

WAR CRIMES AND CRIMES AGAINST HUMANITY COMMITTED BY RUSSIAN SOLDIERS IN UKRAINE: CAN UKRAINIAN VICTIMS AND THEIR FAMILIES EVER FIND JUSTICE?

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Abstract

The war in Ukraine started on the 24th of February 2022. This war has led to the loss of many lives from both sides: the Russian soldiers and Ukrainian citizens. Both sides have also wasted resources. There appears to be no end in sight yet, though serious moves are being made towards negotiating and reaching an agreement on cease fire. With the level of losses on both sides especially the loss of lives on the Ukrainian side, questions are already being asked if the victims of war crimes in Ukraine can ever get justice. This article analyzed the possibility of the Ukrainian citizens ever getting justice for war crimes and crimes against humanity orchestrated against them by the Russian soldiers. The analysis centred on the possibility of accessing justice before the institutions empowered to deliver justice for crimes committed against the Ukrainian people: Ukrainian National Courts, the International Criminal Court and or any international criminal tribunal that may be set up by the United Nations Security Council. The research adopted the doctrinal methodology which analyzed primary and secondary sources of materials. The research discussed the history of the war, the possibility of trial at the ICC, the possibility of trial before any tribunal, and the recommendation and conclusion. The article recommends the reform of the United Nations Security Council and the strengthening of the International Criminal Court.

Keywords: War Crimes, Crimes against Humanity, Justice, Russian Soldiers

1.0 Introduction

The 24th of February 2022 is a date that Ukrainians will not forget in a hurry. This is because it is the day that the Russian soldiers launched an offensive against the state of Ukraine. The invasion has lasted for more than three years now without any end in sight. The sustained offensive

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coupled with the Israeli attack on Palestinians settling in the Gaza Strip in the last quarter of 2024 has heightened the tension in the world particularly between the North Atlantic Treaty Organization hereinafter referred to as NATO and Russia. Though the emergence of President Donald Trump of the United States has diffused the tension, between NATO on one side and ²Russia on the other, there is still more to be done for normalcy to return. This is because the war has altered the political, economic and social landscape of the world. This article is divided into four parts. The first is the introduction, the second looks at conceptual clarification of terms and a brief history of the war, the third discusses the framework for the prosecution of the perpetrators of war crimes before the Ukrainian National Justice System, International Criminal Court and International Criminal Tribunals, the fourth is conclusion and recommendation for reforms.

2.0 DEFINITION OF TERMS AND THE HISTORY OF THE WAR IN UKRAINE.

2.1 DEFINITION OF TERMS

2.1 (a) WAR CRIMES.

The best definition of war crimes is in the Rome Statute of the International Criminal Court. The definition, though comprehensive as it captures every element of the crime, is too worded, detailed, and unwieldy. In any case, it is the best definition so far. Article 8 (2) of the Rome Statute of the International Criminal Court Defines war Crimes to include:

- a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
 - I. Willful killing
 - II. Torture or Inhuman treatment including biological experiments.
 - III. Willfully causing great suffering or serious injury to the body or health
 - IV. Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly.
 - V. Compelling a prisoner of war or other protected person of the rights of fair and regular trial.

- VI. Unlawful deportation or transfer or unlawful confinement.
 - VII. Taking of hostages.
- b) Other serious violations of the laws and customs applicable in International armed conflict, within the established framework of international law, namely, any of the following acts:
- I. Intentionally directing attacks against the civilian population or against individual civilians not taking direct part in hostilities.
 - II. Intentionally directing attacks against civilian objects, that is, Objects which are not military objectives.
 - III. Intentionally directing attacks against personnel, installations, material, units vehicle involved in humanitarian assistance or material, units or vehicles involved in a humanitarian assistance or peacekeeping mission by the charter of the United Nations as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict.
 - IV. Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which will be excessive about the concrete and direct overall military advantage anticipated.
 - V. Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not yet military objectives.
 - VI. Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion.
 - VII. Making improper use of a flag of truce, of the flag or the military in insignia and uniform of the enemy or of the United Nations as well as of the distinctive emblems of the Geneva Conventions resulting in death or serious personal injury.
 - VIII. The transfer, directly or indirectly, by the occupying power of parts of its civilian population into the territory it occupies or the deportation or transfer of all or part of the population of the occupied territory within or outside this territory.
 - IX. Intentionally directing attacks against buildings dedicated to religion, Education, Art, Science or charitable purposes, Historical Monuments,

Hospitals and places where the sick and wounded are collected, provided they are not military objectives.

