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## OVERVIEW

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The Journal of International Criminal Law (*JICL*) is a scientific, online, peer-reviewed journal, first edited in 2020 by Prof. Dr. Heybatollah Najandimanesh, mainly focusing on international criminal law issues.

Since 2023 JICL has been co-managed by Prof. Dr. Anna Oriolo as General Editor and published semiannually in collaboration with the International and European Criminal Law Observatory (IECLO) staff.

JICL Boards are powered by academics, scholars and higher education experts from a variety of colleges, universities, and institutions from all over the world, active in the fields of criminal law and criminal justice at the international, regional, and national level.

The aims of the JICL, *inter alia*, are as follow:

- to promote international peace and justice through scientific research and publication;
- to foster study of international criminal law in a spirit of partnership and cooperation with the researchers from different countries;
- to encourage multi-perspectives of international criminal law; and
- to support young researchers to study and disseminate international criminal law.

Due to the serious interdependence among political sciences, philosophy, criminal law, criminology, ethics and human rights, the scopes of JICL are focused on international criminal law, but not limited to it. In particular, the Journal welcomes high-quality submissions of manuscripts, essays, editorial comments, current developments, and book reviews by scholars and practitioners from around the world addressing both traditional and emerging themes, topics such as

- the substantive and procedural aspects of international criminal law;
- the jurisprudence of international criminal courts/tribunals;
- mutual effects of public international law, international relations, and international criminal law;
- relevant case-law from national criminal jurisdictions;
- criminal law and international human rights;
- European Union or EU criminal law (which includes financial violations and transnational crimes);
- domestic policy that affects international criminal law and international criminal justice;
- new technologies and international criminal justice;
- different country-specific approaches toward international criminal law and international criminal justice;
- historical accounts that address the international, regional, and national levels; and



- holistic research that makes use of political science, sociology, criminology, philosophy of law, ethics, and other disciplines that can inform the knowledge basis for scholarly dialogue.

The dynamic evolution of international criminal law, as an area that intersects various branches and levels of law and other disciplines, requires careful examination and interpretation. The need to scrutinize the origins, nature, and purpose of international criminal law is also evident in the light of its interdisciplinary characteristics. International criminal law norms and practices are shaped by various factors that further challenge any claims about the law's distinctiveness. The crime vocabulary too may reflect interdisciplinary synergies that draw on domains that often have been separated from law, according to legal doctrine. Talk about “ecocide” is just one example of such a trend that necessitates a rigorous analysis of law *per se* as well as open-minded assessment informed by other sources, *e.g.*, political science, philosophy, and ethics. Yet other emerging developments concern international criminal justice, especially through innovative contributions to enforcement strategies and restorative justice.

The tensions that arise from a description of preferences and priorities made it appropriate to create, improve and disseminate the JICL as a platform for research and dialogue across different cultures, in particular, as a consequence of the United Nations push for universal imperatives, *e.g.*, the fight against impunity for crimes of global concern (core international crimes, transboundary crimes, and transnational organized crimes).

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## International Crimes and Justice: Insights on the International Courts' Decisions on the Situation in Ukraine

*by Francesco Focillo\**

**ABSTRACT:** The situation that has unfolded in Ukraine since 2014 have had consequences in international relations and has also been brought before international tribunals, i.e., the International Court of Justice, the European Court of Human Rights, the Court of Justice of the European Union, and the International Criminal Court, the latter issuing arrest warrants against Vladimir Putin and Maria L'vova-Belova. Moving from the historical background of the Russian-Ukrainian crisis, this paper aims to analyse the international reactions to it, focusing on the “judicial” responses and in particular on the ICC investigation and arrest warrants paying close attention to their public availability. The objective of this work is, with the limitations present due in the analysis of events that still have to unfold completely, both on the field and in the courtrooms, to understand what effect these judicial proceedings can have on the Russian Federation's diplomatic, international, and economic relations.

**KEYWORDS:** Aggression; Human Rights; International Criminal Court; Russia-Ukraine Conflict; Terrorism; Warrant of Arrest.

### I. The Conflict in Ukraine: From the Maidan Revolution to the 2022 Escalation

On December 1, 1991, the Ukrainian electorate confirmed the Act of Declaration of Independence of the Ukraine, adopted on August 24, 1991,<sup>1</sup> confirming the newly found independence of Ukraine from the USSR.<sup>2</sup> Ukraine's relations with Russia would see an important shift twenty years after its independence, in a process started by the Euromaidan protests. The Euromaidan<sup>3</sup> protest movement started on November 21, 2013, after President Viktor Fedorovych Yanukovich's<sup>4</sup> decision to delay Ukraine's signing of the European Union

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#### DOUBLE BLIND PEER REVIEWED ARTICLE

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<sup>1</sup> PAUL ROBERT MAGOCSI, *A HISTORY OF UKRAINE: THE LAND AND ITS PEOPLES* (2010), at 722-723.

<sup>2</sup> A journalistic report of the results of the Ukrainian independence referendum can be found in Paolo Valentino, *Sepolta a Kiev l'Unione di Gorbaciov*, *CORRIERE DELLA SERA* (Dec. 3, 1991).

<sup>3</sup> The name Euromaidan is a blend word that comes from the blending of *Europe* and *Maidan Nezaležnosti* (the Ukrainian name of Kyiv's Independence Square, where the protests began). Jim Heintz, *Ukraine's Euromaidan: What's in a name?*, ASSOCIATED PRESS (Dec. 2, 2013), <https://apnews.com/general-news-c920a5f8b5c343f4b888a36bad899091>.

<sup>4</sup> The patronymic, in this case *Fedorovych*, is used in official documents in both Ukrainian and Russian. In this work it will be used in the first instance in which a person whose name is in either Russian or Ukrainian is cited. In Ukrainian law patronymics are regulated by article 28 para. 1 of the Ukrainian Civil Code.



Association Agreement<sup>5</sup> after having promised to do so,<sup>6</sup> shifting his policies from pro-European to pro-Russian and sparking the protests that evolved into the Revolution of Dignity. On February 23, 2014, the Revolution of Dignity (also known as the Maidan Revolution)<sup>7</sup> ended with the creation of an *interim* government headed by Arseniy Petrovych Yatsenyuk, which succeeded the one headed by Mykola Yanovych Azarov. On February 22, 2014, President Yanukovych fled the country,<sup>8</sup> and a new presidential election was held on May 25,<sup>9</sup> which was won by Petro Oleksiiiovych Poroshenko.<sup>10</sup> It is important to underline that this election was not held in all of Ukraine, with the majority Russophone regions of Crimea, Donetsk and Lugansk (Donetsk and Lugansk are collectively known as *Donbas*) not taking part in these elections.<sup>11</sup>

As cited before, the elections did not take place in these regions because the Euromaidan protest movement and Revolution of Dignity found opposition there. Indeed, in response to the protests, on March 1<sup>st</sup>, 2014, the Russian Council authorised the use of armed forces in Ukraine, specifically in Crimea, which hosts the Sevastopol Naval Base,<sup>12</sup> that had been leased by Russia from Ukraine in 1997 after the signing of the Partition Treaty on the Status and Conditions of the Black Sea Fleet.<sup>13</sup> The annexation of Crimea by separatist armed units and the so-called *little green men* (Russian forces in unmarked uniforms)<sup>14</sup> was rubberstamped by a referendum held on March 16<sup>th</sup> 2014,<sup>15</sup> the subsequent declaration of independence by the Crimean Parliament, and its application to join Russia;<sup>16</sup> Russia formally annexed Crimea on March 21, 2014.<sup>17</sup> In the Donbas, in response to the Euromaidan Revolution, pro-Russian protesters

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<sup>5</sup> European Union, Republic of Ukraine, Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, (June 27, 2014), OJ L 161, 29.5.2014, at 3–2137. The agreement was signed on March the 21<sup>st</sup>, 2014 (Preamble, Article 1, Titles 1, 2 and VII), and on June the 27<sup>th</sup>, 2014. It entered into effect on September 1<sup>st</sup>, 2017, upon the ratification by all signatories. The agreement was deposited at the Council of Europe Union-General Secretariat. See Sergio Cantone, *Cronaca di una rivoluzione improbabile*, in 2014(4) LIMES 117 (2014).

<sup>6</sup> Serhiy Kvit, *The Ideology of the Euromaidan*, in 1(1) CONTEMPORARY UKRAINE: A CASE OF EUROMAIDAN 27 (2014).

<sup>7</sup> *Supra*, note 3.

<sup>8</sup> The fall of President Yanukovych is analysed in detail in Thomas Ambrosio, *The fall of Yanukovych: structural and political constraints to implementing authoritarian learning*, in 33(2) EAST EUROPEAN POLITICS 184 (2017).

<sup>9</sup> Yuriy Shevda, Joung Ho Park, *Ukraine's revolution of dignity: The dynamics of Euromaidan*, in 7(1) JOURNAL OF EURASIAN STUDIES 85 (2016).

<sup>10</sup> Central Election Commission, *On the results of the presidential elections of Ukraine*, CVK.GOV.UA (June 1, 2014), [https://www.cvk.gov.ua/wp-content/uploads/2018/10/protokol\\_cvk\\_25052014.pdf](https://www.cvk.gov.ua/wp-content/uploads/2018/10/protokol_cvk_25052014.pdf).

<sup>11</sup> OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, UKRAINE EARLY PRESIDENTIAL ELECTION 25 MAY 2014 OSCE/ODIHR ELECTION OBSERVATION MISSION FINAL REPORT (May 25, 2014), <https://www.osce.org/odihr/elections/ukraine/120549>.

<sup>12</sup> Jure Vidmar, *The Annexation of Crimea and the Boundaries of the Will of the People*, in 16(3) GERMAN LAW JOURNAL 365 (2015).

<sup>13</sup> The Naval Base was leased after the short-lived Republic of Crimea's Constitution was abolished by the Ukrainian Parliament in 1995. Spencer Kimball, *Bound by treaty*, DEUTSCHE WELLE (Nov. 3, 2014), <https://www.dw.com/en/bound-by-treaty-russia-ukraine-and-crimea/a-17487632>.

<sup>14</sup> Mark Galeotti, *'Hybrid War' and 'Little Green Men': How It Works, and How It Doesn't*, in UKRAINE AND RUSSIA: PEOPLE, POLITICS, PROPAGANDA AND PERSPECTIVES (Agnieszka Pikulicka-Wilczewska, Richard Sakwa eds., 2015), at 85-86. In Russia the *little green men* are referred to as *polite people*, to which, on May the 7<sup>th</sup>, 2015, a monument was erected in Belgorosk, as reported in Daisy Sinclair, *Russia Unveils Monument To 'Polite People' Behind Crimean Invasion*, RADIOFREEEUROPE RADIO LIBERTY (May 6, 2015), <https://www.rferl.org/a/russia-monument-polite-people-crimea-invasion/27000320.html>.

<sup>15</sup> An analysis of the highly contested legality of the 2014 Crimean Referendum is found in Christian Marxsen, *The Crimea Crisis – An International Law Perspective*, in 74(2) ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT (HEIDELBERG JOURNAL OF INTERNATIONAL LAW) 367 (2014).

<sup>16</sup> Jure Vidmar, *The Annexation of Crimea*, *op. cit.*

<sup>17</sup> *Id.*



occupied, before being removed by the Security Service, the Donetsk Regional State Administration Building.<sup>18</sup> The pro-Russian protests continued in April,<sup>19</sup> with pro-Russian militants fighting Ukrainian government forces in several cities in the region between April 12 and April 14,<sup>20</sup> and with the declarations of independence of the Donetsk People's Republic<sup>21</sup> and of the Luhansk People's Republic<sup>22</sup> in the same month.

The separatist republic in the Donbas and Ukraine fought until 2022, despite the signing of two memoranda that should have laid the groundwork for peace: the Minsk agreement<sup>23</sup> on September 5, 2014, and the Minsk II agreement<sup>24</sup> on February 12, 2015, which “served the immediate needs of the various parties but established a roadmap for the future which could not actually be followed”.<sup>25</sup> Russia continued to intervene in the conflict justifying its involvement with concerns for Russian speakers in Ukraine.<sup>26</sup> Russian involvement would increase in 2021 with two Russian military build-ups near the border between March and April, and with a second build-up between October 2021 and February 2022.<sup>27</sup> The second Russian military build-up was the prelude to the full-scale Russian invasion of Ukraine, called *special military operation* by Russian authorities, announced by Putin and enacted by the Russian military on February 24, 2022.<sup>28</sup> Russia had previously recognized the Donbas republics on February 22, 2022.<sup>29</sup>

During the conflict, on September 29, 2022, after holding referendums (deemed as illegitimate by the OSCE),<sup>30</sup> the Russian Federation formally annexed the Donetsk, Kherson, Luhansk and Zaporizhzhia oblasts,<sup>31</sup> with the United Nations Secretary General António

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<sup>18</sup> Charlie D'Agata, *Ukrainian city of Donetsk epitomizes country's crisis*, CBS EVENING NEWS (Mar. 6, 2014), <https://www.cbsnews.com/news/ukrainian-city-of-donetsk-epitomizes-countrys-crisis/>.

