

**A SUBMISSION BY
THE KHPG (UKRAINE)
TO THE INTERNATIONAL
CRIMINAL COURT**

Concerning Acts of Genocide
allegedly committed by Russian forces
in and around the city of Mariupol
(Donetsk Region, Ukraine)
between 24 February and 21 May 2022

The publication has been prepared in the framework
of the project «Collect data on the war crimes by Russian army in Ukraine
and to prepare several submissions to ICC»
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THE TABLE OF CONTENTS

00	GLOSSARY (NAMES, TITLES, ABBREVIATIONS)	4
01	SUMMARY	6
02	INTRODUCTION	7
03	METHODOLOGY	9
	3.1 Sources of Information	9
	3.2 The Conduct of Monitoring Missions	10
	3.3 The Collection, Verification and Collation of Information relating to events in Mariupol, between 24 February and 21 May 2022	11
	3.4 Preservation and Archiving of Online Sources	11
04	EVENTS, CONSEQUENCES, INTERNATIONAL LEGAL ASSESSMENT	12
	4.1 The Course of Events and their Consequences	12
	4.2 Legal Assessment by International Institutions	13
05	GENOCIDE	14
	5.1 Legal Assessment	14
	5.2 The Protected Group (target of genocide)	14
	5.2.1 – Substantiation of the Protected Group in Mariupol Against which a Genocidal Intention was directed	16
	5.3 The Intent to Destroy (the subjective aspect)	22
	5.4 Direct Evidence (the objective aspect)	22
	5.4.1 – Grounds for concluding beyond a reasonable doubt that a Genocidal Intention lay behind the situation in Mariupol	26
	5.5 The Agents of Genocide	30
06	A SUBSTANTIATION OF THE ACTS COVERED BY POINTS (A), (C) AND (E) OF ARTICLE 6 OF THE ROME STATUTE	32
	6.1 Killing members of the group	32
	6.2 Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part	40
	6.3 Forcibly transferring children of the group to another group	55
07	CONCLUSIONS	70

APPENDICES

1.	A CHRONOLOGICAL DESCRIPTION OF EVENTS	75
2.	INFORMED CONSENT TO SUBMISSION OF EVIDENCE [FORM]	95

GLOSSARY

TITLES, ORGANISATIONS AND ABBREVIATIONS

“DPR”	the “Donetsk people’s republic”. Recognised internationally by Russia, Syria and North Korea.
“LPR”	the “Luhansk people’s republic”. Recognised internationally by Russia, Syria and North Korea.
AI	Amnesty International, London (est. 1961), international HRO.
Centre for Civil Liberties	Centre for Civil Liberties, Kyiv (est. 2007), national HRO.
Centre for Strategic Litigation	set up by KHPG in 2003.
city	urban population centre, pop. 50,000 upwards.
dB	database
district administration	rayon cf. Regional Administration
ECHR	European Convention on Human Rights and Fundamental Freedoms.
ECTHR	European Court of Human Rights, Strasbourg.
est.	established
FSB	Federal Security Service (RF), est. 1995. Russian successor to the KGB.
Geneva Conventions	I, II, III, IV: 12 August 1949; Ukraine and Russia are both signatories.
Genocide Convention	The UN Convention “on the Prevention and Punishment of the Crime of Genocide” (December 1948). Ukraine and Russia are both signatories.
Helsinki Union	Ukrainian Helsinki Union for Human Rights (est. 2004), national HRO.
HRMMU	United Nations Human Rights Monitoring Mission in Ukraine since 2014.
HRO	human rights organisation
HRW	Human Rights Watch, New York (est. 1978), international HRO.
ICTFY	International Criminal Tribunal for the former Yugoslavia (1993–2017).
ICTR	International Criminal Tribunal for Rwanda (1994–2015).
IDP	Internally Displaced Person.
Independent Monitoring Mission	UN Independent Mission. Set up in March 2022; reported in October 2022 and March 2023.
International Criminal Court	ICC, est. 1998, see Rome Statute.
Kadyrov fighters	Chechen fighters, supplied by Ramzan Kadyrov.
KHPG	Kharkiv Human Rights Protection Group, est. 1992, national HRO (KHPG).
Mariupol Territorial Community	Administrative area covering the city and surrounding settlements
MLRS	self-propelled multiple rocket launcher system.
NGO	non-governmental organisation.

OSCE	Organisation for Security and Cooperation in Europe.
OUNHCHR	Office of the UN High Commissioner for Human Rights (est. 1993), international HRO.
PILPG	Public International Law & Policy Group (London), "a global Pro Bono law firm" – https://www.publicinternationallawandpolicygroup.org/ –.
Pop.	Population. [000; date]
Population centre	City, town, village.
Regional Administration	Oblast (cf. district administration)
RF	Russian Federation; Russia.
Rome Statute	1998 Law establishing the ICC, cf. International Criminal Court. Neither Russia nor Ukraine are signatories.
T4P	Tribunal for Putin Initiative (est. March 2022).
town	urban population centre, under 50,000 inhabitants.
Wagner group	"Wagner" private military company (PMC). Mercenary organisation set up by Yevgeny Prigozhin in 2018. Active in 20 African countries (CAR, Sudan, etc); in Syria; and in Ukraine.
*	*
UKRAINE (Ministries, agencies, etc)	UKRAINE (Ministries, agencies, etc)
Council for National Security	Ukraine's Council for National Security & Defence.
Occupied Territories	districts of the Donetsk and Luhansk Regions, occupied since April 2014. See "DPR" and "LPR". Compare Temporarily occupied territories.
SBU	Ukrainian Security Service.
Temporarily occupied territories	Parts of Zaporizhzhia, Kherson, Donetsk and Luhansk Regions, occupied since February 2022, cf. Occupied Territories. On 30 September 2022 declared part of the Russian Federation.
Verkhovna Rada	Ukrainian parliament, lower house. In Soviet period known as Supreme Soviet of the UkSSR.

01 SUMMARY

1. On 2 March 2022, Karim Khan KC, the prosecutor of the International Criminal Court (hereinafter the ICC), announced that an investigation was being opened into the situation in Ukraine. The investigation would embrace any past and present accusations of war crimes, crimes against humanity, and acts of genocide committed by any person in any part of Ukraine since 21 November 2013.

The Kharkiv Human Rights Protection Group (hereinafter the KHPG), a Ukrainian NGO, is making this Submission to the Office of the ICC Prosecutor. It contains a variety of information about events in Mariupol between 24 February and 21 May 2022 that took place as part of Russia's full-scale invasion of Ukraine.

2. The KHPG considers that acts committed by the Russian side in Mariupol during the three-month period from 24 February to 21 May 2022 fall within the definition of genocide as envisaged in Article 6 of the ICC's Rome Statute.
3. In this Submission the KHPG describes deeds that, on the basis of the evidence gathered by our organisation, may be classified as acts of genocide.
4. In the "Introduction" (Section 2 below) a brief description of the KHPG is followed by our thanks to various international institutions that have supported our efforts and to partner organisations that took part in the gathering of information.
5. In "Methodology" (Section 3 below) we list the sources from which we obtained information and the way in which the evidence was analysed. We describe how information about events in Mariupol in the named period was gathered, verified and aggregated. We describe the database in which all the gathered information was stored.
6. In "Chronology and Summary" (Section 4 below) we offer a brief chronological description of the sequence of events in Mariupol from 24 February to 21 May 2022. General findings are based on the information gathered about the crimes we were examining.
7. In "Genocide" (Section 5 below) we present the grounds for establishing
 - 7.1 the intent to destroy in part or as a whole the protected group in Mariupol during those three months as defined in Article 6 of the Rome Statute;
 - 7.2 acts perpetrated by the Russian side that are defined in points (a), (c) and (e) of Article 6 of the Rome Statute, namely
 - a) Killing members of the group;
 - c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - e) Forcibly transferring children of the group to another group.
8. In "Acts covered by points [a], [c] and [e] of the Rome Statute's Article 6" (Section 6 below) certain general information about each of the crimes listed in Section 5 ("Genocide") is presented; evidence confirming that a crime was committed is analysed; the possible legal classification of the confirmed crime is formulated in accordance with the Rome Statute.
9. In "Conclusions" (Section 7 below) the findings of the Submission are presented on the basis of the evidence gathered here.
10. Appendix One contains "A description in chronological order of events that took place in and around the city (the Mariupol territorial community) between 24 February and 21 May 2022". References to Appendix One in this text and its footnotes will be indicated throughout as "A Description of Events" (Appendix One).

[§§9 & 10 in an earlier draft were removed. They are here replaced by §§11 & 12]

02 INTRODUCTION

13. This Submission is being made to the Prosecutor's Office of the International Criminal Court by the Kharkiv Human Rights Protection Group, a Ukrainian NGO. The text includes a variety of information compiled by the Kharkiv Human Rights Protection Group (hereinafter KHPG) about events in and around the city of Mariupol over a three-month period (24 February to 21 May) at the beginning of Russia's mass invasion of Ukraine in 2022.
14. About the KHPG
- a) The KHPG was registered in 1992. Prior to that (1989–1991) the group operated as the human-rights wing of the Kharkiv branch of the Memorial Society.¹
 - b) Today the KHPG defends the rights of individuals against a range of violations, examining up to 3,000 appeals from the public each year (see – <https://khp.org/en/1608811870> –). The group informs the public and the government in Ukraine about human rights and analyses the state of human rights in Ukraine. For thirty years, the KHPG has tried to improve the observation of human rights in Ukraine. In particular, it has defended: the right to life; the right to freedom from torture and cruel treatment; the right to freedom from arbitrary arrest and detention; the right to freedom of information and free speech; the right to privacy; and the rights of vulnerable groups within the population (detainees and prisoners, LGBT individuals, drug addicts, asylum seekers, and others).
 - c) The KHPG Centre for Strategic Litigation, set up in 2003, examines up to two hundred cases a year, in Ukrainian courts and at the European Court of Human Rights (ECtHR) in Strasbourg. The Centre's lawyers have submitted 635 appeals to the ECtHR: they have won 185 cases concerning the infringement of various articles of the ECHR (European Convention for the Protection of Human Rights and Basic Freedoms; Articles 2, 3, 5, 6, 8, 13 et al.); 85 more cases have passed the stage of communication and await examination by the Court; the remainder await communication from the ECtHR. More than half of the latter group concern crimes committed during the conflict in eastern Ukraine since 2014.
 - d) In 2022 and 2023 the KHPG constantly gathered and studied information about events in the city of Mariupol from open sources, and from personal contact with city inhabitants, now evacuated to Ukrainian-controlled territory, who were victims or eyewitnesses of crimes committed by the Russian military.
15. On 24 March 2022, in response to Russia's full-scale aggression against Ukraine in February that year, the KHPG joined with the Centre for Civil Liberties and the Ukrainian Helsinki Union for Human Rights to form the "Tribunal for Putin" (T4P) initiative (see – <https://t4pua.org/en/> –). Subsequently, other national and local human rights organisations in Ukraine joined the T4P.
- Across all the Regions of Ukraine member-organisations are recording and documenting events that bear the hallmarks of crimes listed and defined in Articles 6, 7 and 8 (genocide, crimes against humanity, war crimes) of the International Criminal Court's Rome Statute. The T4P Initiative strives to make use of the existing mechanisms of the United Nations, the Council of Europe, the Organisation for Security and Cooperation in Europe (OSCE) and the International Criminal Court to prevent these crimes and to bring those responsible to justice. T4P also works with Ukraine's national investigative bodies.

¹ Set up in 1988 with branches across the USSR, Memorial International and the Memorial Human Rights Centre were formally abolished by a Moscow court ruling in January 2022. When Memorial was awarded the Nobel Peace Prize in autumn 2022 it donated half its share of the prize money to the KHPG (– <https://khp.org/en/1608811573> –).

To record and document these events T4P member-organisations follow open sources (internet, social networks, news and media, official announcements) to obtain information about specific incidents that fit the definition of a war crime (e.g., shelling of residential buildings, killing of civilians, acts of torture and other crimes listed in the Rome Statute). Details are also gathered directly from victims and eyewitnesses. After verification, these details are entered in the T4P dB as a specific incident. Priority is given to the search for media files and personal data that can subsequently be verified using open sources (OSINT). Where possible staff of T4P member-organisations make a record at the crime scene, taking photos from drones of damage caused, and make personal contact with eyewitnesses of the event. The information in the T4P dB is confidential and personal details are further encrypted; current statistics may be examined, however, and questions sent to the dB managers.

The T4P approach is unique in that it documents information at the regional level. Various organisations are assigned responsibility for the coverage of particular parts of Ukraine, usually those Regions where the said organisations have worked for years and understand the geography of the area and other distinctive local features. In certain Regions, the T4P Initiative possesses more information about war crimes than the Ukrainian government or international organisations.

16. The authors of this Submission are four KHPG staff members (Yekateryna Buryakovska, Yevhen Zakharov, Mikola Komarovskiy and Mykhaylo Romanov) and Tatyana Samoderzhenkova of Ukraine's Helsinki Union for Human Rights (formerly of the UHHR's Mariupol office).
17. The KHPG is very grateful to international charitable institutions for supporting: our operations in wartime; our efforts to collect, document and analyse this information; and our preparation of this Submission.

In alphabetical order, our sponsors and donors are: the Democracy Fund (US Embassy in Ukraine); Dignity, the Institute against Torture (Denmark); the European Prison Litigation Network (France); the European Union (Brussels); the Norwegian Helsinki Committee; the Open Archives Initiative (USA); Panorama Global (USA); People in Need (Czech Republic) and the Prague Civil Society Centre.

18. The KHPG has worked together with the Helsinki Union for Human Rights in Ukraine and the Centre for Civil Liberties concerning various aspects of information-gathering. Our thanks to all colleagues for their friendly and fruitful cooperation.

03 METHODOLOGY

3.1 – SOURCES OF INFORMATION

19. To gather information about particular events we have drawn on 14 types of source:
- i. Official statements by the authorities in Ukraine, including self-governing bodies such as the Mariupol City Council;
 - ii. Official materials of international organisations such as Amnesty International (AI), Human Rights Watch (HRW), the Public International Law & Policy Group (PILPG), and others;
 - iii. Official statements by the Russian (RF) authorities;
 - iv. Announcements on Ukrainian Telegram channels – Mariupol Now, the Mariupol City Council, and others;
 - v. Announcements by Russian and pro-Russian Telegram channels about those Missing and / or Killed – “In Remembrance, Mariupol”, “The Search for Family & Relatives, Mariupol”, etc.;
 - vi. Reports by international monitoring missions: the OSCE, the Office of the UN High Commissioner for Human Rights, and also the Independent UN Commission for Investigating Violations in Ukraine;
 - vii. Materials of reports by NGOs (international and national);
 - viii. Interviews with people who were victims of alleged international crimes (Articles 6, 7 & 8 of the Rome Statute), who are referred to in this Submission;
 - ix. Interviews conducted by the Kharkiv Human Rights Protection Group (KHPG) and by other NGOs;
 - x. Missions to compact settlements of Internally Displaced People (IDP) from Mariupol in order [a] to verify and check information obtained in contact with victims and eyewitnesses, [b] to interview the victims of human rights violations and other eyewitnesses, and [c] to take photos and make videos of and to study the materials (photos, videos) preserved by victims and eyewitnesses of these events;
 - xi. The KHPG database which is regularly updated within the scope of the Tribunal for Putin (T4P) Initiative;²
 - xii. “A Chronological Description of Events that took place in Mariupol and the surrounding Mariupol district between 24 February and 21 May 2022” which forms Appendix One of this Submission. When cited in this document items from this source are referred to as “A Description of Events” (Appendix One);
 - xiii. The KHPG website where more than forty interviews have been published with people who escaped from Mariupol³ and other news items have appeared concerning the city;⁴
 - xiv. Case files of investigations opened by the KHPG’s Strategic Litigation Centre concerning human rights violations in the conflict zone.

Events on which we focus attention in this Submission have also been analysed in terms of International criminal law, specifically the Rome Statute of the International Criminal Court, its practice and that of preceding International Criminal Tribunals (for the former Yugoslavia, Rwanda, etc.). Research on human rights and other social science research findings have also been used for methodological purposes.

² Statistical findings drawn from the KHPG dB may be found here, – <https://t4pua.org/stats> –.

³ See “Voices of War”, KHPG website (– <https://khp.org/1308> –).

⁴ See “A Chronicle of Russian crimes in Mariupol” (Ukr.) KHPG website – <https://khp.org/1303> –.

20. The **KHPG dB** is a relational dB built using the MySQL system for managing databases. The programme developed by the KHPG enables its managers to check the accuracy of street addresses, locate and reveal the repetition of one and the same incident, and protect personal data by their automatic coding and preservation in coded form in the dB. By entering an access key all personal data are decoded and may be analysed. A two-phase identification is required to enter the dB.

The location and geographical coordinates are determined for **each incident**; as are media files and sources, identity of individuals, the date or assumed period of time when the event took place; types of site attacked and event are listed for choice; a description of the incident is provided, so also is a preliminary classification of the alleged crime according to the Rome Statute. If the victim or eyewitness of the event is a child, this is noted in the dB. Media files (photos, videos, internet data, screenshots, etc) are attached to each incident and, if they are known, the personal details of its participants.

The database has a **flexible structure**. If need be, its categories can be widened, for instance, to introduce additional fields containing information about the evidence that a crime has been committed.

A mechanism has also been created that **tracks all changes in data** for incidents. This works on the principle of a 'black box'. If necessary, a record may be obtained of all changes in the record of a specific incident and the identity of the person who made them.

The dB programme enables the **selection of incidents** according to particular criteria: those that affect adults and children; those that occurred over a particular period of time; the selection of incidents by location, type of site attacked; and by type of event, both individually and in combination according to any choice of these identifying characteristics. The programme makes it possible to create reports displaying generalised information in **tabular form**: the distribution of incidents over a certain period of time; according to location, type of losses, type of site attacked, type of event; together with a provisional classification of the crime committed. The programme enables the creation of **graphic displays** using maps based on the GOOGLE MAP system.

A dedicated programme has also been created for the **automatic storage on the cloud** of all videos and photos taken in the field. At the same time, the related media files are entered into the dB together with other relevant data about the incident or, in the case of outsize files, are stored on Google-disc.

3.2 – THE CONDUCT OF MONITORING MISSIONS

21. The purpose of KHPG's monitoring mission to a compact settlement of IDPs from Mariupol was to gather information, to verify data received earlier about a documented incident, and to clarify the information stored in our dB. In addition, we provided legal consultation to all who needed such advice, and we interviewed victims and eyewitnesses.

Usually, our monitoring team was made up of 3-4 people, including at least one lawyer. Prior to its arrival the team had already reached agreement to meet known victims of war crimes; then the team sought for new information which accumulated "like a snowball". Sometimes our missions aimed to meet a specific person who held information about these crimes before that witness or victim left Ukraine in order to record what he or she knew. Sometimes the purpose of the mission was to interview a victim or eyewitness: in that case the team included a journalist and a video cameraperson.

After the interview had taken place, the KHPG staff member who did the interviewing checked and verified the specific details of each incident described in the interview, either to add that event to our dB or, in the case an incident entered earlier, to check and verify the details. The interview

and further questioning were always preceded by a formal request for permission to use the data and to process the individual's personal details (see Appendix Two), as well as taking statements as to the provision of legal aid. Interviewees were always warned of the possible risks and negative consequences of passing on information about war crimes and other events.

During their period of contact with victims or eyewitnesses of certain events, KHPG staff studied documents, video films and photos and, on occasion, showed them to their interviewees.

3.3 – COLLECTION, VERIFICATION AND COLLATION OF INFORMATION ABOUT EVENTS IN AND AROUND MARIUPOL BETWEEN 24 FEBRUARY AND 21 MAY 2022

22. Using the triangulation method, KHPG staff members attempted to verify data obtained from the internet and by other means. For the most part the accumulated information was confirmed by testimony about events by other eyewitnesses and victims or by other sources of information. Data were also checked by re-examining information and reports about events in and around Mariupol that various participants posted in social networks. By studying sources of information that were independent of one another, KHPG staff were able to provide an authoritative assessment of data about the victims of human rights violations, their eyewitnesses and perpetrators.

