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RUSSIA-UKRAINE: War crimes by Russia in Ukraine, evidence accumulating

War crimes in Ukraine

By Dr Aaron Rhodes for Human Rights Without Frontiers

Evidence of the commission of war crimes by Russian forces in Ukraine is rapidly accumulating. Intergovernmental organizations are launching investigations, and Ukrainian

citizens and reporters on the ground, using cell phone cameras, are recording such atrocities and bringing them to world attention, except in Russia, China, and other states trying to keep the truth from their citizens.

It becomes increasingly apparent that Russian forces are committing these crimes as a deliberate tactic to demoralize and break the will of civilians, and convince Ukrainian authorities to accept Russian demands and sue for peace to prevent further slaughter.

War crimes are thus a tactic to achieve victory. At the same time, investigations of war crimes, and the threat of punishment by international courts, are also a strategy to induce fear among Russian leaders, undermine their authority, and thus end those crimes – in addition to being a principled effort to bring perpetrators to justice.

According to the International Criminal Court (ICC), “war crimes” refers to grave breaches of the Geneva Conventions of 1949 and other serious violations of the laws and customs applicable in armed conflict, “when they are committed as part of a plan or policy or on a large scale.”

These prohibited acts include: murder; mutilation, cruel treatment and torture; taking of hostages; intentionally directing attacks against the civilian population; intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historical monuments or hospitals; pillaging; rape, sexual slavery, forced pregnancy or any other form of sexual

violence; conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.

These principles hold that when a combatant knowingly uses tactics that will incur disproportionate harm to civilians or the environment, it is a war crime. The ICC is also mandated to prosecute the "crime of aggression," a manifest violation of the Charter of the United Nations.

Ukraine, while not a signatory to the Rome Statute establishing the ICC, accepted its jurisdiction after Russia's 2014 armed incursion. Thirty-nine (39) States Parties to the ICC have referred the situation in Ukraine to Prosecutor Karim A.A. Khan for an immediate investigation. By 28 February, Khan **stated**, "My Office had already found a reasonable basis to believe crimes within the jurisdiction of the Court had been committed, and had identified potential cases that would be admissible."

Allegations of war crimes being committed by the Russian military include the deployment of banned weaponry including cluster bombs, which scatter small bombs in a wide area, in civilian areas where there has been no government or military target. Evidence of the use of such weapons has been **documented** in Kharkiv, Bucha, and Okhtyrka, where such a bomb evidently hit a kindergarten, killing three people including a child. Ukrainian officials also **accused** Russia of using thermobaric bombs, the **most devastating** non-nuclear weapons, which threaten all life within a broad territory and suffocate or burn victims alive. While not explicitly banned by international conventions, their use would constitute a war crime.

Civilian targets, with no military function, are being heavily attacked. In a statement to the UN Human Rights Council on 3 March, High Commissioner for Human Rights Michele Bachelet **said** that “most civilian casualties have been caused by the use of heavy artillery, multi-launch rocket systems and air strikes in populated areas... Massive damage to residential buildings has been inflicted. The use of weapons with wide area effects in densely populated urban areas is inherently indiscriminate...”

According to the **Wall Street Journal**, “Russia’s military insists it isn’t targeting civilians and blames Ukrainian “nationalists” for shelling their own, without any evidence. But deaths are mounting from Russian strikes on residential areas in cities throughout the country, while agreements to evacuate other towns and cities have fallen through.”

The same publication **reported** on 6 March that Russia is recruiting Syrians skilled in urban combat to fight in Ukraine. Chechen forces have also been used by the Russian military.

Russia’s record of war crimes in both Syria, where air attacks virtually destroyed the city of Aleppo in 2016, and in the second Chechen war of 1999-2000, give rise to fear that a scorched-earth approach is being applied in Ukraine—one where humanitarian concerns are of no concern, and war crimes are a method aimed at achieving victory.

During the second Chechen war, there were between 85,000 and 250,000 casualties among the roughly one million Chechens in the area at the times of the open conflict, i.e., anywhere between 8 and 25 percent of the population. I visited human rights advocates in Grozny in July 2002, on behalf of the International Helsinki Federation for Human Rights; one my co-

workers remarked that the condition of the city was “worse than Kabul, even 1945 Dresden.” Numerous villages had been encircled by Russian forces, the stated goal being to “mop up” and neutralize rebels. Residents were systematically robbed, beaten, raped, or shot. Many were abducted and disappeared.

Benjamin Ferencz, who worked as a prosecutor of Nazi war criminals during the Nuremberg Trials, **said** that the imprisonment of Russian President Vladimir Putin is “very realistic...I want to see Putin behind bars as soon as possible.” But it seems unlikely that war crimes investigations by international bodies will deter the crimes now perpetrated in Ukraine, either for fear of prosecution, or in response to domestic or international opinion. Russia has made only half-hearted denials of allegations of war crimes, sometimes blaming Ukrainian nationalists for civilian deaths; Russia has apparently **intentionally** shelled civilians during evacuation efforts along agreed upon humanitarian corridors.

Russia, not a party to the ICC statute, will likely deny that it has any legitimate jurisdiction. The impact of war crimes allegations on public opinion and internal political pressure on the Russian regime will be held down by government censorship ensuring that information about these charges is largely unknown. Western news sources have been **blocked**. While **increasing numbers** of Russians disapprove of the war, they risk severe punishment for expressing it, and support for the war, driven by media propaganda, is also strong. Legislators have **amended** the criminal code to make the spread of “fake” information an offense punishable by fines and jail terms as long as 15 years, an effective ban on independent journalism.

Under such Stalinist conditions, and given the unlikelihood that international war crimes investigations can bring about any timely changes in policy, Russia's devastating assault on Ukrainian civil society is likely to continue. How it will affect Ukraine's resolve to remain free and democratic, and how Western governments and civil society will respond, is to be seen.

Aaron Rhodes is Senior Fellow in the Common Sense Society, and President of the Forum for Religious Freedom-Europe. He was Executive Director of the International Helsinki Federation for Human Rights 1993-2007.

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