<sup>19</sup> Alec Luhn, *East Ukraine protesters joined by miners on the barricades*, THE GUARDIAN (Apr. 13, 2014), <https://www.theguardian.com/world/2014/apr/12/east-ukraine-protesters-miners-donetsk-russia>.

<sup>20</sup> MICHAEL KOFMAN, KATYA MIGACHEVA *et al.*, LESSONS FROM RUSSIA'S OPERATIONS IN CRIMEA AND EASTERN EUROPE (2017), at 43.

<sup>21</sup> *Ukraine crisis: Protesters declare Donetsk 'republic'*, BBC (Apr. 7, 2014), <https://www.bbc.com/news/world-europe-26919928>.

<sup>22</sup> *Separatists Declare 'People's Republic' In Ukraine's Luhansk*, RADIOFREEEUROPE RADIOLIBERTY (Apr. 28, 2014), <https://www.rferl.org/a/separatists-declare-luhansk-peoples-republic/25364894.html>.

<sup>23</sup> Officially known as the *Protocol on the results of consultations of the Trilateral Contact Group with respect to the joint steps aimed at the implementation of the Peace Plan of the President of Ukraine, P. Poroshenko, and the initiatives of the President of Russia, V. Putin*.

<sup>24</sup> Officially known as the *Package of Measures for the Implementation of the Minsk Agreements*.

<sup>25</sup> PAUL D'ANIERI, UKRAINE AND RUSSIA: FROM CIVILIZED DIVORCE TO UNCIVIL WAR (2023), at 240.

<sup>26</sup> Volodymyr Kulyk, *National Identity in Ukraine: Impact of Euromaidan and the War*, in 68(4) EUROPE-ASIA STUDIES 588 (2016).

<sup>27</sup> Simon Shuster, *The Untold Story of the Ukraine Crisis*, TIME (Feb. 2, 2022), <https://time.com/magazine/europe/6144693/february-14th-2022-vol-199-no-5-europe/>.

<sup>28</sup> The expression *special military operation* comes from Vladimir Putin's “On conducting a special military operation” televised address of February the 24<sup>th</sup>, 2022. The use of the term *invasion* in Russia was prohibited by Russian Federal Laws no.31-FZ and no.32-FZ of March the 4<sup>th</sup>, 2022. For a timeline of the events of February 23<sup>rd</sup> and 24<sup>th</sup> 2022 and the reactions to them see Jessie Yeung, Adam Renton, *et al.*, *Russia attacks Ukraine*, CNN INTERNATIONAL (Feb. 24, 2022), <https://edition.cnn.com/europe/live-news/ukraine-russia-news-02-23-22/index.html>.

<sup>29</sup> *Ukraine crisis: Russia orders troops into rebel-held regions*, BBC.COM (Feb. 22, 2022), <https://www.bbc.com/news/world-europe-60468237>. Alongside Russia only the Democratic People's Republic of Korea, the Syrian Arab Republic, and the *non-internationally recognized* Republic of Abkhazia ever recognized these republics.

<sup>30</sup> *OSCE heads condemn plan to hold illegal “referenda” in occupied territories of Ukraine*, ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE (Sept. 20, 2022), <https://www.osce.org/chairmanship/526432>.

<sup>31</sup> Russia annexed these oblasts even though it did not control the entirety of their territories. The only country to accept the results of the referendums was the Democratic People's Republic of Korea.

Gutierrez<sup>32</sup> stating that “any annexation of a State’s territory by another State resulting from the threat or use of force is a violation of the Principles of the UN Charter and international law”.<sup>33</sup> The motivations given by Russian officials for its Special Military Operation, especially by President Putin, are too many to list here, we can see as examples: NATO’s expansion in the former territory of the Warsaw Pact<sup>34</sup> (the West’s “broken promise” made to Michail Sergeevič Gorbačëv in 1990),<sup>35</sup> the “denazification” and demilitarisation of Ukraine,<sup>36</sup> the “historical unity of Russian and Ukrainians”<sup>37</sup> and the aforementioned safeguard of Russian speakers. The Russian Orthodox Church has endorsed the invasion seeing the Special Military Operation as a “Holy War”<sup>38</sup> in which Russia is defending “the single spiritual space of Holy Russia”.<sup>39</sup>

The list of given motivations is not, by any means, complete, and the analysis of the reasons that Russia has given to justify the invasion is out of the scope of this work, especially given that “*es bien sabido que las intenciones declaradas no siempre concuerdan con las obras realizadas*”,<sup>40</sup> but, in order to tackle matters that are directly related to the conflict between Ukraine and the Russian Federation, these motivations given by Russian officials, especially by its Head of State, can help us to see the reasons behind Russia’s actions, and to better understand the actions of the Russian Federation, including the ones investigated by the International Criminal Court (ICC), that have brought to the accusations against Putin and L’vova-Belova.

## II. The Economic Sanctions against State and Non-State Actors Involved in the Russian Aggression of Ukraine

The sanctions against Russia include travel bans, asset freezes, unavailability of funds, and other measures, with economic sanctions being the most studied in the literature.<sup>41</sup> Economic sanctions have been a staple of international relations for thousands of years, with the first recorded ones dating back to 432 B.C., when Pericles prohibited the import and the selling of

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<sup>32</sup> Secretary-General of the United Nations from 2017 onwards; Prime Minister of Portugal from 1995 to 2002; United Nations High Commissioner for Refugees from 2005 to 2015.

<sup>33</sup> *Ukraine: UN Secretary-General condemns Russia annexation plan*, UNITED NATIONS (Sept. 29, 2022), <https://news.un.org/en/story/2022/09/1129047>.

<sup>34</sup> The States that were formally in the Warsaw Pact (either as independent states, as Socialist Republics in Czechoslovakia, or as Socialist Republics in the USSR) and that have subsequently joined NATO are: Albania (Albania left the Warsaw Pact in 1968), Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, and Slovakia.

<sup>35</sup> Giorgio Cella, *La Russia è in Ucraina per tornare impero*, in 2022(3) LIMES 101, at 103.

<sup>36</sup> *Decision taken on denazification, demilitarization of Ukraine — Putin*, TASS RUSSIAN AGENCY (Feb. 24, 2022).

<sup>37</sup> VLADIMIR PUTIN, ON THE HISTORICAL UNITY OF RUSSIANS AND UKRAINIANS (July 12, 2021).

<sup>38</sup> As cited in Brian Mefford, *Russian Orthodox Church declares “Holy War” against Ukraine and West*, ATLANTIC COUNCIL (Apr. 9, 2024), <https://www.atlanticcouncil.org/blogs/ukrainealert/russian-orthodox-church-declares-holy-war-against-ukraine-and-west/>.

<sup>39</sup> *Id.* The autocephalous nature of the national orthodox churches, especially in those of the former USSR, and their general identification with their respective national governments is discussed in Giovanni Filoramo, *Cristianesimo*, in MANUALE DI STORIA DELLE RELIGIONI (Giovanni Filoramo, Marcello Massenzio *et al.* ed., 1998), at 207, 222.

<sup>40</sup> MARINA FERNÁNDEZ LAGUNILLA, LA LENGUA EN LA COMUNICACIÓN POLÍTICA I: EL DISCURSO DEL PODER (1999), at 79.

<sup>41</sup> The European Council keeps on its website, a page that gives an overview of the European Union’s sanctions against Russia. The European Council, *EU Sanctions against Russia*, CONSILIUM.EUROPA.EU, <https://www.consilium.europa.eu/en/policies/sanctions-against-russia/#military-aggression>.

products originating from Megara, as a retaliation after the kidnapping of three women.<sup>42</sup> The use of sanctions has increased after World War II, including sanctions imposed by the United Nations, with the countries of western Europe, often alongside the United States, playing the most active role in the intergovernmental coalitions that have imposed a large fraction of the sanctions seen since the 1990s,<sup>43</sup> with those, paraphrasing the famous Marx's quote, having been referred to as a spectre haunting the world.<sup>44</sup> This role of "western European" countries has remained present in the case of the economic sanctions against Russia, that have been imposed by the European Union and by the United States in response to the 2014 Russian annexation of Crimea, especially on its oil sector.<sup>45</sup>

On March 6, 2014, with Executive Order 13660, entitled "Blocking Property of Certain Persons Contributing to the Situation in Ukraine"<sup>46</sup> the President of the United States Barack Obama,<sup>47</sup> finding "that the actions and policies of persons including persons who have asserted governmental authority in the Crimean region [...] constitute an unusual and extraordinary threat to the national security and foreign policy of the United States, and I hereby declare a national emergency to deal with that threat",<sup>48</sup> ordered that "all property and interests in property that are in the United States [...] are blocked and may not be [...] dealt with".<sup>49</sup> The Council of the European Union, with Council Decision 2014/145/CFSP of March 17, 2014, mandated that "Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of the natural persons responsible for actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, and of natural persons associated with them",<sup>50</sup> this Decision brought, on March 17 2014, Council Regulation 269/2014,<sup>51</sup> which implemented Decision 2014/145/CFSP.<sup>52</sup> The European Union, through its Global Human Rights Sanctions Regime, has also imposed sanctions on Russian individuals for their role in the conflict in Ukraine.<sup>53</sup>

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<sup>42</sup> Jean-Marc Thouvenin, *History of implementation of sanctions*, in *ECONOMIC SANCTIONS IN INTERNATIONAL LAW AND PRACTICE* (Masahiko Asada, ed., 2019), at 85.

<sup>43</sup> Lance Davis, Stanley Engerman, *Sanctions: Neither War nor Peace*, in 17(2) *JOURNAL OF ECONOMIC PERSPECTIVES* (2003) 187-197, at 189-190.

<sup>44</sup> Lorenzo Bernardini, *La funzione "servente" della giustizia penale nell'enforcement delle sanzioni economiche dell'UE*, in *CRIMINALITÀ TRANSNAZIONALE* (Anna Oriolo, et al eds., 2024), at 80.

<sup>45</sup> Daniel Fjærtoft, Indra Overland, *Financial Sanctions Impact Russian Oil, Equipment Export Ban's Effects Limited*, in 113(8) *OIL AND GAS JOURNAL* (2015) 66.

<sup>46</sup> Executive Office of the President, *Blocking Property of Certain Persons Contributing to the Situation in Ukraine* – Executive Order 13660 (Mar. 6, 2014).

<sup>47</sup> Barack Hussein Obama II, President of the United States of America from 2009 to 2017.

<sup>48</sup> Executive Order 13660, *supra* note 46.

<sup>49</sup> *Id.*, Section 1.

<sup>50</sup> Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, L 78/16, in *OFFICIAL JOURNAL OF THE EUROPEAN UNION* (Mar. 17, 2014), art.1.

<sup>51</sup> Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, L 78/6, in *OFFICIAL JOURNAL OF THE EUROPEAN UNION* (Mar. 17, 2014), para. 12.

<sup>52</sup> On the European Union's sanctions see Lorenzo Bernardini, *La funzione "servente" della giustizia penale*, *op. cit.*

<sup>53</sup> Council Decision (CFSP) 2020/1999 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses (Document 02020D1999-20240722) (Dec. 7, 2020). It is important to specify that the EU Global Human Rights Sanctions Regime does not apply only to Russian nationals.

## International Crimes and Justice: Insights on the International Courts' Decisions on the Situation in Ukraine

Even though sanctions against Russia had already been imposed in 2014,<sup>54</sup> the 2022 escalation of the conflict brought with it a series of responses from governments, international organizations, and other entities.<sup>55</sup> The reactions to the invasion and the sanctions against Russia are too numerous to be enumerated in the present work, so a few of the earliest ones will be listed to paint the general picture of the situation.