3.4 – THE PRESERVATION AND ARCHIVING OF ONLINE SOURCES

23. In the course of their work, KHPG staff examined various sources of information, in particular the Russian mass media. In certain cases, the information they presented offered substantial proof that one or another deed had taken place. To preserve these materials and ensure unobstructed access to such data if they were deleted, we employed services for archiving pages on the internet ([-https://archive.ph/](https://archive.ph/) – and others).

04 EVENTS THEIR CONSEQUENCES AND INTERNATIONAL LEGAL ASSESSMENT

4.1 – THE COURSE OF EVENTS AND THEIR CONSEQUENCES

24. Early on Thursday morning, 24 February 2022, like dozens of other Ukrainian towns and cities, Mariupol was attacked by forces from the Russian Federation. This marked the beginning of Russia's all-out war against Ukraine.

The first explosions occurred in eastern Mariupol on the left-bank of the Kalmius River. Until Tuesday, 1 March the city's eastern districts, which were closer to Russian-held territory, were shelled and bombarded. That day it was reported that the centre of Mariupol had also been shelled.⁵ From Wednesday 2 March onwards, the city also came under attack: from the west, following the occupation on Saturday, 26 February, of Melitopol city and the port of Berdiansk (Zaporizhzhia Region); from the north and the east, and from the south where the invaders used motorboats to block the city's access to the Azov Sea. From that day forward Russian forces subjected Mariupol to a barrage of rocket artillery and aerial bombardment that struck all the city districts, hitting residential buildings and critical infrastructure sites.

Following Russia's shelling and bombardment of Mariupol on Wednesday and Thursday, 2–3 March 2022, electricity and water supplies in the city were cut off and later so were supplies of gas. Food, water and medicaments could not be brought into Mariupol. Testimony by eyewitnesses, reports by monitoring missions and open sources provide abundant evidence that, beside attacking residential areas and the civilian population, Russia's armed forces methodically destroyed all critical infrastructure sites: food distribution centres, hospitals and buildings attached to the Ministry for Emergency Situations.

The massive and systematic shelling also prevented the evacuation of Mariupol's inhabitants to Ukrainian-controlled territory. Many who risked driving out of the city came under fire. Sometimes Mariupol's inhabitants left for Ukrainian-controlled territory on foot.⁶ Many were forced to leave in the direction of the "Donetsk people's republic" (Ukrainian territory occupied by Russia since 2014) and Russia itself.⁷

From the end of April until the siege of Mariupol ended in May Russian forces continued to pound the Azovstal works with a devastating attack: the Azov Regiment, other Ukrainian armed units, and civilians were all based there.⁸

25. While Mariupol was under siege Russia's all-out invasion of Ukraine continued. This led to the partial occupation of Regions in the northwest (Kyiv, Chernihiv, Sumy) east (Kharkiv) and south (Mikolayiv, Kherson, Zhitomir, Zaporizhzhia) of Ukraine.

⁵ "The aggressor carried out airstrikes against the Left Bank, the Kommunalnik agency and Kirov Square" (Ukr.), Mariupol city website 0629, 1 March 2022 – <https://www.0629.com.ua/news/3341053/agresor-zavdav-artudaru-polivoberizzu-kp-komunalnik-ta-plosi-kirova-foto> – [retrieved 12 May 2023].

⁶ "The man who led 117 people out of Mariupol on foot", KHPG, 16 May 2022 – <https://khpg.org/en/1608810569> – [retrieved 27 July 2023].

⁷ See §40, "A Description of Events" (Appendix One).

⁸ "Civilians waiting for a humanitarian corridor are crowded in the Azovstal basement" (Russ.), Deutsche Welle, Facebook, 23 April 2022 – <https://www.facebook.com/watch/?v=413987610554604> – [retrieved 12 May 2023].

4.2 – LEGAL ASSESSMENT BY INTERNATIONAL INSTITUTIONS

26. On Wednesday, 2 March 2022, the United Nations General Assembly passed a resolution classifying Russia's attack on Ukraine as an act of aggression in violation of Article 2 (4) of the UN Charter.⁹

International Humanitarian Law qualified the Russian invasion of Ukraine as an international armed conflict: its conduct is therefore subject to the demands of all four Geneva Conventions (1949) and Additional Protocol No. 1 (1977); the Hague Convention of 1907 including the Statute concerning the laws and customs of war on land; as well as customary international law as it applies to such conflicts.¹⁰

⁹ UN Doc. A/ES-11/L.1, *Aggression against Ukraine*, 1 March 2022 – <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/293/36/PDF/N2229336.pdf?OpenElement> – [retrieved 7 July 2023].

¹⁰ UN General Assembly resolution, *Aggression against Ukraine*, 1 March 2022 – <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/293/36/PDF/N2229336.pdf?OpenElement> – [retrieved 7 July 2023].

05 GENOCIDE

5.1 – LEGAL ASSESSMENT

27. As one of four crimes listed by the Rome Statute that cause the greatest “concern to the international community as a whole”, Genocide was designated and defined by the December 1948 UN Convention “on the Prevention and Punishment of the Crime of Genocide”. This placed an obligation on the Contracting-Parties to the Convention to prevent the crime, and if it had occurred to treat it as a criminal offense and punish the guilty parties.

Thanks to the historical contribution of international courts and tribunals the concept of Genocide as a crime has been put into practice, and the definition provided by the Convention was reproduced in the statutes establishing a number of international courts and tribunals. The ad hoc tribunals for the former Yugoslavia and for Rwanda and the International Criminal Court adapted the definition of the crime of Genocide to new contexts.

28. Article 6 of the Rome Statute reproduces in full the definition of Genocide contained in the 1948 UN Convention. It defines Genocide as any of the Acts listed in points (a) to (e) implemented with the intention of destroying in part or as a whole any national, ethnic, racial or religious group as such, namely
- a) Killing members of the group;
 - b) Causing serious bodily or mental harm to members of the group;
 - c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - d) Imposing measures intended to prevent births within the group;
 - e) Forcibly transferring children of the group to another group.

29. The international crimes covered by the Rome Statute have a structure that distinguishes them from the classic constitution of crimes envisaged in many national criminal codes and systems.

The elements of an international crime are as follows: the material fact (*actus reus*); the subjective element (*mens reus*); and the context of the act. In issuing its warrant for the arrest of Al-Bashir, former president of Sudan, for example, the International Criminal Court demonstrated that in the case of Genocide the subjective element was yet more specific. It was necessary to offer proof:

- [i] of the subjective element in any of the Acts of Genocide envisaged in Article 6 (§§a–e) of the Rome Statute as required by Article 30 concerning intent and knowledge, and
- [ii] of an additional subjective element, usually referred to as the “*dolus specialis*” (specific intent), in accordance with which any Act of Genocide must be committed with “the intention to partially or wholly destroy” the target group.¹¹

We focus our attention on the substantiation of this additional subjective element in the following text.

5.2 – THE PROTECTED GROUP (OR TARGET OF GENOCIDE)

30. Article 6 of the Rome Statute defines Genocide as any of the following acts “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”. Neither

¹¹ ICC, “Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad, Al Bashir”, The Situation in Darfur, Sudan, ICC-02/05-01/09-3, PTC I, ICC, 4 March 2009, para. 139 – https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2009_01517.PDF – [retrieved 4 July 2023].

the Rome Statute as a whole nor the "Elements of Crime" (Article 9) contain an exhaustive interpretation of how any of these four named groups are constituted.

31. The practice of the International Criminal Tribunal for Rwanda (ICTR) is of partial help in this instance. In the Case of Jean-Paul Akayesu (1998) the National Group is defined as the totality of individuals who, it is considered, share a legal connection based on their common citizenship, in the combination and inter-relation of rights and duties. Citizenship being here defined on the basis of the factual ties between an individual and the corresponding State.¹² This approach is termed 'objective' because it defines the protected National Group on the basis of an external factor, that of citizenship.
32. A different approach was formulated in the practice of the International Criminal Tribunal for the former Yugoslavia (ICTFY). It was based on a combination of subjective and objective criteria,¹³ for "it would be a dangerous task today to attempt to define a national, ethnic, racial or religious group using rigorous, objective and irreproachable criteria because the result would not necessarily correspond to the perception of persons belonging to such a category".¹⁴
33. After the 1998 Akayesu Case, the International Criminal Tribunal for Rwanda (ICTR) also concentrated in subsequent cases on a wider approach. In the Laurent Semanza Case (2003), the ICTR said, "In order to determine if a group should be protected, we must evaluate in each specific case the objective criteria affecting a particular social and historical context, as well as the subjective attitudes of the criminals to the victims or representatives of a certain group. In the Case of Juvenal Kajelijeli (2003), the ICTR said, "membership of a group [...] is a subjective rather than objective concept, whereby the victim is regarded by the person carrying out an act of genocide to belong to a group destined for extermination".

International Criminal Tribunals have concentrated their attention In other Judgements not only on the offender's perception of a group but on its stigmatisation as a subjective criterion. In the Case of Radoslav Brdjanin (2007), for example, the ICTFY noted: "In accordance with the jurisprudence of the Tribunal, the protected group may be identified with the help of the objective criterion of the group's stigmatisation, including that imposed by those carrying out the crime, on the basis of its membership of a supposed national, ethnic, racial or religious group". In the Case of Ignace Bagilishema (2001), for instance, the ICTR noted that the group concerned had been stigmatised as a separate national, ethnic or racial unit by the community and this enabled the court to determine whether it was a targeted (protected) national, ethnic or racial group in the eyes of the alleged offenders. In other words, the offenders in such cases identify, name and stigmatise the members of another group – they "other" them.

34. The self-identification of members of a group and their identification by others were also distinguished in the decisions of both ICTFY and ICTR as a subjective criterion. This found expression in the ICTR Judgement in the Case of Clément Kayishema and Obed Ruzindana (1999) where a definition of an Ethnic Group was offered: an ethnic group is one whose members share a common language and culture; or a group that identifies itself as such; or a group identified as such by others including the perpetrators of a crime (identification by others).

¹² ICTR, The Prosecutor vs Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgement, 2 September 1998, para. 512 – <https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-96-4/MSC15217R0000619817.PDF> – (see also – <https://www.internationalcrimesdatabase.org/Case/50/Akayesu/> – [retrieved 3 July 2023]).

¹³ ICTFY, The Prosecutor vs Vidoje Blagojevic and Dragan Jokic, Case No. IT-02-60-T, Decision, 17 January 2005 – <https://www.internationalcrimesdatabase.org/Case/1221/Blagojevi%C4%87-and-Joki%C4%87/> – [retrieved 3 July 2023].

¹⁴ ICTFY, The Prosecutor vs Goran Jelusic, Case No. IT-95-10-A, Judgement, 14 December 1999, para. 70 – <https://www.internationalcrimesdatabase.org/Case/76/Jelisi%C4%87/> – [retrieved 3 July 2023]).

35. The history of the adoption of the 1948 Convention testifies to the intention of its compilers to embrace “stable and durable groups” as those protected from Genocide. In the aforementioned case of Akayesu the idea was introduced that the protected group should be stable and permanent: “The Chamber considers, consequently, that in any case during the confirmed events the Tutsi truly constituted a stable and permanent group and all identified them as such.”¹⁵
36. We should note an important feature in establishing the protected group found expression in the ICC’s 2009 decision in the Case of Al Bashir, former President of Sudan: certain positive features must be found that distinguish a national, ethnic, racial or religious group, it cannot be defined by their absence.
37. Consequently, it is desirable to base the definition of the protected group on a combination of subjective and objective characteristics as well as such criteria as its stability and durability as a group.
38. Separately, we should note that the the formulation “as such” in the text of Article 6 of the Rome Statute is of critical importance. For it indicates that the crime requires the intention to destroy a group of people that share a certain group identity, in other words “the victim is singled out not by reason of his individual identity, but rather on account of his being a member of a national, ethnical, racial or religious group”.¹⁶

5.2.1 – Substantiation of the Protected Group in Mariupol Against which a Genocidal Intention was directed

39. The **independence of modern Ukraine** was proclaimed in 1991 after the Verkhovna Rada (Supreme Soviet) of the Ukrainian Soviet Socialist Republic (SSR) passed a law confirming the result of the referendum held on 1 December 1991.

By this law Ukraine became an indivisible and sovereign State and the Constitution and Laws of Ukraine operated exclusively on the territory of that country. This law was preceded by a most important and historic document, the Declaration of State Sovereignty promulgated in 1990 by the Supreme Soviet (Verkhovna Rada) of the Ukrainian SSR. The Declaration defined the fundamental principles of the self-determination of the Ukrainian nation, government by the people, the implementation of State authority, the establishment of Ukrainian citizenship, economic independence, etc.

Ukraine was defined as a “national and sovereign State”, developing within existing borders through the assertion by the Ukrainian Nation of its inalienable right to self-determination. The “People of Ukraine” refers to the citizens of all ethnic communities that make up the Republic. The People of Ukraine constitutes the one and only source of State authority in the Republic and each citizen (possessing citizenship of the Ukrainian SSR) has the right to retain his or her citizenship.¹⁷ The State was charged with defending and preserving the national Statehood of the People of Ukraine. Equality of all before the law was guaranteed.

¹⁵ ICTR, The Prosecutor vs Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgement, 2 September 1998, para. 511 – <https://www.internationalcrimesdatabase.org/Case/50/Akayesu/> – [retrieved 3 July 2023].

¹⁶ ICTR, The Prosecutor vs Alfred Musema, Case No. ICTR-96-13-A, Judgement, 27 January 2000, para. 165 – <https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-96-13/MS21028R0000532581.PDF> – [retrieved 4 July 2023] (see also – <https://www.internationalcrimesdatabase.org/Case/121/Musema/> – [retrieved 3 July 2023]).

¹⁷ (1) All citizens of the former Soviet Union permanently resident in Ukraine when it declared its independence (24 August 1991) were granted Ukrainian citizenship; in addition all persons (2) who were not citizens of other States living in Ukraine on the date when the Ukrainian Law “On the citizenship of Ukraine” (13 November 1991) came into force, received citizenship of Ukraine irrespective of their race; skin colour; political, religious or other convictions; gender; ethnic or social background; property status; place of residence; and linguistic or other attributes. For other rules, see the Ukrainian Law “On citizenship” (Ukr.) – <https://zakon.rada.gov.ua/laws/show/2235-14#Text> – [retrieved 6 May 2023].

These principles were reproduced in the 1996 Constitution of Ukraine, where they were also extended by other extremely important laws. The Preamble to the Ukrainian Constitution opens with the words: "The Verkhovna Rada of Ukraine, on behalf of the Ukrainian people (citizens of Ukraine of all nationalities), expressing the sovereign will of the people, based on the centuries-old history of Ukrainian State-building and on the right to self-determination realised by the Ukrainian nation, all the Ukrainian people..." The principle of the National State is thereby asserted, the State being formed by the People, Ukrainian citizens of all nationalities (Ethnic Groups) with the Ukrainian ethnos as the core of the Ukrainian Nation.¹⁸

In the interpretation of the term "People of Ukraine", therefore, we can trace both an ethnic criterion (all nationalities / ethnic groups in Ukraine; the Ukrainian Ethnos or Nation) and political criteria (citizens of Ukraine). Furthermore, Article 11 of the 1996 Constitution says: "The State promotes the consolidation and development of the Ukrainian nation, of its historical consciousness, traditions and culture, and also the development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine."

Modern Ukraine is inhabited by the People of Ukraine, Ukrainian citizens of various nationalities, the core of which is made up of ethnic Ukrainians. Russia has cast doubt on the formation of the Ukrainian State and the Ukrainian Nation. This scepticism lies at the heart of the present Russian war against Ukraine: such eliminationist rhetoric has become a strong base for Russian propaganda inside Russia and beyond its borders. Early in 2020, Vladislav Surkov (then adviser to Putin) declared in an interview:¹⁹

"Ukraine does not exist, there is a Ukrainian outlook: a particular mental disorder, in other words, which has been raised to an extraordinary level by a fascination with ethnography, a bloodthirsty form of local studies. Instead of a State there is confusion: they eat borshch, praise Stepan Bandera and play their pandore [bandura], but there is no nation. There may be a brochure entitled 'Independent Ukraine': there is no such country. The only remaining question: does Ukraine exist or has it not yet come into existence? One way or another, Russia must take part in resolving these issues.

"Even when Ukraine formed part of Russia relations were never simple. Ukraine always meant trouble for the Tsarist or Soviet bureaucracy: Hetman Polubotok [1660-1724] let down the Tsars; West Ukraine went over to Hitler. In historical terms the use of force towards fraternal Ukraine is the only method that has proved effective. I doubt that any new approach will be invented."

In 2021, the President of Russia, Vladimir Putin published an article "On the historical unity of Russians and Ukrainians". There was no "historical foundation", in his view, for "the idea of the Ukrainian People as separate from the Russian Nation"; Ukrainization, he wrote, was "often forced on those who do not consider themselves Ukrainian".²⁰ This rhetoric is bound up with a contradictory and manipulative reading of history whereby certain parts of modern Ukraine, for many years part of the Russian Empire and, subsequently, of the Soviet Union, are seen as intrinsically

¹⁸ According to the first All-Union census of population in the USSR in 1926, ethnic Ukrainians living in Ukraine amounted to 80% of the total. All subsequent population censuses showed that ethnic Ukrainians made up roughly 70–75% of the territory's population. The last census to ask about the ethnic composition of the republic's population was held in 2001. It showed that ethnic Ukrainians were in the absolute majority; there were, meanwhile, 150 different ethnic groups and communities within Ukraine.

¹⁹ Interview with Putin adviser Vladislav Surkov: "I find it interesting to work against reality" (Russ.), *Aktualnye Kommentarii*, 26 February 2020 — <https://actualcomment.ru/surkov-mne-interesno-deystvovat-protiv-realnosti-200260855.html> — [retrieved 6 July 2023].

²⁰ "Russia's Eliminationist Rhetoric Against Ukraine: A Collection", *Just Security*, 6 June 2022 (updated 14 February 2023) — <https://www.justsecurity.org/81789/russias-eliminationist-rhetoric-against-ukraine-a-collection/> — [retrieved 6 May 2023].

'Russian', in particular the city of Mariupol.²¹ Russia used such a narrative to justify its 'defence' of the Russian-speaking population in such areas from the pro-Ukrainian policies of the central authorities of Ukraine.²² This served as the pretext for Russia's armed incursion into the Donetsk and Luhansk Regions in 2014 and its full-scale invasion of Ukraine on 24 February 2022. In his address that day, the Russian President Vladimir Putin said that the goal of the February 2022 invasion was to defend the inhabitants of the Donbas from genocide at the hands of "extreme nationalists and neo-Nazis" living in Ukraine.²³

40. **Official propaganda in Russia**, meanwhile, labelled a substantial portion of Ukrainians as a national group, 'nationalists' and 'fascists'. This referred to those who identified themselves with Ukraine, an independent State with its own borders, judicial system, administrative bodies and way of life. They are a group of people who, apart from anything else, identify themselves as a distinct entity, with common interests and views, which is not directly related to Russia. An article published in April 2022 "What must Russia do with Ukraine?" embodies such a political and ideological attitude to Ukraine. It includes the following statement:²⁴ "The Banderite elite [of Ukraine] must be eliminated, it cannot be re-educated. The 'troglodytes' who through their action and inaction have actively and passively supported the Banderite elite, must experience the hardships of war and assimilate that experience as a historical lessons and an expiation of guilt".
41. "Banderite" is a term widely used in Russian propaganda today. Originally, it derived from the name of **Stepan Bandera** (1909–1959), leader of the Organisation of Ukrainian Nationalists (OUN) from 1940 until his death. During the USSR's post-war struggle to take control of West Ukraine this neologism was widely applied as a derogatory term for those who supported Ukrainian independence and fought against the imposition of Soviet rule and values.

