collective Memory’, *Opinio Juris,* 5 April 2022; D Fraser, ‘Russia Is Committing Atrocity Crimes in Ukraine, but not Genocide’, *The Interpreter,* 16 March 2022. [↑](#footnote-ref-10)
11. JL Maynard, ‘Is Genocide Occurring in Ukraine: An Expert Explainer on Indicators and Assessments’, *Just Security,* 6 April 2022; J Cerone, ‘Claims of Genocide and other International Crimes in the Russia-Ukraine Conflict’, *Human Righter*, 9 May 2022; NM Naimark, ‘Ukraine and the Cloud of Genocide’, Hoover Institution at Stanford University, 10 May 2022. [↑](#footnote-ref-11)
12. IB Friedman, ‘Weaponizing “Genocide;” Post-War International Justice in Putin’s Crosshairs’, *JURIST,* 23 March 2022. [↑](#footnote-ref-12)
13. *Prosecutor v Kambanda,* ICTR 97-23-S, Judgment and Sentence, 4 September 1998, para 14. [↑](#footnote-ref-13)
14. Liptak (n7); No author, ‘Emmanuel Macron demande la qualification du mot “genocide” par des juristes,’ *Le Point,* 14 April 2022. [↑](#footnote-ref-14)
15. See discussion in Maynard (n11) and Priemel (n10); DA Kourtis, ‘Are States Allowed to “Cry Wolf”? Genocide and Aggression in Ukraine v Russia’, *Opinio Juris,* 21 March 2022. [↑](#footnote-ref-15)
16. Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, (1951) 78 UNTS 277. [↑](#footnote-ref-16)
17. *Prosecutor v Popović et al*, IT-05-88-T, Judgment, 10 June 2010, para 807. [↑](#footnote-ref-17)
18. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Judgment, 26 February 2007, [2007] ICJ Rep 43, para 186. [↑](#footnote-ref-18)
19. The words ‘deliberately’ and ‘intended’, for example, clearly shows that the acts must be intentional. See *Genocide* case (n18) para 186. [↑](#footnote-ref-19)
20. *Genocide* case (n18) para 187. [↑](#footnote-ref-20)
21. *Genocide* case (n18) para 188. [↑](#footnote-ref-21)
22. *Kambanda* (n13) para 16. [↑](#footnote-ref-22)
23. See e.g., Adama Dieng, Under-Secretary-General and Special Adviser of the Secretary-General on the Prevention of Genocide, states that ‘[r]atifying the Convention is a matter of moral obligation towards humanity’. United Nations Human Rights Office of the High Commissioner, ‘Genocide: “Never Again” Has Become “Time and Again”’, *News*, 18 September 2018. [↑](#footnote-ref-23)
24. Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, 28 May 1951, [1951] ICJ Rep 15, 23. [↑](#footnote-ref-24)
25. Kourtis (n15). [↑](#footnote-ref-25)
26. Oler (n9). [↑](#footnote-ref-26)
27. Parliamentary Assembly of the Council of Europe, *Resolution 2436 - The Russian Federation’s Aggression against Ukraine: Ensuring Accountability for Serious Violations of International Humanitarian Law and other International Crimes*, 28 April 2022. [↑](#footnote-ref-27)
28. United Nations, *Framework of Analysis for Atrocity: A Tool for Prevention of Crimes*, 2014. [↑](#footnote-ref-28)
29. See e.g., Genocide Watch (for Ukraine, see <https://www.genocidewatch.com/ukraine>) and the Early Warning Project (for Ukraine, see <https://earlywarningproject.ushmm.org/>). [↑](#footnote-ref-29)
30. ‘There is a false belief that the Genocide Convention “requires countries to intervene once genocide is formally identified”.’ Fraser and McIntyre (n9). See also W Schabas, ‘Preventing Genocide and the Ukraine/Russia Case’ *EJIL:Talk!,* 10 March 2022. [↑](#footnote-ref-30)
31. *Genocide* case (n18) para 430. [↑](#footnote-ref-31)
32. International Commission on Intervention and State Responsibility, *The Responsibility to Protect*, 2001. [↑](#footnote-ref-32)
33. UN General Assembly, *Resolution 60/1 – 2005 World Summit Outcome*, 24 October 2005, UN Doc A/RES/60/1, paras 138-139. [↑](#footnote-ref-33)
34. UN General Assembly, *Report of the Secretary-General – Implementing the Responsibility to Protect*, 12 January 2009, UN Doc A/63/677. [↑](#footnote-ref-34)
35. See discussion in Schabas (n30). [↑](#footnote-ref-35)
36. *Genocide* case (n18) paras 166-167. [↑](#footnote-ref-36)
37. Article I Genocide Convention; see also discussion in *Genocide* Case (n18) paras 428-432 (prevention), paras 440-447 (punishment). [↑](#footnote-ref-37)
38. Rome Statute of the International Criminal Court, adopted 17 July 1998, entered into force 1 July 2002, 2187 UNTS 3. [↑](#footnote-ref-38)
39. See e.g., United Nations Human Rights Office of the High Commissioner, *Update on the Human Rights Situation in Ukraine – Reporting Period: 24 February – 26 March,* 26 March 2022 and Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights, *Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes against Humanity Committed in Ukraine since 24 February 2022,* ODIHR.GAL/26/22/Rev.1, 13 April 2022. [↑](#footnote-ref-39)