In the immediate aftermath of Russia's actions in February 2022, the Association of South-East Asian Nations (ASEAN) called for restraint;<sup>56</sup> the African Union, through its *at-the-time* Chair Macky Sall<sup>57</sup> and the Chairperson of the African Union Commission Moussa Faki Mahamati,<sup>58</sup> expressed its concern and urged "the two Parties to establish an immediate ceasefire and to open political negotiations without delay";<sup>59</sup> the General Secretariat of the Organization of American States (OAS) condemned the escalation of the conflict and stated that "Russian aggression constitutes a crime against international peace";<sup>60</sup> and the OECD strongly condemned the "the launch by President Putin of a military operation".<sup>61</sup> The Council of the European Union agreed on a first package of sanctions on February 23, 2022.<sup>62</sup> The following day the members of the European Council condemned "in the strongest possible terms Russia's unprecedented military aggression against Ukraine",<sup>63</sup> declaring that "the EU stands firmly by Ukraine and its people as they face this war. The EU will provide further political, financial and humanitarian assistance".<sup>64</sup> NATO also condemned "in the strongest

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<sup>54</sup> As discussed in Niccolò Locatelli, Alberto De Sanctis, *La battaglia per l'Ucraina, nel contesto*, LIMES ONLINE (May 2, 2014), <https://www.limesonline.com/background/la-battaglia-per-l-ucraina-nel-contesto-14669680/>.

<sup>55</sup> Scott R. Anderson, Zachary Badore, *et al.*, *The World Reacts to Russia's Invasion of Ukraine*, LAWFARE (Feb. 24, 2022), <https://www.lawfaremedia.org/article/world-reacts-russias-invasion-ukraine>.

<sup>56</sup> Reuters, *ASEAN Urges Maximum Restraint, De-escalation of Russia-Ukraine Tensions - Draft Statement*, VOICE OF AMERICA (Feb. 24, 2022).

<sup>57</sup> Prime Minister of Senegal from 2004 to 2007, President of Senegal from 2012 to 2024, and Chair of the African Union from 2022 to 2023.

<sup>58</sup> Prime Minister of Chad from 2003 to 2005, and Chair of the African Union Commission from 2008 to 2017 and from 2017 to the time of writing.

<sup>59</sup> African Union, *Statement from Chair of the African Union, H.E President Macky Sall and Chairperson of the AU Commission H.E Moussa Faki Mahamat, on the situation in Ukraine*, AFRICAN UNION (Feb. 24, 2022), <https://au.int/en/pressreleases/20220224/african-union-statement-situation-ukraine>.

<sup>60</sup> General Secretariat of the Organization of American States, *Statement from the OAS General Secretariat on the Russian Attack on Ukraine*, ORGANIZATION OF AMERICAN STATES (Feb. 24, 2022), [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-008/22](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-008/22).

<sup>61</sup> OSCE Chairperson, OSCE Secretary General, *Joint statement by OSCE Chairman-in-Office Rau and Secretary General Schmid on Russia's launch of a military operation in Ukraine*, ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE (Feb. 24, 2022), <https://www.osce.org/chairpersonship/512890>.

<sup>62</sup> Council of the EU, *EU adopts package of sanctions in response to Russian recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and sending of troops into the region*, COUNCIL OF THE EUROPEAN UNION (Feb. 23, 2022), <https://www.consilium.europa.eu/en/press/press-releases/2022/02/23/russian-recognition-of-the-non-government-controlled-areas-of-the-donetsk-and-luhansk-oblasts-of-ukraine-as-independent-entities-eu-adopts-package-of-sanctions/>. The European Union has since expanded its sanctions against the Russian Federation and its statements condemning Russia's military actions.

The consilium.europa.eu website keeps a page on its website dedicated to the timeline of the European Union's response to the situation: *Timeline – EU response to Russia's war of aggression against Ukraine*, CONSILIUM.EUROPA.EU (the page was created on Feb. 23, 2022, and it's still being updated at the time of writing).

<sup>63</sup> European Council, *Joint statement by the members of the European Council*, EUROPEAN COUNCIL (Feb. 24, 2022), <https://www.consilium.europa.eu/en/press/press-releases/2022/02/24/joint-statement-by-the-members-of-the-european-council/>.

<sup>64</sup> *Id.*



possible terms Russia's horrifying attack on Ukraine",<sup>65</sup> urging Russia "in the strongest terms to turn back from the path of violence and aggression it has chosen"<sup>66</sup> and that "Russia's leaders must bear full responsibility for the consequences of their actions".<sup>67</sup> The day after that statement the NATO Heads of State and Government also issued a statement calling the situation "the gravest threat to Euro-Atlantic security in decades",<sup>68</sup> condemning "in the strongest possible terms Russia's full-scale invasion of Ukraine, enabled by Belarus"<sup>69</sup> and that NATO "will draw all the necessary consequences for NATO's deterrence and defence posture".<sup>70</sup> The G7<sup>71</sup> published a statement condemning the "large-scale military aggression by the Russian Federation against the territorial integrity, sovereignty and independence of Ukraine",<sup>72</sup> being united in their "support for the people of Ukraine and its democratically elected government",<sup>73</sup> and calling "on other states not to follow Russia's illegal decision to recognize the proclaimed independence of these entities".<sup>74</sup> The G7 has reiterated its condemnation of "Russia's illegal, unjustifiable, and unprovoked full-scale invasion"<sup>75</sup> of Ukraine, reaffirming ever since its "unwavering support for Ukraine".<sup>76</sup> The United Nations General Assembly adopted, on March 2, 2022, Resolution A/RES/ES-11/1 that condemned the "24 February 2022 declaration by the Russian Federation of a 'special military operation' in Ukraine"<sup>77</sup> and requesting it to withdraw from the Ukrainian territory. The Committee of Ministers of the Council of Europe, with Resolution CM/Res(2022)2, excluded Russia on March 16, 2022, after the Parliamentary Assembly adopted an opinion on the matter.<sup>78</sup>

Not only international organizations, but also States have commented on the situation; for brevity's sake we will only describe the United States of America's, the People's Republic of China's, and the Republic of India's reactions to the escalation of the conflict. The United States of America's President Joe Biden<sup>79</sup> condemned the attack on February 23, 2022, calling

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<sup>65</sup> North Atlantic Council, *Statement by the North Atlantic Council on Russia's attack on Ukraine*, NORTH ATLANTIC TREATY ORGANIZATION (Feb. 24, 2022), [https://www.nato.int/cps/en/natohq/official\\_texts\\_192404.htm](https://www.nato.int/cps/en/natohq/official_texts_192404.htm).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> North Atlantic Treaty Organization, *Statement by NATO Heads of State and Government on Russia's attack on Ukraine*, NORTH ATLANTIC TREATY ORGANIZATION (Feb. 25, 2022), [https://www.nato.int/cps/en/natohq/official\\_texts\\_192489.htm](https://www.nato.int/cps/en/natohq/official_texts_192489.htm).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> The Russian Federation was part of the grouping from 1997 to 2014, when it was suspended due to its annexation of Crimea; it officially left it in 2017. During Russia's presence the Grouping was called G8.

<sup>72</sup> G7, *G7 Leaders' Statement on the invasion of Ukraine by armed forces of the Russian Federation* (Feb. 24, 2022).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> G7, *G7 Leaders' Statement 24 February 2024*, (Feb. 24, 2024), <https://www.g7italy.it/wp-content/uploads/G7-Leaders-Statement.pdf>.

<sup>76</sup> *Id.*

<sup>77</sup> United Nations General Assembly, Resolution A/RES/ES-11/1 (Mar. 2, 2022). The voting on the Resolution saw 141 votes in favour, 35 abstentions, 12 absences, and 5 votes against (by the Syrian Arab Republic, the Democratic People's Republic of Korea, the State of Eritrea, the Republic of Belarus, and the Russian Federation itself).

<sup>78</sup> Parliamentary Assembly of the Council of Europe, *Consequences of the Russian Federation's aggression against Ukraine Opinion 300 (200)* (Mar. 15, 2022). The Council of Europe was founded with the 1949 Treaty of London. Ukraine joined it on November 9, 1995; Russia joined it on February 28, 1996.

<sup>79</sup> Joseph Robinette Biden Jr., 46<sup>th</sup> President of the United States, from 2021 to 2025, and 47<sup>th</sup> Vice President of the United States from 2009 to 2017.

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Russia's actions "unprovoked and unjustified"<sup>80</sup> and holding that "Russia alone is responsible for the death and destruction this attack will bring, and the United States and its Allies and partners will respond in a united and decisive way".<sup>81</sup> The day after this statement President Biden, after a phone call with Volodymyr Zelensky, "condemned this unprovoked and unjustified attack by Russian military forces",<sup>82</sup> and that "the United States and our Allies and partners will be imposing severe sanctions on Russia".<sup>83</sup> On March 1, 2022, President Biden's 2022 State of the Union Address focused heavily on the Russia-Ukraine war.<sup>84</sup> The People's Republic of China's (PRC) aligned its rhetoric to Russia's, blaming the USA and NATO for the escalation, because "the overexpansion of NATO in eastern Europe militarized the region and precipitated Russia's special military operation",<sup>85</sup> but it also, through its Foreign Minister Wang Yi,<sup>86</sup> told senior European officials that China respects countries' sovereignty, including Ukraine's, whilst also justifying Russia's concerns about NATO's expansion.<sup>87</sup> The Republic of India has opted for a neutral stance on the situation with its officials steering clear of blaming Russia,<sup>88</sup> calling for restraint in the region.<sup>89</sup> Generally speaking the countries which have vocally condemned the Russian actions in Ukraine are present in Russia's *unfriendly countries list*, which are the countries that have imposed or joined sanctions against Russia.<sup>90</sup>

Speaking of sanctions, after the escalation of the conflict in Ukraine the United States sanctioned Vladimir Putin and Sergey Viktorovič Lavrov<sup>91</sup> on February 25, 2022,<sup>92</sup> and Joe

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<sup>80</sup> Joseph Robinette Biden Jr., *Statement by President Biden on Russia's Unprovoked and Unjustified Attack on Ukraine*, THE WHITE HOUSE (Feb. 23, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/23/statement-by-president-biden-on-russias-unprovoked-and-unjustified-attack-on-ukraine/>.

<sup>81</sup> *Id.*

<sup>82</sup> Joseph Robinette Biden Jr., *Statement by President Joe Biden on Phone Call with President Volodymyr Zelenskyy of Ukraine*, THE WHITE HOUSE (Feb. 24, 2022), <https://it.usembassy.gov/statement-by-president-joe-biden-on-phone-call-with-president-volodymyr-zelenskyy-of-ukraine/>.

<sup>83</sup> *Id.*

<sup>84</sup> Joseph Robinette Biden Jr., *2022 State of the Union Address*, in 168(37) CONGRESSIONAL RECORD – SENATE (Mar. 1, 2022).

<sup>85</sup> Sheena Chestnut Greitnes, *China's Response to War in Ukraine*, in 62(5-6) ASIAN SURVEY 751 (2022) at 755.

<sup>86</sup> Minister of Foreign Affairs of the PRC from 2013 to 2022 and from 2023 onwards.

<sup>87</sup> *China says it respects Ukraine's sovereignty and Russia's security concerns*, REUTERS (Feb. 25, 2022), <https://www.reuters.com/world/europe/china-says-it-respects-ukraines-sovereignty-russias-security-concerns-2022-02-25/>. On the matter at hand see also Camille Bourgeois-Fortin, Darren Choi, Sean Jake, *China and Russia's invasion of Ukraine: Initial responses and implications*, THE CHINA INSTITUTE OF THE UNIVERSITY OF ALBERTA (Mar. 7, 2022).

<sup>88</sup> Chloe Cornish, Benjamin Parkin, *India sticks with Russia after Vladimir Putin's invasion of Ukraine*, FINANCIAL TIMES (Mar. 1, 2022), <https://www.ft.com/content/6c52b083-d38a-40c9-9e23-2747c913065f>.

<sup>89</sup> Siladitya Ray, *Why India Is Trying To Sit On The Fence In The Russia-Ukraine Conflict*, FORBES (Feb. 23, 2022), <https://www.forbes.com/sites/siladityaray/2022/02/23/why-india-is-trying-to-sit-on-the-fence-in-the-russia-ukraine-conflict/>.

<sup>90</sup> This list includes: the Republic of Albania, the Principality of Andorra, the Commonwealth of Australia, the Commonwealth of The Bahamas, Canada, Iceland, Japan, the Principality of Liechtenstein, the Federated States of Micronesia, the Principality of Monaco, Montenegro, New Zealand, the Republic of North Macedonia, the Kingdom of Norway, the Republic of San Marino, the Republic of Singapore, the Republic of Korea, the Swiss Confederation, the Republic of China (which Russia sees as a rebel region of the PRC), Ukraine, the United Kingdom of Great Britain and Northern Ireland, the United States of America, and the European Union, with all of its member States.