In recent years, the rhetoric of Russian propaganda has reverted unmistakably to the restoration of Soviet attitudes and policies. In such a context, the derogatory term 'Bandera supporters', applied, e.g., to the Euromaidan protestors of 2013-2014, refers to any who resist Russian expansion and want an independent Ukraine. It is used today to label and denigrate groups of people who identify themselves with the Ukrainian State and oppose the imposition of Russian values: there is, in practice, no such thing as a group or contingent of 'Bandera supporters' within Ukrainian society.

42. There is, thus, a deliberate attempt to create the impression that a national group hostile to Russians exists in Ukraine and poses a threat to their security. Russian officials and RF State-controlled media repeatedly speak of 'denazification' as one of the main goals of the February 2022 invasion of Ukraine. They use a variety of epithets to denounce Ukrainians as subhumans: they are zombified, bestial, pawns; they have been infected with, or are suffering from, mental illness (they are riffraff, filth). Russian officials and the RF State-controlled media describe Ukrainians as an existential threat to Russia: invoking the words Nazism, Hitlerjugend and Third Reich, they

²¹ "With 'Novorossiia', Putin Plays the Name Game With Ukraine", *Wall Street Journal*, 1 September 2014 – https://online.wsj.com/articles/with-novorossiia-putin-plays-the-name-game-with-ukraine-1409588947?reflink=desktop_webshare_permalink – [retrieved, 5 May 2023].

²² "Putin promises to always 'defend Russians' in Ukraine" (Russ.), BBC, 14 June 2014 – https://www.bbc.com/russian/russia/2014/06/140624_putin_deauthorisation_ukraine_reax – [retrieved 6 May 2023]; "Putin called Mariupol an ancient Russian city and talked of the plans for its restoration", (Russ.) *Rossiiskaya gazeta*, 4 November 2022 – <https://rg.ru/2022/11/04/putin-nazval-mariupol-drevnim-russkim-gorodom-i-rasskazal-o-planah-po-vostranovleniiu.html> –

²³ Text of address by Russian President Vladimir Putin (Russ.), RIA Novosti, 24 February 2022 – <https://ria.ru/20220224/obraschenie-1774658619.html> – [retrieved 4 July 2023].

²⁴ "What Russia must do with Ukraine" (Russ.), RIA Novosti, 5 April 2022 – <https://ria.ru/20220403/ukraina-1781469605.html> – [retrieved 7 May 2023].

describe them as a personification of evil. Such rhetoric depicts a substantial part or an entire generation of Ukrainians as Nazis and deadly enemies, thereby turning them into a legitimate or necessary target for extermination.²⁵

43. This stigmatisation did not remain at the level of slogans and propaganda. It was used directly to justify the armed invasion of a sovereign State. In his public addresses, Vladimir Putin has constantly employed this offensive vocabulary and neologisms when spreading false claims about Ukraine, its leadership and its people.²⁶

This was one aim of Russia's military invasion of Ukraine that it did not hide, which was wholly warranted by its genocidal intentions. Such rhetoric and the means Russia employed confirm beyond any doubt that the aim of the invasion was the extermination of a substantial part of the protected group, which defined itself by its national identification with the Ukrainian State as an independent, self-organising community, and identified itself with the territory, way of life, public values, common rights and duties, etc.²⁷

44. Identification with a National Group is not always accompanied by an emotional or political colouration (e.g., "I actively support the national unity of Ukrainians and consider that the enemy must be destroyed!"). Even without taking active part in armed resistance to the Russians, the overwhelming majority of the population in Ukraine see themselves as belonging to the national group of Ukrainians. Ukrainians who are publicly active, 'aware' Ukrainians, form the avantgarde of the national group and make up its most influential and significant part. That is why the Russian leadership focused attention on the destruction of this group, and why its active destruction is evidence of a genocidal intention. Destruction of this group could lead to the destruction of the group as a whole.
45. The independent international commission set up by the Office of the UN High Commissioner for Human Rights to investigate violations in Ukraine found that across Ukraine the occupying Russian forces went from house to house, seeking out 'Nazis' and 'Banderites':²⁸ "Residents of the localities visited told the Commission that in late February or early March 2022, Russian armed forces arrived in their settlements and often deployed in local schools, administration buildings or residential houses. In most places, soldiers went door to door in search for 'Nazis' or 'banderovtsy'

²⁵ The Newlines Institute for Strategy and Policy, "An Independent Legal Analysis of the Russian Federation's Breaches of the Genocide Convention in Ukraine and the Duty to Prevent", May 2022 – <https://newlinesinstitute.org/an-independent-legal-analysis-of-the-russian-federations-breaches-of-the-genocide-convention-in-ukraine-and-the-duty-to-prevent/> – [retrieved 8 May 2023].

²⁶ " 'Bandera supporters', 'Western consultants' and others: Six falsehoods in a single speech by Russian President Vladimir Putin" (Russ.) video recording, Krym-Realia, 28 February 2022 – <https://ru.krymr.com/a/31727358.html> – [retrieved 8 May 2023].

²⁷ The beginning of the Russian Federation's war against Ukraine, unleashed in 2014, indicated the deep and fundamental changes Russia envisaged making after it realised that it was losing control of that nominally 'independent' colony.

It was during this opening phase of the war that a vividly expressed genocidal rhetoric made its appearance in Russia, based on references to the 'followers of Bandera' and nationalists and attempts to devalue the national focal points of the population of Ukraine.

Calls were then openly made to exterminate any who tried to discuss the Ukrainian Nation and its State, "The 'fraternal' approach to Ukraine and Ukrainians must be destroyed" (Russ.), Ukrudprom, 15 November 2016 – https://ukrudprom.com/digest/Bratskiy_podhod_Ukrainu_i_ukraintsev_neobhodimo_unichtogit.html – [retrieved 6 July 2023].

Following the all-out invasion of Ukraine in 2022 such rhetoric became a barely concealed slogan. On 3 April 2022, the RIA Novosti news agency published an article by Timofei Sergeitsev entitled "What Russia must do with Ukraine" (Russ.) – <https://archive.ph/FoMBp> – [retrieved 8 May 2023].

²⁸ "Independent International Commission of Inquiry on Ukraine", 18 October 2022, United Nations Human Rights (Office of the High Commissioner) §62 – <https://www.ohchr.org/en/documents/reports/a77533-independent-international-commission-inquiry-ukraine-note-secretary> – [retrieved 8 May 2023].

(Banderites), which are derogatory terms often used by officials of the Russian Federation to describe supporters of the Government of Ukraine. In many cases, they confiscated people's phones."

46. Squads of 'Kadyrov fighters' (Chechen fighters) were later sent to monitor the already-occupied city of Mariupol. There they constantly referred to Ukrainians as 'Banderites' and 'Devils' (*shaitany*). On 29 March 2022, the Chechen leader Ramzan Kadyrov announced in Mariupol that peaceful negotiations would only be possible once the "Banderites and Devils" in Ukraine had been exterminated.²⁹ This and previously quoted statements are evidence that genocidal intent was directed against a national group as such, the Ukrainian People in Mariupol.

47. In accordance with the Constitution, Ukraine is a unitary State. Its territory is divided into administrative units that take into account the historical, economic, ecological, geographical and demographic features of those regions and their ethnic and cultural traditions, but they are not self-governing. In the interests of efficient organisation local self-government is guaranteed in Ukraine, starting with the community that exists in a village, town or city. Such a Territorial Community is made up of inhabitants united by their permanent residence within the boundaries of a village, town or city that constitutes an independent administrative unit. In accordance with the Ukrainian Law "On local self-government", the Community may also consist of a voluntary association of the inhabitants of several villages or towns grouped under a single administrative centre.

These communities are therefore made up of representatives of the Ukrainian People while the division of the population between different communities has a functional purpose, viz. to independently resolve local issues within the framework of the Constitution and Laws of Ukraine. The inhabitants of each Territorial Community, in other words, are an inseparable part of the Ukrainian Nation. The Protected Group against which the military and political leadership of the Russian Federation has directed its genocidal intention are the inhabitants of the Mariupol Territorial Community (*territorialna obshchyna*): it is a sub-group of the National Group, the People of Ukraine, who live in every part of the country. A genocidal intention directed at the whole of Ukraine was implemented in and around the city of Mariupol.

In the Case of Goran Jelusic, the trial chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTFY) recognised that genocide may take place even if the intention to exterminate a group is confined to a limited geographical area, such as a region or a municipality.³⁰

48. The **Mariupol Urban Territorial Community** is located in Ukraine, in the Mariupol district of the Donetsk Region; the city of Mariupol is its administrative centre. The community embraces the city of Mariupol, the town of Stary Krym, the Rybatskoe settlement and eight villages (Agrobaza, Berdyanskoe, Pokrovskoe, Priazovskoe, Prigorodnoe, Krasnoe, Shevchenko and Shirokaya Balka). When the Russians invaded on 24 February 2022 the population of Mariupol was approximately 426,000 while the total population of the entire Territorial Community was 446,000 inhabitants. Historical and cultural factors meant that the population of the city varied in ethnicity and religious affiliation.³¹ In September 1991, when Ukraine became independent the first city in eastern Ukraine to raise the national flag over its administrative building was Mariupol.

49. In 2014, it should be noted, separatists supported by Russia made an unsuccessful attempt to seize control of Mariupol. They attempted to hold a referendum in Mariupol about joining Rus-

²⁹ See information here: "The Azov regiment is after Kadyrov's TikTok broadcasters for a staged video of fighting in Mariupol" (Russ.), *Ukrainska Pravda*, 29 March 2022 – <https://www.pravda.com.ua/news/2022/03/29/7335567/> – [retrieved 8 May 2023].

³⁰ ICTFY, *The Prosecutor vs Goran Jelusic*, Case No. IT-95-10-A, Judgement (14 December 1999), para. 70 – <https://www.internationalcrimesdatabase.org/Case/76/Jelisi%C4%87/> – [retrieved 3 July 2023].

³¹ "The ethnic composition of the population" (Ukr.), Donetsk Region – <https://dn.gov.ua/oblast/etnichnij-sklad-naselennya> –

sia but it was an abject failure.³² From that year onwards, the city and the surrounding territory become part of the frontline in the Russo-Ukrainian confrontation and a refuge for people from the occupied parts of the Donetsk and Luhansk Regions. Following the tragic events when the separatists attempted to seize Mariupol the inhabitants rallied around efforts to strengthen pro-Ukrainian feelings in the city, evidence of a yet more intensive formation of the Ukrainian Nation in and around Mariupol.

During the post-2014 period a core of public activists took shape. For the most part, NGOs were formed around three key issues: the Eastern Brama organisation focused on the urgent need to aid and support Ukraine's armed forces; the Khalabuda NGO was dedicated to humanitarian aid; while the Fund for the Development of Mariupol concentrated on infrastructure, the ecological situation, and boosting the accountability of the authorities.³³ In 2015, a thousand people demonstrated on the streets of Mariupol carrying national insignia and placards proclaiming that the frontline city was Ukrainian. The city's inhabitants wanted to let the world know that Russian fighters were violating the Minsk Accords and regularly shelling villages close to Mariupol. City residents also called on the OSCE monitoring mission to establish effective control over the contact line and record all violations of the ceasefire agreement.³⁴

On the eve of the invasion, on 22 February 2022, Mariupol residents responded to the recognition by Russia of the 'independence' of the Luhansk and Donetsk 'people's republics', and the transfer to those territories of regular Russian troops, by holding a demonstration declaring that Mariupol was part of Ukraine.³⁵

50. In addition to the mass, indiscriminate attacks on residential buildings and civilian infrastructure that led to the destruction of a substantial part of the city's buildings and caused the deaths or physical and psychological injuries of many people in Mariupol, **filtration procedures** directed against Ukrainians are acknowledged to have inflicted psychological injury.

As many eyewitness accounts confirm,³⁶ filtration was introduced for all obliged to flee the city before they were allowed 'full rights of residence' in the territories occupied by Russian forces, and for deportees from Mariupol. Those who served in the civilian administration, the army or other forms of activity in support of Ukraine were all subject to such measures. The official Russian government newspaper, *Rossiiskaya gazeta*, reported that 5,000 Ukrainians were being held and checked in the Bezimenne Filtration Camp, in order "not to permit Ukrainian nationalists disguised as refugees to avoid punishment and enter Russia."³⁷

51. The large number of likely victims, impossible to assess at present, and the extensive damage and destruction to civilian buildings, indicate a genocidal intention directed against a major part of the

³² "The separatists have reported the results of the 'referendum' in Donetsk" (Russ.), BBC, 14 May 2014 – https://www.bbc.com/russian/international/2014/05/140512_ukraine_east_referendum_results – BBC Russian Service, 11 May 2014 – [retrieved 10 May 2023]; "11 May. How the residents of Mariupol took part in the referendum, and how the DPC came into being" (Russ.), Mariupol city website 0629, 11 May 2014 – <https://www.0629.com.ua/news/2756745/11-maa-2014-go-kak-mariupolcy-na-referendum-hodili-i-pocemu-poavilas-dnr-foto> – [10 May 2023].

³³ "The last Donbas outpost: what do residents of Mariupol think about European integration?" New Europe Center (Kyiv), 14 June 2019 – <http://neweurope.org.ua/en/analytics/ostannij-forpost-donbasu/> – [retrieved 10 May 2023].

³⁴ "The inhabitants of Mariupol formed a living chain in the centre of the city" (Ukr.), Channel 5, 14 March 2015 – <https://www.5.ua/86/zhyteli-mariupolia-vyshykuvalysia-zhyvym-lantsiuhom-u-tsentri-mista-shchob-pokazaty-shchovono-ie-ukrainskym-73287.html> – [retrieved 10 May 2023].

³⁵ "Mariupol does not want to be part of the 'DPR' or Russia, 'This is Ukraine'" (Ukr.), Radio Svoboda, 23 February 2023 – <https://www.radiosvoboda.org/a/novyny-pryazovya-mariupol-dnr-rosiya/31717390.html> – [retrieved 10 May 2023].

³⁶ See §§47–48, "A Description of Events" (Appendix One).

³⁷ "Hundreds of Ukrainians were forcibly deported to Russia, say Mariupol women", *The Guardian*, 4 April 2022 – <https://www.theguardian.com/world/2022/apr/04/hundreds-of-ukrainians-forcibly-deported-to-russia-say-mariupol-women> – [retrieved 11 May 2023].

Ukrainian People in and around Mariupol. The intention was to kill all those who remained in the city and force those who for some reason escaped that assault to leave Mariupol and settle in Russia.

Indirect confirmation of this policy is provided by the division of the population of Ukraine by Russian counter-intelligence into four groups. These are listed as follows by the authors of a detailed Western study, "Preliminary lessons from Russia's invasion of Ukraine":³⁸

1. Those who must be exterminated, "physically liquidated";
2. Those in need of repression and intimidation;
3. Those who might be persuaded to collaborate; and
4. Those already prepared to collaborate.

It is clear that the Russian leadership regards the National Group of Ukrainians as a target to be influenced, a group that by definition lacks independence and autonomy and requires external management and guidance. This perception of the group means that in certain circumstances it may be exterminated, as indicated by the first group above. The presence of the first group in Russia's classification of the population offers undoubted proof that a specific plan and policy for the extermination of part of the National Group of Ukrainians had been prepared and would be implemented.

5.3 – THE INTENT TO DESTROY (THE SUBJECTIVE ASPECT)

52. As noted earlier (§31), the International Criminal Tribunal for Rwanda (ICTR) in its Judgement in the 1998 Case of Jean-Pierre Akayesu commented that "genocide differs from other crimes in that it embodies a special intention or *dolus specialis*. This forms an essential constituent element of the crime, indicating that the guilty party was clearly striving to commit the act of which he or she is accused. The special intention in the crime of genocide is 'the intention to exterminate in whole or in part' (para. 498)". The judgement reached by the UN International Court in the "Bosnian Genocide Case" clarified that genocide is restricted to "the physical or biological extermination of a group".³⁹

Following the approach delineated by the ICTR in the Case of Tharcisse Muvunyi (2006), a conclusion as to the offender's genocidal intention may be drawn in the absence of direct evidence on the basis of existing facts and circumstances. These can lead beyond a reasonable doubt to a certainty about that intention if it is the only reasonable conclusion to be drawn on the basis of the totality of evidence. It is important to divide the evidence and facts relating (1) to the political or military leadership, (2) to the persons who gave direct orders for implementing acts of genocide, and (3) to the actual perpetrators of those genocidal acts. This corresponds to the regime of responsibility outlined in Articles 25, 28 and 30 of the Rome Statute.

5.4 – DIRECT EVIDENCE (THE OBJECTIVE ASPECT)

53. We have gathered the following as direct evidence in this Submission: statements, the deeds performed by the perpetrators, and official announcements expressing an intention to exterminate

³⁸ Mykhaylo Zabrodskyi, Jack Watling, Oleksandr V. Danylyuk and Nick Reynolds, "Preliminary Lessons in Conventional War fighting from Russia's Invasion of Ukraine: February-July 2022", Royal United Services Institute For Defence and Security Studies, 2022, — <https://static.rusi.org/359-SR-Ukraine-Preliminary-Lessons-Feb-July-2022-web-final.pdf> — [retrieved 11 May 2023].

³⁹ The Case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina vs Serbia and Montenegro), Judgement, 26 February 2007 — <https://www.icj-cij.org/public/files/case-related/91/091-20070226-JUD-01-00-EN.pdf> — [retrieved 11 May 2023].

the group. There are expressions of satisfaction at the commission of acts of genocide, words by which the perpetrator ordered or encouraged others to commit acts of genocide, the use of obscene words against members of the protected group, and such. This evidence mainly concerns Ukraine, but some items relate specifically to Mariupol.

54. As explained by the ICTR,⁴⁰ genocidal "intent can be inferred either from words or deeds and may be demonstrated by a pattern of purposeful action. In particular, the Chamber considers evidence such as [...] the use of derogatory language toward members of the targeted group". Furthermore, "even when a speech contains no explicit appeal to commit genocide, it may still constitute direct incitement to commit genocide in a particular context, so long as the speech is not considered ambiguous within that context. In order to determine the speech's true meaning, it may be helpful to examine how it was understood by the intended audience."⁴¹
55. In particular, Vladimir Putin has asserted in numerous public statements the need to destroy Ukraine and the Ukrainian People. In his video appeal on 24 February 2022, for example, after stating that the goal of the Special Operation was "to defend people who for the past eight years have suffered from victimisation and genocide at the hands of the Kyiv regime", Putin warned that anyone who tried to stop Russia, or "threaten Russia and the Russian People should be aware that Russia's response will be rapid and lead to consequences which they have never before encountered in their history."⁴²
56. In a declaration of victory ("Russia's Attack and the New World"), accidentally published on 26 February 2022 and later withdrawn, Putin said, "Ukraine will no longer exist as an anti-Russian entity": the country would be "reorganised, restored and returned to its natural condition as part of the Russian world".⁴³ In another well-known reference to Ukraine, Putin recalled "a vulgar Russian verse about a necrophiliac rape" ('Like it or not, you must put up with it, my beauty').⁴⁴
57. As concerns other figures in authority, we may quote the words of:
1. **Leonid Slutsky**, chair of the Duma committee for international affairs - speaking on 30 September 2022 about the war against Ukraine, Slutsky said: "It's a cruel fact. [We're fighting t]o the very last Ukrainian; that's what I said, to the last Ukrainian."⁴⁵
 2. The head of Chechnya **Ramzan Kadyrov** (Telegram announcements by Kadyrov, Telegram 21 February to 3 August 2022):⁴⁶
 "Chechen fighters are actively engaged in the Special Operation to cleanse Ukraine from Banderites, nationalists and terrorists," (8 March 2022);

⁴⁰ ICTR, Kayishhema and Ruzindana, "Judgement", ICTR-95-1-T, 21 May 1999, para. 93.

⁴¹ ICTR, Prosecutor v. Bizimungu et al, "Judgement", ICTR-99-50-T, 30 September 2011, para. 1974.

⁴² "Putin Orders a 'Special Military Operation' for Ukraine", Bloomberg, 24 February 2022, — <https://www.bloomberg.com/news/videos/2022-02-24/putin-orders-special-military-operation-for-ukraine-video-l00nw4qc> — [retrieved 11 May 2023].