- X. Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiment of any kind which are neither justified by the medical, dental or Hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons.
- XI. Killing or wounding treacherously individuals belonging to the hostile nation or army.
- XII. Declaring that no quarter will be given.
- XIII. Destroying or seizing the enemies' property unless such destruction or seizure is imperatively demanded by the necessities of war.
- XIV. Declaring abolished, suspended or inadmissible in a court of law the right and action of the nationals of the hostile party.
- XV. Compelling the nationals of the hostile party to take part in the operations of war directed against their own country even if they were in the belligerent's service before the commencement of the war.
- XVI. Pillaging a town or place even when taken by assault.
- XVII. Employing poison or poisoned weapons.
- XVIII. Employing asphyxiating, poisonous or other gasses and all analogous liquids, materials or devices.
- XIX. Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.
- XX. Employing weapons, projectiles material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the internal law of armed conflict, provided that such weapons, projectiles material and methods of warfare are the subject of a comprehensive prohibition and are included in an annexed to this statute, by an amendment by the relevant provisions outlined in article 121 and 123.
- XXI. Committing outrages upon personal dignity, in particular humiliating and degrading treatment.

- XXII. Committing rape sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7, paragraph 2(f), enforced sterilization or another form of sexual violence also constitutes a grave breach of the Geneva Conventions.
 - XXIII. Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations.
 - XXIV. Intentionally directing attacks against buildings, materials, medical units and transport, and personnel using the distinctive emblems of the Geneva Convention in conformity with intentionally:
 - XXV. Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions.
 - XXVI. Conscripting or enlisting children under the age of 15 years into the national armed forces or using them to participate actively in hostilities
- c) In the case of an armed conflict not of an international character, serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
- i. Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture,
 - ii. Committing outrages on personal dignity, in particular humiliating and degrading treatment.
 - iii. Taking of hostages.
 - iv. The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- d) Paragraph 2(c) applies to armed conflicts not of international character and thus does not apply to situations of internal disturbances and tensions such as riots, isolated and sporadic acts of violence or other acts of violence of other similar nature.
- e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

- I. Intentionally directing attacks against the civilian population as such or against individual civilians not taking part in hostilities.
- II. Intentionally directing attacks against buildings, materials, medical units and transport, and personnel using the distinctive emblems of the Geneva Convention in conformity with international law.
- III. Intentionally directing attacks against personnel, installations, material units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under International law of armed conflict.
- IV. Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where sick and wounded are collected, provided they are not military objectives.
- V. Pillaging a town or place, even when taken by assault.
- VI. Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7, paragraph 2(f), enforced sterilization, and any other form of sexual violence also constitute a serious violation of Article 3 common to the four Geneva Conventions.
- VII. Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities.
- VIII. Ordering the Displacement of the civilian population for reasons related to the armed conflict, unless the security of the civilians involved or imperative military reasons so demand.
- IX. Killing or wounding treacherously a combatant adversary.
- X. Declaring that no quarter will be given.
- XI. Subjecting Persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons.
- XII. Destroying or seizing the property of an adversary unless such destruction or seizure is imperatively demanded by the necessities of the conflict.

- f) Paragraph 2(e) applies to armed conflicts, not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflict that takes place in the territory of a state when there is protracted armed conflict between government authorities and organized armed groups or between such groups.

The above definition is too wide and unwieldy. We would instead look at a definition that is short but captures the main gist of the offence in question. Section 6.2.5 of the Ecuador Naval Manual.1989 defines war crime as:

“War crimes are defined as those acts which violate the law of armed conflict, that is, the rules established by customary and conventional International law regulating the conduct of warfare, and which have been generally recognized as war crimes. Acts constituting war crimes may be committed by the armed forces of a belligerent or by individuals belonging to the civilian population...”

The above definition suggests that armed conflict of any kind at all is regulated by laws. These laws could either be established customary international law, conventional international law or treaty laws that regulate the conduct of warfare and have been generally recognized as war crimes. They can either be committed by the armed forces of a belligerent or individuals belonging to a civilian population.

2.1. (b) CRIMES AGAINST HUMANITY

The Rome Statute resort to the definition of war crimes has also sufficiently defined crimes against humanity. Article 7 of the Rome Statute of the International Criminal Court defines "Crimes against Humanity" to mean³:

“...any of the following acts when committed as part of a widespread or systemic attack directed against any civilian population, with knowledge of the attack:

- a. Murder
- b. Extermination
- c. Enslavement
- d. Deportation or forcible transfer of population.

³ Article 7 of the Rome Statute of the International Criminal Court.

- e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of International law.
- f. Torture
- g. Rape, Sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- h. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, or gender as defined in paragraph 3 or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the Jurisdiction of the court.
- i. Enforced disappearance of persons.
- j. The crime of apartheid
- k. Other inhumane acts of a similar character intentionally cause great suffering or serious injury to the body or mental or physical health.

