



SCIREA Journal of Sociology

<http://www.scirea.org/journal/Sociology>

March 12, 2023

Volume 7, Issue 2, April 2023

<https://doi.org/10.54647/sociology84889>

# The War between Russia and Ukraine: Crimes against Humanity under the Rome Statute of the International Criminal Court

**Shrouk Mahmoud Saleh**

Liverpool John Moores University, United Kingdom

## Abstract

This article reviews the Russian acts committed in Ukraine under international criminal law, i.e., the Rome Statute of the International Criminal Court, which may amount to crimes against humanity. The article depends on evidence and reports submitted by international organizations, such as the United Nations (UN) and the Organization for Security and Co-operation in Europe (OSCE) to illustrate the unlawful acts committed by Russia.

**Keywords:** Russia, Ukraine, International Criminal Law, The Rome Statute of the International Criminal Court, Crimes Against Humanity.

## 1. Introduction

Ukraine, as the meaning of the name 'Borderland' implies, has always been at the crossroad and a battlefield for major power struggles from the Mongol Empire in the 13th Century to

the Polish–Lithuanian Commonwealth in the 17th/18th centuries and thereafter under Catherine the Great of Russia to the Bolshevik Russia in 1917/1920. It became part of the Soviet Union, which continued until the collapse of the Union in 1991 to be a sovereign state.

Because of its proximity both to the west and east, Ukraine has a mix of diverse demography, cultures, and languages, which is a result of constant conquests and annexations by outside forces. Russia, purportedly, seeks to have a special claim on the territory because of the sizeable ethnic Russian population, especially in the east of Ukraine of Donbas. Crimea, which was part of Russia from 1783 to 1954, was gifted to Ukraine by the Soviet leader Nikita Khrushchev, an ethnic Ukrainian. Crimea was reabsorbed back into the Russian Federation in 2014 following the coup in Ukraine while Donbas (Donetsk & Lugansk) declared autonomy, both events deemed unacceptable by Ukraine.

This paper examines the current war between Russia and Ukraine, and how it is justified, where reports allege that Russia has committed crimes against humanity, in violation of the Rome Statute of the International Criminal Court (Rome Statute) as it is the main legal instrument of international criminal law, which the International Criminal Court (ICC) enforces. Hence, this paper will examine the various reports recording the violations and unlawful acts committed by Russia in Ukraine, and review them under international criminal law, i.e., the Rome Statute.

Therefore, this paper will try to answer the following questions: How do Russia and Ukraine justify their use of force? Did Russia commit acts that may amount to crimes against humanity in Ukraine, especially murder and deportation? If so, what are the applicable legal instruments to the factual circumstances? How the international community can put an end to such unlawful acts? And what is the power of ICC regarding the acts committed?

This paper will employ doctrinal and theoretical methods in attaining its objectives. As it will review the alleged acts committed by Russia in Ukraine, using the aforementioned international legal instrument, i.e., the Rome Statute. In addition, the paper will be based on critical analysis and argumentative discussions found in international legal academia as well as reports reviewing the war between Russia and Ukraine.

This paper addresses investigation of allegations of incidents in Ukraine and the deliberate deportation of Ukrainians to Russia and other states. There is also evidence of the unlawful indiscriminate killing of civilians and there has been evidence from the investigation in Ukraine by the Organization for Security and Co-operation in Europe (OSCE) based on

videos and photos of civilians who have died, and UN reports detail cases of invasion and violations by Russian troops.

## 2. Casus Belli

The question in international law of just or legitimate war, as a western concept, has been debated for centuries by legal and political scholars. It is noted that: “just war, notion that resort to armed force (*jus ad Bellum*) is justified under certain conditions; also, the notion that the use of such force (*Jus in Bello*) should be limited in certain ways.” (Encyclopedia Britannica) Although the concept has been espoused in the Greek and Roman times, notable is the Dutch author Hugo Grotius (1653-1645) who extensively wrote about the doctrine in ‘On the Laws of War and Peace’ arguing that war could be legitimate and justifiable only if a country faces an imminent threat and war becomes necessary and is proportionate to the danger.<sup>1</sup>(Stanford Encyclopedia of Philosophy)<sup>2</sup>. He brings into his arguments other laws such as laws of nature, nations, and international. He clearly lays out the circumstances by stating that: “war in defense of life is permissible only when the danger is immediate and certain, not when it is merely assumed the danger must be immediate and imminent at that point in time.”<sup>3</sup>

How this relates to the present crisis in Ukraine and the alleged justification by Russia and alleged crimes that may have been committed by the parties to the conflict under international criminal law are a few points examined in this paper.