⁴³ Accidentally published declaration of Russian victory: "The Russian Offensive and the New World," — <https://www.justsecurity.org/81789/russias-eliminationist-rhetoric-against-ukraine-a-collection/> — and see original Russian, RIA Novosti (26 February 2022, since deleted) — <https://web.archive.org/web/20220226051154/https://ria.ru/20220226/rossiya-1775162336.html> — [both retrieved 11 May 2023].

⁴⁴ Russ.: "Терпи, моя красавица". Everyone thought that Putin was referring to "The Red Mould" (Красную плесень). In fact, the Russian president was quoting from the equally obscene popular couplets (частушки), — <https://meduza.io/shapito/2022/02/09/terpi-moya-krasavitsa> — [retrieved 4 July 2023].

Cf. "Russia's Eliminationist Rhetoric" (see fn. 20), updated 29 June 2023 — <https://www.justsecurity.org/81789/russias-eliminationist-rhetoric-against-ukraine-a-collection/> — [retrieved 6 July 2023].

⁴⁵ UPDATED Head of the Duma Committee for International Affairs Leonid Slutsky — Telegram posts by Slutsky — Telegram (24 February 2022 to 23 January 2023).

⁴⁶ UPDATED Chechen leader Ramzan Kadyrov, Telegram posts by Kadyrov, Telegram (21 February to 26 November 2022).

"Very soon now these courageous warriors will wipe this vile and base phenomenon called 'nationalism' from the pages of Ukrainian history," (19 March 2022);

"I do not envy the fate of those Banderite dogs because their miserable fate has already been decided by our valiant warriors. My dear brothers ... are determined to excise this hated Nazi tumour. Very soon now peace and order across all Ukraine will finally be established by the hands of Chechen fighters.

"They intend to decapitate all the devils hiding behind thick walls or, even more abominably, behind peaceful civilians," (here Kadyrov uses the Muslim term *shaitan* to denote devils or arch-fiends, 24 March 2022).

"With such a motivation and warlike spirit, we simply do not have the right to leave a single nationalist or Banderite on Ukrainian soil," (26 April 2022).

"I'm convinced that Vladimir Putin, the President of Russia, adopted the only correct decision when he ordered that the American chimaera should be destroyed in embryo before it can grow in Ukraine," (26 June 2022).

58. Most of this evidence shows the arguments the Russian leadership were preparing within the country to 'explain' to its population why the invasion took place. The main thesis points to the existence of a group of people that should be exterminated if Russia and Russian society were to feel 'secure'.
59. Talking of the preparation of the Russian audience for committing or approving acts of brutality, the authors of *An Independent Legal Analysis of the Russian Federation's Breaches of the Genocide Convention in Ukraine*⁴⁷ discuss the awards the Kremlin bestows on soldiers suspected of committing mass murder in Ukraine, thereby giving soldiers the opportunity to commit, and society to approve, further acts of brutality. The Kremlin is able to stir up the population by directing and intensifying its propaganda in State-controlled mass media and through strict military censorship. Influential political and religious leaders and representatives of State-owned media, including Putin himself, serve as the mouthpieces of this provocation by propaganda.
60. More and more evidence is coming to light that shows how soldiers have adopted this campaign by the Russian State. They repeat its slogans as they commit atrocities. Russian soldiers are reported as threatening to rape "every Nazi slut", to "hunt down the Nazis", to "liberate you from the Nazis" and the assertion (made after a public execution) that "we are here to cleanse you from this filth".⁴⁸
61. An important indication of genocidal intention is the emphatically disdainful attitude to the National Group of Ukrainian inhabitants of the city of Mariupol, as subjects of international law, especially as concerns international humanitarian law. Ukraine and Russia have both signed and ratified major conventions that define international humanitarian law. This should mean that the rights of national groups, especially in Ukraine, are respected.
62. Yet Russia has displayed an emphatically disdainful attitude towards the national group of Ukrainians and disregards the rights that Ukrainians enjoy as those to whom the norms of international humanitarian law apply. Such an attitude reveals a refusal to acknowledge the Ukrainians as a national group or to recognise Ukraine as an independent State. Such an attitude cannot be limited to particular soldiers, it is a generally-adopted policy towards the Ukrainians. Consequently, it forms a genocidal intent, both as a psychological attitude towards a national group as

⁴⁷ "An Independent Legal Analysis", May 2022 (see fn. 25) – <https://newlinesinstitute.org/an-independent-legal-analysis-of-the-russian-federations-breaches-of-the-genocide-convention-in-ukraine-and-the-duty-to-prevent/> – [retrieved 6 July 2023].

⁴⁸ Cf. "Russia's Eliminationist Rhetoric" (see fn. 20) updated 29 June 2023 – <https://www.justsecurity.org/81789/russias-eliminationist-rhetoric-against-ukraine-a-collection/> – [retrieved 6 July 2023].

such, and to its right to exist and defend itself within the meaning of Article 6 of the Rome Statute. The other side of this attitude is the denial by Russia's highest-ranking officials of that national group's right to exist.⁴⁹

63. As concerns middle-ranking military officers, who most likely gave the order to shell Mariupol, it is known that the attack on the city was directly led by Mikhail Mizintsev.⁵⁰ The UK and Australia have issued sanctions against him, accusing him of ordering the destruction of the maternity hospital and the drama theatre in Mariupol where more than a thousand civilians were hiding. These events took place in the southern port of Mariupol on the Azov Sea, a city that the Russian army reduced to rubble.⁵¹
64. Open sources also reveal that it was presumably Lieutenant-General Nikolai Gostev,⁵² commander of the 4th army of paratroopers and anti-aircraft defence systems of the Southern Military District of Russian Armed Forces, who gave the order on 9 March 2022 for the shelling of City Hospital No. 3 (§14, last paragraph, "A Description of Events", Appendix One). In March 2022, the Russian media also reported that the deputy commander of the Black Sea fleet, Captain (1st class) Andrei Paly was killed, presumably before 27 March, in fighting outside Mariupol.⁵³ Ukrainian media reported that General Oleg Mityayev, commander of the 150th motor-rifle division of the 8th Guards Army (Southern Military District), was killed during the storm of Mariupol.⁵⁴
65. The Russian daily *Komsomolskaya pravda* published an interview with its military correspondent Alexander Khodakovsky in its online edition. From early February 2022 onwards, Khodakovsky spent one hundred days in Mariupol with the Vostok battalion of the Donetsk 'people's republic'. His report states that "the battalion was relocated in one move from Donetsk to the outskirts of Mariupol" in a single column. Then the battalion "crossed the former border between the DPR and Ukraine and occupied the suburban settlements of Kalinovka, Talakovka and part of Sartana that is already considered the outskirts of Mariupol". There it conducted "exhaustive battles in the multi-storey [residential] buildings of the Eastern micro-district which adjoins the Azovstal plant", 'capturing' those multi-storey buildings after pushing Ukrainian forces back to the plant.⁵⁵
66. More information about the units from the Donetsk 'people's republic' fighting in Mariupol can be found on the InContact social network page of the 384th Naval Intelligence Unit of the DPR's 1st Army Corps:⁵⁶ they were the 9th Mariupol-Khingan Marine Regiment, the Sparta Intelligence

⁴⁹ Interview with Vladislav Surkov (see fn. 19), 26 February 2020 – <https://actualcomment.ru/surkov-mne-interesno-deystvovat-protiv-realnosti-2002260855.html> –

⁵⁰ "Who is the Butcher of Mariupol? ... Sanctioned Russian colonel accused of Ukraine hospital bombing", *The Independent*, 31 March 2022 – <https://www.independent.co.uk/news/world/europe/butcher-mariupol-mikhail-mizintsev-ukraine-b2048056.html> – [retrieved 4 July 2023].

⁵¹ "Britain has introduced sanctions against RF propagandists and the 'Butcher of Mariupol' Mizintsev" (Ukr.), *Evropeiskaya pravda*, 31 March 2022 – <https://www.eurointegration.com.ua/news/2022/03/31/7136976/> – [retrieved 4 July 2023].

⁵² Nikolai Vasilyevich Gostev, *The Book of Murderers of the Ukrainian People* (Russ.) – <https://russian-torturers.com/ru/profile/1378> – [retrieved 4 July 2023].

⁵³ "Deputy commander of the Black Sea Fleet Andrei Paly was killed near Mariupol" (Russ.), Yunarmy: Army Cadets National Movement – <https://www.yunarmy.ru/press-center/news/pod-mariupolem-pogib-zamkomanduyushchego-chernomorskim-flotom-andrey-paliy/> – [retrieved 4 July 2023].

⁵⁴ "The identity of the Russian general killed by the Azov regiment has been established" (Russ.), Korrespondent, 15 March 2022 – <https://korrespondent.net/ukraine/4457406-ustanovlena-lychnost-ubytoho-azovom-rossyiskoho-henerala-sotssety> – [retrieved 4 July 2023].

⁵⁵ Alexander Khodakovsky, "When the Azovstal fighters began to surrender we were amazed. There were more of them than us!" (Russ.), *Komsomolskaya pravda*, 20 May 2022 – <https://www.kp.ru/daily/27395.5/4590308/> – [retrieved 4 July 2023].

⁵⁶ "The liberation of Mariupol: New Russia's marines vs. the Ukrainian State's marines" (Russ.), 384th Naval Intelligence Unit, DPR, 23 March 2022 – https://vk.com/@morskaya_pehota_384-morpehi-novorossii-protiv-morpehov-ukraini – [retrieved 4 July 2023].

Battalion and the 384th Special Naval Intelligence Unit. Members of the Sparta Intelligence Battalion were on display in a New Year broadcast by the Russian State-controlled TV channel Rossiya-1.⁵⁷

67. Certain evidence concerns those who took a direct part in the invasion of Mariupol. The Ukrainian Security Service (SBU) intercepted a phone call of the Rostov commander of a Russian military unit who was four kilometres away from the Azovstal plant.⁵⁸ “We are here, waiting for three-ton ‘surprises’ from Russia to fall from the skies”, he says, referring to bombs. “They said they would flatten everything ... A lieutenant-colonel came here and told us: ‘You’ll feel it and hear it’.” He told his wife, “There’ll be an explosive wave – imagine,” and when asked about the fate of the civilian population, he replied: “They’ve all left. All who wanted to go, have left. Only patriots and the craftiest ones have stayed behind...”.
68. The Russian terrorist, The Russian terrorist, Igor Mangushev, a mercenary from Moscow, is believed to be a leader of the ENOT Corps private military company. He gave a speech at a club in which, holding a human skull in his hand, he called for the genocide of Ukrainians. The skull belonged, in his words, to one of the defenders of Mariupol. This is a direct quotation:⁵⁹ “We’re alive; this lad is already dead. May he burn in hell. He was unlucky. We shall make a goblet of his skull. We are not fighting with people of flesh and blood, we are fighting against an idea, the idea of Ukraine as an anti-Russian State. There can be no peace. We must rid Ukraine of Ukrainians [lit. de-ukrainise Ukraine]. We must take back our Russian land. That is the tragedy of Ukrainian warriors. It doesn’t matter to us, how many of them we have to kill. If we were fighting with people, we might be able to negotiate a peace with them. But we are fighting an idea and all who support that idea must be killed. Just like this lad who, evidently, did not want to lie buried next to Azovstal.”
69. The creation of Russian State awards, such as the ‘Medal for the Liberation of Mariupol’,⁶⁰ encourage the alleged genocidal crimes. It is known that the medal was awarded to Ramzan Kadyrov, head of the Chechen Republic.⁶¹

5.4.1 – Grounds for concluding beyond a reasonable doubt that a Genocidal Intent lay behind the situation in Mariupol

70. A political doctrine that gave rise to genocidal acts.

The destruction of the inhabitants of Mariupol and of the city itself were an inherent part of the full-scale invasion of Ukraine, itself justified as the protection from genocide of the Russian-speaking inhabitants of the Donbas.⁶² The invasion took place, according to the Russian propaganda, in order to denazify and demilitarise Ukraine: it was a negation of the Ukrainian Statehood and a denial of the existence of the Ukrainian Nation. Taken together with Russia’s eliminationist

⁵⁷ “2023 New Year’s celebration at Shabolovka”, show and concert on TV channel Rossiya-1, 8 January 2023 (2.13 to 2.20 mins) – <https://youtu.be/2E5jFuCyhWE> – [retrieved 5 July 2023].

⁵⁸ From the SBU Telegram channel, 19 April 2022 – <https://t.me/informnapalm/7480> – [retrieved 5 July 2023].

⁵⁹ “Who is Igor Mangushev, the man who spoke with a skull in his hand that he claimed to be the ‘remains’ of an Azovstal defender” (Russ.), Current Time: Radio Liberty, 30 August 2022 – <https://www.currenttime.tv/a/ukraine-russia-war-mangushev/32010950.html> – [retrieved 5 July 2023].

⁶⁰ “A medal ‘for Mariupol’ has been created in the DPR” (Russ.), Eurasia Daily, 27 April 2022 – <https://eadaily.com/ru/news/2022/04/27/v-dnr-uchrezhdjena-medal-za-osvobozhdenie-mariupolya> – [retrieved 5 July 2023].

⁶¹ “Kadyrov has been awarded the medal ‘For the Liberation of Mariupol’” (Russ.), Chechnya Today, 7 October 2022 – <https://www.chechnyatoday.com/news/359233> – [retrieved 5 July 2023].

⁶² “Putin Orders a ‘Special Military Operation’ for Ukraine”, Bloomberg, 24 February 2022, – <https://www.bloomberg.com/news/videos/2022-02-24/putin-orders-special-military-operation-for-ukraine-video-l00nw4qc> – [retrieved 5 July 2023].

rhetoric,⁶³ this propaganda vividly illustrates the intention to destroy the Ukrainian People. Mariupol may be examined as a territory where this intention was put into practice.

71. **Acts that violate, or as the offenders themselves believe, violate the basic life activities of the Group.**

In the case of Mariupol, the second largest city in the Donetsk Region (pop. 426,000; 2021), the mass shelling of residential buildings and of the civil infrastructure and the blockade of Mariupol by Russian troops led inevitably to considerable losses among the city's civilian population.⁶⁴

72. **Destruction of or attacks upon cultural or religious property and the emblems of the Protected Group.**

Due to the shelling of the city and later actions of the occupation authorities, 15 culturally significant buildings and monuments were destroyed in Mariupol: among them were the Drama Theatre, the School of the Arts, and the monument to the Victims of the Holodomor (1932–1933 man-made famine). The desire to totally destroy the city on the Azov Sea and to wipe both Mariupol and its inhabitants "from the face of the earth" found expression in the destruction of two of the city's outstanding cultural sites: the Drama Theatre and the Kuindji Museum (Arkhypp Kuindji (1841–1910) was one of the outstanding artists of the late Tsarist Empire, born in Mariupol of Greek parents).

73. **Destruction of or attacks upon residential buildings belonging to members of the Group.**

As a result of Russian attacks on Mariupol, more than 61,000 multi-storey apartment buildings and 2,300 private homes were damaged. That is the assessment of Ukraine's Ministry for the Reintegration of Temporarily Occupied Territories. It represents the most severe damage to be inflicted on the housing stock anywhere in Ukraine following the Russian invasion of 24 February 2022.⁶⁵

74. **The destruction of a limited number of individuals chosen because of the influence and significance their disappearance would have on the group as such.**

Filtration procedures, the deportation of people and children. The wounding and killing of individuals during the filtration procedures. As stated earlier (§51) the perpetrators of genocide in Ukraine had divided Ukrainians into groups and particular categories were due to be exterminated.⁶⁶

75. **Other acts that are systematically directed against one and the same group, no matter whether those acts were committed by the same offenders or different persons.**

The destruction of Mariupol, a city with almost half a million inhabitants, as a major social, cultural, economic and urban centre of the Azov region Was a powerful blow against a protected national group because it gave the impression that the group as a whole was vulnerable and undefended.

76. **The scale of the crimes committed, their general and widely-implemented nature within a certain region or the country as a whole.**

The range of activities are a vivid indication that the deeds committed were systematic, widespread, repetitive and persistent: they began with propaganda and information campaigns, and included the filtration system, the scale and goals of the invasion, the means by which military actions were pursued, the types of weapons and their use, and the behaviour of military personnel

⁶³ "Russia's Eliminationist Rhetoric Against Ukraine: A Collection" (see fn. 20) <https://www.justsecurity.org/81789/russias-eliminationist-rhetoric-against-ukraine-a-collection/> – [retrieved 5 July 2023].

⁶⁴ §37, "A Description of Events" (Appendix One).

⁶⁵ "The destruction of Mariupol and the ashes of Avdeyevka: Russia's scorched earth policy in Ukraine" (Ukr.), Ukrainian Ministry for the Reintegration of Temporarily Occupied Territories – <https://minre.gov.ua/news/ruyiny-mariupolya-y-popil-avdiyivky-taktyka-spalenoyi-zemli-po-rosiysky> –; see also – <https://minre.gov.ua/en/> – [retrieved 5 July 2023].

⁶⁶ "Preliminary Lessons in Conventional War fighting" (see fn. 38), Zabrodskyi, Watling, Danylyuk and Reynolds (Royal United Services Institute), Defence and Security Studies, 2022, – <https://static.rusi.org/359-SR-Ukraine-Preliminary-Lessons-Feb-July-2022-web-final.pdf> – [retrieved 5 July 2023].

in the occupied territories. Without doubt this was the result of a conscious approach, the planning of the relevant actions, the interpretation of events, their prerequisites and consequences, and also the expectation and desire for such consequences.

77. Taken together, these aspects and deeds are evidence of the intention to destroy a protected National Group. The objective side was implemented by a wide scale of deeds committed and their repetition. Information obtained from victims in Mariupol and witnesses of particular events indicate that the same situation was encountered everywhere Russian soldiers had been present: prisons were found, the bodies of people killed for no purpose, and mass burials. There were numerous witnesses of the punitive actions of Russia's military.⁶⁷
78. **Russia's siege of Mariupol, surrounding the city from all sides and monitoring any movements in the city or its surroundings.**

According to the rules governing sieges, affirmed by the norms of international humanitarian law, those conducting the siege in theory should wish for the civilian population to leave the area. The practical actions of the Russian forces, however, show that they were attacking the entire population of Mariupol. Many research centres and media outlets confirm that Russia either did not agree to the evacuation of the civilian population or violated such agreements by attacking anyone who tried to leave the city. Russian troops created and maintained conditions for the starvation of Mariupol's population, using this condition as a means of waging war.

Humanitarian corridors should have facilitated the supply of humanitarian aid to the civilian population and enabled civilians who wished to leave the city to do so. In order for such a humanitarian corridor to work, however, the military on both sides needed to reach an effective agreement. The course of events shows that Russian troops constantly shelled evacuation routes and violated agreements about the departure of civilians from Mariupol.⁶⁸

79. **The methodical way in which killings were planned.**

During the first month of the invasion, the following buildings and targets in Mariupol were systematically attacked and destroyed: civilian hospitals, branches of the State Emergency Service, food stores, systems for communications, heating, and the supply of water and gas.⁶⁹ This

⁶⁷ "Probably for murdered Mariupol civilians. Maxar Technologies Inc. shows photos taken from space of the graves in Manhush" (Russ.), *New Voice*, 21 April 2023 – <https://nv.ua/ukraine/events/bratskaya-mogila-pod-mariupolem-maxar-pokazala-sputnikovye-snimki-mangusha-poslednie-novosti-50235904.html> – [retrieved 5 July 2023].

"New mass grave points to war crimes in Mariupol, Ukrainian officials say", *Washington Post*, 21 April 2022 – <https://www.washingtonpost.com/world/2022/04/21/new-mass-grave-manhush-near-mariupol/> – [retrieved 5 July 2023].

"Another possible mass grave with as many as 9,000 bodies is found near Mariupol", *NPR*, 22 April 2022 – <https://www.npr.org/sections/pictureshow/2022/04/22/1094234731/possible-mass-graves-near-mariupol-shown-in-satellite-images> – [retrieved 5 July 2023].

"In Mariupol, Putin now rules a wasteland, pitted with mass graves", *The Guardian*, 23 April 2022 – <https://www.theguardian.com/world/2022/apr/23/in-mariupol-putin-now-rules-a-wasteland-pitted-with-mass-graves> – [retrieved 5 July 2023].