<sup>91</sup> Minister of Foreign Affairs of the Russian Federation since 2004.

<sup>92</sup> *U.S. Treasury Imposes Sanctions on Russian Federation President Vladimir Putin and Minister of Foreign Affairs Sergei Lavrov*, U.S. DEPARTMENT OF THE TREASURY (Feb. 25, 2022), <https://home.treasury.gov/news/press-releases/jy0610>.

Biden tightened the sanctions imposed since 2014, with Executive order 14024,<sup>93</sup> issued on February 21, 2022, which was followed three days later by the U.S. Treasury's Office of Foreign Assets Control.<sup>94</sup> On March 1, 2022 the European Union, United Kingdom, Canada and United States also agreed to remove Russian banks from the Society for Worldwide Interbank Financial Telecommunication's (SWIFT) bank messaging system, in compliance with EU Council Regulation 2022/345.<sup>95</sup> The sanctions discussed above have been tightened and amended in the years after the escalation of the conflict. As discussed *supra*, the 2022 escalation of the conflict brought an escalation of the sanctions against the Russian Federation, Russian individuals, and Russian companies, brought forward mainly by the European Union and the United States of America, but also by other States, e.g. the Swiss Confederation, which adopted the European Union's sanctions on March 4, 2022,<sup>96</sup> and the United Kingdom.<sup>97</sup> The European Union's aforementioned sanctions have been extended until, at the time of writing, July 31, 2025. The council adopted its first package of sanctions on February 23, 2022 with Council Regulation 2022/259.<sup>98</sup> The Council of the European Union adopted new sanctions packages through the conflict; on June 27, 2024, the European Council meeting's conclusions welcomed the adoption of the EU's fourteenth package of sanctions;<sup>99</sup> already in April 2024 in the European Union's member states an unprecedented number of sanctions were in place,<sup>100</sup> due to the situation in Ukraine making the EU's autonomous restrictive measures become fundamental in the EU's response to it.<sup>101</sup> The latest measure adopted by the European Union, at the time of writing, has been the Council's decision to not accept Russian documents issued in Ukraine and Georgia.<sup>102</sup>

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<sup>93</sup> Executive Office of the President, Executive Order 14024 Executive Order on Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to Continued Russian Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine (Feb. 21, 2022).

<sup>94</sup> Office of Foreign Assets Control, Directive 2 under E.O. 14024, "*Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions*" (the "*Russia-related CAPTA Directive*") (Feb. 24, 2022).

<sup>95</sup> *An update to our message for the Swift Community*, SWIFT (Mar. 20, 2022), <https://www.swift.com/news-events/news/message-swift-community>. Not all Russian banks were disconnected from Swift, most notably Gazprombank was not sanctioned. Sberbank, partly owned by Gazprom, was sanctioned and then removed from the SWIFT sanctions on May 31<sup>st</sup>, 2022, as discussed in: Michael Brüggemann, André Lippert, *et al*, *EU authorized new sanctions against Russia*, LEXOLOGY (Oct. 31, 2022).

<sup>96</sup> Schweizerische Bundesrat – Conseil fédéral Suisse – Consiglio federale svizzero, Verordnung über Massnahmen im Zusammenhang mit der Situation in der Ukraine vom 4. März 2022 – Ordonnance instituant des mesures en lien avec la situation en Ukraine du 4 mars 2022 – Ordinanza che istituisce provvedimenti in relazione alla situazione in Ucraina del 4 marzo 2022 – 946.231.176.72 (Mar. 4, 2022).

<sup>97</sup> The United Kingdom was still in the European Union when the 2014 sanctions were established. The Statutory Instrument 2019 No. 885 The Russia (Sanctions) (EU Exit) Regulations 2019 of April 10<sup>th</sup>, 2019, and its subsequent amended versions regulate the United Kingdom's stance on sanctions towards Russia.

<sup>98</sup> Council of the European Union, Council Regulation (EU) 2022/259 of 23 February 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, LI 42/1, 65 OFFICIAL JOURNAL OF THE EUROPEAN UNION (Feb. 23, 2022).

<sup>99</sup> General Secretariat of the European Council, European Council meeting (27 June 2024) – Conclusions EUCO 15/24 (June 27, 2024).

<sup>100</sup> On the European Union's sanctions see Lorenzo Bernardini, *La funzione "servente" della giustizia penale*, *op. cit.*, at 83.

<sup>101</sup> *Id.* at 85.

<sup>102</sup> Council of the European Union, *Council adopts decision not to accept Russian documents issued in Ukraine and Georgia*, CONSILIUM.EUROPA.EU (Dec. 8, 2024), <https://www.consilium.europa.eu/en/press/press-releases/2022/12/08/council-adopts-decision-not-to-accept-russian-documents-issued-in-ukraine-and-georgia/>.



Sanctions against Russia also hit seemingly non-related areas, such as motorsport and association football. In motorsport the Fédération Internationale de l'Automobile (FIA)'s World Motor Sport Council banned Russian and Belarusian national teams from participating in international competitions, and mandated drivers, individual competitors, and officials to participate only in individual and neutral capacity,<sup>103</sup> and Haas F1 Team parted ways with its Russian title sponsor Uralkali and with Russian driver Nikita Dmitrievich Mazepin<sup>104</sup> with Nikita Mazepin being sanctioned himself and, owner of Uralkali and father of Nikita, Dmitrij Arkadievich Mazepin also being sanctioned.<sup>105</sup> The Fédération Internationale de Football Association (FIFA) and the Union of European Football Associations (UEFA) banned Russia's national teams and clubs from their competitions, including the 2022 FIFA World Cup.<sup>106</sup>

These sanctions against Russia have become a key policy tool in response to the Russian actions in Ukraine, generating, ever since their first implementation in 2014, a debate about their effectiveness.<sup>107</sup> Timofeev, in 2022, described these sanctions' effects as a confirmation of the ineffectiveness of sanctions as a political tool if the target country "is a major power determined to achieve its goals",<sup>108</sup> even though Russia "will have to pay as a result"<sup>109</sup> of these sanctions, with others finding that the target country and the ones imposing these sanctions are both hit, with the target country bearing the biggest economic loss, and others pointing out that the extensive integration of Russia in world markets and its economic size and political/military power make it "less vulnerable to economic coercion".<sup>110</sup>

### III. State Responsibility, Human Rights Violations and International Crimes in the Russia-Ukraine Conflict

#### A. The European Court of Human Rights Rulings on the Alleged Offences against Minorities in Ukraine

The events that have unfolded since 2014, made their way in international court rooms. Before the European Court of Human Rights (ECtHR) Ukraine claimed that Russia, having exercised effective control over Crimea, has adopted administrative practices that violate the European

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<sup>103</sup> FIA Regulatory & Governance Department, FIA Circular: Revised measures due to Russian invasion of Ukraine (Feb. 10, 2023). Russians with double citizenship could participate under their non-Russian citizenship, such as Israeli-Russian driver Robert Michajlovič Švarcman who started racing under the Israeli flag in 2022.

<sup>104</sup> *Haas part ways with Nikita Mazepin 'with immediate effect'*, FORMULA1.COM (Mar. 5, 2022), <https://www.formula1.com/en/latest/article/breaking-haas-to-part-ways-with-nikita-mazepin-with-immediate-effect.nmmqyclyJjFNkPJjQiyF>.

<sup>105</sup> Nikita and Dmitrij Mazepin were hit by the first wave of 2022 sanctions. On March 20, 2024, the European Court of Justice, with its Judgment in Case T-743/22, lifted the European Union's sanctions on Nikita Mazepin.

<sup>106</sup> *FIFA/UEFA suspend Russian clubs and national teams from all competitions* in FIFA.COM (Feb. 28, 2022), <https://inside.fifa.com/tournaments/mens/worldcup/qatar2022/media-releases/fifa-uefa-suspend-russian-clubs-and-national-teams-from-all-competitions>. The Russian Federation organized the prior 2018 FIFA World Cup.

<sup>107</sup> Iana Dreyer, Nicu Popescu, *Do sanctions against Russia work?*, in 2014 EUROPEAN UNION INSTITUTE FOR SECURITY STUDIES (2014), at 1.

<sup>108</sup> Ivan N. Timofeev, *Sanctions on Russia: A New Chapter*, in 20(4) RUSSIA IN GLOBAL AFFAIRS 103 (2022), at 115.

<sup>109</sup> *Id.*

<sup>110</sup> Jeffrey J. Schott, *Economic sanctions against Russia: How effective? How durable?*, in 23(3) PIETERSON INSTITUTE FOR INTERNATIONAL ECONOMICS (Apr. 2023), at 12.

Convention on Human Rights.<sup>111</sup> On March 13, 2014 and August 26, 2015 Ukraine lodged two applications that, in 2018, were joined in Application 20958/14, in which Ukraine submitted that: Russia had “presided over an administrative practice in violation of both the substantive and procedural limbs of Article 2 of the Convention, construed in harmony with the applicable rules of IHL, namely the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977”,<sup>112</sup> alleging disappearances of ethnic Ukrainians and Tatars,<sup>113</sup> and of opponents of the Russian “occupation”,<sup>114</sup> in violation of: Article 2 of the European Convention on Human Rights (ECHR); of Articles 3 and 5 of the ECHR alleging that “there was sufficient evidence of an administrative practice of inhuman and degrading treatment, torture and arbitrary deprivation of liberty”;<sup>115</sup> of Article 6 § 1 of the ECHR alleging that “as from 27 February 2014 onwards, the court system in Crimea could not be considered to have been ‘established by law’”;<sup>116</sup> that there was an administrative practice regarding the impossibility of opting out of Russian citizenship, arbitrary raids of private dwellings of perceived opponents of the Russian “occupation”, and the transfer of “convicts” to the territory of the Russian Federation, in violation of Article 6 § 1 of the ECHR;<sup>117</sup> the “alleged existence of an administrative practice of harassment and intimidation of religious leaders not conforming to the Russian Orthodox faith” and “arbitrary raids of places of worship and confiscation of religious property”,<sup>118</sup> in violation of Article 9 of the ECHR; of Article 10, with the alleged existence of an “administrative practice of ‘suppression’ of non-Russian media, including the closure of Ukrainian and Tatar television stations”;<sup>119</sup> of Article 11 with the prohibition of “public gatherings and manifestations of support for Ukraine or the Crimean Tatar community, as well as intimidation and arbitrary detention of organisers of demonstrations”;<sup>120</sup> “the expropriation without compensation of the property of civilians and private enterprises”,<sup>121</sup> in violation of Article 1 of Protocol no. 1 to the ECHR; of Article 2 of Protocol No. 1 to the ECHR with the “suppression of the Ukrainian language in schools and persecution of Ukrainian-speaking children at school”;<sup>122</sup> of para. 1 of Article 2 of Protocol No. 4 to the ECHR with the “restrictions on the freedom of movement between Crimea and mainland Ukraine”;<sup>123</sup> and of Article 14 of the ECHR due to the “discriminatory treatment of the Crimean Tatar population”.<sup>124</sup>

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<sup>111</sup> European Court of Human Rights, Information Note on the Court’s case-law 247 Ukraine v. Russia (*re* Crimea) (dec.) [GC] – Applications nos. 20958/14 and 38334/18 (Dec. 16, 2020).

<sup>112</sup> European Court of Human Rights’ Grand Chamber, Judgement on the Case of Ukraine v. Russia (*re* Crimea) (*Applications nos. 20958/14 and 38334/18*) (June 25, 2024), para. 951.

<sup>113</sup> The Tartars, or Tatars, are a Turkic ethnic group that appeared in Crimea in the 13<sup>th</sup> and 14<sup>th</sup> centuries. ALAN W. FISHER, *THE CRIMEAN TATARS* (1987).

<sup>114</sup> European Court of Human Rights’ Grand Chamber, Judgement on the Case of Ukraine v. Russia (*re* Crimea), *supra* note 112, para. 952.

<sup>115</sup> *Id.*, para. 976.

<sup>116</sup> *Id.*, para. 1000.

<sup>117</sup> *Id.*, para. 1023.

<sup>118</sup> *Id.*, para. 1054. On the topic of national orthodox churches’ autocephaly and their connection with national governments see *supra* note 39.

<sup>119</sup> *Id.*, para. 1078.

<sup>120</sup> *Id.*, para. 1105.

<sup>121</sup> *Id.*, para. 1129.

<sup>122</sup> *Id.*, para. 1152.

<sup>123</sup> *Id.*, para. 1166.

<sup>124</sup> *Id.*, para. 1176. On the Crimean Tatars see note 113 *supra*.