The above definition identifies some key elements or important words that constitute crimes against humanity which are: "widespread spread" "systemic attack" "civilian Population" "knowledge of attack". To avoid further defining the keywords identified above, let us identify their synonyms to appreciate what crimes against humanity are. Other words for "widespread" include: general, broad, extensive, and indiscriminate. "Systemic attack" means orchestrated, planned, calculated attacks. Civilian population means population other than military targets or non-military population, the public, the populace, or the citizenry. From the above definition and synonyms of keywords, it will be safe to describe crimes against humanity as: the killing, tortured, extermination, enslavement or generally the doing of all those things identified in the article 7 as part of the general, widespread or broad calculated attack on civilian population with the knowledge of attack.

2.1.(c) INTERNATIONAL CRIMINAL COURT:

The International Criminal Court is defined as⁴:

“ a permanent international court established to investigate, prosecute and try individuals accused of committing the most serious crimes of concern to the international community

⁴ International Criminal Court "Understanding the international criminal court" <<https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf>> accessed on 23 March 2025

as a whole, namely the crime of genocide, crimes against humanity, war crimes and the crime of aggression...”

2.1. (d) INTERNATIONAL CRIMINAL TRIBUNAL:

International Criminal Tribunals are defined thus⁵:

International criminal tribunals are special courts established to prosecute cases arising under international criminal law. These tribunals have jurisdiction over crimes such as genocide, war crimes, and crimes against humanity, among other international crimes. They are divided into permanent and ad-hoc (temporary) tribunals.

The keywords in the above definition are "Special Courts" with jurisdiction to prosecute international crimes. They are usually courts established by the United Nations Security Council. More about these courts will be discussed subsequently.

2.2 BRIEF HISTORY OF THE WAR

The war is believed by many to have started with the annexation of the Crimean Peninsula in 2014⁶. The annexation of Crimea was done under the pretext of protecting the rights of Russian citizens and Ukrainians of Russian ethnic background⁷. After the attack, a referendum was held wherein Cremins of Russian background voted to join Russia. Ever since Putin Annexed Crimea, there have been wars and conflicts in the eastern region of Ukraine which is dominated by Russian Ukrainians⁸. Years after the annexation, Putin launched a full-scale war against Ukraine claiming, amongst other things, that his actions were in self-defence. Putin believed there was genocide being committed against Russians hence the goal of his attack was to stop the genocide and demilitarize the region in Ukrainian territory⁹. Vladimir Putin had also expressed dissatisfaction at the desire of Ukraine to join NATO. NATO which is an acronym for the Northern Atlantic Treaty Organization was an organization that was formed after the Second

⁵ Cornell Law School: Legal Information Institute “ International Criminal Tribunals”

<https://www.law.cornell.edu/wex/international_criminal_tribunals> accessed on the 23 March 2025.

⁶ Centre for Preventive Action " War In Ukraine" updated may 20,2024 <<https://www.cfr.org/global-conflict-tracker/conflict/conflict-ukraine>> accessed on the 19 July 2024

⁷ ibid

⁸Ibid.

⁹ Ibid.

World War as a Power block to counter and checkmate the Warsaw pact¹⁰. The two organizations, apart from being headed by two major powers, the United States and the then USSR, now Russia, were friends and allies during the Second World War. i.e. differed in ideology and interest. The two blocks were involved in a cold war for more than three decades. The war only ended in the last decade of the 20th century with the collapse of the USSR.¹¹ During the Cold War, Ukraine was part of the USSR which means that Ukraine had historical, cultural, and geographical ties with Russia¹². Historically, Ukraine was part of the USSR before its collapse and balkanization. Culturally, Ukrainians share the same or similar culture to Russia¹³. Geographically, Ukraine shares borders with Russia hence the fear of Russia that NATO can attack Russia from Ukraine. To be fair to Russia, no one including the United States would have tolerated what Russia is asked to tolerate. we however not concerned about the propriety or otherwise of what Ukraine did but only concerned about how the war is being executed as well as the human rights breach in Ukraine.

2.2.(a) EFFORTS MADE BY PRESIDENT DONALD TRUMP AND WORLD LEADERS TOWARDS ENDING THE WAR IN UKRAINE

It is not in doubt that efforts have been made to bring the war to an end but all efforts have yielded no positive results. It was President Trump's strong point of campaign to end the war in Ukraine within 24 hours of becoming the President. President Trump was sworn in as President on the 20th of January 2025. On the 12th of February 2025, he announced that he had called the Russian President to discuss a cease fire deal between Ukraine and Russia¹⁴. The call was

¹⁰ The The Warsaw Treaty Organization (also known as the Warsaw Pact) was a political and military and defence alliance established on May 14, 1955 between the Soviet Union and several Eastern European countries ((Poland, East Germany, Czechoslovakia, Hungary, Romania, Bulgaria, Albania). The organization collapsed with the collapsed of the Soviet Union in 1991. History.com Editors "NATO: The Western Nations Join Forces" Updated: April 20, 2023, | Original: April 14, 2010.< <https://www.history.com/topics/cold-war/formation-of-nato-and-warsaw-pact>> accessed on 28 July 2024

¹¹ Ibid.