Ukraine’s point of view is that no justification warranted an act of aggression against a sovereign state without a resolution by the Security Council at the United Nations (UN). Ukraine further argues that existing international laws do not justify the invasion of its territories and violating its sovereignty, territorial integrity, civilian deaths, and damage to infrastructure. It also claims that Russian justifications of self-defense and safeguarding the ethnic Russians in the east are highly exaggerated. It is noted that the landmark Nuremberg Trials after WW II proclaimed, “To initiate a war of aggression is not only an international

---

1 Miller, Jon, "Hugo Grotius", The Stanford Encyclopedia of Philosophy (Spring 2021 Edition), <<https://plato.stanford.edu/archives/spr2021/entries/grotius/>>. accessed 17 April 2022

2 Ibid.

3 Grotius, Hugo, The Rights of War and Peace (2005 ed.) 1625. Online Library of Liberty, <<https://oll.libertyfund.org/title/grotius-the-rights-of-war-and-peace-2005-ed-vol-1-book-i>> accessed 18 April 2022

crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulative evil of the whole.’<sup>4</sup>

Notwithstanding, there is an alternative Russian viewpoint, which has to be examined through complex international law. Russia asserts that it has acted in accordance with international law as enshrined in the United Nations Charter, specifically Chapter VII, Article 51, which deals with ‘Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression.’<sup>5</sup> It is stated in the Charter that: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”<sup>6</sup> Russia has furthermore relied on Grotius and the subsequent concept of pre-emption, which many states, especially the USA, Israel, and NATO have been practicing, thus creating legal precedents.

The *casus belli* by Russia is that it has acted in self-defense because NATO’s expansion right on its border with missiles changes the status quo and the security structure in Europe based and agreed upon the concept of indivisibility of security meaning that no state will enhance its security at the expense of another. Another cause cited by Russia is the protection of its ethnic population scattered around Ukraine, especially in Eastern Ukraine, which has been under constant attack by the Ukrainian forces since 2014. Russia emphasizes that it had exhausted all negotiations with Ukraine and NATO for peaceful resolution of disputes citing the non-adherence of the Minsk Agreement of 2015 amongst EU, Ukraine, and Russia requiring all parties to deescalate and provide autonomy to the breakaway Donbas region. Russia claims that all promises and agreements in relation to NATO expansion eastward and European security protocols had been violated.

---

4 Gerhard Werle, *Principles of International Criminal Law*, (T.M.C. Asser Press 2nd edition 2009) 481.,

5 *Ibid.*

6 United Nations Charter, Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Article 51

### **3.The Acts of crimes against humanity in Ukraine**

#### ***3.1 Crime against humanity of murder***

The murder of civilians is an element of the crime against humanity, and the Rome Statute set up this crime against humanity as a grave crime and established provisions in Article 7(1)(a) to prosecute and investigate the perpetrators of this crime who are responsible for “attack directed against a civilian population”.<sup>7</sup> Therefore, the war in Ukraine and the casualties of Ukrainian civilians concern the International Criminal Court, and people around the world are concerned about it.

During the Russian invasion of Ukraine, Russia has been alleged to have committed crimes against humanity against the Ukrainian people because Russia is said to have indiscriminately attacked civilians, killed them without discrimination, and destroyed hospitals, schools, houses, and multiple museums. It is also alleged that Russia used dangerous weapons such as phosphorus bombs and cluster munitions, resulting in the indiscriminate killing of civilians and injuries.<sup>8</sup>

The United Nations reported multiple casualties of civilians in Ukraine in this war, such as numerous civilians killed and the numbers of victims that are given below are actually much less than the actual number of casualties, such as in Donetsk and Luhansk 608 victims, 123 killed and 485 injured, also in government-controlled territory 469 casualties, 99 killed and 370 injured, and on territory controlled by the self-proclaimed republics, 139 casualties, 24 killed and 115 injured. <sup>9</sup>That is what the United Nations reported from February 24th, 2022, to March 9th, 2022. Since 2014, the UN Human Rights Monitoring Mission in Ukraine has been able to record and report the casualties in Ukraine and collect evidence because they met witnesses and made an analysis to corroborate the acts and documents. The UN also had confident sources of videos, photos, and documents, which also had relevant confident sources. However, from February 24th, 2022, the Russian troops in Ukraine prevented HRMMU from accessing the victims and visiting places destroyed by Russian troops<sup>10</sup>.