In Application no. 38334/18, lodged on August 10, 2018, Ukraine accused Russia of perpetrating “unlawful deprivation of liberty, prosecution, ill-treatment and convictions of Ukrainians for their thoughts, expression of opinions, political stance and/or pro-Ukrainian activity”<sup>125</sup> using Russian legislation, of the deportation of Crimean Tatars and Ukrainian activists to Russia by the Donbass republics, and of detention, torture, and sentencing by Russian courts for committing fabricated crimes.<sup>126</sup>

In its Judgment of June 24, 2024, the Grand Chamber of the ECtHR found that Russia had exercised extraterritorial jurisdiction over Crimea<sup>127</sup> and that it had violated multiple dispositions of ECHR, namely, the ECtHR found Russia responsible of violations of Articles 6 and 8 complained in both applications,<sup>128</sup> of Articles 2, 3, 8, 9, 10, and 11 of the ECHR, of Articles 1 and 2 of Protocol no. 1, and of Articles 2 and 14 of Protocol no. 4 complained in application no. 20958/14,<sup>129</sup> and of Articles 3, 5, 7, 10, 11, and 18 complained in application 38334/18.<sup>130</sup> The ECtHR held that Russia “must take every measure to secure, as soon as possible, the safe return of the relevant prisoners transferred from Crimea to penal facilities located on the territory of the Russian Federation”.<sup>131</sup> This judgment, in the view of some commentators, “will be the basis for deciding many hundreds of ‘Crimean’ individual cases pending before the ECtHR” and for other cases brought before the Court by Ukraine against Russia, which will, most likely, be successful.<sup>132</sup> It has to be noted that, since September 16, 2022, Russia ceased to be a Party to the European Convention on Human Rights,<sup>133</sup> with 17450 applications against it pending before the ECtHR and 2129 judgments and decisions yet to be fully implemented at the time.<sup>134</sup> In spite of this, the ECtHR is still competent to deal with applications against Russia lodged before September 16, 2022,<sup>135</sup> even though their enforcement by Russia is not ensured, as Dzehtsiarou also points out.<sup>136</sup>

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<sup>125</sup> *Id.*, para. 387.

<sup>126</sup> On the admissibility of the applications see Agata Kleczkowska, *Where Is the European Court of Human Rights Heading? Comments on the Grand Chamber Admissibility Decision in Ukraine v. Russia (Re Crimea) (Applications No. 20958/14 and 38334/18)*, in 10(2) POLISH REVIEW OF INTERNATIONAL AND EUROPEAN LAW 135 (2022).

<sup>127</sup> European Court of Human Rights’ Grand Chamber, Judgment on the Case of Ukraine v. Russia (*re Crimea*), *supra* note 112, para. 864.

<sup>128</sup> *Id.*, at 340.

<sup>129</sup> *Id.*, at 340-341.

<sup>130</sup> *Id.*, at 342.

<sup>131</sup> *Id.*, at 343

<sup>132</sup> Kanstantsin Dzehtsiarou, *Ukraine v Russia (re Crimea): the European Court of Human Rights Goes ‘All-in’*, EJIL: TALK! (June 27, 2024), <https://www.ejiltalk.org/ukraine-v-russia-re-crimea-the-european-court-of-human-rights-goes-all-in/>.

<sup>133</sup> Committee of Ministers of the Council of Europe, *Russia ceases to be a Party to the European Convention on Human Rights on 16 September 2022*, COUNCIL OF EUROPE (Mar. 23, 2022), <https://www.coe.int/en/web/portal/-/russia-ceases-to-be-a-party-to-the-european-convention-of-human-rights-on-16-september-2022>.

<sup>134</sup> Council of Europe, *Russia ceases to be party to the European Convention on Human Rights*, COUNCIL OF EUROPE (Sept. 16, 2022).

<sup>135</sup> European Court of Human Rights, Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights (Mar. 22, 2022).

<sup>136</sup> Kanstantsin Dzehtsiarou, *Ukraine v Russia*, *op. cit.*

## B. Terrorism Financing and Racial Discriminations in the Russia-Ukraine Conflict before the International Court of Justice

On January 16, 2017, Ukraine, through its Deputy Foreign Minister Olena Zerkal, requested provisional measures of protection to the International Court of Justice (ICJ),<sup>137</sup> accusing the Russian Federation of violating the International Convention for the Suppression of the Financing of Terrorism (Terrorism Financing Convention) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). The alleged violations include the alleged supply by Russia of “heavy weaponry and other critical support to illegal armed groups, knowing that these groups are engaged in acts of terrorism against civilians”,<sup>138</sup> going against in its obligations under the Terrorism Financing Convention “not just by its failure to prevent or investigate the financing of terrorism but also by its direct sponsorship of terrorism”,<sup>139</sup> and not following the CERD by using “its control over the Crimean peninsula to impose a policy of Russian ethnic dominance, pursuing the cultural erasure of non-Russian communities through a systematic and ongoing campaign of discrimination”.<sup>140</sup> The ICJ announced its provisional measures on April 19, 2017,<sup>141</sup> in which it concluded that the conditions required to indicate provisional measures in respect of CERD were met<sup>142</sup> and that Russia “must refrain [...] from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis”.<sup>143</sup> “In addition, the Russian Federation must ensure the availability of education in the Ukrainian language”,<sup>144</sup> and the ICJ indicated that “both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve”.<sup>145</sup> On November 8, 2019, the ICJ released its preliminary objections, which rejected all of the preliminary objections raised by Russia and found that it had jurisdiction to adjudicate on the matters at hand.<sup>146</sup> The ICJ delivered its judgment on January 31, 2024, and found that Russia had not violated Article 8 para. 1,<sup>147</sup> Article 10 para. 1,<sup>148</sup> Article 12 para. 1,<sup>149</sup> and Article 18 para. 1 of the ICSTF,<sup>150</sup> and that it had violated Article 9 para. 1 of the Terrorism Financing Convention by repeatedly failing to identify several of the alleged offenders accused of

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<sup>137</sup> Olena Zerkal, Request for the Indication of Provisional Measures of Protection Submitted by Ukraine (Jan. 16, 2017).

<sup>138</sup> *Id.*, para. 2.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*, para. 3.

<sup>141</sup> International Court of Justice, Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of all Forms of Racial Discrimination (Ukraine v. Russian Federation) Request for the Indication of Provisional Measures - Order Of 19 April 2017 (Apr. 19, 2017).

<sup>142</sup> *Id.*, para. 99.

<sup>143</sup> The Mejlis of the Crimean Tartar Peoples is the highest representative body of the Crimean Tatars. It has been banned by the Russian Federation on April the 26<sup>th</sup> 2016, as reported in: Crimean Tatar Elected Body Banned in Russia, HUMAN RIGHTS WATCH (Sep. 29, 2016).

<sup>144</sup> International Court of Justice, Application of the International, *supra*, note 141., para. 102.

<sup>145</sup> *Id.*, para. 106.

<sup>146</sup> International Court of Justice, Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of all Forms of Racial Discrimination (Ukraine v. Russian Federation) Judgment of 8 November 2019 (Nov. 8, 2019).

<sup>147</sup> *Id.*, para. 98.

<sup>148</sup> *Id.*, para. 120.

<sup>149</sup> *Id.*, para. 131.

<sup>150</sup> *Id.*, para. 146.

financing terrorism.<sup>151</sup> The Court did “not consider it necessary or appropriate to grant any of the other forms of relief requested by Ukraine”<sup>152</sup> in regards to the violations of the Terrorism Financing Convention. Regarding the alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),<sup>153</sup> the ICJ found that Russia had violated Article 4 of the CERD by engaging in “law enforcement measures that discriminate against persons of Crimean Tatar origin based on their ethnic origin”,<sup>154</sup> and of Article 2 para. 1 (a) and Article 5 (e) (v) of the CERD “by the way in which it has implemented its educational system in Crimea after 2014 with regard to school education in the Ukrainian language”,<sup>155</sup> with the ICJ considering Russia required to ensure the teaching of the Ukrainian language with “due regard to the needs and reasonable expectations of children and parents of Ukrainian ethnic origin”.<sup>156</sup> The ICJ also found that Russia violated its obligations under para. 106 (1) (a) of the 2017 Order by maintaining limitations on the Mejlis and its obligations under para. 106 (2) of the 2017 Order by not refraining “from any action which might aggravate or extend the dispute between the Parties or make it more difficult to resolve”.<sup>157</sup> As anticipated by Marchuk in January 2017, Ukraine found more success in its claims under the CERD, claims that Georgia launched against Russia before the ICJ after the 2008 Russo-Georgian War, which did not reach the merits stage,<sup>158</sup> even though the judgment has been described by Marchuk herself as “a sobering experience for those who followed the case closely, as the vast majority of Ukraine’s claims were rejected”.<sup>159</sup>

On February 25, 2022, Ukraine filed a second application before the ICJ instituting proceedings against Russia “in a dispute concerning the interpretation, application or fulfilment of the Convention on the Prevention and Punishment of the Crime of Genocide”<sup>160</sup> submitting an urgent request for the indication of provisional measures.<sup>161</sup> On March 16, the ICJ indicated

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<sup>151</sup> *Id.*, paras. 100-111, 147.

<sup>152</sup> *Id.*, para. 150.

<sup>153</sup> The International Convention on the Elimination of All Forms of Racial Discrimination adopted by the United Nations General Assembly on December the 21<sup>st</sup> 1965 and has entered into force on January the 4<sup>th</sup> 1969. The Russian Federation signed it on March the 7<sup>th</sup> 1966 and ratified it on February the 4<sup>th</sup> 1969 (both signing and ratification were performed by the USSR). Ukraine signed the convention on March the 7<sup>th</sup> 1966 and ratified it on March the 7<sup>th</sup> 1969 (as the Ukrainian SSR).

<sup>154</sup> International Court of Justice, Application of the International Convention, *supra* note 146, para. 244.

<sup>155</sup> *Id.*, para. 370.

<sup>156</sup> *Id.*, para. 373.

<sup>157</sup> International Court of Justice, Application of the International Convention, *supra* note 146, para. 404.

<sup>158</sup> Iryna Marchuk, *Ukraine Takes Russia to the International Court of Justice: Will It Work?*, EJIL: TALK! (Jan. 26, 2017), <https://www.ejiltalk.org/ukraine-takes-russia-to-the-international-court-of-justice-will-it-work/>.

<sup>159</sup> Iryna Marchuk, *Unfulfilled Promises of the ICJ Litigation for Ukraine: Analysis of the ICJ Judgment in Ukraine v Russia (CERD and ICSFT)*, EJIL: TALK! (Feb. 22, 2024), <https://www.ejiltalk.org/unfulfilled-promises-of-the-icj-litigation-for-ukraine-analysis-of-the-icj-judgment-in-ukraine-v-russia-cerd-and-icsft/>.

<sup>160</sup> The Convention on the Prevention and Punishment of the Crime of Genocide, also known as the Genocide Convention, was signed on December the 9<sup>th</sup>, 1948 and came into effect on January the 12<sup>th</sup>, 1951, with the Secretary-General of the United Nations as its depositary. Russia signed it on December the 16<sup>th</sup>, 1949 and deposited its ratification on May the 3<sup>rd</sup> 1954 (both signing, and ratification were performed by the USSR, of which the Russian Federation is the successor as recognized by the international community). Ukraine signed it on December the 16<sup>th</sup> 1949 and deposited its ratification on November the 15<sup>th</sup> 1954 (as the Ukrainian SSR). The International Court of Justice has jurisdiction on the matter ex art. 9 of the Genocide Convention, which states that “disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute”.

<sup>161</sup> International Court of Justice, Request for the indication of provisional measures submitted by Ukraine (Feb. 27, 2022).



the aforementioned provisional measures, which included the immediate suspension of the military operations in Ukraine by Russia, the assurance by Russia that any armed units supported or directed by it stop the military operations in Ukraine and that both Russia and Ukraine shall refrain from further escalatory actions that might “aggravate or extend the dispute before the Court or make it more difficult to resolve”.<sup>162</sup> At the time of writing the ICJ has not yet delivered its judgment on this case.