¹² Mayhill Fowler "Soviet Ukraine in a Nutshell" <<https://origins.osu.edu/read/soviet-ukraine-nutshell>> accessed on 28 July 2024

¹³ Eve Conant "Russia and Ukraine: the tangled history that connects—and divides—they" February 24, 2023, <<https://www.nationalgeographic.com/history/article/russia-and-ukraine-the-tangled-history-that-connects-and-divides-them>> accessed on the 28 July 2024

¹⁴ Antoinette Radford " Timeline of how Trump's pledge to end the war in Ukraine hit reality" <<https://edition.cnn.com/2025/03/26/europe/timeline-trumps-pledge-to-end-ukraine-war>> accessed on the 14 August 2025.

obviously without US's NATO allies in Europe or with the input of Ukraine. It was after the call that the President Trump informed President Volodymyr Zelensky of his earlier call to Russian President¹⁵. The action of Trump no doubt enraged US's European Allies. On the 15th of February 2025, US's European allies and the Ukrainian authorities expressed disappointment over their exclusion from the talks between the US President and Putin¹⁶

Pope Leo, the first American Pope took steps to broker a cease fire and peace deal but it didn't work. On Wednesday the 4th of June 2025, Vladimir Putin discussed the war in Ukraine with Pope Leo in a telephone call¹⁷. Putin expressed his willingness to end the war. He however blamed Zelensky for sabotaging peace efforts by orchestrating attacks on Russian civilian population.¹⁸ Russia has also made demands as conditions for ending the war. These demands include: territorial concessions, the limiting of Ukrainian Military, and the jettisoning of the desire of Ukraine to join NATO. Zelensky on the other hand, in rejecting these demands seeks for unconditional ceasefire.¹⁹

There have been Positive developments recently. Ukraine, on the 14th of August 2025, secured the release and return of 84 soldiers and civilians from Russian captivity in a prisoner swap deal with Moscow²⁰. This development is as a result of a series of exchanges that occurred in the past recent months following the talks between Russia and Ukraine that held in Istanbul in the months of May and July 2025²¹. The released prisoners include those held in captivity since 2014, 2015 and 2017²²

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ LE MONDE "Pope Leo and Putin hold 'constructive' call on Ukraine war, says Kremlin"
<https://www.lemonde.fr/en/international/article/2025/06/04/pope-leo-and-putin-hold-constructive-call-on-ukraine-war-says-kremlin_6742018> accessed on the 15 August 2025

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Martin Fornusek, Tim Zadorozhny "84 Ukrainians return from Russian captivity in latest prisoner swap — some held since 2014"< <https://kyivindependent.com/ukraine-brings-home-84-captives-in-latest-swap-with-russia/>>accessed on the 15 August 2025.

²¹ Ibid.

²² Ibid.

President Trump met with President Putin of Russian on the 14th of August and discussed a cease fire as well as broker a peace deal with Russia²³. Russia insisted that it would not return captured territories to Ukraine. While Ukraine rejects Russia’s intention not to return captured territories, European allies of the US have requested the US to discuss the parameters of the peace deal²⁴. Trump had, before the meeting of 14th August 2025 however threatened to deal with Russia. He is quoted to have said: “Putin will not mess me around” believing that the talks scheduled for 15/8/2025 will produce results²⁵. Trump had given Russia an ultimatum to end the war or face sanctions. The ultimatum expired on the 15/8/2025²⁶. The sanctions included: imposition of 100% tariffs on countries that buy Russian Oil, unless Russia agrees to a cease fire. This threat is believed will affect China and India²⁷. Russia is however not moved by the threat as it is determined to capture four more regions of Ukraine.²⁸ Though the talks between Trump and Putin of 15th August 2025 ended in a deadlock²⁹, it is expected that there will be another meeting but this time around between the two warring parties: Putin and Zelensky³⁰. Trumps wishes to have them talking³¹.

2.2 (B) Evidence of Human Right Breaches, War Crimes and Crimes Against Humanity Committed By Russia in Ukraine.

Ever since the attack was launched in Ukraine on the 24th of February 2022, there have been war crimes, crimes against humanity and human right breaches by the Russian forces in Ukraine.

²³ “Katherine Doyle, Kristen Welker, Courtney Kube and Carol E. Lee” Trump told Zelensky and allies he will not discuss territory divisions with Putin this week. <<https://www.nbcnews.com/politics/donald-trump/trump-told-zelenskyy-allies-wont-discuss-territory-divisions-putin-wee-rcna224894>> accessed on the 14 August 2025

²⁴ Ibid.