"In Mariupol, echoes of history, utter devastation and a last stand", *Washington Post*, 24 April 2022 – <https://www.washingtonpost.com/world/2022/04/24/mariupol-ukraine-last-days/?variant=15bc93f5a1ccbb65> – [retrieved 5 July 2023].

"Urgently help Ukraine civilians flee Mariupol", *Human Rights Watch*, 26 April 2022 – <https://www.hrw.org/news/2022/04/26/urgently-help-ukraine-civilians-flee-mariupol> – [retrieved 5 July 2023].

"Mass graves in Ukraine reveal mounting death toll", *Wall Street Journal*, 6 May 2022 – <https://www.wsj.com/articles/mass-graves-in-ukraine-reveal-mounting-death-toll-11651829402> – [retrieved 5 July 2023].

"Entire trenches filled with the slain. In Mariupol and its surroundings more than 10,000 new graves have been found – Associated Press" (Russ.), *New Voice*, 22 December 2023 – https://nv.ua/ukraine/events/v-mariupole-i-ego-okrestnostyah-bolee-10-tysyach-mogil-poslednie-novosti-50292696.html?utm_campaign=Dailypayukr&utm_content=678702440&utm_medium=Dailypay&utm_source=email – [retrieved 5 July 2023].

⁶⁸ §40, "A Description of Events" (Appendix One).

⁶⁹ §§1–37, "A Description of Events" (Appendix One).

indicates a determination to leave the population without any chance of rescue or survival, therefore amounting to genocide within the meaning of Article 6(c) of the Rome Statute (deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part). Russia's actions confirm that measures were planned and methodically implemented to achieve the desired effect. Genocide was carried out as a comprehensive, all-embracing crime. For this crime was limited not to a single act but to an abundance of action. The implementation of these genocidal deeds reveals that Russia was using, among others, methods of intimidation aimed (in particular) at the National Group: it was gradually being exterminated and its members were made to understand that this persecution was constant and systematic. They realised that the threat to their lives was not directed at any individual but extended without exception to all people belonging to the group.

80. **This methodical implementation of a genocidal intention was obvious during the capture of Mariupol and the physical extermination of a large proportion of its population.**

These deeds were meant to demonstrate, on the one hand, Russia's intentions and, on the other, the defencelessness of the National Group of Ukrainians. By destroying the civilian population, including women and children, the Russian leadership tried to demonstrate in practice "that's what will happen to everyone".

A similar tactic for implementing a genocidal intent was revealed when the genocide at Srebrenica was examined. The Tribunal (ICTY) noted that the Srebrenica district had enormous strategic importance for the perpetrators, and it was significant in the eyes of the international community because the UN Security Council had declared it a "safe haven". The criminals who committed genocide there did so, therefore, in order to show how vulnerable and defenceless the district was and that the safety of Bosnian Muslims could not be assured.⁷⁰

81. **The systematic nature of the killings and the disposal of the corpses.**

The shelling and demolition of buildings was continuous. It is presently hard to obtain information about those who have died and where they are buried.⁷¹

82. **Actions or statements by the perpetrators of the crimes, including offensive vocabulary directed at members of the Group.**

As mentioned above, the use of offensive terminology, artificial neologisms and stigmatising verbal symbols constantly accompanied the entire invasion of Ukraine and emanated from all the information offered by Russia's leading political and public figures.

83. **The type of weapon employed and the extent of physical injuries.**

Firearms, artillery,⁷² aerial bombardment,⁷³ shelling by the navy,⁷⁴ took place, including the use of prohibited types of weapon such as cluster bombs and phosphorus bombs.⁷⁵

84. **Forced migration.**

According to pro-Russian sources, over 134,000 people were deported from Mariupol.⁷⁶

⁷⁰ "Genocide Determinations and Ukraine: A Q&A with Former Ambassador Todd Buchwald", Just Security, 14 June 2022 — <https://www.justsecurity.org/81903/genocide-determinations-and-ukraine-a-qa-with-fmr-ambassador-todd-buchwald/> — [retrieved 5 July 2023]. Also see §§12–16 of the Prosecutor vs Radislav Krstic — <https://www.refworld.org/cases,ICTY,414810d94.html> —.

⁷¹ §37, "A Description of Events" (Appendix One).

⁷² §6, para. 5, "A Description of Events" (Appendix One).

⁷³ §§3–5, 13–15, 31, 35, "A Description of Events" (Appendix One).

⁷⁴ §6, "A Description of Events" (Appendix One).

⁷⁵ §34, "A Description of Events" (Appendix One).

⁷⁶ "RF Ministry of Defence: 134,299 people have been evacuated from Mariupol" (Russ.), *Komsomolskaya pravda*, 9 April 2022 — <https://www.kp.ru/daily/27377.5/4570416/> — [retrieved 9 April 2023].

For the deportation of adults and children, see also §§42–50, "A Description of Events" (Appendix One).

5.5 – THE AGENTS OF GENOCIDE

85. We consider the high-ranking officials of the State that carried out these aggressive actions towards particular groups of people, including protected National Groups, to be the Agents of Genocide. They commanded sufficient resources to carry out genocide and possessed the authority and power to effectively implement their genocidal intention and make these available to a large number of their subordinates. These high-ranking individuals possessed the necessary human, material, technical, informational, political and legal resources. In this sense, the appeals and rhetoric presented in a context shaped by high-ranking individuals were decisive and the motive force behind the crimes committed by the immediate perpetrators.
86. The Kremlin, Putin's regime, has repeatedly denied the atrocities committed by its forces, describing such allegations as "fake news". This has permitted Russia's soldiers to commit new atrocities and Russian society to aid and abet them. The Kremlin even introduced awards for the "capture" of certain towns or villages. On 18 April 2022, Putin awarded an honorary title to a certain brigade for "defending the sovereignty of Russia", noting their 'mass heroism and courage' as "a model for imitation when performing military duties, and displaying bravery, selflessness and high professionalism". Russian soldiers of a vulnerable conscription age were additionally indoctrinated by the obligatory reading of Putin's article about "The unity of Russians and Ukrainians" and compulsory watching of daily TV news programmes six days a week (the exception was Sunday).⁷⁷ This offers an undeniable proof of a genocidal policy and the influence of Russia's leadership on the population, especially its soldiers, in supporting the intention to destroy the Protected Group of Ukrainians.
87. This is particularly important when we consider the complex construction of the crime of genocide: it begins with formation of the intent by the main bearer of the idea; they then transfer it to the direct perpetrator where the idea is more widely implanted, stimulating the execution of various deeds; the performance of particular events is facilitated; and an atmosphere of impunity and protection is created for those who actually commit this crime.
88. Defining the Target Group as an existential threat enables the instigators to depict violence against the group as self-defence and a necessity.⁷⁸ The official Russian pretext for invasion recalls several of the most frequently repeated forms of counter-accusation offered by perpetrators during the Holocaust and prior to the slaughter at Srebrenica.⁷⁹ On 15 February 2022, Putin issued a statement accusing Ukraine of genocide in the Donbas region,⁸⁰ a baseless accusation that he had repeated for years and which was reflected in the words of Russian officials and the State-controlled media. On 17 February 2022, the Permanent RF Delegation to the United Nations presented a document to the Security Council claiming that Ukraine had "exterminated the civilian population" in territories now controlled by Russian separatists. State-controlled media in Russia repeatedly published reports that Russians had fled from persecution by the Ukrainian government. On 21 February 2022, in yet another nationwide address three days before the invasion, Putin repeated his statement that Ukraine is an unlawful entity and that Ukrainians were

⁷⁷ "An Independent Legal Analysis", May 2022 (see fn. 25) – <https://newlinesinstitute.org/wp-content/uploads/Ukrainian-Final-Report.pdf> – [retrieved 6 July 2023].

⁷⁸ Dangerous Speech: A Practical Guide, 19 April 2021 – <https://dangerousspeech.org/guide/> – [retrieved 11 May 2023].

⁷⁹ Dangerous Speech: A Practical Guide, 19 April 2021 – <https://dangerousspeech.org/guide/> – [retrieved 11 May 2023].

⁸⁰ "News conference following Russian-German talks", website of President of Russia, 15 February 2022 – <http://en.kremlin.ru/events/president/news/67774> – [retrieved 5 July 2023].

assembling troops, shelling territory held by Russian separatists, and torturing Russians whom they detained there.⁸¹

89. The influence exercised by the Agent of Genocide is also significant: the Agent's access to major and significant resources, and the authority it enjoys among the population of the Aggressor-State. The Agent of Genocide possesses significant political, financial, human, informational and technical resources. To commit genocide, i.e., to destroy a National Group as such, requires substantial resources in order to influence and exercise authority over a wide range of people. Financial, material and technical resources enabled the Agent of Genocide to invade Ukraine, conduct military operations and to exterminate people. The necessary human resources are, first and foremost, the direct perpetrators of the genocide, those who will actually destroy members of the Protected Group.
90. As the course of events shows, the Agent committing Genocide is quite evident in the criminal events that Russia has organised in Ukraine. The Russian leadership, viz. official figures, have the power in accordance with the RF Constitution to take decisions about the use of force. They have shaped the country's policy, implementing and carrying out particular decisions: we may name President Vladimir Putin, Minister of Defence Sergei Shoigu, Minister of Foreign Affairs Sergei Lavrov, FSB head Alexander Bortnikov, head of the Russian Security Council Nikolai Patrushev, Minister of Internal Affairs Vladimir Kolokoltsev and the military leadership of Russia's armed forces.
91. In conclusion, we may define the distinctive features of the Agent of crime as follows:
 - [a] the occupation of influential posts or positions;
 - [b] access to every type of resource (political, financial, human, information, material and technical, etc);
 - [c] the determined use of the above-mentioned resources;
 - [d] support of the will to act and the established intention to commit genocide.

⁸¹ "An Independent Legal Analysis", May 2022 (see fn. 25) – <https://newlinesinstitute.org/an-independent-legal-analysis-of-the-russian-federations-breaches-of-the-genocide-convention-in-ukraine-and-the-duty-to-prevent/> – [retrieved 5 July 2023].

06 SUBSTANTIATION OF THE CRIMES COMMITTED UNDER POINTS (A), (C) AND (E) OF ARTICLE 6 OF THE ROME STATUTE

6.1 – KILLING MEMBERS OF THE GROUP

The regulatory framework

Actions committed with the intention of destroying in whole or in part any national, ethnic, racial or religious group as such. Point (a), Article 6 of the Rome Statute: Killing members of the group.

The elements of the crime of killing members of a protected group

92. The target of the killings, the protected group, are the population of the city of Mariupol (Ukraine, Donetsk Region). Ukrainians as a community united by their national status form the protected group. The territorial designation, the city of Mariupol, is determined by a range of factors: chief among them are strategic and geopolitical considerations.
93. International judicial practice is familiar with the ability to extend a genocidal intent over a limited territory. The first case to come before the International Criminal Tribunal for the Former Yugoslavia (ICTY) was that of Goran Jelusic, the 23-year-old commandant of the Luka camp in Brcko. He asserted that he hated Muslim woman and admitted that he was guilty of war crimes and crimes against humanity. He did not confess to being guilty of genocide. The Trial Judgement on 14 December 1999 in the case of Jelusic is of considerable importance: the panel of judges recognised that genocide could have taken place even if the intention to destroy others was restricted to a limited geographical area, such as a local district or municipality.⁸²
94. We should note that the implementation of the genocidal intent in and around the city of Mariupol may be explained not only by the special position and condition of the city, but also to the failure to implement such an intention elsewhere in the country due to the active resistance of the Ukrainian military, the local population and the leadership of Ukraine.

The Subjective Aspect

95. This refers to the intent to exterminate part of the Protected Group, the inhabitants of the city of Mariupol. The presence of such an intent is confirmed by the general context created by Russian propaganda which filled the print and electronic media and social networks.⁸³ The Russian leadership, those representing the mass media and cultural figures in Russia systematically dehumanised Ukrainians as a national group and continue to do so.⁸⁴

⁸² The Prosecutor vs Goran Jelusic, Case No. IT-95-10-A, Judgement (14 December 1999), para. 70 (see – <https://www.internationalcrimesdatabase.org/Case/76/Jelisi%C4%87/> – [retrieved 3 July 2023]).

⁸³ "Russia's Eliminationist Rhetoric Against Ukraine: A Collection", Just Security, 6 June 2022 (updated 14 February 2023, see fn. 20) – <https://www.justsecurity.org/81789/russias-eliminationist-rhetoric-against-ukraine-a-collection/> – [retrieved 6 May 2023].

⁸⁴ "Russians publicly call for the murder of Ukrainians" (Russ.), YouTube, 22 December 2022 – <https://www.youtube.com/watch?v=b-l5lmskiNg> – [retrieved 19 July 2023].

103. The way Russian forces conducted their military campaign, moreover, indicates that an order had been issued on the basis of a policy of extermination. Such a conclusion may be drawn from the shelling of the city and its civilian and vital infrastructure, its residential buildings and public institutions (hospitals and schools), which was senseless from a military point of view.⁸⁹ It is impossible to launch strikes against such sites, especially when firing shells and missiles or dropping bombs, without an order being issued. Orders are issued on the basis of an established strategy and in pursuit of definite goals.
104. The constant shelling and bombardment of Mariupol gave the Russian forces no significant military advantage and this, taken together with a siege that lasted more than two months, leaves no doubt that the military were pursuing another goal, the destruction of the city and the extermination of its inhabitants. The systematic and regular nature of the strikes against Mariupol confirms this hypothesis.
105. The deliberate siege of Mariupol, the destruction of its vital infrastructure facilities, the creation of a humanitarian crisis and the obstruction of the evacuation of the city's civilian population,⁹⁰ – all of these were elements in the implementation of the genocidal intent to exterminate the Protected Group.⁹¹
106. The researchers who compiled the "Independent Legal Analysis of the Russian Federation's Breaches of the Genocide Convention in Ukraine and the Duty to Prevent" (May 2022) reached similar conclusions as to the probable genocide against Ukrainians. In particular they noted that:
- Russian troops gathered together civilians in Ukraine for mass shooting in the temporarily occupied territories employing typical methods of killing: tied hands, torture and execution by a shot fired at close quarters. The thoroughly documented massacre in Bucha (Kyiv Region) indicates the tactics consistently followed by Russian forces in occupied and inaccessible areas. As subsequent investigations and aerial photographs show, the number of mass graves in districts under Russian control have rapidly increased. The full scale of these murders will not be known until access is restored to areas currently controlled by the Russian forces. There have been deliberate attacks on shelters, evacuation routes and humanitarian corridors.
 - Systematic and targeted attacks by Russian forces on shelters and evacuation routes appear to be part of a military strategy aimed at killing civilians who are resident in areas under siege or the site of military operations.
 - Indiscriminate bombardment of residential districts. Russian forces have made extensive use of weapons that have a wide radius of destruction or cluster munitions, aiming at densely populated areas in no less than eight of Ukraine's 24 Regions.⁹²
107. Evidence confirming that murder was widely committed
- Satellite photos of Mariupol taken on the morning of 9 March 2022 by Maxar Technologies provide confirmation of the previous statements. The photos clearly show substantial damage

⁸⁹ "The Battle for Mariupol, 2022" (Russ.), Wikipedia – [https://ru.wikipedia.org/wiki/%D0%91%D0%BE%D0%B8_%D0%B7%D0%B0_%D0%9C%D0%B0%D1%80%D0%B8%D1%83%D0%BF%D0%BE%D0%BB%D1%8C_\(2022\)](https://ru.wikipedia.org/wiki/%D0%91%D0%BE%D0%B8_%D0%B7%D0%B0_%D0%9C%D0%B0%D1%80%D0%B8%D1%83%D0%BF%D0%BE%D0%BB%D1%8C_(2022)) – [retrieved 19 July 2023].

⁹⁰ Fredrick W. Kagan, George Barros and Kateryna Stepanenko, "Russian Offensive Campaign Assessment", Institute for the Study of War, 8 March 2022 – <https://www.understandingwar.org/background/russian-offensive-campaign-assessment-march-8> – [retrieved 19 July 2023].

⁹¹ "Traitors helped to destroy Mariupol, says Mayor Boychenko" (Ukr.), 13 June 2022 – <https://www.bbc.com/ukrainian/features-61761536> – [retrieved 19 July 2023].

⁹² The Newlines Institute for Strategy and Policy, "An Independent Legal Analysis of the Russian Federation's Breaches of the Genocide Convention in Ukraine and the Duty to Prevent", May 2022 (see fn. 25) – <https://newlinesinstitute.org/an-independent-legal-analysis-of-the-russian-federations-breaches-of-the-genocide-convention-in-ukraine-and-the-duty-to-prevent/> – [retrieved 8 May 2023].

to multi-storey buildings, residential premises, grocery stores and other civilian infrastructure sites. Comparison between photos taken before and after the city was shelled show the extent of the damage and destruction;⁹³

- According to UN figures, up to 90% of Mariupol's apartment blocks and up to 60% of private homes have been destroyed or damaged as a result of military operations within the city;⁹⁴
- Russian forces continued to target civilian facilities using tanks, artillery, land- and air-based rockets. Russia bombed art school No. 12 in the Left-bank district of Mariupol which was being used as a shelter by about four hundred civilians. The school was destroyed and its inhabitants were buried in the ruins;⁹⁵
- On 9 March 2022, Russian forces struck a maternity hospital and a children's hospital in the centre of Mariupol, probably in a bombing raid. Three people died as a result, including one child, and 17 were injured;⁹⁶
- On 17 March 2022, a male civilian died as the result of a Russian artillery attack on the city;⁹⁷
- A woman 'P.' came to us for legal advice. In March 2022, her father died in Mariupol after stepping on a mine;⁹⁸
- Mariupol had been destroyed. All around stood the blackened remains of burnt-out buildings; not a single building was left standing on the left bank of the River Kalmyk. The centre of the city was unrecognisable;⁹⁹
- Mass burials were discovered in Manhush with the help of satellite photos. When Maxar Technologies published the photos, it announced that the size of the burial area had gradually increased over the month since Russian soldiers continued to bring bodies there from Mariupol. The plot was about 340 metres long. Up to nine thousand victims of Russian forces could be buried there;¹⁰⁰
- The Associated Press reported that there were "entire trenches" filled with the slain in and around Mariupol: more than 10,000 new graves had been found:¹⁰¹

⁹³ Wall, Mike, "Russia-Ukraine invasion updates. Satellite photos of Mariupol (Ukraine) show damage from Russian attacks: Grocery stores, homes and shopping centers have gone up in smoke", space.com. Future US, Inc., 9 March 2022 – <https://www.space.com/mariupol-ukraine-damage-satellite-photos> – [retrieved 19 July 2023].

⁹⁴ "High Commissioner updates the Human Rights Council on Mariupol, Ukraine", Office of the High Commissioner for Human Rights, 16 June 2022 – <https://www.ohchr.org/en/statements/2022/06/high-commissioner-updates-human-rights-council-mariupol-ukraine> – [retrieved 19 July 2023].

⁹⁵ "Russia bombs Mariupol art school where 400 were sheltering, Ukraine officials say", Times of Israel, 20 March 2022 – <https://www.timesofisrael.com/russia-bombed-mariupol-art-school-where-400-were-sheltering-ukraine-officials-say/> – [retrieved 19 July 2023].

⁹⁶ "A video of today's events", Mariupol Now telegram channel, 10 March 2022 – <https://t.me/mariupolnow/1791> – [retrieved 19 July 2023]; "The first minutes after the attack" (Ukr.), YouTube – <https://www.youtube.com/watch?v=2EhsJomegW0> – [retrieved 19 July 2023]; "'Her hip was smashed.' A mother and infant died after the maternity hospital in Mariupol was shelled. Doctors describe how they tried to save them" (Russ.), Current Time (Radio Liberty) 14 March 2022 – <https://www.currenttime.tv/a/31752691.html> – [retrieved 19 July 2023].

⁹⁷ KHPG closed database (Ukr.)

⁹⁸ KHPG closed database (Ukr.)