### C. The Court of Justice of the European Union’s Decision on the Legitimacy of the Restrictive Measures against Russian Aggression

The sanctions adopted by the Council of the European Union did not go unchallenged before the courts, with the Court of Justice of the European Union (CJEU) tackling the prohibition of legal advisory services to either the Russian Government or Russian entities, bodies, or legal persons, with certain exceptions, originally established by Council Regulation (EU) No 833/2014,<sup>163</sup> and then amended by Council Regulations 2022/1904 (Oct. 6, 2022),<sup>164</sup> 2022/2474 (Dec. 16, 2022),<sup>165</sup> and 2023/427 (Feb. 25, 2023). These provisions brought the *Ordre néerlandais des avocats du barreau de Bruxelles* (hereinafter *Ordre of Bruxelles*), the *Ordre des avocats à la cour de Paris* (hereinafter *Ordre of Paris*), and the Association Avocats Ensemble (ACE) to bring forward proceedings before the General Court of the European Union, seeking their annulment. According to those parties, this prohibition infringes the fundamental rights that guarantee access to legal advice, professional secrecy and independence of lawyers, the values of the rule of law and the proportionality and legal certainty. The jurisdiction of the CJEU on the case is based on Article 263 of the TFEU, which states that “The Court of Justice of the European Union shall review the legality of legislative acts, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects vis-à-vis third parties”.

More specifically the action brought by the *Ordre de Bruxelles*, in Case T-797/22<sup>166</sup> sought to annul Article 1(12) of Regulation 2022/1904, “in so far as they replace and amend”<sup>167</sup> Regulation (EU) No 833/2014, alleging the infringement of the rights to privacy and access to

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<sup>162</sup> International Court of Justice, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* Request for the indication of provisional measures (Mar. 16, 2022).

<sup>163</sup> Specifically, by its Article 5, which states that “It shall be prohibited to directly or indirectly purchase, sell, provide brokering or assistance in the issuance of, or otherwise deal with transferable securities and money-market instruments with a maturity exceeding 90 days, issued after 1 August 2014 by: (a) a major credit institution or other major institution having an explicit mandate to promote competitiveness of the Russian economy, its diversification and encouragement of investment, established in Russia with over 50 % public ownership or control as of 1 August 2014, as listed in Annex III; or (b) a legal person, entity or body established outside the Union whose proprietary rights are owned for more than 50% by an entity listed in Annex III; or (c) a legal person, entity or body acting on behalf or at the direction of an entity referred to in point (b) of this paragraph or listed in Annex III.”

<sup>164</sup> Article 1(12) stated that “It shall be prohibited to provide, directly or indirectly, architectural and engineering services, legal advisory services and IT consultancy services to: (a) the Government of Russia; or (b) legal persons, entities or bodies established in Russia.”

<sup>165</sup> The wording of Article 1(12) is the same as in Regulation 2022/1904.

<sup>166</sup> Action brought on 26 December 2022 — *Ordre néerlandais des avocats du barreau de Bruxelles and Others v Council* (Case T-797/22) (2023/C 63/79), in C63/61 OFFICIAL JOURNAL OF THE EUROPEAN UNION (Feb. 20, 2023).

<sup>167</sup> *Id.*

justice provided for in articles 7 and 47 respectively, of the Charter of Fundamental Rights of the European Union, “in that the general prohibition on the provision of legal advisory services constitutes interference with the right of every litigant to seek legal advice from his or her lawyer, and with the principle of professional secrecy and the principle of the independence of the lawyer”,<sup>168</sup> the principle of proportionality, and the principle of legal certainty.<sup>169</sup> The rationale of the action brought by the *Ordre of Paris*, in Case T-798/22,<sup>170</sup> was the same, requesting the annulment of Article 1(12) of Council Regulation (EU) 2022/1904 and of article 1(13) of Council Regulation (EU) 2022/2474, alleging that those provisions infringe Articles 7 and 47 of the Charter of Fundamental Rights of the European Union. The action brought by ACE, in Case T-828/22,<sup>171</sup> too asked for the annulment of Article 1(12), alleging infringement of article 47 of the Charter of Fundamental Rights of the European Union and of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The CJEU made its judgments public on the three cases on October 2, 2024.<sup>172</sup> In regards to Case 797/22<sup>173</sup> the CJEU rejected the case because it “has not found there to be any interference, on account of the prohibition at issue, with the right to be advised, defended and represented by a lawyer in order to receive legal advice”<sup>174</sup> because “Article 7 of the Charter does not guarantee a right of access to a lawyer, be it in judicial proceedings or in a non-contentious context, the prohibition at issue cannot constitute interference with a right deriving from that article”,<sup>175</sup> rejecting the complaint regarding the independence of lawyers,<sup>176</sup> stating that “even if there were interference with the independence of lawyers, it would be justified and proportionate”,<sup>177</sup> establishing that the provisions in question pose no undermining of the rule of law,<sup>178</sup> and rejecting the alleged breach of the principle of legal certainty.<sup>179</sup> Cases T-798/22<sup>180</sup> and Case T-828/22<sup>181</sup> were rejected as well. The CJEU justified its judgments recalling that the provisions in question do “not concern legal advisory services provided in connection with judicial, administrative or arbitral proceedings”, reminding that “legal advice provided to natural persons [...] does not fall within the scope of the prohibition”, and that the provisions put in question by the cases brought to it do not interfere with the protection of the professional secrecy of lawyers, with the independence of lawyers, and with rule of law.<sup>182</sup> In

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<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> Action brought on 28 December 2022 — *Ordre des avocats à la cour de Paris and Couturier v Council* (Case T-798/22) (2023/C 63/80), in C63/61 OFFICIAL JOURNAL OF THE EUROPEAN UNION (Feb. 20, 2023).

<sup>171</sup> Action brought on 23 December 2022 — *ACE v Council* (Case T-828/22) (2023/C 71/49), in C71/37 OFFICIAL JOURNAL OF THE EUROPEAN UNION (Feb. 27, 2023).

<sup>172</sup> The interrelation of these three cases can be seen in the publishing of one single press release by the CJEU on these cases. Court of Justice of the European Union, *Restrictive measures in response to the war in Ukraine: the prohibition on providing legal advisory services to the Russian Government and to entities established in Russia is valid* (Press Release No 155/24), COURT OF JUSTICE OF THE EUROPEAN UNION (Oct. 2, 2024).

<sup>173</sup> Court of Justice of the European Union, Judgment of the General Court (Grand Chamber) (ECLI:EU:T:2024:670) (Oct. 2, 2024).

<sup>174</sup> *Id.*, para. 66.

<sup>175</sup> *Id.*, para. 64.

<sup>176</sup> *Id.*, paras. 133-136.

<sup>177</sup> *Id.*, para. 135.

<sup>178</sup> *Id.*, paras. 169-171.

<sup>179</sup> *Id.*, para. 210.

<sup>180</sup> Court of Justice of the European Union, Judgment of the General Court (Grande Chambre) (ECLI:EU:T:2024:671) (Oct. 2, 2024), para. 127.

<sup>181</sup> Court of Justice of the European Union, Judgment of the General Court (Grande Chambre) (ECLI:EU:T:2024:672) (Oct. 2, 2024), para. 112.

<sup>182</sup> Court of Justice of the European Union, *Restrictive measures*, *supra* note 172.



its sentence regarding Case T-797/22 the Grand Chamber of the EU General Court specified that the “the prohibition at issue meets, in an appropriate and consistent manner, the objective of further increasing the pressure exerted on the Russian Federation to end its war of aggression against Ukraine and cannot, in any event, be regarded as being manifestly inappropriate having regard to that objective”,<sup>183</sup> that “the adoption of restrictive measures must make it possible to ‘increas[e] the costs of Russia’s actions to undermine Ukraine’s territorial integrity, sovereignty and independence and to promot[e] a peaceful settlement of the crisis’”,<sup>184</sup> confirming the political reasoning behind the restrictive measures adopted by the European Union. At the time of writing there are no publicly available records about any appeal against these decisions. The EU General Court found the legitimacy of the Council Regulation 2022/1904 on the fact that it does not prohibit legal advisory services in case of existing or probable litigation, but only in cases that do not fall under the protections guaranteed by articles 7 and 47 of the EU Charter of Fundamental Rights,<sup>185</sup> since article 7 does not “guarantee a right to access to a lawyer, be it in judicial proceedings or in a non-contentious context”.<sup>186</sup> The Grand Chamber has also pointed out that the prohibition “relates only to legal services provided to the Russian Government and to legal persons, entities and bodies established in Russia”,<sup>187</sup> leaving legal advice provided to natural persons outside the scope of the prohibition at hand. On the alleged interference with the independence of lawyers and of the values of the rule of law the Grand Chamber has argued that the independence of lawyers “may be subject to restrictions justified by objectives of general interest pursued by the European Union”,<sup>188</sup> and that, on the alleged breach of the principle of proportionality, “the prohibition at issue meets, in an appropriate and consistent manner, the objective of further increasing the pressure exerted on the Russian Federation to end its war of aggression against Ukraine and cannot [...] be regarded as manifestly inappropriate having regard to that objective”.<sup>189</sup>

In the perspective indicated by the EU Court ruling, the objective of countering the Russian aggression against Ukraine, prevails over other interests and rights also protected by EU law, to the point of legitimizing any restrictions.

#### **IV. Individual Responsibility and the International Criminal Court’s Investigation and Proceeding on the Situation in Ukraine**

##### **A. The Alleged War Crimes in Prejudice of Ukrainian Children**

On the matter of the Situation in Ukraine the ICC Prosecutor Karim Ahmad Khan<sup>190</sup> stated, on February 25, 2022, that, following Ukraine’s 2015 declaration accepting the ICC’s jurisdiction,<sup>191</sup> his office “may exercise its jurisdiction over and investigate any act of genocide, crime against humanity or war crime committed within the territory of Ukraine since 20

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<sup>183</sup> Court of Justice of the European Union, *Judgment of the General Court*, *supra* note 173, para. 176.

<sup>184</sup> *Id.*, para. 196.

<sup>185</sup> *Id.*, para. 49.

<sup>186</sup> *Id.*, para. 64.

<sup>187</sup> *Id.*, para. 102.

<sup>188</sup> *Id.*, para. 132.

<sup>189</sup> *Id.*, para. 176.

<sup>190</sup> Referred to as “Karim A.A. Khan QC” in ICC documentation.

<sup>191</sup> Pavlo Klimkin, *Letter to Mr. Herman von Hebel*, in INTERNATIONAL CRIMINAL COURT (Sep. 8, 2015).

February 2014 onwards”.<sup>192</sup> On February 28, 2022, just four days after the beginning of Russia’s “special military operation”,<sup>193</sup> Karim Ahmad Khan, announced his decision “to proceed with opening an investigation into the Situation in Ukraine, as rapidly as possible”, announcing the decision to open an investigation into the situation, after being “satisfied that there is a reasonable basis to believe that both alleged war crimes and crimes against humanity have been committed in Ukraine in relation to the events already assessed during the preliminary examination by the Office”,<sup>194</sup> later announcing that an active investigation was underway.<sup>195</sup> Subsequently, on March 2, 2022, the Presidency of the ICC assigned the case to Pre-Trial Chamber II,<sup>196</sup> which notified the receipt of referrals and initiated the investigation on March 7, 2022.<sup>197</sup> In 2022 ICC Prosecutor Karim Ahmad Khan visited Ukraine multiple times, during one of his visits, on March 16, he transmitted a formal request to the Russian Federation to discuss the situation, seeing the active engagement of Russia in the investigation as essential.<sup>198</sup> In April the Office of the Prosecutor joined the Joint Investigation Team (JIT) on the crimes committed in Ukraine; ever since then the JIT’s efficacy has been recognized as effective<sup>199</sup> the first collaboration between the ICC and the Joint Investigation Team.<sup>200</sup>

The findings of the investigations in Ukraine brought, on March 17, 2023, the issuing of a press release entitled *Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova*, in which the Court made public the issuing of warrants of arrest for Vladimir Vladimirovich Putin (whom has and will also be referred to as Vladimir Putin or Putin) and Maria Alekseyeva L’vova-Belova (whom will also be referred to as Marija L’vova-Belova or L’vova-Belova).<sup>201</sup> The press statement states the accusations against the defendants and the Pre-Trial Chamber II’s belief that “each suspect bears responsibility for the war crime of unlawful deportation of population and that of unlawful

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<sup>192</sup> Karim Ahmad Khan, *Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: “I have been closely following recent developments in and around Ukraine with increasing concern.”*, INTERNATIONAL CRIMINAL COURT (Feb. 25, 2022), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-i-have-been-closely-following>.

<sup>193</sup> Vladimir Vladimirovič Putin, *Address by the President of the Russian Federation*, OFFICIAL INTERNET RESOURCES OF THE PRESIDENT OF RUSSIA (Feb. 24, 2022).

<sup>194</sup> Karim Ahmad Khan, *Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: “I have decided to proceed with opening an investigation.”*, INTERNATIONAL CRIMINAL COURT (Feb. 28, 2022), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-i-have-decided-proceed-opening>.

