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## Categorizing Russian Atrocity Crimes in Ukraine: Judicial Accountability and Implications Ahead

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One year into Russia’s full-scale invasion of Ukraine, International Criminal Court Prosecutor Karim Khan [summarized](#) the scope and scale of the devastation by stating, “Ukraine is a crime scene.” From violence like killing, rape, and torture to property damage to forced displacement, the list of Russian crimes in Ukraine is expansive and affects millions.

These crimes can be divided into two main categories: 1) the [crime of aggression](#), or activities by political and military leaders that involve the “planning, initiation, or execution of an act of using armed force by a State against the sovereignty, territorial integrity, or political independence of another State,” and 2) [atrocity crimes](#), or those “considered to be the most serious crimes against humankind” with acts that harm “the core dignity of human beings” (war crimes, crimes against humanity, and genocide). Significantly, in addition to war crimes and crimes against humanity, Russia has also committed genocide in Ukraine, as my colleagues and I [documented](#) in a comprehensive earlier report. In addition to demonstrating intent to destroy the Ukrainian national group in part, Russia has—in a highly unusual step—committed all five genocidal acts prohibited in the UN Genocide Convention. Durable trends of direct and public incitement to commit genocide—a separate crime—can also be found at various levels of the Russian leadership. This memo addresses the judicial, research, and social implications of these crimes in Ukraine moving forward.

### **Categorizing Russian Criminal Actions in Ukraine**

Addressing the full breadth of Russian criminal violations in Ukraine is beyond the scope of this memo, but a short summary can help organize this complex context. Many of the crimes listed below are occurring simultaneously, with some aspects that overlap yet with judicial accountability processes that will diverge.

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## *The Crime of Aggression*

The unprovoked, one-sided nature of Russia's brutal full-scale invasion of Ukraine has sent shockwaves across prevailing institutions, laws, and norms. Notwithstanding its well-discussed [limitations](#) and [inequalities](#), the post-World War II system of international institutions and laws formalized a process by which inter-state security and economic disputes could be addressed outside of a context of kinetic warfare. Even when violated by nation-states, the existence of fundamental principles like territorial integrity and state sovereignty were not themselves disputed. In this light, Russia's attempted annexation of (at least) five provinces of their neighbor's sovereign, internationally recognized territory in a one-sided war of conquest has ripple effects for the international rules that uphold every existing diplomatic, economic, and security agreement.

These factors shape interpretations of Russia's war against Ukraine as a crime of aggression. Also referred to as a [crime against peace](#), the Rome Statute adopted the following [definition](#): "the planning, preparation, initiation, or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations." Best described as a leadership crime, individual perpetrators tried under this crime must be political or military leaders. Although often-debated, the Rome Statute also contains a comprehensive [list](#) of acts of aggression, including invasion, annexation by use of force, bombardment, military occupation, and military blockade of ports, all of which describe Russia's actions in Ukraine. UN General Assembly resolutions have reflected the language of the crime of aggression, including a March 2022 [resolution](#) passed by an overwhelming 141-5 majority condemning Russia's "aggression against Ukraine in violation of the Charter of the United Nations." In July, the European Union Agency for Criminal Justice [inaugurated](#) a new international center for prosecuting Russia for the crime of aggression against Ukraine – the first such prosecutorial effort since the Nuremberg Trials.

## *Atrocity Crimes*

Throughout Russia's full-scale invasion, the intense cruelty directed against civilians has resulted in numerous crimes under the broad category of atrocity crimes, [defined](#) by the UN as war crimes, crimes against humanity, and genocide. While the protected victims under these separate crimes can differ, atrocity crimes collectively have been [termed](#) the "most serious crimes against humankind," harming the "core dignity of human beings, in particular the persons that should be most protected by States."

One common misperception regarding mass atrocities is their perceived commonplace occurrence. In fact, robust research from atrocity prevention literature [shows](#) that not all armed conflicts result in mass atrocities against civilians, much less crimes like genocide. Additional research [indicates](#) that the majority of armed groups do not commit atrocity crimes, even when they have the capacity and the opportunity to do so. These factors shape atrocity prevention definitional decisions, such as the U.S. Holocaust Memorial Museum's [definition](#) of "mass killing," as 1,000 noncombatant deaths in one year, when targeted along group lines. Taken together, these factors indicate the extreme level of brutality by Russian forces against Ukrainians, their systematic campaign to willfully

target civilians, and the number of confirmed (and projected) civilian fatalities are outliers in the overall portrait of global warfare. This outlying brutality raises important indications regarding Russian motives in Ukraine that this memo will continue to discuss.