⁹⁹ "Mariupol under siege: Journalists from the Associated Press showed the whole world the hell in which the survivors were living" (Russ.), Gorlovka, 22 March 2022 – <https://gorlovka.ua/news/article/21700/> – [retrieved 20 July 2023]. "20 days in Mariupol: The team that documented city's agony", AP, 22 March 2022 – <https://apnews.com/article/russia-ukraine-europe-edf7240a9d990e7e3e32f82ca351dede> – [retrieved 20 July 2023].

¹⁰⁰ "Probably for murdered Mariupol civilians. Maxar Technologies Inc. shows photos taken from space of the graves in Manhush" (Russ.), New Voice, 21 April 2023 – <https://nv.ua/ukraine/events/bratskaya-mogila-pod-mariupolem-maxar-pokazala-sputnikovyie-snimki-mangusha-poslednie-novosti-50235904.html> – [retrieved 5 July 2023].

¹⁰¹ "Entire trenches filled with the slain. In Mariupol and its surroundings more than 10,000 new graves have been found – Associated Press" (Russ.), New Voice, 22 December 2023 – https://nv.ua/ukraine/events/v-mariupole-i-ego-okrestnostyah-bolee-10-tysyach-mogil-poslednie-novosti-50292696.html?utm_campaign=Dailypayukr&utm_content=678702440&utm_medium=Dailypay&utm_source=email – [retrieved 5 July 2023].

- Although Mariupol remained under the Russian control, making on-site investigation impossible, analysis of satellite photos revealed an expansion of new graves near a cemetery in Manhush near Mariupol from March onwards;¹⁰²
- A Russian tank shelled a house in Mariupol inhabited by civilians at a point-blank range;¹⁰³
- A Russian tank shelled and destroyed No. 10 Morskoi Boulevard in Mariupol on 13 April 2022;¹⁰⁴
- At 2.30 pm on Saturday, 26 February 2022, Russian forces bombed private houses in the town of Sartana (Mariupol district), killing two people and wounding six others;¹⁰⁵
- Further Russian bombing raids that day killed four more and wounded another nine people in Sartana;¹⁰⁶
- From 24 February to 1 March 2022 the deaths of five people and the destruction of 52 residential or communal buildings were recorded in Mariupol;¹⁰⁷
- From early March 2022 onwards, the city was constantly attacked by Russia's missile artillery while the enemy's forces bombed residential buildings in almost all Mariupol's districts;¹⁰⁸
- At 2 pm on 1 March 2022, Russian shells hit residential buildings on the city's Shevchenko Boulevard, killing 16-year-old Denys Savchenko;¹⁰⁹
- On 6 March an 18-month-old infant was killed in Mariupol.¹¹⁰

The Instigators and Perpetrators of the Crime

108. Those instigating and perpetrating the crime may be defined as follows:

- The instigator who forms and shapes the intent to commit genocide. Individuals who form the context and spread the genocidal intent to specific perpetrators: Russia's political leadership and its military subdivisions;

¹⁰² "New mass grave points to war crimes in Mariupol, Ukrainian officials say", Washington Post, 21 April 2022 – <https://www.washingtonpost.com/world/2022/04/21/new-mass-grave-manhush-near-mariupol/> – [retrieved 5 July 2023].
"Another possible mass grave with as many as 9,000 bodies is found near Mariupol", NPR, 22 April 2022 – <https://www.npr.org/sections/pictureshow/2022/04/22/1094234731/possible-mass-graves-near-mariupol-shown-in-satellite-images> – [retrieved 5 July 2023].

"In Mariupol, Putin now rules a wasteland, pitted with mass graves", The Guardian, 23 April 2022 – <https://www.theguardian.com/world/2022/apr/23/in-mariupol-putin-now-rules-a-wasteland-pitted-with-mass-graves> – [retrieved 5 July 2023].

"In Mariupol, echoes of history, utter devastation and a last stand", Washington Post, 24 April 2022 – <https://www.washingtonpost.com/world/2022/04/24/mariupol-ukraine-last-days/?variant=15bc93f5a1ccbb65> – [retrieved 5 July 2023].

"Urgently help Ukraine civilians flee Mariupol", Human Rights Watch, 26 April 2022 – <https://www.hrw.org/news/2022/04/26/urgently-help-ukraine-civilians-flee-mariupol> – [retrieved 5 July 2023].

"Mass graves in Ukraine reveal mounting death toll", Wall Street Journal, 6 May 2022 – <https://www.wsj.com/articles/mass-graves-in-ukraine-reveal-mounting-death-toll-11651829402> – [retrieved 5 July 2023].

¹⁰³ "A Russian tank shoots up a house full of civilians in Mariupol at close range" (Ukr.), YouTube – <https://www.youtube.com/watch?v=BWgcwl7BRnA> – [no longer available, 20 July 2023].

¹⁰⁴ "A Russian tank shells and destroys No. 10 Morskoi Boulevard in Mariupol, 13 April 2022", YouTube – <https://www.youtube.com/watch?v=1JnvCkihXbQ&t=2s> – [no longer available, 20 July 2023].

¹⁰⁵ §3, "A Description of Events", (Appendix One). "Russian forces shelled Sartana, targeting the home of the district head" (Ukr.) 0629 Mariupol city website, 26 February 2022 – <https://www.0629.com.ua/news/3338735/obstrilali-sartanu-pocilili-u-budinok-golovi-mariupolskogo-rajonu> – [retrieved 20 July 2023].

¹⁰⁶ §3, "A Description of Events", (Appendix One). "Russian forces again shelled Sartana today. The number of victims has risen" (Ukr.), 0629 Mariupol city website, 26 February 2022 – <https://www.0629.com.ua/news/3338932/rosijski-ivsja-znovu-obstrilali-sartanu-kilkist-zertv-zroslo> – [retrieved 20 July 2023].

¹⁰⁷ §5, "A Description of Events", (Appendix One). "Kirilenko: Russian artillery is firing rockets into Mariupol and the shelling of the city is continuous" (Ukr.), Ukrinform, 1 March 2022 --<https://www.ukrinform.ua/rubric-ato/3417136-kirilenko-mariupol-pid-skvalom-reaktivnoi-artilerii-rf-obstrili-ne-pripinautsa.html> – [retrieved 20 July 2023].

¹⁰⁸ §6 onwards, "A Description of Events", (Appendix One).

¹⁰⁹ §6, "A Description of Events", (Appendix One). (Ukr.), Mariupol city council Telegram channel, 1 March 2022 -- <https://t.me/mariupolrada/8660> – [retrieved 20 July 2023].

¹¹⁰ §11, "A Description of Events", (Appendix One). "Russia is murdering children!" (Ukr.) 0629 Mariupol city website, 7 March 2022 – <https://www.0629.com.ua/news/3344882/rosia-vbivae-ditej-v-marupoli-zagynuv-18-misacnij-hlopcek-foto> – [retrieved 20 July 2023].

- The perpetrator of genocidal intent. Particular soldiers and individuals who are taking part in the armed conflict with weapons in their hands, executing the orders of the military and political leadership of the Aggressor-State.
109. An example of an instigator, someone who shapes the genocidal intent, is Colonel-General Mikhail E. Mizintsev of the Russian army. It is suspected that he gave the order to destroy the maternity hospital and the drama theatre in Mariupol where more than one thousand civilians were taking shelter from the fighting.¹¹¹

ANALYSIS

110. Article 6 (a) Genocide by Killing is defined by the following elements:
1. The perpetrator killed one or more persons.
 2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
 3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
 4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

The perpetrator killed one or more persons

111. The killings are the act of physical destruction of members of the protected group. As numerous sources testify, the numbers of civilians killed in Mariupol is significant. According to data compiled at the end of April 2022, the total number of deaths had then reached 20,000 people. Similar data from other sources indicate that by May 2022 more than 20,000 civilians in Mariupol had been killed as a result of the Russian aggression.¹¹² Mass burials and the testimony of victims and eyewitnesses provide confirmation of these events.¹¹³
- The mayor of Mariupol's adviser, Petro Andryushchenko, named a similar figure.¹¹⁴
- "In two months, the Russian army has killed twice as many people as the Germans who occupied Mariupol for two years" [during WW II], announced the Mariupol city council.¹¹⁵
112. Similar figures may be obtained using indirect methods. At the moment of Russia's armed invasion in February last year the estimated population of Mariupol was about 445,000: today only 130,000 people remain in the city.¹¹⁶ 75,000 were evacuated to Ukraine¹¹⁷; 134,299 were deported

¹¹¹ "A recording in which a Russian general calls his subordinates 'scum and toerags' has been made public" (Ukr.), Ukrinform, 23 March 2022 -- <https://www.ukrinform.ua/rubric-ato/3437742-mrazi-i-gadonisi-opriludnili-zapis-pilkuvanna-rosijskogo-general-a-z-pidleglimi.html> – [retrieved 20 July 2023].

¹¹² Nathan Hodge, Julia Presniakova, Katie Polglase, Jennifer Hauser, Hira Humayun and Julia Hollingsworth, "Mass graves near besieged Ukrainian city Mariupol are evidence of war crimes, say Ukrainian officials", CNN, 22 April 2022 – <https://edition.cnn.com/2022/04/22/europe/mariupol-ukraine-russia-intl-hnk/index.html> – [retrieved 20 July 2023].

¹¹³ "Mass grave seen near Mariupol as Biden announces more aid for 'critical window' of war", *The Washington Post*, 22 April 2022 – <https://www.washingtonpost.com/world/2022/04/21/russia-ukraine-war-news-mariupol-live-updates/> – [retrieved 20 July 2023].

¹¹⁴ "The Mariupol mayor's advisor says that those slain in the city could number approximately 20,000" (Ukr.), Radio Svoboda, 15 March 2022 – <https://www.radiosvoboda.org/a/news-mariupol-zahybli/31752967.html> – [retrieved 20 July 2023].

¹¹⁵ "In two months the Russian army has killed twice as many people as the [German] fascists when they occupied Mariupol for two years [during WW II]" (Russ.), *Zerkalo nedeli*, 30 April 2022 – <https://zn.ua/UKRAINE/armija-rf-za-dva-mesjatsa-ubila-v-mariupole-vdvoe-bolshe-ljudej-chem-fashisty-za-dva-hoda-okkupatsii-horoda.html> – [retrieved 20 July 2023].

¹¹⁶ "Up to 130,000 people remain in Mariupol, without food, water or medical supplies", Andryushchenko

¹¹⁷ "It's proved possible to evacuate about 75,000 people from Mariupol using humanitarian corridors. Another 100,000 must be moved to safety" (Ukr.), Ukrinform, 20 July 2022 – <https://www.ukrinform.ua/rubric-regions/3444972-iz-mariupola-evakuovali-75-tisac-ludej-veresuk.html> – [retrieved 20 July 2023].

to Russia.¹¹⁸ The total number who, consequently, are not accounted for by any source is no more than 100,000 people. This figure is very approximate, of course: it does not include those who managed to leave Mariupol during the first days of the invasion or others who left the city by different routes. In any case, the total 100,000 gives some idea of the scale on which the Russian troops implemented their genocidal intent. As the KHPG recorded the crimes of Russia's political and military leadership it documented a great number of killings of civilians. More than 150 incidents involving the murder of civilians were verified by open sources, following existing methodologies (the Berkeley Protocol¹¹⁹, the EU's "Documenting international crimes and human rights violations for accountability purposes: Guidelines for civil society organisations"¹²⁰). They were then entered in the T4P dB maintained by Ukraine's rights activists.¹²¹

113. The special tribunals that have examined cases of genocide elsewhere adopted an approach that makes no distinction between the means and methods used for killing civilians. Russia's indiscriminate shelling of the civilian infrastructure of Mariupol may therefore be considered another way of carrying out premeditated murders, motivated by the general intent to destroy the protected national group of Ukrainians in the city.
114. Certain incidents recorded in the Tribunal for Putin (T4P) dB:¹²²
- On 21 March 2022, a Russian sniper shot a man dead at 109, Italyansky Street, in Mariupol;¹²³
 - On 15 April 2022, a man was shot dead in his own yard in Mariupol;¹²⁴
 - On 15 March 2022, a Russian tank opened fire on the building of the Caritas office at 4 Banny pereulok, in Mariupol. Seven of the civilians taking shelter there from the fighting were killed;¹²⁵
 - Civilians carrying out a humanitarian mission or trying to flee the fighting were murdered as they used the humanitarian corridors;
 - A person bringing humanitarian aid to Mariupol was shot dead;¹²⁶
 - Residential areas were shelled, as were civilian facilities. Reports that a shell had landed in the city's Eastern district: "Lazo Street, next to School No. 51," they wrote, "A direct hit on a residential building".¹²⁷
 - At 2.25 pm on 10 March 2022, Grad missiles hit the premises of the Greek cultural centre;¹²⁸
 - On 24 March 2022, a multi-storey block of flats at 101, Peace Avenue, was hit and destroyed by a Russian artillery attack.¹²⁹

¹¹⁸ "RF Ministry of Defence: 134,299 people have been evacuated from Mariupol" (Russ.), *Komsomolskaya pravda*, 9 April 2022 – <https://www.kp.ru/daily/27377.5/4570416/> – [retrieved 9 April 2023].

¹¹⁹ The Berkeley Protocol on Digital Open Source Investigations (2020) – <https://humanrights.berkeley.edu/berkeley-protocol-digital-open-source-investigations> – [retrieved 24 July 2023].

¹²⁰ Documenting International Crimes and Human Rights Violations for Criminal Accountability Purposes: Guidelines for Civil Society Organisations", EU Agency for Criminal Justice Cooperation, 21 September 2022 – <https://www.eurojust.europa.eu/publication/documenting-international-crimes-and-human-rights-violations> – [retrieved 20 July 2023].

¹²¹ "About us", The Tribunal for Putin (T4P) initiative – <https://t4pua.org/en/1202> – [retrieved 20 July 2023].

¹²² "Live Statistics", The Tribunal for Putin (T4P) initiative – <https://t4pua.org/en/stats> – [retrieved 20 July 2023].

¹²³ Telegram channel: In Remembrance, Mariupol – <https://t.me/mariupolRIP/28790> – [retrieved 24 July 2023].

¹²⁴ Telegram channel: In Remembrance, Mariupol – <https://t.me/mariupolRIP/13216> – [retrieved 24 July 2023].

¹²⁵ Caritas, Mariupol (Ukr.), 11 April 2022 – <https://www.facebook.com/1633475056873131/posts/2962339960653294/> – [retrieved 24 July 2023].

¹²⁶ Telegram channel Mariupol Now (Ukr.), 3 April 2022 – <https://t.me/mariupolnow/5016> – [retrieved 24 July 2023].

¹²⁷ Telegram channel "Mariupol, a Safe City" (Russ.), brief reports on 24 February 2022 – https://t.me/Bezpechnuy_Mariupol/134327 – [retrieved 24 July 2023]; – https://t.me/Bezpechnuy_Mariupol/134337 – [retrieved 24 July 2023]; – https://t.me/Bezpechnuy_Mariupol/134340 – [retrieved 24 July 2023]; – https://t.me/Bezpechnuy_Mariupol/134420 – [retrieved 24 July 2023].

¹²⁸ "Russians shelled the Kyivstar office and Greek cultural centre in Mariupol" (Ukr.), 0629 Mariupol city news website, 10 March 2022 (video) – <https://www.0629.com.ua/news/3347344/v-mariupoli-rasisti-obstrilali-ofis-kiivstaru-ta-greckij-kulturnij-centr-video> – [retrieved 24 July 2023].

¹²⁹ Builders Telegram channel (Russ.), 1 April 2022 – <https://t.me/budivelnikiv/182> – [retrieved 24 July 2023].

**Such persons belonged to a particular national group,
the Ukrainian inhabitants of the city of Mariupol**

115. All the information presented above (and in Appendix One) and the recorded testimony of eyewitnesses refers only to the inhabitants of Mariupol. It was in the city of Mariupol that the Russian military, disregarding the norms of international humanitarian law, demonstrated a particularly high level of violence and disrespect towards the civilian population.

**The perpetrator intended to destroy, in whole or in part,
that national, ethnical, racial or religious group, as such**

116. Killing members of the protected group is the most evident and simple means of implementing a genocidal intention. Killing, as stated earlier, is the act of physical destruction of members of the protected group. The intention to kill as a means of destroying members of the protected group was confirmed by the repeated and systematic killing of the Mariupol's civilian population.
117. The mass murder of civilians in Mariupol continued from the first day of the Russian invasion, Thursday 24 February 2022, until Friday 20 May 2022 when the last Ukrainian soldiers left the Azovstal plant and surrendered.
118. The dehumanisation and demonisation of the population of Ukraine as a whole, and of the city of Mariupol in particular, by Russian propaganda facilitated the implementation of the genocidal intent to kill representatives of the protected group.
119. Evidence of those killed in Mariupol indisputably shows that the civilian population was the main target of the Russian military. As demonstrated earlier, indirect methods of calculation suggest that the numbers of civilians killed in Mariupol were up to 100,000 in total, while losses among combatants were significantly lower.
120. Killing was the main method for implementing a genocidal intent in Mariupol: from Sunday 26 February onwards civilian sites in the city were subjected to indiscriminate shelling and bombardment that was not aimed at military targets or personnel.
121. On that day, for instance, at 2.30 pm Russian forces bombed private houses in the town of Sartana to the north of Mariupol, killing two and wounding six.¹³⁰ Further bombing raids on Sartana that Sunday killed four and wounded nine.¹³¹
122. Given the context of these actions and numerous eyewitness accounts; the particular incidents and the general course of events; the way in which military operations were conducted and the means used, their systematic nature and intensity: we conclude that the perpetrators of these deeds were fully aware of what they were doing and were following orders to kill members of the protected group. The behaviour of Russia's soldiers indisputably demonstrates their intention to destroy members of the protected group.

**The conduct took place in the context of a manifest pattern of similar conduct
directed against that group or was conduct that could itself effect such destruction**

123. Past judicial investigations of the crime of genocide confirms that the final total of those members of the protected group who have been killed is not relevant. Given the extreme public danger

¹³⁰ "Sartana shelled. Home of Mariupol district head targeted" (Ukr.), 0629 Mariupol city news website, 26 February 2022 – <https://www.0629.com.ua/news/3338735/obstrilali-sartanu-pocilili-u-budinok-golovi-mariupolskogo-rajonu> – [retrieved 24 July 2023].

¹³¹ "Russian forces have again shelled Sartana. There are more victims" (Ukr.), 0629 Mariupol city news website, 26 February 2022 – <https://www.0629.com.ua/news/3338932/rosijski-vijska-znovu-obstrilali-sartanu-killist-zertv-zros-la> – [retrieved 24 July 2023].

represented by such activities, the crime has been committed from the moment its execution on any scale. An intention to destroy all members of the protected group need not be implemented in full for the intent to commit genocide to be established.

According to the ICTY,¹³² "this provision does not require proof of that a result was attained; as such, it does not require proof that the conditions actually led to death or serious bodily or mental harm of members of the protected group."

124. The relevant international norms that define genocide and responsibility for committing that crime do not make the total destruction of the group, or the creation of the unavoidable threat of its total destruction, an obligatory condition. The crime is complete from the moment that the genocidal intent has been implemented no matter what the final consequences of the crime may be (the total destruction of the group, creation of a real threat of its total destruction, the maximum approximation of the threat of total destruction, and so on). What matter are the models of conduct.

125. The models are defined as a stable sequence characterised by the succession, the systematic nature and the repetition of a series of actions. The actions of Russia's soldiers display all the distinctive signs of such a model. This conduct and its individual acts are indisputable evidence of the attitude towards the national group of Ukrainians in Mariupol as 'subhumans' whose destruction was neither complicated nor prohibited.

As Mark Galeotti, a specialist in Russian security affairs has commented, this thesis is confirmed by the words of Putin himself: "The fact that ordinary Ukrainians are now taking up arms against us ... these aren't just enemies, these are traitors. And treason is the gravest crime possible."¹³³ "Ukrainians did fight back..." says Galeotti, "The fierce resistance of a people considered to be part of one's own contributed to the sense that Ukrainians were worse than a typical battlefield adversary."