<sup>195</sup> Karim Ahmad Khan, *Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation*, INTERNATIONAL CRIMINAL COURT (Mar. 2, 2024), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-receipt-referrals-39-states>.

<sup>196</sup> Presidency of the International Criminal Court, *Decision assigning the situation in Ukraine to Pre-Trial Chamber II No.: ICC-01/22-1* (Mar. 2, 2022).

<sup>197</sup> Pre-Trial Chamber II, Notification on receipt of referrals and on initiation of investigation No.: ICC-01/22.

<sup>198</sup> Karim Ahmad Khan, *Statement of ICC Prosecutor, Karim A.A. Khan QC, on his visits to Ukraine and Poland: “Engagement with all actors critical for effective, independent investigations.”*, INTERNATIONAL CRIMINAL COURT (Mar. 16, 2022), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-his-visits-ukraine-and-poland-engagement-all-actors>.

<sup>199</sup> Domenico Albanese, *Il ruolo di Eurojust nelle indagini sui crimini internazionali commessi in Ucraina*, in CRIMINALITÀ TRANSNAZIONALE E UNIONE EUROPEA (Anna Oriolo et al., ed., 2024), at 251.

<sup>200</sup> Paolo Bargiacchi, *Il contributo di Eurojust al perseguimento dei crimini internazionali commessi in Ucraina*, in 2023(2) EU-WEB LEGAL ESSAYS. GLOBAL & INTERNATIONAL PERSPECTIVES 14 (2023), at 21.

<sup>201</sup> International Criminal Court, *Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova*, INTERNATIONAL CRIMINAL COURT (Mar. 17, 2023), <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>.

transfer of population from occupied areas of Ukraine to the Russian Federation, in prejudice of Ukrainian children”.<sup>202</sup>

More precisely, the accusations against both Vladimir Putin and Marija L’vova-Belova involve the alleged unlawful transfer of children from occupied areas of Ukraine to the Russian Federation,<sup>203</sup> under Article 8 (2)(a)(vii) of the Rome Statute, which states that the “unlawful deportation or transfer or unlawful confinement” constitutes a war crime under the Rome Statute, and under and 8 (2)(b)(viii), which states that the “the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory” constitutes a serious violation of the laws and customs applicable in international armed conflict, of the Statute, and that both bear individual criminal responsibility “for having committed the acts directly, jointly with others and/or through others”, under Article 25 (3)(a) of the Statute. Vladimir Putin is also being accused for “his failure to exercise control properly over civilian and military subordinates who committed the acts, or allowed for their commission, and who were under his effective authority and control, pursuant to superior responsibility”,<sup>204</sup> under Article 28 (b) of the Statute, which states that “a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where [...] the crimes concerned activities that were within the effective responsibility and control of the superior”.

The alleged responsibilities of the defendants arise from their respective roles in the Russian Federation’s government during the timeframe under investigation, i.e. from February 24, 2022, onwards, with Vladimir Putin being the President of the Russian Federation since May 7, 2012, and Marija L’vova-Belova being the Children’s Rights Commissioner for the President of Russia since October 27, 2021. It is reasonable to assume that their respective roles put them in a situation in which Article 25 (3) and Article 25 (3)(b) of the Statute, that mandate that “a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person [...] orders, solicits or induces the commission of such a crime which in fact occurs or is attempted”, are applicable to them.

## **B. Warrants of Arrest of the International Criminal Court and their Public Availability**

In the Rome Statute the issuing of arrest warrants is regulated in Article 58. The first paragraph of Article 58 states that the Pre-Trial Chamber shall issue a warrant of arrest, after the examination of the application and of the evidence submitted by the Prosecutor if “there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court”, and if the arrest of the person appears necessary under the conditions prescribed in art. 58 para. 1(b). The third paragraph of the Article indicates the required contents of warrants of arrest, which are: “the name of the person and any other relevant identifying information; a specific reference to the crimes within the jurisdiction of the Court for which the person’s arrest is sought, and a concise statement of the facts which are alleged to constitute those crimes”, with the effect of and the amendment of the warrant being specified in paras. 4 and 5.

The public availability of warrants of arrest, which is not found in the case analysed in this work, is not specifically cited in the Rome Statute. The public availability of case records

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<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

is, however, present at Rule 15 para. 1 of the Rules of Procedure and Evidence of the Court, that requires that “the Registrar shall keep a database containing all the particulars of each case brought before the Court, subject to any order of a judge or Chamber providing for the non-disclosure of any document or information, and to the protection of sensitive personal data. Information on the database shall be available to the public in the working languages of the Court”,<sup>205</sup> documents that, under regulation 22 of the Regulations of the Court, “shall include any motion, application, request, response, reply, observation, representation and any other submission in a form capable of delivering a written record to the Court”,<sup>206</sup> a definition under which warrants of arrest do not fall, even though their existence is often revealed to the public after their issuance.

The warrants of arrest issued by the Pre-Trial Chamber can be made publicly available on the ICC website, under their cases' respective *Court records and transcripts* sections, alongside other records, and transcripts which are required to be publicly available by the aforementioned regulation 22 of the Regulations of the Court. As a matter of fact, public notice of the warrants of arrest are often available, independently of the state of the proceedings against the defendants, as is possible to confirm on the ICC's website, the public availability of warrants of arrest can be seen in the cases of: defendants whose cases have been closed, such as in the case of former Libyan Head of State Muammar Mohammed Abu Minyar Gaddafi;<sup>207</sup> for defendants still at large, like Vladimir Putin and Marija L'vova-Belova, such as in the case of former President of Sudan Omar Hassan Ahmad al-Bashir;<sup>208</sup> for defendants in ICC custody, such as in the case of Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud;<sup>209</sup> for defendants that have been acquitted, such as in the case of former President of the Ivory Coast Laurent Koudou Gbagbo;<sup>210</sup> and for defendants that have been convicted by the Court, such as in the case of Thomas Lubanga Dyilo,<sup>211</sup> who, on March 17, 2006 became the first person arrested under a warrant issued by the ICC<sup>212</sup> and later sentenced to fourteen years in prison on March 14, 2012 becoming the first person convicted and sentenced by the Court.<sup>213</sup>

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<sup>205</sup> International Criminal Court, Rules of Procedure and Evidence, rule 15 para. 1.

<sup>206</sup> International Criminal Court, Regulations of the Court, regulation 22.

<sup>207</sup> His case was terminated “because of the charged circumstances caused by his death”, as specified in Pre-Trial Chamber I, *Situation in Libya in the case of The Prosecutor v. Muammar Mohammed Abu Minyar Gaddafi, Saif al-Islam Gaddafi and Abdullah al-Senussi Decision to Terminate the Case Against Muammar Mohammed Abu Minyar Gaddafi No.: ICC-01/11-01/11* (Nov. 22, 2011), at 3-4. The warrant of arrest in Gaddafi's case is available at Pre-Trial Chamber I, *Warrant of Arrest for Muammar Mohammed Abu Minyar Gaddafi No.: ICC-01/11-01/11-2*.

<sup>208</sup> In his case the Pre-Trial Chamber I issued a first warrant on March the 4<sup>th</sup> 2009 but, after an appeal it had to issue a second warrant on July 12<sup>th</sup>, 2010. Pre-Trial Chamber I, *Warrant of Arrest for Omar Hassan Ahmad Al Bashir No.: ICC-02/05-01/09-1* (Mar. 4, 2009). Pre-Trial Chamber I, *Second Warrant of Arrest for Omar Hassan Ahmad Al Bashir No.: ICC-02/05-01/09-95* (July 12, 2010).

<sup>209</sup> Described by the ICC website as “Alleged member of Ansar Eddine and de facto chief of Islamic police”. Pre-Trial Chamber I, *Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud No.: ICC-01/12-01/18-2-tENG* (Mar. 27, 2018). Al Hassan has been sentenced to ten years of imprisonment by Trial Chamber X of the ICC on November 20, 2024.

<sup>210</sup> Pre-Trial Chamber III, *Warrant Of Arrest For Laurent Koudou Gbagbo No.: ICC-02/11-01/11-1* (Nov. 23, 2011).

<sup>211</sup> Former President of the Union des Patriotes Congolais/Forces Patriotiques pour la Libération du Congo (UPC/FPLC).

Pre-Trial Chamber I, *Warrant of Arrest No.: ICC-01/04-01/06-2-tEN* (Feb. 10, 2006).

<sup>212</sup> Amnesty International, *La première arrestation de la Cour pénale internationale doit être suivie par d'autres à travers le pays*, in BULLETIN D'INFORMATION 069/2006 (Mar. 20, 2006).

<sup>213</sup> International Criminal Court, *ICC First verdict: Thomas Lubanga guilty of conscripting and enlisting children under the age of 15 and using them to participate in hostilities*, INTERNATIONAL CRIMINAL COURT (Mar. 14, 2012),



The warrants of arrest issued by the ICC, unlike other documents, are considered “secret in order to protect victims and witnesses and also to safeguard the investigation”,<sup>214</sup> with this also being the case with the ones against Vladimir Putin and Marija L’vova-Belova,<sup>215</sup> however, despite the secrecy of the warrants themselves, the ICC publicized their issuing, as it often does, because “the public awareness of the warrants may contribute to the prevention of the further commission of crimes”.<sup>216</sup> This justification can also be seen in the case of the other warrants of arrest issued in the context of the Russia-Ukraine conflict, with the cases of Sergey Ivanovich Kobylash, Viktor Nikolayevich Sokolov, Sergei Kuzhugetovich Shoigu, and Valery Vasilyevich Gerasimov. In the case of the warrants against Sergey Kobylash and Viktor Sokolov the Chamber “considers that public awareness of the warrants may contribute to the prevention of the further commission of crimes”,<sup>217</sup> and in the case of the warrants against Sergei Kuzhugetovich Shoigu and Valery Gerasimov it stated that “the Chamber considered that public awareness of the warrants may contribute to the prevention of the further commission of crimes”.<sup>218</sup> As it is noticeable it is not only the reasoning behind the public notice of the warrants same, but the sentences in which this reasoning is explained are *verbatim* the same. So, it is reasonable to conclude that the reasoning behind the public availability of these statements might be seen as a tactic of publicity and strengthening through transparency, a choice that, in the eyes of the Pre-Trial Chamber, could show the dedication of the Court to the fight against war crimes and other violations of the Rome Statute, with the objective to deter others from committing them and to strengthen the public standing of the Court. The results of this choice by the International Criminal Court are not yet clear but what is possible to infer is that it might have brought more attention to its actions.

Compared to other cases, even in the Situation of Ukraine, the public availability of the notice is stronger in the case of the arrest warrants against Putin and L’vova-Belova, for which a video entitled *ICC arrest warrants in the situation of Ukraine: Statement by President Piotr Hofmański* is available on the ICC’s official YouTube channel, called *IntlCriminalCourt*,<sup>219</sup> in which the ICC President Piotr Hofmański talks about the accusations and reiterates the desire to make the warrants’ “existence public in the interest of justice and to prevent the commission of future crimes”,<sup>220</sup> no video has been published by the ICC in regards to the other warrants issued in the context of the Russia-Ukraine conflict. The video, as of October 1, 2024, has amassed more than sixty-thousand views, being the second most viewed video with audio in

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<https://www.icc-cpi.int/news/icc-first-verdict-thomas-lubanga-guilty-conscripting-and-enlisting-children-under-age-15-and>.

<sup>214</sup> See *supra* note 201 and corresponding text.

<sup>215</sup> Lorenzo Roccagiatà, *La Corte Penale Internazionale emette un mandato di arresto nei confronti di Vladimir Putin per crimini di guerra in Ucraina*, GIURISPRUDENZA PENALE (Mar. 17, 2023), <https://www.giurisprudenzapenale.com/2023/03/17/la-corte-penale-internazionale-emette-il-mandato-di-arresto-nei-confronti-di-vladimir-putin/>.

<sup>216</sup> *Id.*

<sup>217</sup> International Criminal Court, *Situation in Ukraine: ICC judges issue arrest warrants against Sergei Ivanovich Kobylash and Viktor Nikolayevich Sokolov*, INTERNATIONAL CRIMINAL COURT (Mar. 5, 2024), <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-sergei-ivanovich-kobylash-and>.

<sup>218</sup> International Criminal Court, *Situation in Ukraine: ICC judges issue arrest warrants against Sergei Kuzhugetovich Shoigu and Valery Vasilyevich Gerasimov*, INTERNATIONAL CRIMINAL COURT (July 25, 2024), <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-sergei-kuzhugetovich-shoigu-and>.