While war crimes, crimes against humanity, and genocide are distinct crimes, they can occur in tandem. Definitions of *war crimes* are located in both international humanitarian law and international criminal law treaties, as well as in international customary law (see [Annex 1](#)). Broadly, war crimes are serious violations that occur during a state of armed conflict, with prohibited examples including violent acts, attacks, and reprisals against civilians and civilian infrastructure with no military objective, destruction of education and religious institutions, or attacks where civilian fatalities are expected or excessive in relation to direct, concrete military advantages. In contrast, *crimes against humanity* are possible during both peacetime and during warfare, defined under the [Rome Statute](#) as a specific list of prohibited acts (e.g., murder, deportation, torture, rape, etc.) “when committed as part of a widespread or systematic attack direct against any civilian population.” In contrast to the crime of *genocide*, no corresponding language regarding establishing a specific intent behind these crimes is enumerated *and* prohibited acts include a final broad category (“other inhumane acts”). These factors often led to more rapid determinations of crimes against humanity as compared to genocide, which requires establishing perpetrator intent.

### **Russian Breaches of the Genocide Convention in Ukraine**

The term “genocide” is perhaps one of the most loaded terms in political discourse and often misapplied, yet its conception is also one of the most well-defined categories in international law. Adopted in 1948, the [United Nations Convention on the Prevention and Punishment of the Crime of Genocide](#) (hereafter, Genocide Convention) was adopted just three years after the United Nations itself was formed. Now ratified or acceded to by [153 nations](#) (including Russia), the Genocide Convention was the [first](#) human rights treaty adopted by the then-nascent UN General Assembly. The global breadth of its signatories across every continent remains a major achievement—including one that may not be replicable on any international matter today. The Genocide Convention has been widely credited with pioneering the development of international criminal law and international human rights.

The Genocide Convention prohibits five distinctive genocidal crimes (Article III): 1) genocide, 2) conspiracy to commit genocide, 3) direct and public incitement to commit genocide, 4) attempt to commit genocide, and 5) complicity to commit genocide. Given the space constraints, this memo focuses on discussions of Russian breaches in the separate crimes of genocidal incitement and commission. A comprehensive documentation of Russian crimes in these areas is beyond this memo’s scope; after all, such strong claims require the type of strong evidence that goes beyond this succinct format. The documentation supporting this analysis can be [found](#) in the New Lines Institute and Raoul Wallenberg Centre for Human Rights report, “The Russian Federation’s Escalating Commission of Genocide in Ukraine: A Legal Analysis,” on which I served as Principal Author. Instead of summarizing these claims in abbreviated form here, I primarily focus on the implications of our findings for law, policy, and scholarship moving forward.

### *Direct and Public Incitement*

The verbal vitriol directed by Russian state actors is a [well-documented](#) trend that existed prior to Russia's full-scale invasion. By May 2022, genocide experts [described](#) how Ukrainians were regularly constructed as constituting existential threats, targeted for dehumanizing rhetoric, and accused of the acts that Russians themselves committed (a social phenomenon [common](#) in genocides, known as "accusation in a mirror"). In July 2023, a follow-up inquiry [examined](#) evidence to determine whether Russian actors continued these prohibited acts in the year that followed. Using an expert [framework](#) on the five "D's" of incitement—demonization, delegitimization, dehumanization, denial (repudiating past atrocities) and disinformation (knowingly promoting false narratives to malign)—we found no evidence that genocidal incitement abated in either frequency or tone. Instead, we [documented](#) durable trends of genocidal incitement across multiple levels of Russian authority, from president Vladimir Putin down through local military and occupational authorities with direct physical control over Ukrainians. New dehumanizing tropes ("de-Satanization") were introduced through influential, state-endorsed platforms in the fall of 2022, establishing that rather than stopping, these breaches escalated.

Expressed motivations to destroy Ukraine or Ukrainian-ness belie characterizations of the war as a straightforward border skirmish or land grab. Within the legal parameters of "direct and public incitement," Russian state actors' graphic threats and slurs against Ukrainians are not just repellent but are criminal acts prohibited by the Genocide Convention, of which Russia itself is a signatory. Direct and public incitement to genocide—like the crime of genocide itself—has no statute of limitations, suggesting that such perpetrators will face international criminal charges for the remainder of their lives. Exemplifying this point, the trial of an 87-year-old Rwandan propagandist charged with genocidal incitement in 1994 [began](#) in The Hague in September 2022.

### *Commission of Genocide*

This inciting language has been matched by genocidal actions. The [Genocide Convention](#) delineates five prohibited acts (Article II): "killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group, and forcibly transferring children of the group to another group." Of crucial importance, the presence of these acts does not itself meet the evidentiary standard of [genocide](#); rather, they must also be "committed with intent to destroy in whole or in part, a national, ethnical, racial, or religious group." Thus, establishing genocide involves the [intersection](#) of genocidal motives (*mens rea*) with genocidal conduct (*actus reus*).

In our [legal analysis](#), we devote nearly sixty pages of publicly available data to establishing this overlap of genocidal intent and actions, seen through *both* a pattern of atrocities from which an inference of intent to destroy the Ukrainian national group can be drawn and documented evidence of the described prohibited acts. In a highly unusual [finding](#), we record violations in all five prohibited acts, again underscoring the extreme

level of brutality directed by Russian state actors against Ukrainians. Soberingly, we [document](#) an overall portrait of Russia escalating its genocide over time. The Genocide Convention's [central duty](#) remains *prevention*, with corresponding legal obligations for all 153 signatories. As Russian actors have adapted and escalated their genocidal acts in Ukraine, the international community is also obligated to rise to these challenges.