²⁵ Kelly Rissman, Holly Evans, Alisha Rahaman Sarkar “Trump-Putin summit live: Delegations head to Alaska after Trump says Putin ‘will not mess me around’ on Ukraine”<<https://www.independent.co.uk/news/world/europe/trump-putin-alaska-summit-ukraine-russia-war-peace-talks-live-b2808169.html>> accessed 15 August 2025

²⁶ Darya Korsunskaya, Andrew Osborn and Mark Trevelyan “Exclusive: Putin doubts potency of Trump's ultimatum to end the war, sources say”< <https://www.reuters.com/world/europe/putin-doubts-potency-trumps-ultimatum-end-war-sources-say-2025-08-05/> >accessed 15 August 2025.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Aditi Sangal et all “August 15, 2025: Trump-Putin summit ends without concrete deal” CNN Politics. <https://edition.cnn.com/politics/live-news/trump-putin-meeting-news-08-15-25> accessed on the 22 august 2025.

³⁰ the Guardian “ Trump steps back from Russia and Ukraine peace talks for now, sources say” <https://www.theguardian.com/us-news/2025/aug/21/trump-ukraine-russia-peace-talks> accessed on the 22 August 2025.

³¹ Ibid.

These allegations are the outcome of findings conducted by the U.N. Human Rights Council (UNHRC) established by the Independent International Commission of Inquiry on Ukraine (IICI)³². The Organization for Security and Cooperation in Europe (OSCE), acting under what is known as the “Moscow Mechanism, Ukraine’s Office of the Prosecutor General (OPG) is also investigating hundreds of suspected war crimes committed by Russian soldiers as part of efforts to hold the Russian soldiers and authorities accountable³³. The United States, in 2023 threw its weight behind the establishment of the International Centre for Prosecution of the Crime of Aggression (ICPA), launched by the EU’s Agency for Criminal Justice (Eurojust) in early 2023³⁴. What then are the crimes discovered to have been committed by the soldiers? These crimes include: the killing of defenseless civilians,³⁵ attacking civilian homes and non-military targets like schools³⁶, residential buildings, places of worship etc. Other war crimes like rape, and torture, were recorded in some areas.³⁷With all the investigative bodies involved in investigating war crimes and crimes against humanity, it is believed that there are enough pieces of evidence to sustain the trial and conviction of every person involved in war crimes.³⁸. The question that remains unanswered is: can these perpetrators of evil ever be punished?

3.0 The Framework for Accountability of Russian Soldiers for War Crimes Committed

Perpetrators of war crimes and crimes against humanity can be held to account for their conduct through any of the three following ways: trial before national courts in whose territory the crimes

³² The United Nations Human Rights Office of the High Commissioner "Report of the Independent International Commission of Inquiry on Ukraine" office of the UN Commission of Inquiry on Ukraine finds continued war crimes and human rights violations gravely impacting civilians 20 October 2023. <<https://www.ohchr.org/en/press-releases/2023/10/un-commission-inquiry-ukraine-finds-continued-war-crimes-and-human-rights>> Accessed on 25 March 2025

³³ OSCE “Moscow Mechanism experts present report on Ukraine to OSCE Permanent Council” <https://www.osce.org/permanent-council/567358> . Accessed on the 2nd February 2026.

³⁴ EUROJUST “European Union Agency for Criminal Justice Cooperation” <https://www.eurojust.europa.eu/news/one-year-launch-international-centre-prosecution-crime-aggression-against-ukraine-icpa> accessed on the 2nd February 2026

³⁵ This is an offence under the Common Article 3 of the Geneva Conventions 1949

³⁶ Rome Statute Article 8(2)(b)(ii) & (ix)

³⁷ Ibid at Article 8(2)(b)(xxii) of the Rome Statute.

³⁸ Aljezeera “Russian soldier pleads guilty at Ukraine war crimes trial” <https://www.aljazeera.com/news/2022/5/18/russian-soldier-pleads-guilty-at-ukraine-war-crimes-trial> accessed on the 2nd February 2026.

were committed, arrest, investigation and prosecution at the international criminal courts and trial before tribunals.

3.1 JUSTICE BEFORE THE UKRAINIAN NATIONAL COURTS.

It is a long-established principle in international criminal law that the justice systems of states have the powers, in fact, the primary responsibility, to prosecute perpetrators of crimes of international concern committed in their territories³⁹. These crimes are: war crimes, crimes of aggression, crimes against humanity and genocide committed within their territory⁴⁰. States in whose territory these crimes are committed may not be able to prosecute perpetrators for these crimes if they have not enacted or incorporated in their Penal Laws, offences that constitute these offences of international concern. Ukraine appears to have exercised this option of prosecuting Russian soldiers for crimes committed on Ukrainian soil⁴¹. The state of Ukraine has an office established called: "the Office of the Prosecutor General⁴² ". The office is occupied by a person appointed by the President of Ukraine with the consent of the Parliament called" Verkhovna Rada.⁴³". The occupant of that office can only cease to hold that office after serving a six-year term, or on order of the Ukrainian President with the consent of the Parliament or upon the vote of no confidence passed by the Parliament.⁴⁴. The powers of the office include: organising and leading pre-trial investigations; supporting public prosecution in the courts; and representing the interest of the state in the courts, according to the law.⁴⁵ The office of the prosecutor has prosecuted Russian soldiers before Ukrainian courts for offences committed in Ukraine. For example, Vadim Shishimarin, a Russian soldier and commander of the 4th Kantemirov Division of the Moscow Oblast was on May 23, 2022, sentenced to life imprisonment.⁴⁶. The Russian

³⁹ See articles 1, 10 and 17 of the Rome Statute of the International Criminal Court. Other instruments also authorize states to try persons for crimes of international concern.