That is why killing, as the simplest and most accessible form of destruction, became so widespread.

6.2 – DELIBERATELY INFLICTING ON THE GROUP CONDITIONS OF LIFE CALCULATED TO BRING ABOUT ITS PHYSICAL DESTRUCTION, IN WHOLE OR IN PART

The regulatory framework

126. One of the genocidal acts defined in Article 6 (c) of the Rome Statute is "Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part". The elaboration of the "Elements of the Crime" refers to the constituent parts of such a crimes:
- (i) the material element (*actus reus*): "The perpetrator caused serious bodily or mental harm to one or more persons" belonging to the protected group, "Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part" (§§101–120).
 - (ii) the subjective element (*mens rea*): "The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such." (§§121–129)

¹³² ICTY, *The Prosecutor v. Radovan Karadžić*, Public Redacted Version of Judgement Issued on 24 March 2016, para. 546–548.

¹³³ "Atrocities in Ukraine War Have Deep Roots in Russian Military", *New York Times*, 17 April 2022 – <https://www.nytimes.com/2022/04/17/world/europe/ukraine-war-russia-atrocities.html> – [retrieved 8 July 2023].

- (iii) the contextual element: "The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction." (§§130–132).

(i) the material element (*actus reus*)

127. Consequently, in accordance with the "Elements of the Crime", it must be proven that the perpetrator of the crime created such conditions of life for one or more members of the protected group as were calculated to bring about "its physical destruction, in whole or in part".

The Rome Statute envisages the following types of material element (*actus reus*) to which it gives no further interpretation.

1. Conduct that may be understood as a criminal act or criminal inactivity, as described in the definition of the crime;

2. Consequences that may concern either the final outcome, such as causing death (as per Article 6 (a) of the Rome Statute) or creating conditions of harm or the risk of harm (threat);

3. The context refers to a description of the essential characteristics of persons or objects that are mentioned in the elements of conduct and their consequences.

When approaching Article 6 (c) of the Rome Statute it seems logical to organise the substantiation of the material element in the following fashion:

- (a) A general description of what may be considered "conditions ... calculated to bring about the physical destruction" of the Ukrainians living in the Mariupol Territorial Community as of 24 February 2022.
- (b) A description of the specific criminal deeds committed (conduct) and their consequences with the aid of the "conditions" so created.
- (c) Confirmation that the victims of these criminal deeds were members of the protected group, viz. Ukrainians living in the Mariupol Territorial Community as of 24 February 2022.
128. A general description of what may be considered "conditions ... calculated to bring about the physical destruction" of Ukrainians living in the Mariupol Territorial Community as of 24 February 2022. The "Elements of Crimes" indicate that "conditions of life" as understood in Article 6 (c) of the Rome Statute may include, but are not limited to, the deliberate deprivation of resources essential to survival (such as food or medical treatment) or the systematic ejection of people from their homes. A deeper understanding of this phrase may be obtained from the preparatory work (*travaux préparatoires*) for the 1948 UN Convention on Genocide: the Belgian delegation then suggested that the words "calculated to bring about ... physical destruction" might be replaced by the original phrase "intended to cause death".¹³⁴
129. The difference between point 6 (c) and point 6 (a) of the Rome Statute ("Killing members of the group") lies in the time that elapses between the act and its lethal outcome: in the case of 6 (a) ("Killing members of the group") the act of physical destruction is accompanied by a material deed and coincides with it. Point 6 (c) "should be interpreted as a method of destruction whereby the perpetrator does not immediately kill members of the group but, in the final analysis, is pursuing the goal of their physical destruction".¹³⁵ This was confirmed in the decisions of the ICTR concerning such methods as [1] subjecting the group to minimal nutrition, [2] systematically ejecting its members from their homes, [3] denying them the right to medical treatment, [4] creating condi-

¹³⁴ UN Doc. A/C.6/217 (Belgian proposal), 9 November 1948 – <https://digitallibrary.un.org/record/603915?ln=en> – [retrieved 24 July 2023].

¹³⁵ The Prosecutor vs Jean-Paul Akayesu, Case No. ICTR-96-4-T, 2 September 1998, para. 505 [retrieved 24 July 2023].

- tions that resulted in their slow death (e.g., lack of suitable accommodation, clothing and hygiene or excessive workloads or physical exertion),¹³⁶ and [5] rape.¹³⁷
130. The ICTY also declined to provide any exhaustive definition of the “conditions of life calculated to ... bring about its destruction”. The value of its rulings in these cases is that it suggested criteria demonstrating that the conditions were **calculated** to lead to the destruction of the group. In the case of Radoslav Brdjanin, the Court focused on the “objective probability” that such conditions would lead to destruction, their actual nature, the length of time members of the group was subjected to those conditions, and the characteristics of those members of the group who suffered such conditions.¹³⁸ When the International Criminal Court issued its second ruling to order the arrest of Omar al-Bashir it indicated that the conditions created by polluting wells and water pumps, and the forced transfer of several hundred thousand civilians belonging for the most part to related ethnic groups (Fur, Masalit and Zaghawa) – combined with the resettlement in the villages they had left by members of other pro-government ethnic groups – supported a policy of genocide that were calculated to lead to the physical destruction of part of these ethnic groups.
131. The above groundwork by international tribunals is important when it comes to the substantiation of the *actus reus* under Article 6, point (c) of the Rome Statute. An established understanding of the category “conditions of life” is lacking in legal documents and case law and this is mainly because it is not possible to list beforehand all the “conditions of life” that might fall under Article 6(c) of the Rome Statute. An analysis of this category in the light of the specific situation, taking into account the other elements of this crime is therefore justified.
132. This paragraph substantiates the creation by the Russian side of conditions of life for the inhabitants of the Mariupol Territorial Community that were calculated to bring about the physical destruction, in whole or in part, of members of the national group of Ukrainians (the Ukrainian People).
133. As mentioned earlier, in Section 5.2.1 of this Submission (§47), in accordance with the Constitution, Ukraine is a unitary State. Its territory is divided into administrative units for functional purposes to independently resolve local issues within the framework of the Constitution and the Laws of Ukraine. The Mariupol Territorial Community (*territorialnaya hromada*) is, as a consequence, an inseparable part of Ukraine. The life of the city’s inhabitants and of the surrounding settlements was organised as a territorial community. As the ICRC has commented, a city community is made up of a complex range of sub-systems of the various inter-related spheres of city life (as a community, an economy, a system of administration and services) while the people at the centre of these sub-systems form part of the texture of the city, thanks to their countless interactions and interdependence. Survival within the city depends on the goods and services supplied by the State or third parties: these include water, sanitation, electrical energy and health-care. This “urban paradox”, in the words of the ICRC, makes the city’s inhabitants vulnerable to disruption of services and taken together with the density of the population and the scale and complexity of its social and administrative dynamics, makes towns and cities different from other sites of war and violence.¹³⁹

¹³⁶ The Prosecutor vs Jean-Paul Akayesu, Case No. ICTR-96-4-T, 2 September 1998, paras. 505-6 [retrieved 24 July 2023].

¹³⁷ The Prosecutor vs Clement Kayishema, Case No. ICTR-95-I-T, Judgement, 21 May 1999, paras. 114-116.

¹³⁸ The Prosecutor vs Radoslav Brdjanin, Case No. IT-99-36-T, Judgement, 1 September 2004, para. 906 [retrieved 24 July 2023].

¹³⁹ “Present and engaged: how the ICRC responds to armed conflict and violence in cities”, Humanitarian law and policy, 19 January 2023 – <https://blogs.icrc.org/law-and-policy/2023/01/19/present-and-engaged-icrc-armed-conflict-violence-cities/> – [retrieved 8 July 2023].

134. As noted in Section 5.2.1, by 9 March 2022 the Mariupol Territorial Community, with its population of 446,000, was under siege. Totally surrounded by the Russian forces, it was subjected to a continuous shelling of residential buildings and critical infrastructure facilities. Evacuation from the city was almost impossible or very dangerous. The siege continued until 20 May 2022 when all those on the premises of the Azovstal plant were evacuated.¹⁴⁰ The first report of the OSCE Moscow Mechanism's mission described the conditions arising from the siege of Mariupol as "extreme".¹⁴¹

The following paragraphs of this section will provide evidence that the Russian side created conditions of life for the inhabitants of Mariupol and the surrounding territory that could immediately and in the medium-term constitute a threat to the existence of the national group of Ukrainians.

A description of the specific criminal actions (conduct) and their consequences in terms of the conditions created

A) The supply of electricity, water, heating and communications

135. As a result of the shelling of Mariupol by the Russian forces during the first week of the invasion, starting from Thursday, 24 February 2022, supplies of electricity, water, gas and mobile phone communications stopped entirely.¹⁴² "During the last six days the civilian inhabitants of Mariupol have been trapped in a waterless, chilly nightmare without electricity, living under the constant threat of Russian bombardment," reported Human Rights Watch in the days up to 7 March.¹⁴³ On 6 March, it was announced, that a Russian shell had struck the last functioning tower for mobile phone communications. After that a coordinated response to emergencies became impossible. The ongoing shelling of the city hampered repairs to the damaged infrastructure supplying electricity, water, communications and heating to its residents. The ICRC reported this on Twitter, saying that its colleagues in Mariupol were hiding in shelters: "There's no electricity, water and gas supply. Meaning no means for heating. Some people still have food, but I'm not sure for how long it will last. Many report having no food for children."¹⁴⁴ At a briefing on Friday, 25 February 2022, the Mayor of Mariupol said that the invaders had smashed the water supply from the Siverskyi Donets river and knocked out 34 substation transformers.¹⁴⁵ March 2022 proved very cold in Mariupol and this made conditions exceptionally hard for its inhabitants, leading to deaths from sub-zero temperatures.¹⁴⁶ In the absence of electric power and light, the only way to get warm and prepare food was to cook on fires outside: this was very dangerous due to the systematic

¹⁴⁰ §34, "A Description of Events", (Appendix One).

¹⁴¹ OSCE Moscow Mechanism's mission of experts, "Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine" (1 April-25 June 2022), 14 July 2022 – <https://www.osce.org/odihr/522616> – [retrieved 8 July 2023].

¹⁴² "Kyivstar announces purposeful destruction of telecoms infrastructure in Mariupol by Russian military", Interfax-Ukraine, 11 March 2022 – <https://en.interfax.com.ua/news/general/811368.html> –; "The Last Days Of Mariupol's Internet", Forbes, 31 March 2022 – <https://www.forbes.com/sites/thomasbrewster/2022/03/31/the-last-days-of-mariupols-internet/?sh=6f1fc7135962&fbclid=IwAR3fxy7p4CpmokKLKUtIX7lmywmkz9GC1fLd5WDrhySwhFNO-1wOmQtoBZdQ> – [retrieved 24 July 2023].

¹⁴³ "Ukraine: Mariupol Residents Trapped by Russian Assault", Human Rights Watch, 7 March 2022 – <https://www.hrw.org/news/2022/03/07/ukraine-mariupol-residents-trapped-russian-assault> – [retrieved 24 July 2023].

¹⁴⁴ ICRC Twitter, 12 March 2022 – <https://twitter.com/ICRC/status/1502588461903224834?s=20&t=McQejFZ-ByySn-8BBw3q6Mg> – [retrieved 24 July 2023].

¹⁴⁵ "Fighting near Pavlopol, Russian saboteurs and damage to infrastructure: Mariupol Mayor Boychenko about the war" (Russ.), News of Donbas, 25 February 2022 – <https://novosti.dn.ua/ru/news/321040-boi-u-pavlopolya-diversanty-i-povrezhdennaya-infrastruktura-mer-mariupolya-o-vojne> – [retrieved 24 July 2023].

¹⁴⁶ "The women of Mariupol on the struggle to survive" (Ukr.), Vostochny Variant website, 20 July 2022 – <https://v-variant.com.ua/article/zhinky-z-mariupolia-za-zhyttia/> – [retrieved 24 July 2023].

shelling of the city until mid- and late-April. The lack of heating was critical for the new-born and the sick (those suffering from strokes¹⁴⁷ and frostbite¹⁴⁸), especially for the functioning of the city's hospitals.

136. The occupation of Mariupol and the surrounding area, and the frequent systematic, targeted and planned shelling of its infrastructure facilities deprived the city's inhabitants of basic services, meeting the demand for electricity, water, heating, food and communications. It was highly stressful for healthy adults to be unable to meet such needs: the vulnerability of children, the sick and the old placed them at a considerable risk. Meanwhile, the chaotic shelling of residential areas made it additionally dangerous to even search for the means to independently meet the basic needs.
137. The relentless attack on Mariupol and its infrastructure took place in the end of winter when utilities such as heating and electricity are absolutely indispensable to the physical survival. The Russian AF deliberately targeted those facilities in order to create conditions in which human existence was impossible. The targeting of such facilities has been recognised by the ICTY as genocidal; "Examples of such acts include, but are not limited to, subjecting the group to a subsistence diet; failing to provide adequate medical care; systematically expelling members of the group from their homes; and generally creating circumstances that would lead to a slow death such as the lack of proper food, water, shelter, clothing, sanitation, or subjecting members of the group to excessive work or physical exertion."¹⁴⁹

B) Access to food and drinking water

138. By the beginning of March water was already ceasing to reach Mariupol because the Russians were constantly shelling the city and had blown up its main supply lines. While it remained possible, the city's water service company continued to supply inhabitants with drinking water.¹⁵⁰ Later, there were numerous reports that those remaining in Mariupol were forced to melt snow and drink water from the dregs.¹⁵¹
139. In a podcast on 6 March 2022, Médecins sans Frontières reported that its staff in Mariupol were emphasising the urgent need to restore access to water. "People don't know where to get water," said the coordinator of MSF's coordinator for emergencies. "They are drinking rainwater or collect snow for water. People are literally breaking into the heating network to get water there to wash their hands."¹⁵² On 6 March 2022, the Mariupol city council announced that a 6-year-old child had died of dehydration: his mother was killed earlier by a Russian shell.¹⁵³
140. During the first days of the invasion Russian forces also shelled other facilities critical for the survival of the city's inhabitants: large food stores and warehouses containing foodstuffs.

¹⁴⁷ Telegram channel: In Remembrance, Mariupol» (Russ.), 21 March 2022 — <https://t.me/mariupolRIP/28572> — [retrieved 24 July 2023].

¹⁴⁸ Telegram channel: In Remembrance, Mariupol» (Ukr.) 13 March 2022, — <https://t.me/mariupolRIP/31270> — [retrieved 24 July 2023].

¹⁴⁹ ICTY, *The Prosecutor v. Radovan Karadžić*, Public Redacted Version of Judgement Issued on 24 March 2016, para. 546–548.

¹⁵⁰ "We had enough water to put out the fires: we took it from the river" (Ukr.), 0629 Mariupol city news website, 9 September 2022 — <https://www.0629.com.ua/news/3459204/vodi-dla-gasinna-pozez-vistacalo-brali-z-riki-u-nas-tehniku-rosiani-znisili-golovnij-pozeznik-mariupola-rozpoviv-ak-ratuvali-misto-foto-video> — [retrieved 24 July 2023].

¹⁵¹ "We gathered snow, melted it and used it to cook our food", says mother of large Mariupol family" (Ukr.), KHPG, 9 May 2022 — <https://khpg.org/1608810532> —; "I survived 21 days with a shard in my body. I was lucky", KHPG, 27 April 2022 — <https://khpg.org/1608810403> — [retrieved 24 July 2023].

¹⁵² "Médecins sans Frontières are unable to gain access to Mariupol, Melitopol or the occupied areas of the Kherson Region" (Ukr.), Ukrinform, 21 December 2022 — <https://www.ukrinform.ua/rubric-society/3638417-likari-bez-kordoniv-ne-maut-dostupu-v-mariupol-melitopol-ta-na-okupovanu-hersonsinu.html> — [retrieved 24 July 2023].

¹⁵³ Telegram channel, Mariupol city council, 8 March 2022 — <https://t.me/mariupolrada/8760> — [retrieved 24 July 2023].

On 4 March, the Donetsk Region Administration announced, large stores like Metro, Epicentre, Port-City (on the Zaporizhzhia road) and Selpo (in the east of the city) had burned down.¹⁵⁴ In April 2022, certain opposition deputies on the city council¹⁵⁵ gave the Russian forces the coordinates of the largest store of food and humanitarian aid in Mariupol which they then destroyed. The stores were kept at the Kommunalshchik communal enterprise, which indicates the planned nature of the attack. The saturation bombing of Mariupol by the Russian forces led to the closing of small and medium-size food shops,¹⁵⁶ and without any certainty or knowledge as to the likely length of the blockade, people took the undamaged goods from the shops. It should also be said that the ICRC building at 12 Torgova Street was attacked at least twice¹⁵⁷ and, as a result, there was not a single Red Cross representative in Mariupol after 15 March.¹⁵⁸

141. The Independent International Commission of Inquiry on Ukraine reported: "The city suffered from constant shelling, which led to large-scale destruction. For weeks, heavy fighting hampered repeated efforts to evacuate civilians and curtailed the access of inhabitants to basic necessities."¹⁵⁹ David Beasley, head of the UN's World Food Programme, declared that people "are dying of hunger" in Mariupol when it was besieged by the Russian army. The lack of access to food combined with the constant shelling of the city created a particular danger for vulnerable groups in the population, particularly children and the elderly. One old man died of hunger because he lived on the eighth floor of an apartment block and could not leave the building because a Russian shell had destroyed the staircase landing.¹⁶⁰
142. The report of the OSCE Moscow Mechanism's mission noted (Section 9) that "Starvation methods are prohibited because of their multifaceted, destructive, and torturous impacts on individuals and societies, but as those consequences are gradual and often shaped by a combination of conditions and intervening factors, it can be difficult to trace the specific harms associated with starvation in a particular context to specific military operations." Article 14 of Additional Protocol II (1977) forbids "Starvation of civilians as a method of combat", and the commentary determines that actions intended to cause starvation "may entail the total or partial disappearance of whole groups of people, which could amount to genocide, if brought about intentionally".
143. Despite numerous efforts by the UN, the ICRC and foreign governments additional supplies of humanitarian aid did not reach Mariupol during March. On 31 March 2022, Russian forces blocked

¹⁵⁴ Facebook page of Tetiana Ignatchenko, 4 March 2022 – https://www.facebook.com/permalink.php?story_fbid=1802338073295767&id=100005587749108 – [retrieved 24 July 2023].

¹⁵⁵ "Enemy bombs Left-bank, Kommunalshchik enterprise and Kirov Square" (Ukr.), 0629 Mariupol city news website, 1 March 2022 – <https://www.0629.com.ua/news/3341053/agresor-zavdav-artudaru-po-livoberizzu-kp-komunalnik-ta-plosi-kirova-foto> – [retrieved 24 July 2023].

¹⁵⁶ "She found out she was pregnant the day Russia invaded: a doctor in a bomb-shelter (part 2)", KHPG, 9 November 2022 – <https://khp.org/1608810724> – [retrieved 24 July 2023].

¹⁵⁷ "Damage to ICRC warehouse in Mariupol", ICRC, 30 March 2022 – <https://www.icrc.org/en/document/damage-icrc-warehouse-mariupol> – [retrieved 8 July 2023];

Video from Telegram channel that probably catches the moment when the ICRC premises were bombed on 8 March 2022 (Russ.), Mariupol Now, 7 April 2022 – <https://t.me/mariupolnow/5563> – [retrieved 24 July 2023].

¹⁵⁸ "Damage to ICRC warehouse in Mariupol", ICRC, 30 March 2022 – <https://www.icrc.org/en/document/damage-icrc-warehouse-mariupol> – [retrieved 8 July 2023]; Video from Telegram channel that probably catches the moment when the ICRC premises were bombed on 8 March 2022 (see fn. 154) – <https://t.me/mariupolnow/5563> – [retrieved 24 July 2023].

¹⁵⁹ Report of the International Independent Commission for Investigating Violations in Ukraine, 18 October 2023, §30.