### **Implications for Jurisprudence, Scholarship, and Post-War Societies**

These findings have implications for research, policy, and law, with several below.

*Targeting a National Group:* Russia's targeting of the Ukrainian national group will require new partnerships across scholarship and jurisprudence. Previous prosecutorial efforts have pursued accountability for other types of protected groups named in the Genocide Convention (i.e., those targeted along religious or ethnic lines), but this prosecutorial effort would be the first to prosecute violations against a protected national group. Scholars, including anthropologists and regional experts, will [have](#) a key role to play here. Moreover, the protection of the Ukrainians is not yet secured: Ukrainians, a protected national group, are not safe from Russia's continuing genocidal actions. Understanding that Russia is targeting an entire nation must make policymakers clear-eyed about the scope of the civilian protection challenges. For example, humanitarian aid was increased dramatically to help Ukrainians defend against Russia's mass targeting of Ukrainian infrastructure in fall 2022. Prior to this aid surge, the International Rescue Committee had estimated that 17.7 million Ukrainians would [require](#) emergency humanitarian aid—an extraordinarily large group targeted with extreme violence by Russian perpetrators.

*Open-Source Data and Investigations:* The Russia-Ukraine war has been [called](#) the “most documented war in history,” with large-scale warfare often livestreamed and geo-located in near-real-time. As granular dynamics appear regularly across diverse social media platforms, prosecutorial efforts are likely to run into similar evidence [preservation challenges](#) that have been raised in other conflicts. Additionally, open-source experts have [flagged](#) that key challenges are not evidence scarcity but rather the analyst capacity to analyze it, including meeting evidentiary standards for diverse judicial accountability institutions. Tensions between slow bureaucratic innovation within the legacy organizations tasked with responding to Russian atrocities *and* the need to codify processes and standards for the inclusion of open-source data exist. These realities will pose future [obstacles](#) for perpetrator accountability and should be addressed by research-based policy guidance recommendations now.

*Political Will Realities:* Russia's genocide in Ukraine is occurring in the context of the most documented war in history and with characteristics of all five prohibited acts, while key figures including Russian President Putin routinely self-incriminate themselves in public fora. Despite these clear realities, genocide accountability relies heavily on the political will for designations and prosecutions, with some recognitions occurring generations later. Thus court verdicts—while an irreplaceable accountability step—cannot be relied upon to stop Russia's atrocity crimes occurring now. With genocide requiring [specific policy choices](#), policymakers should act on the realities of this specific form of [perpetrator logic](#) now. The duty to prevent genocide in Ukraine has indisputably been [triggered](#) in

international law. Journalists can play a powerful role by routinely asking global leaders about the fulfillment (or lack thereof) of their legal obligations in this area.

*Determining “Guilt” and “Responsibility.”* Criminal law focuses on the individuals to held responsible for criminal acts, with individuals alone (not institutions, States, or collectives) held to a standard of guilt. Still, international customary law formally delineates Articles on Responsibility for attributing wrongful conduct to a State. Grounded in the Nuremberg Tribunal’s [principles](#), a State Responsibility Framework<sup>2</sup> complements parallel criminal processes that hold individuals to account. As Russia has used State organs empowered by State law to pursuing genocide in Ukraine, its responsibility for redress to Ukrainians is legally, morally, and politically justifiable, including the transfer of frozen [Russian assets](#) to Ukraine.

*Social Dynamics for Ukraine, Russia, and Europe.* The social impacts of Russia’s genocide in Ukraine are innumerable. First, trauma healing literature underscores that individual and collective trauma creates new social needs, [including](#) justice, safety, answers, empowerment, restitution, and vindication. As Ukrainian society comes to terms with two genocides [waged](#) by Moscow within ninety years, channeling their needs for accountability, safety, and recovery through institutions like the European Union, NATO, and international courts must remain a global priority to avoid extra-institutional scenarios. Regarding future social Russian dynamics, I have previously [discussed](#) common scenarios for genocide perpetrator societies, including moral reorientation and cascading radicalization. Given grim realities that accompany war criminals returning home, Russian experts and actors should more clearly, coherently, and openly discuss the coming social effects of what is likely to be non-extradition policies of the Russian government regarding individuals indicted by international courts. If the Russian State is [unable or unwilling](#) to remove atrocity perpetrators from Russian society, many such individuals will remain in Russia to avoid international warrants. These realities should also shape European attitudes toward continental security. The post-Cold War “peace dividend” era allowed European governments to spend less on security and defense, while shaping European attitudes toward major warfare as something geographically distant. A variety of harrowing statistics in Ukraine – which now makes Europe home to the world’s most mined country – should influence European attitudes to prioritize Ukraine’s victory and recovery as part of an overall deterrence posture.

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<sup>2</sup> See [Diamond et al.](#), pages 8-11.

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