⁴⁰ Ibid.

⁴¹ Iryna Saliı "War crimes in the Kyiv region: a Russian soldier sentenced to 12 years" 25 April 2024 <<https://www.justiceinfo.net/en/131276-war-crimes-kyiv-region-russian-soldier-sentenced-12-years.html>>. Accessed on the 28 March 2024.

⁴² Wikipedia "the office of the prosecutor general" <https://en.wikipedia.org/wiki/Prosecutor_General_of_Ukraine> accessed on the 23 March 2025.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ ZMINA "The first trial against the Russian Soldier" is an indicator of the state justice system of Ukraine". <<https://ulag.org.ua/articles-and-publications/the-first-trial-against-the-russian-soldier-as-an-indicator-of-the-state-justice-system-of-ukraine-zmina/>> accessed on the 23 March 2025.

soldier was found guilty of violating the laws and customs of war as well as premeditated murder under p. 2 of article 438 of the Criminal Code of Ukraine.⁴⁷ Though there have been convictions of Russian soldiers by the Ukrainian court systems, the system has not been effective in holding perpetrators of these heinous crimes accountable for their actions, this is because most of the soldiers or persons tried were tried and convicted in absentia⁴⁸. The report has it that over 100 (hundred) Persons have been tried and convicted though in absentia⁴⁹. This then raises concerns as to the effectiveness of national courts in holding these offenders and convicts accountable. In other words, can the national courts in Ukraine hold Russian soldiers accountable? The answer is No. That these people are tried in absentia means the system has already failed to hold them accountable. Just like Ukraine, without foreign help is powerless in its fight with Russia, it is also powerless in holding Russian soldiers accountable through its institutions.

3.2 JUSTICE BEFORE THE INTERNATIONAL CRIMINAL COURT

Another option available to Ukrainians is to have the International Criminal Court try the Russian soldiers. Unfortunately for Ukraine but fortunately for Russia, both Russia and Ukraine were not parties to the Rome Statute⁵⁰. Though Ukraine was not, before the commencement of the war in 2014 a state party, it has on two occasions, exercised its desire to accept the Court's jurisdiction over crimes allegedly committed on its territory, under Article 12(3) of the Statute⁵¹. The first declaration was with respect to alleged crimes committed in Ukrainian from 21 November 2013 to 22 February 2014 while the second declaration was with respect to crimes committed from February 2014 to date⁵². Many have argued that though Ukraine has accepted the jurisdiction of the ICC, it still does not have jurisdiction over Russian soldiers as Russia is not a state party to the statute. Our opinion is that the court has jurisdiction over Russian

⁴⁷ Ibid.

⁴⁸ VICTORIA MATOLA "Ukraine: justice in absentia" INSTITUTE FOR WAR & PEACE Tuesday, 11 April, 2023 <<https://iwpr.net/global-voices/ukraine-justice-absentia>> accessed on the 28 July 2024

⁴⁹ Diana Kolodiazna "How does Ukraine pass judgment on violations of the laws and customs of war? 24 April 2024. <<https://zmina.info/en/articles-en/how-ukraine-passes-judgment-on-violations-of-the-laws-and-customs-of-war/>> accessed on the 28 July 2024

⁵⁰ The international criminal court "Situation in Ukraine: Situation referred to the ICC by 43 States Parties: March - April 2022" <<https://www.icc-cpi.int/situations/ukraine>> accessed on 27 July 2024

⁵¹ Ibid.

⁵² Ibid.

soldiers⁵³. This is because the crimes were committed outside the territory of Russia and in the territory of Ukraine which has declared and accepted the jurisdiction of the court. It would have been a different thing if Ukraine did not accept the jurisdiction of the ICC under Article 12 of the statute making both states not members⁵⁴. Though Ukraine has only accepted the jurisdiction of the ICC but is not formally a member, the Court can still exercise jurisdiction.⁵⁵ It is enough that Ukraine has accepted the jurisdiction of the Court under Article 12 and the crimes were committed on the territory of Ukraine. It doesn't matter if the culprits are not nationals of Ukraine⁵⁶.