---

7 United Nations Human Rights, ‘HRMMU Update on the human rights situation in Ukraine, UN Human Rights Monitoring Mission in Ukraine report’ < [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf) > accessed 20 April 2022

8 Ibid.

9 Office of the High Commissioner for Human Rights, ‘Ukraine: civilian casualty’ < <https://www.ohchr.org/en/news/2022/03/ukraine-civilian-casualty-update-10-march-2022> > accessed 20 April 2022

10 Office of the High Commissioner for Human Rights, ‘Ukraine: civilian casualty’ < <https://www.ohchr.org/en/news/2022/03/ukraine-civilian-casualty-update-10-march-2022> > accessed 23 April 2022

Therefore, the UN records the number of casualties on "reasonable grounds to believe the standard of proof" and based on investigation information.<sup>11</sup>

Due to the investigations of several international agencies into violations of human rights and crimes against humanity in Ukraine since 2014, such as the International Commission of Inquiry on Ukraine belonging to the United Nations and the UN Human Rights Monitoring Mission in Ukraine (HRMMU). The monitoring of the war stated that over 2500 cases of possible war crimes and crimes against humanity in Ukraine were committed by Russia.<sup>12</sup>

According to independent international organizations, the HRMMU and Human Rights Organization, among the acts committed by Russia are indiscriminate violations, killings of civilians, and destroying kindergartens, hospitals, and schools. However, Amnesty International declared on February 25, that Russian troops had "shown a blatant disregard for civilian lives by using ballistic missiles and other explosive weapons with wide-area effects in densely populated areas" and stated that Russia had committed a crime of war and a crime against humanity in the area according to Article 8 (2) (b) war crime of attacking civilians of international criminal law. But Russia denied these claims and accusations and declared that they just used precision-guided weapons.<sup>13</sup> As a result, the bombing resulted in the deaths of over a hundred civilians, which is considered a crime against humanity. Furthermore, on March 3, the Office of the United Nations High Commissioner for Human Rights declared in a statement that over 1006 civilians had died in the first week of the invasion, so this was also considered a crime against humanity and intimidation of citizens.<sup>14</sup>

According to the report on violations of international humanitarian and human rights law, war crimes, and crimes against humanity by the Organization for Security and Co-operation in Europe (OSCE), on March 3, 2022, Ukraine presented a request for support from 45 states. Therefore, the OSCE mandated three experts to investigate and report incidents in Ukraine on March 14, 2022. <sup>15</sup>The mission of the OSCE stated that it "establishes the facts and

---

11 Ibid.

12 Michelle Nichols, 'U.N. suspends Russia from human rights body, Moscow then quits' <<https://www.reuters.com/world/un-vote-suspending-russia-human-rights-council-over-ukraine-2022-04-07/>> accessed 24 April 2022

13 United Nations Human Rights, 'HRMMU Update on the human rights situation in Ukraine, UN Human Rights Monitoring Mission in Ukraine report' <[https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf)> accessed 25 April 2022

14 Ibid.

15 Wolfgang Benedek, Veronika Bílková and Marco Sassòli, OSCE, 'Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity' <<https://www.osce.org/files/f/documents/f/a/515868.pdf>> accessed 27 April 2022