40. *Prosecutor v Akayesu,* ICTR 96-4-T, Judgment, 2 September 1998, para 505. [↑](#footnote-ref-40)
41. *Akayesu* (n40) para 508. [↑](#footnote-ref-41)
42. *Prosecutor v Rutaganda*, ICTR-96-3-T, Judgment, 6 December 1999, para 56; *Prosecutor v Krstić*, IT-98-33-T, Judgment, 2 August 2001, para 557. [↑](#footnote-ref-42)
43. *Akayesu* (n40) para 512. [↑](#footnote-ref-43)
44. *Akayesu* (n40) para 513. [↑](#footnote-ref-44)
45. *Akayesu* (n40) para 511. [↑](#footnote-ref-45)
46. # See e.g., V Putin, ‘On the Historical Unity of Russians and Ukrainians’, 12 July 2021

    [↑](#footnote-ref-46)
47. See discussion in Y Trofimov, ‘Russia’s Long Disdain for Ukrainian Nationhood’, *Washington Post,* 28 April 2022. [↑](#footnote-ref-47)
48. See discussion in Trofimov (n47); D Medvedev, ‘On Fakes and True History’, as reported in M Domańska, ‘Medvedev Escalates Anti-Ukrainian Rhetoric’, Centre for Eastern Studies, 5 April 2022 [↑](#footnote-ref-48)
49. Prosecutor v Kayishema and Ruzindana, ICTR-95-1-T, Judgment, 21 May 1999, para 98; *Krstić* (n42) para 560; *Prosecutor v Stakić*, IT-97-24-A, Appeals Judgment, 22 March 2006, paras 25-26. [↑](#footnote-ref-49)
50. Summary Records of the meetings of the Sixth Committee of the General Assembly, 21 September - 10 December 1948, Official Records of the General Assembly, 19, 57, 58, 59, 60, 61, 100. [↑](#footnote-ref-50)
51. Available at *Bloomberg News,* 24 February 2022, <https://www.bloomberg.com/news/articles/2022-02-24/full-transcript-vladimir-putin-s-televised-address-to-russia-on-ukraine-feb-24> (accessed 3 May 2022). [↑](#footnote-ref-51)
52. I Rodinov, ‘What Russia Should Do with Ukraine’, *RIA Novosti,* 3 April 2022, available in English at <https://english.nv.ua/nation/kremlin-s-mouthpiece-ria-publishes-russian-fascist-manifesto-50231047.html> (accessed 2 May 2022). [↑](#footnote-ref-52)
53. See discussion in Maynard (n11). [↑](#footnote-ref-53)
54. *Kambanda* (n13) para 16. [↑](#footnote-ref-54)
55. *Krstić* (n42) para 574. [↑](#footnote-ref-55)
56. Kayishema and Ruzindana (n49) para 97; *Prosecutor v Bagilishema*, ICTR-95-1A-T, Judgment, 7 June 2001, para 64. [↑](#footnote-ref-56)
57. *Krstić* (n42) para 590 (also para 595); *Genocide* case (n18) para 199. [↑](#footnote-ref-57)
58. *Genocide* case (n18) para 242; *Prosecutor v Stakić,* IT-87-24-T, Judgment, 31 July 2003, para 546. [↑](#footnote-ref-58)
59. Fraser (n10). [↑](#footnote-ref-59)
60. Cerone (n11). [↑](#footnote-ref-60)
61. Fraser (n10). [↑](#footnote-ref-61)
62. *Prosecutor v Galić*, IT-98-29-T, Judgment, 5 December 2003, para 593, also cited in *Genocide* case (n18), para 328. [↑](#footnote-ref-62)
63. See situation described in *Genocide* case (n18) para 328. [↑](#footnote-ref-63)
64. See situation described in *Genocide* case (n18) para 334. [↑](#footnote-ref-64)
65. D Boffey, ‘“A War Crime”: Two Young Boys among Ukrainians Shot Dead During Attempted Evacuation’, *The Guardian*, 3 April 2022. [↑](#footnote-ref-65)
66. *Genocide* case (n18) para 187. [↑](#footnote-ref-66)
67. *Prosecutor v Blagojevic,* IT-02-30-T, Judgment, 17 January 2005as cited in *Genocide* case (n18) para 294. [↑](#footnote-ref-67)
68. *Stakić* (n49) para 18. [↑](#footnote-ref-68)
69. See discussion Irvin-Erikson (n8) and Trofimov (n47). [↑](#footnote-ref-69)
70. *Genocide* case (n18) para 242. [↑](#footnote-ref-70)
71. *Genocide* case (n18) para 372. [↑](#footnote-ref-71)
72. *Krstić* (n42) para 572. [↑](#footnote-ref-72)
73. See discussion Irvin-Erikson (n8). [↑](#footnote-ref-73)
74. See e.g., Human Rights Watch, *Ukraine: Russian Forces’ Trail of Death in Bucha*, 21 April 2022 [↑](#footnote-ref-74)
75. On the scale of the atrocities, see *Krstić* (n42) para 594. [↑](#footnote-ref-75)
76. Tweet, James Longman (ABC News Foreign Correspondent), 5 April 2022: ‘When the Russians arrived, they killed all the men below 50.’ [↑](#footnote-ref-76)
77. ‘Data on the exact pattern of violence perpetrated by Russian forces in Ukraine, meanwhile, remains extremely messy.’ Maynard (n11). [↑](#footnote-ref-77)
78. *Krstić* (n42) para 594. [↑](#footnote-ref-78)
79. *Krstić* (n42)para 595. [↑](#footnote-ref-79)
80. *Genocide* case (n18) para 373. [↑](#footnote-ref-80)
81. *Prosecutor v Jelisić*, IT-95-10-T, Judgment, 14 December 1999, para 80. [↑](#footnote-ref-81)
82. *Jelisić* (n81) para 80. [↑](#footnote-ref-82)
83. *Jelisić* (n81) paras 106-107. [↑](#footnote-ref-83)