The system of accountability before the ICC is activated by a Pro Pio motu investigation by the office of the prosecutor or a referral of situations either by a state party or the United Nations Security Council to the office of the prosecutor⁵⁷. The prosecutor commences the process of accountability by applying for arrest warrants and investigations of persons alleged to have committed these crimes which is the case in the Ukrainian situation. The Court has issued an arrest warrant against the following⁵⁸: Vladimir Vladimirovich Putin, the President of the Russian federation; Maria Alekseyevna Lvova-Belova, Commissioner for Children's Rights in the Office of the President of the Russian Federation for allegedly committing war crimes of unlawfully deporting the population (children) and unlawfully transferring the population (children) from occupied areas of Ukraine to the Russian Federation, Sergei Ivanovich Kobylash, the Lieutenant General in the Russian Armed Forces, who was the Commander of the Long-Range Aviation of the Aerospace Force hence responsible for the war crime of directing attacks at civilian objects; Viktor Nikolayevich Sokolov, the Admiral in the Russian Navy, who was the Commander of the Black Sea Fleet hence responsible for the war crime of directing attacks at civilian objects; Sergei Kuzhugetovich Shoigu, the Minister of Defence of the Russian Federation when the crime of directing attacks at civilian objects was done, and finally Valery

⁵³ Chatham House “The ICC response to Russia’s war gives hope for justice” <<https://www.chathamhouse.org/2023/03/icc-response-russias-war-gives-hope-justice>>. Accessed on the 24 July 2024

⁵⁴ Chan James “Judicial Oversight over Article 12(3) of the ICC Statute” FICHL Policy Brief Series No. 11 (2013). <<https://www.toaep.org/pbs-pdf/11-chan> > Accessed on the 2 March 2025

⁵⁵ Ibid.

⁵⁶ Article 12(2)(a) of the Rome Statute of the International Criminal Court

⁵⁷ See Articles 13 and 14 Of the Rome Statute of the International Criminal Court.

⁵⁸ International criminal court “Situation in Ukraine: Situation referred to the ICC by 43 States Parties: March - April 2022” <<https://www.icc-cpi.int/situations/ukraine>> accessed on 27 July 2024.

Vasilyevich Gerasimov, Chief of the General Staff of the Armed Forces of the Russian Federation and also the first Deputy Minister of Defence for allegedly being responsible for the war crime of directing attacks at civilian objects. The question that agitates critical minds is: can there ever be serious actions taken by the court or any of its organs against the Russian soldiers? Let us analyze having regards Jurisdiction and to the nature of the Court.

Jurisdiction: Ordinarily, the ICC would not have had the jurisdiction to issue any arrest warrants and to commence actions in respect of crimes committed in Ukraine if Ukraine had not made a declaration under Article 12 of the Rome Statute⁵⁹ and this is because neither Ukraine nor Russia is a state party to the Rome Statute. Though the Security Council could still have referred the situation to the office of the prosecutor relying on its powers under Chapter VII of the United Nations Charter⁶⁰ and its special agreement with the court pursuant to article 2 of the Rome Statute to refer situations whether or not a state in whose territory a situation occurs is a state party, it would not have done it because Russian state which is a permanent member and who is the alleged culprit will veto any move to refer the situation to the ICC. The saving grace for Ukraine is Article 12 which has opened a window for it to activate the jurisdiction of the ICC. Though ICC has jurisdiction, having jurisdiction is one and having the ability to exercise the same is another⁶¹.

Nature of the Court: the jurisdiction of the Court is complimentary in nature meaning, it only complements national jurisdictions whose primary duties are to try persons for crimes of international concern. Consequently, the Court relies heavily on state structures and institutions of member states to be effective. That explains why the Rome Statute makes provision for cooperation obligations of state parties⁶². There can't be a proper trial without arrest, investigation, and trial with the offender in attendance. The ICC does not have a police of its

⁵⁹ Article 12 of the Rome Statute states pre conditions for the exercise of jurisdiction by the court. The conditions are that the crimes must have been committed in the territory of a member state or the persons involved in the commission of the crimes are nationals of a member state.

⁶⁰ Chapter VII of the United Nations charter empowers the Security Council alone to determine the existence of any threat to the peace, breach of peace and act of aggression and make recommendations including taking actions on behalf of the members of the United Nations. Article 13 (b) of the Rome Statute on the other hand empowers the United Nations security Council to refer situations to the Court.

⁶¹ This is similar to the verdict of the ICC issuing arrest warrant against the Israeli Prime Minister which has been impossible to enforce. Jack Holmes: "The ICC Arrest Warrants for the Leaders of Israel and Hamas – Current Status and Key Points from Israel's Challenges" <https://anzsilperspective.com/the-icc-arrest-warrants-for-the-leaders-of-israel-and-hamas-current-status-and-key-points-from-israels-challenges/> accessed on the 2nd February 2026.