circumstances of possible cases of war crimes and crimes against humanity, including due to deliberate and indiscriminate attacks against civilians and civilian infrastructure; and to collect, consolidate, and analyze this information to present it to relevant accountability mechanisms, as well as national, regional, or international courts or tribunals that have, or may in the future have jurisdiction."<sup>16</sup> The mission of the OSCE showed concern about civilians because they were vulnerable to children, women, and people with disabilities, as a result, those people had the attention of human rights organizations and the right to take special protection under international humanitarian law. Furthermore, the violations against civilians in Ukraine are considered war crimes and crimes against humanity under IHL.<sup>17</sup> During the mission investigation, the experts received allegations of the executions of a large number of civilians in Ukraine during the occupation of Russia by video and photos of civilians killed on the streets, especially in Bucha during Russia's withdrawal from there.<sup>18</sup> Furthermore, the Ukrainian authorities have alleged and shared photos and names of 10 Russian soldiers who committed violations of the atrocities committed in Bucha, including kidnapping and torturing of civilians without arms in Bucha. The counterclaim is that the Ukrainian authorities also executed and shot many civilians, which cannot be verified. Ukrainian found hundreds of bodies of civilians killed in Bucha by Russian troops after the Russian troops retreated. The officials in Ukraine added that women were raped and the Russian troops killed children, which is a crime against humanity. The Russian officials denied accusations of violations and crimes by their troops, and they affirmed that all the photos were fake, but the witnesses and human rights investigators emphasized that the Russian troops did that. Other reports by Human Rights Watch asserted that the Russian occupying forces committed crimes against humanity in Bucha, with evidence of forced disappearances, unlawful killings of civilians and children, and many atrocities in Bucha.<sup>19</sup> The matter needs thorough and independent investigation preferably by the United Nations. The experts of OSCE reported that if these accusations were true, it would be a serious problem and a violation of IHL and treatments, but Russia denied these accusations and the

---

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Jeffrey Gettleman, 'Ukraine singles out Russian soldiers for atrocities in Bucha' <<https://www.nytimes.com/2022/04/29/world/europe/bucha-russian-soldiers-atrocities.html>> accessed 28 April 2022

killing of civilians. Some of these accusations were denied by Russia claiming that Ukraine was disseminating the reports to elicit sympathy from the rest of the world.<sup>20</sup>

The acts of execution and use of explosive weapons with a wider range in Ukraine require serious investigation and must get the attention of the ICC, and human rights organizations. They must take serious measures to stop these violations and crimes against civilians as this may amount to a crime against humanity under international criminal law<sup>21</sup>.

As stated in Article 7(1)(a) of the Rome Statute, and by analyzing the acts committed of the Russian troops against the aforementioned incidents, it is found that the Russian troops killed Ukrainian civilians, while this conduct was committed as part of a widespread or systematic attack directed against the Ukrainian civilian population, and the Russian troops knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against the Ukrainian civilian population.<sup>22</sup>

### ***3.2 The deportation of Ukrainian civilians***

Ukrainians have lived through the painful memories again as in 1940 they lived the deportation memories that they live with today. That is Russia's troops forced their transfer to Russia. According to a report by Ukrainian civilians who claim to have been children in the 1940s, they are now experiencing the same suffering as if they were children again during Russia's war. According to what happened in the early World War II, Soviet armed men deported families and children from houses to the gulags in Siberia.<sup>23</sup> Furthermore, the reports state that Ukrainians are now forced to relocate to a filtration campus, which unfortunately brings the worst memories back to the new generations.<sup>24</sup>

Due to the war in Ukraine, 10 million people were deported because of Russia's war in Ukraine, on March 16, 2022, the United Nations estimated that 6.4 million people were dispersed in other cities in Ukraine, on March 22, 4 million people fled abroad from Ukraine. The people have escaped to other countries, where they are refugees. As a result, the UN estimates that there are 2 million Ukrainian civilians in Poland. That is the type of forced

---

20 Wolfgang Benedek, Veronika Bílková and Marco Sassòli, OSCE, 'Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity' <<https://www.osce.org/files/f/documents/f/a/515868.pdf>> accessed 29 April 2022

21 Ibid.

22 The International Criminal Court, Elements of Crimes, 2013.

23 Corky Siemaszko, 'Reports of Russians deporting Ukrainians to camps trouble Stalin survivors' <<https://www.nbcnews.com/news/world/reports-russians-deporting-ukrainians-camps-troubles-stalin-survivors-rcna21456>> accessed 2 May 2022

24 Ibid.



displacement of civilians and threats to their lives. The deportation of civilians is considered a violation of the safety of people from the point of Ukraine's government.<sup>25</sup> Moreover, the UN principles, international human rights law, and international humanitarian law, IHL protects refugees under the law. They are also protected by the convention of refugee laws, such as the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.<sup>26</sup>

Furthermore, there are claims about Russia's forced deportation of civilians from Ukraine to Russia. For instance, on March 19, it was reported that Russia displaced over 4,000 Ukrainians from Mariupol to Russia by force. The Ukrainian Ministry of Foreign Affairs announced that the act of forcefully deporting Ukrainians is a violation of the law when the civilians are taken to Russia and put in prison camps. In addition, the Prosecutor General of Ukraine alleges that Russia has forced displaced almost 2,389 children from Ukraine to Russia. The United States Embassy in Kyiv confirmed and clarified this claim, and they reported that the children from "Donetsk and Luhansk oblasts" also announced that they consider "this is not assistance, it is kidnapping."<sup>27</sup> These allegations cannot be corroborated independently.