<sup>219</sup> International Criminal Court, *ICC arrest warrants in the situation of Ukraine: Statement by President Piotr Hofmański*, INTLCRIMINALCOURT YOUTUBE CHANNEL (Mar. 17, 2023), [https://www.youtube.com/watch?v=FbKhCAaRLfc&ab\\_channel=IntlCriminalCourt](https://www.youtube.com/watch?v=FbKhCAaRLfc&ab_channel=IntlCriminalCourt).

<sup>220</sup> *Id.*

English in the IntlCriminalCourt YouTube channel. Data from Google Trends,<sup>221</sup> a service which tracks the quantity of searches on Google regarding specific topics, shows, in March 2023, the month in which the warrants of arrest against Putin and L'vova-Belova were issued, an unprecedented peak of interest in the "International Criminal Court" in Google searches, surpassed only in May 2024, the month in which the Prosecutor Karim Ahmad Khan, in the context of the Situation in Gaza, filed applications for warrants of arrest against Yahya Sinwar,<sup>222</sup> Mohammed Diab Ibrahim al-Masri,<sup>223</sup> Ismail Haniyeh,<sup>224</sup> Benjamin Netanyahu,<sup>225</sup> and Yoav Gallant,<sup>226</sup> applications for which a video on the IntlCriminalCourt YouTube Channel also exists.<sup>227</sup>

### C. The Reactions to the ICC Warrants of Arrest and the Limitations to Travel for Vladimir Putin

The issuing of the warrants brought with it the reactions of Russian officials, former President of the Russian Federation Dmitry Medvedev compared the warrant to toilet paper<sup>228</sup> and Kremlin Press Secretary and Kremlin Deputy Chief of Staff Dmitry Peskov said that any of the court's decisions were "null and void",<sup>229</sup> saying on Telegram that "we do not recognize this court, we do not recognize the jurisdiction of this court. This is how we treat this".<sup>230</sup> Marija L'vova-Belova herself was quoted as saying "it is great that the international community has appreciated the work to help the children of our country, that we do not leave them in war zones, that we take them out, we create good conditions for them, that we surround them with loving, caring people".<sup>231</sup> From the Ukrainian side President Volodymyr Zelensky called it a "historic decision, from which historic responsibility will begin",<sup>232</sup> and Prosecutor General Andriy Kostin said that the decision was "historic for Ukraine".<sup>233</sup> The reactions outside of Russia and Ukraine were mixed, with the President of Serbia Aleksandar Vučić criticizing the warrant

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<sup>221</sup> In Google Trends the data available starts on January 1<sup>st</sup>, 2004.

<sup>222</sup> Head of the Islamic Resistance Movement (" Hamas") in the Gaza Strip at the time of the alleged conduct. He was killed on October 16, 2024, in Rafah.

<sup>223</sup> Commander-in-Chief of the military wing of Hamas, known as the *Al-Qassam Brigades* at the time of the alleged conduct.

<sup>224</sup> Head of Hamas Political Bureau at the time of the alleged conduct. He was killed in Teheran on July 31<sup>st</sup>, 2024.

<sup>225</sup> Prime Minister of Israel at the time of the alleged conduct.

<sup>226</sup> Minister of Defence of Israel at the time of the alleged conduct. Karim Ahmad Khan, *Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine*, INTERNATIONAL CRIMINAL COURT (May 20, 2024), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>.

<sup>227</sup> International Criminal Court, *ICC Prosecutor Khan on application for arrest warrants in the situation in the State of Palestine*, INTLCRIMINALCOURT YOUTUBE CHANNEL (May 20, 2024), *ICC Prosecutor Khan on application for arrest warrants in the situation in the State of Palestine*. With approximately 120000 views it is, as of December 1<sup>st</sup>, 2024, the video in English with the most views on the IntlCriminalCourt YouTube Channel.

<sup>228</sup> As quoted in Antoinette Radford, Frank Gardner, *Putin arrest warrant issued over war crime allegations*, BBC.COM (Mar. 18, 2023), <https://www.bbc.com/news/world-europe-64992727>.

<sup>229</sup> *Id.*

<sup>230</sup> As quoted in Henry Austin, Phil McCausland, *International Criminal Court issues arrest warrant for Putin over alleged Ukraine war crimes*, NBC NEWS (Mar. 17, 2023), <https://www.nbcnews.com/news/world/arrest-warrant-putin-international-criminal-court-ukraine-war-crimes-rcna75471>.

<sup>231</sup> Mike Corder, Raf Casert, *International court issues war crimes warrant for Putin*, AP NEWS (Mar. 18, 2023), <https://apnews.com/article/icc-putin-war-crimes-ukraine-9857eb68d827340394960eccf0589253>.

<sup>232</sup> *Id.*

<sup>233</sup> A. Radford, F. Gardner, *Putin*, *op. cit.*

saying that it would prolong the war,<sup>234</sup> the High Representative of the European Union for Foreign Affairs Josep Borrell stating that “The EU sees the decision by the ICC as a beginning of the process of accountability and holding Russian leaders to account for the crimes and atrocities they are ordering, enabling or committing in Ukraine”,<sup>235</sup> and the President of the United States of America Joe Biden said that the warrant was justified,<sup>236</sup> and that it “makes a good point”.<sup>237</sup>

The arrest warrant has, due to his role, been problematic for Vladimir Putin’s travels abroad, an essential part in the work of any head of state, even though, already in March 2023, Adil Ahmad Haque was quoted as saying “So Putin might go to China, Syria, Iran, his ... few allies, but he just won’t travel to the rest of the world and won’t travel to ICC member states who he believes would ... arrest him”.<sup>238</sup> Ever since March 17, 2023, Vladimir Putin has not ceased his travels abroad, however he had, up until September 2, 2024, only visited countries that had not ratified the Rome Statute of the International Criminal Court.

In the case of travel to States that have ratified the Rome Statute, Article 89(1) of the Statute states that “The Court may transmit a request for the arrest and surrender of a person [...] to any State on the territory of which that person may be found and shall request the cooperation of that State in the arrest and surrender of such a person. States Parties shall [...] comply with requests for arrest and surrender”, and Article 86 states that “States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court”. The warrant was cited by, at the time, President of South Africa Matamela Cyril Ramaphosa as the reason for Putin’s absence at the 15<sup>th</sup> BRICS summit held in Johannesburg, South Africa, between the 22<sup>nd</sup> and 24<sup>th</sup> of August 2023.<sup>239</sup> The decision came after Ramaphosa asked the ICC permission to not arrest Putin, “because to do so would amount to a declaration of war”.<sup>240</sup> Mongolia, on September 2, 2024, became the first State party to the Rome Statute to host Vladimir Putin. Before the visit Ukraine urged Mongolia to arrest Putin, and an ICC spokesperson told the BBC that Mongolia has the obligation to abide by ICC regulations,<sup>241</sup> *ex art.* 86 and 89 (1) of the Statute, however, despite the warrant Putin was not arrested during his visit, with Ukraine Foreign Ministry spokesperson at the time Heorhiy Tykhyi stating that Mongolia had delt “a

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<sup>234</sup> RFE/RL’s Balkan Service, *Serbian President Says ICC Arrest Warrant For Putin Will Prolong The War*, RADIOFREEEUROPE RADIOLIBERTY (Mar. 19, 2023), <https://www.rferl.org/a/serbia-president-icc-arrest-warrant-putin-war/32325143.html>.

<sup>235</sup> EEAS Press Team, *Russia/Ukraine: Statement by the High Representative following the ICC decision concerning the arrest warrant against President Putin*, EUROPEAN UNION EXTERNAL ACTION (Mar. 19, 2023), [https://www.eeas.europa.eu/eeas/russiaukraine-statement-high-representative-following-icc-decision-concerning-arrest-warrant-against\\_en](https://www.eeas.europa.eu/eeas/russiaukraine-statement-high-representative-following-icc-decision-concerning-arrest-warrant-against_en).

<sup>236</sup> Jeff Mason, Simon Lewis, *Biden says Putin committed war crimes, calls charges justified*, REUTERS (Mar. 18, 2023), <https://www.reuters.com/world/europe/us-says-no-doubt-russia-is-committing-war-crimes-ukraine-after-icc-issues-putin-2023-03-17/>. It is important to remind that the United States of America is not a State party to the Rome Statute.

<sup>237</sup> Kathryn Armstrong, Antoinette Radford, Frank Gardner, *Putin arrest warrant: Biden welcomes ICC's war crimes charges*, BBC.COM (Mar. 18, 2023), <https://www.bbc.com/news/world-europe-64998165>.

<sup>238</sup> Mike Corder, Raf Casert, *International court, op. cit.*

<sup>239</sup> Redazione ANSA, *Putin non andrà al vertice Brics in Sudafrica*, ANSA (July 19, 2023), [https://www.ansa.it/sito/notizie/mondo/2023/07/19/putin-non-andra-al-vertice-brics-in-sudafrica\\_b5bf658f-864a-497f-8504-4336dc0ddeae.html](https://www.ansa.it/sito/notizie/mondo/2023/07/19/putin-non-andra-al-vertice-brics-in-sudafrica_b5bf658f-864a-497f-8504-4336dc0ddeae.html).

<sup>240</sup> Carien Du Plessis, *South Africa asks ICC to exempt it from Putin arrest to avoid war with Russia*, REUTERS (July 18, 2023), <https://www.reuters.com/article/world/south-africa-asks-icc-to-exempt-it-from-putin-arrest-to-avoid-war-with-russia-idUSKBN2YY1E6/>.

<sup>241</sup> Sofia Ferreira Santos, *Ukraine calls on Mongolia to arrest Putin ahead of visit*, BBC.COM (Aug. 30, 2024), <https://www.bbc.com/news/articles/c0e852r50x7o>.



heavy blow to the International Criminal Court and the system of criminal law”.<sup>242</sup> Pre-Trial Chamber II entered a “finding on the non-compliance by Mongolia with the request by the Court to cooperate in the arrest and surrender of Vladimir Vladimirovich Putin”, in which it lamented Mongolia’s failure to arrest Putin, referring the matter to the Assembly of State Parties.<sup>243</sup> Mongolia requested, under Article 82(3) of the Rome Statute, to “grant suspensive effect” to the Pre-Trial Chamber II’s decision,<sup>244</sup> but this request was rejected by the Appeals Chamber.<sup>245</sup>

## V. Conclusions

The relations between Russia and Ukraine have a long and troubled history. The 2014 conflict brought with it sanctions, which have been increased in 2022 onwards, and have made international commerce for the Russian Federation more difficult, alongside condemnations of the escalation, especially from the so-called Western countries. Part of the European Union’s sanctions have been challenged before the CJUE, which confirmed the reasoning behind these sanctions, which is the diminishing of Russia’s actions in Ukraine. The ECtHR condemned some actions of the Russian Federation in regard to its treatment of ethnic Ukrainians and Tatars, as the ICJ also did, finding that Russia had violated the CERD. The ICC’s prosecutor started the procedure to initiate investigations on the situation in Ukraine in the immediate aftermath of the 2022 escalation of the conflict. The ICC’s investigations started on March 7, 2022, and it has issued several warrants of arrest against Russian officials, with the most noteworthy one being the one issued against Vladimir Putin. The arrest warrant, criticised heavily by Russian authorities and endorsed by “western” ones, has brought, alongside an unprecedented, until now, attention to the ICC’s actions, as its most notable issue to President Putin, difficulties in his travels abroad, limiting him to travel to States that have not ratified the Rome Statute, a limitation which has seen the exception of his visit to Mongolia, a which has put into question the obligation to arrest individuals brought by the issuing of the warrant, potentially putting into question the International Criminal Court’s potential for effective action in bringing to trial individuals accused of international crimes.

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<sup>242</sup> Reuters, *Putin gets lavish welcome in Mongolia despite ICC warrant*, REUTERS (Sep. 3, 2024), <https://www.reuters.com/world/putin-gets-lavish-welcome-mongolia-despite-icc-warrant-2024-09-03/>.

<sup>243</sup> Pre-Trial Chamber II, Finding under article 87(7) of the Rome Statute on the non-compliance by Mongolia with the request by the Court to cooperate in the arrest and surrender of Vladimir Vladimirovich Putin and referral to the Assembly of States Parties, No: ICC-01/22 (Oct. 24, 2024).

<sup>244</sup> Mongolia, Urgent request for Suspensive Effect”, No.: ICC-01/22-94-Anx (Nov. 1, 2024).

<sup>245</sup> The Appeals Chamber, Prosecution response to Mongolia’s “Urgent request for suspensive effect”, No.: ICC-01/22 (Nov. 6, 2024).