⁶² See articles 86-102 also Part 9 of the Rome Statute of the International Criminal Court.

own, detention facilities of its own, court buildings etc of its own. The ICC strongly relies on states for these facilities. Consequent upon the forgoing, the criminal justice will be compromised without the support of member states. Recently, the Court has issued arrest warrants against some Russian officials. This signifies the commencement of criminal actions against Russian officials. The question that follows is: can the international criminal court go beyond the issuance of a warrant of arrest? It is very unlikely. The power and ability to arrest are the prerogative of the strong to apprehend and detain the weak. Neither Ukraine nor any other states can execute arrest warrants against Russian senior officials including its president Vladimir Putin. In Africa, particularly in the past, arrest warrants issued against some Government officials and Heads of State like Umar Al Bashir have not been executed⁶³. If it was difficult to execute arrest warrants against African states, how much more against Russian Top Government officials?

3.3 TRIBUNALS ESTABLISHED BY THE UNITED NATIONS SECURITY COUNCIL

The U.N. Security Council has the power, under Chapter VII of the United Nations Charter to take any actions that will ensure international peace and security which includes setting up tribunals⁶⁴. The Security Council has, in the past and pursuant to its powers in chapter VII established Tribunals: Ad Hoc and Hybrid International Criminal Tribunals to investigate and prosecute atrocities or crimes under international humanitarian law⁶⁵. These tribunals have been more effective in holding persons accountable for heinous crimes committed in comparison to national institutions of states and the International Criminal Court. The reason for this effectiveness is that it is established by the Security Council which is made up of the strong and mighty and hence regarded as the police of other states. The Security Council does not only have the power and force to enforce its resolutions but also has the powers to direct other member states of the United Nations General Assembly to comply with its resolutions or cooperate with it

⁶³ Umar Al bashir is the former President of Sudan. First Warrant of arrest was issued on the 4 March 2009 while the second was issued on the 12 July 2010. All warrants have not been executed. See “The Prosecutor v. Omar Hassan Ahmad Al Bashir” <https://www.iccpi.int/sites/default/files/CaseInformationSheets/AlBashirEng.pdf> accessed on the 2nd February 2026

⁶⁴ The United Nations and the Rule of Law “ International and Hybrid Criminal Courts and Tribunals” <https://www.un.org/ruleoflaw/thematic-areas/international-law-courts-tribunals/international-hybrid-criminal-courts-tribunals> accessed on the 28 July 2024

⁶⁵ Ibid.

in ensuring the implementation of its resolutions. The first of such tribunals established by the Security Council is the Nuremberg Tribunals which tried war crimes committed by the Nazi soldiers and her allies. Other tribunals include: the International Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)⁶⁶. The Security Council has also been involved in the establishment of Hybrid Courts or Tribunals. These hybrid courts or tribunals include the Special Court for Sierra Leone (SCSL)⁶⁷, the Extraordinary Chambers in the Courts of Cambodia (ECCC), and the Special Tribunal for Lebanon (STL)⁶⁸. These tribunals are known as a hybrid because they operate a blend of domestic and international law, institutions and personnel.

3.4 CAN VICTIMS OF WAR CRIMES AND CRIMES AGAINST HUMANITY EVER FIND JUSTICE?

Having analyzed the various avenues of holding Russian soldiers accountable, it is our opinion that the Ukrainian Victims and their families may never get justice as their chances slim. This is because Russia is a big state and a strong one at that. National Courts cannot effectively try high Russian Government officials and have them punished. The international criminal court is not likely going to enforce the warrant of arrest issued against the Russian president and members of his cabinet. This is because the Court does not have any structures or institutions that will ensure the arrest, detention and trial of high-profile state officials and heads of government. It may have been possible that the referral was done by the United Nations Security Council. The Security Council cannot also establish a tribunal that will try those accused of having committed war crimes and crimes against humanity. This is because Russia which is a permanent member and whose vote is indispensable is the culprit in this case. What then can be the way out for victims? There is no way out. The victims of the Ukrainian conflict should only pray that the whole world rises against Russia as it did against the officials of the Nazi Government and her allies. This is however not likely to occur until there is a third world war which would have exposed the inability of the United Nations to avert a world war. A third world war is not what should be desired because it may be more disastrous than the first and second world wars combined owing to the level of technological advancement attained by mankind.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

4.0 CONCLUSION AND RECOMMENDATION

This article has discussed the war in Ukraine and the possibility of victims ever finding justice. It however has reached a conclusion that the Ukrainians should not expect any substantial justice now owing to the fact that it is fighting Russia which is not only a big state but a permanent member of the Security Council. It is however recommended that the International Criminal Court be strengthened to ensure that is effective and have the powers to punish any state or head of government that perpetrates war crimes and crimes against humanity while in office. The United National Security Council should be rejigged and reformed in a manner that the powers of the permanent members are whittled down so that where a permanent member is involved or accused of committing war crimes, it can be punished like any other state.