There is another allegation of the forced deportation of Ukrainians to Russian territory to filtration camps in Russia. On March 15, 2022, according to a woman witness who hid with her family in Mariupol, Russian troops stormed the Ukraine bomb shelter and took the women and children by force, transferred them to buses, and sent them to filtration camps in Russia.<sup>28</sup> Therefore, the officials in Ukraine claimed and accused Russia of forcing the transfer of Ukrainians from Mariupol to the filtration campus and transferring them by force to the Russian filtration camps to get the eastern Ukraine region under Russia's control. But the Kremlin spokesperson, Dmitry Peskov, denied this accusation and clarified that this accusation was a lie. Furthermore, he claimed that 420,000 Ukrainians were willing to relocate to Russia, particularly from dangerous areas in Ukraine and the Donetsk and Luhansk regions.<sup>29</sup>

---

25 Michael N. Schmitt, 'Deportation of Ukrainian Civilians to Russia: the Legal Framework' <<https://lieber.westpoint.edu/deportation-ukrainian-civilians-russia-legal-framework/>> accessed 4 May 2022

26 Ibid.

27 Ibid.

28 Pjotr Sauer, 'Hundreds of Ukrainians forcibly deported to Russia, say Mariupol women' <<https://www.theguardian.com/world/2022/apr/04/hundreds-of-ukrainians-forcibly-deported-to-russia-say-mariupol-women>> accessed 5 May 2022

29 Ibid.

The United Nations reported on the violations of Russia's mass forced transfer of millions of Ukrainians. As such, one of the officials for humanitarian affairs and refugees told the Security Council that the violations have been increasing in Ukraine and the deportations of Ukrainians to Russia are forced. The delegate says that Russia is making Ukraine dire and Ukrainians face violence and mass deportation from Russian troops. Furthermore, Martin Griffiths, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, says that "the lives of millions of civilians are simply at stake."<sup>30</sup> Therefore, the UN tried to provide help to civilians, but due to a lack of assurances and protection, the circumstances of war prevented them from providing such help, and they could not move to war areas. Thus, the United Nations increased its support to movements to assist the Ukrainian Red Cross in helping evacuees and civilians.<sup>31</sup>

On the other hand, Martin Griffiths described the dangers and damage to Ukrainian civil infrastructure, like water, sanitation, health, and electricity, due to the war. If the war continues, the cost will increase every day. As Filippo Grandi, United Nations High Commissioner for Refugees, said, "if the war does not stop, 4 million Ukrainian refugees will leave Ukraine in the next few days, and this will increase the load on the economy of other countries. Therefore, this crisis will affect the countries receiving refugees. Certain private companies and individuals have donated over \$40 million to agencies in a few days to help Ukrainians, and many countries, like the United States, the United Kingdom, Germany, and others, have donated money and weapons to help Ukraine counter the aggression."<sup>32</sup>

Concerning the practice rules of the Rome Statute relating to deportation: "Pursuant to Article 7(1)(d) of the 1998 Rome Statute, "deportation or forcible transfer of the population when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, constitutes a crime against humanity." Hence, when applying the elements of this crime on the factual findings, it is found that the Russian troops deported or forcibly transferred, without grounds permitted under international law, Ukrainian civilians to another State or location, by expulsion or other coercive acts, while those Ukrainian civilians were lawfully present in the area from which they were so deported or transferred, and the Russian troops were aware of the factual circumstances that established

---

30 Security Council, United Nations, 'Amid Violence, Mass Forced Displacement, 'Lives of Millions' of Ukrainian Civilians at Stake, Humanitarian Affairs Chief Tells Security Council < <https://www.un.org/press/en/2022/sc14812.doc.htm>> accessed 6 May 2022

31 Ibid.

32 Ibid.

the lawfulness of such presence. It is also found that this conduct was committed as part of a widespread or systematic attack directed against the Ukrainian civilian population, and the Russian troops knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against the Ukrainian civilian population.<sup>33</sup>

#### **4. The International Criminal Court**

On March 2, 2022, one of the prosecutors of the International Criminal Court (ICC) initiated an investigation into the present and past crimes committed by Russia, such as the allegations by Ukraine of Russia's crimes against humanity. Therefore, the ICC sent a team of lawyers, investigators, and professionals to collect evidence of the Ukrainian's claims.<sup>34</sup> On the other hand, Russia and Ukraine are not parties to the Rome Statute of the ICC and the investigation is based on that Ukraine agreed to sign in 2014 and 2015 the ICC jurisdiction to the effect of two declarations,<sup>35</sup> which were, first Ukraine applied to the International Criminal Court (ICC) for jurisdiction under Article 12 (3) of the Rome Statute in 2014 and the second declaration in 2015, to investigate the claim of crimes committed on her territory beginning in 2013 to 2014 under the jurisdiction of the ICC.<sup>36</sup>

As a result, there are 41 countries that are party to the ICC's support for Ukraine and the escalation of the war against Ukraine to justice pursuant to international criminal law. Therefore, they initiated an investigation into the situation in Ukraine. However, the ICC exercised the principles of the Rome Statute on Article 12(3) and accepted the jurisdiction of crimes of war and crimes against humanity committed by states, and the Rome Statute has a mechanism to accept and proscribe the issues pursuant to the declaration accepted by the court. However, Ukraine is not a party to the ICC, but it signed two declarations with two jurisdictions on violations committed on its territory in 2014 and 2015. The ICC has the legal authority to punish those involved in the atrocities. According to the court's declaration signed with Ukraine, the ICC is clearly accountable to the jury and prosecution in this war, as well as to stop the atrocities that Russia is committing in Ukraine, resulting in Ukraine's declaration.

---

33 The International Criminal Court, Elements of Crimes, 2013.

34 Michelle Nichols, 'U.N. suspends Russia from human rights body, Moscow then quits' <https://www.reuters.com/world/un-vote-suspending-russia-human-rights-council-over-ukraine-2022-04-07/> accessed 7 May 2022

35 Ibid.

36 ICC, 'Ukraine accepts ICC jurisdiction over alleged crimes committed since 20 February 2014' <<https://www.icc-cpi.int/news/ukraine-accepts-icc-jurisdiction-over-alleged-crimes-committed-20-february-2014>> accessed 8 May 2022

The ICC is supposed to have jurisdiction over states that have been unable to investigate and prosecute the atrocities committed in their places to solve their cases, while the ICC has not effectuated its authority on the war till now.

The first problem of the ICC is how to prosecute Russian leaders or commanders, despite the fact that the court has no mechanism to prosecute the accused in absentia, and this is a huge disadvantage because they cannot arrest such persons as long as they reside in Russia or other friendly states. But in the precedent years of 1999, the ICC and international tribunals convened by the United Nations to prosecute Milošević who stood trial for the atrocities that he committed in Kosovo in the same year. and the tribunals convened by international tribunals to prosecute the former President of Liberia Charles Taylor and the former President of Chad Hissène Habré<sup>37</sup>. However, the ICC can attempt to rewrite history by prosecuting Russian individuals for war crimes, crimes against humanity, and aggression.

## **5. Will Russia's war with Ukraine end?**

According to the expectations of the Eurasia Group, NATO intended to intervene militarily in Ukraine, but they did not do so. We expected this because Ukraine is not a member of NATO, but they did provide military assistance, equipment, or weapons support but a no-fly zone claiming that doing so would lead to airborne clashes between NATO and Russia, resulting in mass destruction.<sup>38</sup>

Every day of violations raises the expectations of the resistance, and the war becomes tougher as victims increase, and Russia does not appear to stop fighting Ukraine and has plans to occupy more territory as Taras Kuzio reported that Russia has announced that it aims to “the complete military conquest of Ukraine followed by a partition and a massive purge of the civilian population.”,<sup>39</sup> the expectations of the resistance to end this war and forcibly defend Ukrainians. The war will not end because of Russia's force and Ukraine's resistance and continuous external interference.

---

37 Ellen Ioanes, 'Here's what the ICC can actually do about Putin's war crimes'  
<<https://www.vox.com/23017838/international-criminal-court-icc-putin-war-crimes>> accessed 8 May 2022

38 Holly Ellyatt, 'How will Russia's war with Ukraine end? Here are 5 possible outcomes'  
<<https://www.cnn.com/2022/03/08/how-will-russias-war-with-ukraine-end-here-are-5-possible-outcomes.html>> accessed 12 May 2022

39 Ibid.

Consequently, the Ukrainians will face a long occupation with unlimited victims and painful life. Furthermore, they will face the deportation of civilians or the killing of civilians. If international organizations and courts do not take action to end this war, the possibility of genocide will increase. Based on what we know, Putin's intended objective is to remove Ukrainian identity to establish the constitutional legitimacy of a new dictatorial Russian Empire.<sup>40</sup> But the expectations are that Ukraine will not stop the resistance.<sup>41</sup> The analysts of the war state that a miracle expectation of Russia's will to withdraw its troops from Ukraine would occur only if its economy collapses and if the war becomes very costly with the existence of political separation and military rebellion, and Putin's realization that war pays a gross price.<sup>42</sup> Thus till this conflict end, Ukraine is in grave danger until this analysis becomes a reality.

It appears that the ICC cannot arrest and try them in The Hague. However, in the precedent years, the ICC and international tribunals have historical examples for former presidents when the court tried the perpetrators of the atrocities that they committed in other states and how they prosecuted them. Another issue with the ICC is the global perception of their fairness in dealing with individuals. Apart from two European leaders, both from the former Yugoslavia, all other accused had been from Africa.

## **6. Conclusion**

The paper has discussed a brief background of the current war in Ukraine; the question of the Causes Belli of the war by Russia against Ukraine; its position in international law, based on critical analysis and argumentative discussions found in the Rome Statute and international legal academia, as well as reports discussing the war. Furthermore, it highlighted how justified was the war between the two parties in this invasion? The reports also state the acts that Russia committed in Ukraine and the violations committed by Russia; and the allegation by Russia of how Ukraine killed its civilians; to accuse Russia of crimes against humanity and war crimes, and to win the world's support.

The paper has endeavored to examine the deportation or forced transfer of Ukrainians and what they suffered from the war and Russian invasion. The facts employed as evidence of

---

40 Ibid.

41 Ibid.

42 Ibid.

crimes against humanity are essential to prove, which Russia is accused of including the forced transfer of Ukrainians to Russia and other countries. The evidence to prove conclusively an act of crime by any warring party is difficult. It also requires both parties to present and counter the claims submitted by one of the parties. Prosecuting the culprit in an international court such as ICC requires Russia to accept the jurisdiction of the ICC. Another issue could be to name the individuals to try in the ICC.

According to, the violations of unlawful killing of civilians by Russia and Ukraine, which Ukraine accuses Russia of and vice versa, the sources monitoring Russia's war against Ukraine consider the violations committed in Ukraine to be violations under IHL, crimes against humanity, and war crimes. Furthermore, the mission of the OSCE has an issue of investigation to make sure of violations like killing civilians and destroying schools, public property, hospitals, and train stations that were committed by Russia or Ukraine, thus the experts have a difficult time finding the truth. Therefore, it is a problem to prove who was the reason for the death and injury of civilians.

The paper gathered information about ICC jurisdiction and the two declarations Ukraine signed in 2014 and 2015; despite the fact that Ukraine is not a party to the ICC and Rome Statute, it has jurisdiction over the ICC pursuant to Ukraine's declarations as stipulated provisions of the Rome Statute. The problems of the ICC are how to prosecute Russian leaders who may be directly responsible.

The USA has never ratified the Rome Statute as such its position in pursuing a war crime trial against the Russian leadership is not of strength. The USA not only has denied the jurisdiction of the ICC, but it has also sanctioned the chief prosecutor of the ICC.<sup>43</sup> It has passed an act whereby no American can ever be brought to the ICC for any war crimes.<sup>44</sup>

Apparently, the issue of alleged war and other crimes by Russia will continue to be pursued by various parties including the ICC during and after the war. The consequences of such investigations, filing an evidential case, bringing and trying the persons responsible, and prosecuting them are currently unknown.

---

43 Holly Ellyatt, 'How will Russia's war with Ukraine end? Here are 5 possible outcomes' <<https://www.cnbc.com/2022/03/08/how-will-russias-war-with-ukraine-end-here-are-5-possible-outcomes.html>> accessed 13 May 2022

44 Ibid.