¹⁶⁰ Stories from the war: "I survived 21 days with a shard in my body. I was lucky" (Ukr.), Ukrainian Helsinki Union, 21 April 2022 (see fn. 148), – <https://www.helsinki.org.ua/articles/holosy-viyny-ya-prozhyla-21-den-z-oskolkom-tili-meni-poshchastylo/> – [retrieved 24 July 2023].

a convoy of the UN's World Food Programme,¹⁶¹ later the same happened to an ICRC convoy.¹⁶² "On 1 April 2022," reported the OSCE Moscow Mechanism mission's report,¹⁶³

"the mayor of Mariupol claimed that Russia was preventing aid from reaching the besieged city and refusing to allow the opening of the planned 'humanitarian corridor' that would have enabled civilians to flee heavy fighting in the town. On 13 April 2022, the Ukrainian Deputy Prime Minister Iryna Vereshchuk claimed that Russian soldiers were blocking buses in violation of cease-fire agreements. The buses should have carried humanitarian aid and transported civilians into and out of occupied territories in Ukraine's eastern Luhansk and southern Zaporizhzhia Regions. ... Greece claimed that Russia obstructed its delivery of humanitarian aid to Mariupol, besieged by Russian forces."

C) Dealing with the consequences; the work of the Emergency Services

144. Together with facilities that are important for the provision of food and drinking water, the Russian forces also targeted branches of the State Emergency Service of Ukraine. On 10 March 2022, the building of the State Emergency Service on Mitropolitiska Street was shelled,¹⁶⁴ and fire stations all over the city came under attack.¹⁶⁵ In a 4 April interview, Mikhail Vershinin, head of the city police force, (who remained in Mariupol throughout the siege), said that two fire engines were left in the city before the beginning of March; both were then set on fire.¹⁶⁶ Countless reports by the Mariupol authorities and interviews with staff at the city State Emergency Service speak of the need to put out numerous fires in early March. Their number increased every day with the mounting attacks by Russian forces and it became difficult and subsequently impossible to put out the fires due to the lack of fire-engines, although sources of service water were still accessible. On 14 March 2022, enemy shelling destroyed almost all the equipment of the city's Emergency Service.¹⁶⁷
145. In early March, the base stations of all mobile communications and Internet providers in Mariupol ceased to work. Only the Kyivstar network continued to function, using equipment preserved in its office.¹⁶⁸ Thanks to the efforts of its engineers the city retained a limited link with the outside world until 21 March. It was only possible to catch a signal from the centre of Mariupol, which was a very dangerous place to be from the first weeks of the invasion. Due to the above-mentioned attacks on the city's emergency services, Mariupol's inhabitants were forced to extinguish many fires themselves.¹⁶⁹ Elderly and disabled people, children and those trapped in ruins of shelled

¹⁶¹ «Ukraine: Second UN convoy reaches Sumy, Mariupol access thwarted», UN News, 31 March 2022 – <https://news.un.org/en/story/2022/03/1115252> – [retrieved 24 July 2023].

¹⁶² "Humanitarian convoy fails to reach besieged Mariupol", *Financial Times*, – <https://www.ft.com/content/5699c18c-f43a-440e-896f-81c5dddc9e54> – [retrieved 24 July 2023].

¹⁶³ OSCE Moscow Mechanism mission report, 14 July 2022, pdf, p. 21.

¹⁶⁴ Telegram channel of the Ukrainian State Emergency Service (Ukr.), 10 March 2022 – https://t.me/dsns_telegram/4599 – [retrieved 24 July 2023].

¹⁶⁵ "The fire station on Zelinsky Street" (Russ.), Mariupol Now, 29 May 2022 – <https://t.me/mariupolnow/12019> –; "From 10 March onwards the Russians began to target station No. 3" (Ukr.), 0629 Mariupol city news website, 9 September 2022 – <https://www.0629.com.ua/news/3459204/vodi-dla-gasinna-pozez-vistacalo-brali-z-riki-u-nas-tehniku-rosiani-znisili-golovnij-pozeznik-mariupola-rozpoviv-ak-ratuvali-misto-foto-video> – [retrieved 24 July 2023].

¹⁶⁶ Interview with Mikhail Vershinin (Russ.), Infokava, 4 April 2022 – <https://infokava.com/ru/75755-glava-patrujnoj-policii-mariupolja-m-vershinin-u-nas-ostalos-gde-to-100-patrulnyh.html> – [retrieved 24 July 2023].

¹⁶⁷ "The Russians destroyed our equipment" (Ukr.), 0629 Mariupol city news website, 9 September 2022 – <https://www.0629.com.ua/news/3459204/vodi-dla-gasinna-pozez-vistacalo-brali-z-riki-u-nas-tehniku-rosiani-znisili-golovnij-pozeznik-mariupola-rozpoviv-ak-ratuvali-misto-foto-video> – [retrieved 24 July 2023].

¹⁶⁸ Kyivstar Twitter (Ukr.), 29 November 2022 – <https://twitter.com/twiykyivstar/status/1596087838407286785?s=12&t=GuT2Xv5H0wQwoMaPMYzgA> – [retrieved 24 July 2023].

¹⁶⁹ "Interview with Hanna Shevchyk", KHPG, 16 June 2022 – <https://khpg.org/en/1608811369> –; "Two sisters from Mariupol. Imprisoned in Dokuchaievsk for the national anthem on a phone and a photo in a traditional dress" (Ukr.), KHPG, 1 November 2022 – <https://khpg.org/1608811333> – [retrieved 24 July 2023].

buildings were unable to put out the fires as is shown by the significant number of reports of deaths as a result of fires in the city.¹⁷⁰

D) Healthcare

146. Healthcare institutions, most notably hospitals where operations could be performed and emergency treatment provided, were also struck by Russian attacks. Hospital No. 4 in the east of Mariupol was damaged as early as 3 March 2022; it had been without heating and electricity since the end of February.¹⁷¹ On 9 March the Russians struck the maternity hospital and children's hospital in central Mariupol in a bombing raid: as a result, three died, including a child, and 17 were injured.¹⁷² The buildings of Hospital No. 2 and the Regional Hospital were destroyed by Russian shelling before 15 March, as was announced by the chairman of the Donetsk Region civil administration.¹⁷³
147. It was extremely difficult to treat those wounded by Russian shells or to operate on the wounded in the hospitals that had survived because of [1] the difficult conditions (lack of electricity, heat and water),¹⁷⁴ [2] the shortage of doctors, [3] the scarcity of medicine or equipment, [4] the lack of staff, and [5] the problem that many of the wounded were not brought to the hospital immediately and their injuries were complex in nature. As a result, there were many deaths and the bodies of the dead were kept in the hospital basement or outside.¹⁷⁵ As concerns [2], according to the information of the Donetsk Region's military administration as of 15 March 2022 doctors of the Regional Hospital in the western part of Mariupol were taken prisoner by the Russians and were unable to treat people.¹⁷⁶ There were also reports that doctors and patients were forcibly removed from Matsuka Hospital (No. 4).¹⁷⁷ Many doctors could not go to work for fear of the danger to their own lives during the siege.
148. Because of Russian attacks on the Centre for the Treatment and Cure of Dependence, and on the Red Cross society in Mariupol, people who received medicaments at these centres were placed at the risk of death.¹⁷⁸

¹⁷⁰ "Couple burnt to death in central Mariupol" (Russ.), Telegram channel: In Remembrance, Mariupol, 17 March 2022 – <https://t.me/mariupolRIP/33057> –; "Burned to death in her flat" (Russ.), 2 April 2022 – <https://t.me/mariupolRIP/32966> –; "Burnt alive in their home" (Russ.), mid-March 2022 – <https://t.me/mariupolRIP/31617> –; western Mariupol, 15 March 2022 – <https://t.me/mariupolRIP/28406> – [retrieved 24 July 2023].

¹⁷¹ "The confession of a doctor from Mariupol: I have the children anaesthetics before they died" (Ukr.), TL website, 28 April 2022 – <https://t1.ua/news/67687-spovid-likarya-z-mariupolya-ditey-znebolyuvaly-pered-smertyu.html> – [retrieved 24 July 2023].

¹⁷² Telegram channel, Mariupol Now, 10 March 2022 – <https://t.me/mariupolnow/1791> –; "The first minutes after the attack" (Ukr.) – <https://www.youtube.com/watch?v=2EhsJomegW0> –; "Her hip was smashed.' A mother and infant died after the maternity hospital in Mariupol was shelled. Doctors describe how they tried to save them" (Russ.), Current Time (Radio Liberty) 14 March 2022 – <https://www.currenttime.tv/a/31752691.html> – [retrieved 24 July 2023].

¹⁷³ "The invaders took a hospital in Mariupol hostage, says head of Region" (Russ.), *Ukrainska pravda*, 15 March 2022 – <https://www.pravda.com.ua/rus/news/2022/03/15/7331610/> – [retrieved 24 July 2023].

¹⁷⁴ "We were operating like 19th-century surgeons', the work of doctors and traumatologists in besieged Mariupol" (Russ.), *Vostochny variant* website, 18 August 2022 – <https://v-variant.com.ua/ru/article/mariupol-khirurh-travmatoloh/> –; "We'd anesthetize dying children": Andriy Serbyn, doctor in Left-Bank Mariupol", *Svoi global* website, 29 April 2022 – <https://svoi.global/articles/209398/ed-anesthetize-dying-children-andriy-serbyn-doctor-in-left-bank-mariupol> – [retrieved 24 July 2023].

¹⁷⁵ "Hell on Earth: shocking scenes from Mariupol" (Russ.), *Deutsche Welle*, 18 March 2022 – <https://www.dw.com/ru/ad-na-zemle-shokirujushhie-kadry-iz-mariupolja/video-61181308> – [retrieved 24 July 2023].

¹⁷⁶ "Interview with Hanna Shevchyk", *KHPG*, 16 June 2022 – <https://khp.org/en/1608811369> – [retrieved 24 July 2023].

¹⁷⁷ A video that probably shows this forced evacuation can be seen here: "The invaders forced doctors and patients to move to the occupied territories" (Ukr.), *Novynarnia*, 7 April 2022 – <https://novynarnia.com/2022/04/07/okupanty-prymusovo-mariupol/> – [retrieved 24 July 2023].

¹⁷⁸ The Alliance of Public Health: A response to the challenges posed by Russian aggression in Ukraine. Report No. 4 (23 March 2022) special issue, the situation in Mariupol (Ukr.) – <https://www.eatg.org/wp-content/uploads/2022/03/sitrep-war-2022-1.pdf> – [retrieved 24 July 2023].

149. The lack of medical supplies in drug stores and the destruction of the city's hospitals led to many of the indirect deaths from frostbite and shortages of medicaments during the armed conflict. In most cases this affected the elderly and the disabled. Corresponding official data is lacking at present, but an impression of this trend may be formed from interviews with eyewitnesses and doctors who managed to leave Mariupol and from reports on Telegram channels. We are aware of the following cases: deaths from hypothermia¹⁷⁹ or shortages of medicaments;¹⁸⁰ the lack of treatment by a doctor leading to the death of a disabled child,¹⁸¹ of a grown woman with cerebral palsy,¹⁸² of a woman who suffered a stroke in a shelter,¹⁸³ and of fatal heart attacks.¹⁸⁴
150. We should also note the instances of suicide. In his April interview, Mariupol's police chief Mikhail Vershinin said that he received reports every day in March (for as long two-way radio messages still reached him) that 5–6, up to 10, people had leapt to their deaths from the upper storeys of buildings in the city.¹⁸⁵ In interviews those who had managed to escape from Mariupol explained that the frequent desire to commit suicide was prompted by the extreme fear and stress of living in a besieged city subject to constant shelling.¹⁸⁶ There were also cases of the delayed consequences of living under attack in Mariupol, such as strokes suffered in May 2022 when the city was no longer being shelled, but there was not yet access to the necessary medical treatment.¹⁸⁷ It is clear that healthcare has not been restored today to the required level in the occupied city: the Ukrainian side has reported this,¹⁸⁸ and so have pro-Russian sources.¹⁸⁹

In this context, it should be clarified that even “in the absence of direct evidence of whether the conditions of life imposed on the group were deliberately calculated to bring about its physical destruction, a chamber can be guided by the objective probability of these conditions leading to the physical destruction of the group in part. The actual nature of the conditions of life, the length of time that members of the group were subjected to them, and the characteristics of the group such as its vulnerability are illustrative factors to be considered in evaluating the criterion of probability.”¹⁹⁰

¹⁷⁹ Telegram channel: In Remembrance, Mariupol – <https://t.me/mariupolRIP/31270> – 30 September 2022; – <https://t.me/mariupolRIP/19952> – 9 May 2022 [retrieved 24 July 2023].

¹⁸⁰ Telegram channel: In Remembrance, Mariupol – <https://t.me/mariupolRIP/33079> – [retrieved 24 July 2023].

¹⁸¹ Telegram channel: In Remembrance, Mariupol – <https://t.me/mariupolRIP/31256> – 30 March 2022 [retrieved 24 July 2023].

¹⁸² Telegram channel: In Remembrance, Mariupol – <https://t.me/mariupolRIP/31109> – 28 March 2022 [retrieved 24 July 2023].

¹⁸³ Telegram channel: In Remembrance, Mariupol, 18 April 2022 – <https://t.me/mariupolRIP/32016> – [retrieved 24 July 2023].

¹⁸⁴ Telegram channel: In Remembrance, Mariupol, 23 September 2022 – <https://t.me/mariupolRIP/30787> – [retrieved 24 July 2023].

¹⁸⁵ Interview with Mariupol head of police Vershinin (Ukr.), No to the Censor! 3 April 2022 – <https://censor.net/ua/r3330967> – [retrieved 24 July 2023].

¹⁸⁶ “Where other people have a soul, Mariupol's inhabitants have only ashes” (Ukr.), New Poland, 9 February 2022 – <https://novapolshcha.pl/article/na-misci-de-v-lyudei-dusha-u-mariupolciv-zgarishe/> – [retrieved 24 July 2023].

¹⁸⁷ Telegram channel: In Remembrance, Mariupol, 26 May 2022 – <https://t.me/mariupolRIP/22286> – [retrieved 24 July 2023].

¹⁸⁸ “Inhabitants of Mariupol, occupied by the Russians, are dying for lack of medicine” (Ukr.), Ukrinform, 4 July 2022 – <https://www.ukrinform.ua/rubric-regions/3521842-ziteli-okupovanogo-rosianami-mariupola-vmiraut-vid-nestacilikiv.html> – [retrieved 24 July 2023].

¹⁸⁹ Pro-Russian Telegram channel “Infrastructure of Mariupol”, 16 December 2022 – <https://t.me/infrMariupol/1141> – [retrieved 24 July 2023].

¹⁹⁰ ICTY, *The Prosecutor v. Radovan Karadžić*, Public Redacted Version of Judgement Issued on 24 March 2016, para. 546–548.

E) The displacement of people, humanitarian corridors and evacuation

151. From almost the first day of the invasion, Mariupol was surrounded by the Russian forces. The Russians blocked humanitarian exits for the civilian population; Russia did not agree to the evacuation of civilians or violated such agreements and / or attacked those attempting to leave the city.¹⁹¹ It was only possible to leave in the direction of Russia or of the DPR and LPR. Lacking an alternative or facing threats from the Russian invaders, the majority were forced to take that exit route. In effect, this was forced migration. It might appear to be a voluntary decision on the part of Mariupol's inhabitants, but taking into account the humanitarian crisis and extreme danger of staying in the city, the decision was forced upon them. The Human Rights Watch report "We had no other choice" refers to the testimony of Mariupol's inhabitants who were threatened by Russian soldiers and left with no alternative but to move to Russia.¹⁹² There were also reports of the forced deportation of the city's residents to Russia: 15,000 inhabitants of Mariupol, almost half of those who remained in the Left-bank district by the end of March 2022, were subjected to such treatment.¹⁹³ In that case, the Russian side organised convoys of buses and guaranteed a comparatively safe exit route.

It should be noted that, according to the ICTY,¹⁹⁴ when it comes to forced displacement of people, the term "Forced" is not to be interpreted in a restrictive manner, such as being limited to physical force. It may include the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment. The essential element is that the transfer be involuntary in nature, where the relevant persons had no real choice."

152. Leaving for the two "people's republics" or for Russia meant that Mariupol's inhabitants were forced to be processed by the so-called **filtration centres**, such as that in Bezimenne (Donetsk Region). There people were sought who represented a threat to the Russian control over Ukraine, including all who held pro-Ukrainian views (those in charge looked for tattoos, evidence that people had used rifles, the content of their mobile phones, etc.). The official explanation offered by the DPR ran as follows: in order to "prevent the entry to the Donetsk People's Republic of persons attached to Ukraine's army and security service, participants of nationalist battalions, members of subversive-intelligence gathering groups and their accomplices" "a variety of verification procedures are being conducted in the DPR for citizens formerly inhabiting areas previously controlled by Ukraine."¹⁹⁵

153. In the OSCE Moscow Mechanism's first report it was noted that some former inhabitants of Mariupol were subject to cruel treatment at these centres and that the fate of those who did not pass the filtration procedure was unknown.¹⁹⁶

"Those civilians who pass through the filtration procedure are issued some kind of 'travel voucher' for evacuation to Russia. Based on this document, they are relocated to the so-called Temporary

¹⁹¹ Prosecutor-General's Office, "Shelling of an evacuation convoy from Mariupol to Zaporizhzhia: a case has been opened – <https://www.gp.gov.ua/ua/posts/obstril-httpstelegraphfile3e34dda373fe7b299700ejpg-evakuaciinoyi-koloni-yakuraxalas-iz-mariupolya-do-zaporizhya-rozpocato-provadzennya> – [retrieved 24 July 2023].

¹⁹² "We had no choice", Human Rights Watch, 1 September 2022 – <https://www.hrw.org/report/2022/09/01/we-had-no-choice/filtration-and-crime-forcibly-transferring-ukrainian-civilians> – [retrieved 24 July 2023].

¹⁹³ Telegram channel, Mariupol city council (Russ.), 24 March 2022 – <https://t.me/mariupolrada/8987> – [retrieved 24 July 2023].

¹⁹⁴ Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-T, Judgement (TC), 15 March 2002, para 475.

¹⁹⁵ "The FSB has replied to complaints by refugees from Ukraine about filtration centres" (Russ.), RBC, 24 June 2022 – <https://www.rbc.ru/politics/24/06/2022/62b5a4ed9a79479a7db11145> – [retrieved 24 July 2023].

¹⁹⁶ Report of the OSCE Moscow Mechanism's mission of experts (see fn. 139), 14 July 2022 – <https://www.osce.org/odihr/522616> – [retrieved 23 July 2023]. Pdf, pp. 73–74.

Accommodation Points, which include dozens of sanatoriums, former children's wilderness camps and similar facilities that are located all across the Russian Federation including Russian Far North (Murmansk), Siberia (Irkutsk) and Far East (Kamchatka). According to the reports, the Ukrainian citizens can get officially employed through Russian employment centres, in some cases they are also promised free housing, reduced mortgage rates and relocation support. They can apply for "temporary asylum" in the country. In general, the Temporary Accommodation Points are functioning in the open mode and their inhabitants are free to leave them, but they often do not have enough information, money for transport, functioning mobile phones, etc. The mission recognizes as especially difficult the situation of those who do not possess any valid personal documents because they were lost or destroyed during the evacuation or the deportation. Several NGOs from Ukraine and Russia are involved in helping the Ukrainian civilians deported to the Russian Federation to leave for the EU or other third countries if they so wish."

154. There are also reports, we should add, that many Ukrainians who found work through Russian employment centres received documents that prohibited them from leaving the Russian Regions for the next two years.¹⁹⁷
155. There is no precise information about the number of Ukrainians who have been transferred to Russia, just as nothing is known about the fate of the majority of these people. Russia is not cooperating with any humanitarian organisations, or international non-governmental or governmental organisations, to exchange information or cooperate in order to ensure that the interests and rights of these former inhabitants of Mariupol are being respected.
156. Under the conditions described above, Mariupol inhabitants could only organise their departure from the city to the Ukrainian-controlled territory, in the absence of humanitarian corridors, in private motor vehicles. This was very dangerous since such convoys were often shelled by the Russians and cars often struck landmines. The city's residents were also subjected to filtration procedures at the roadblocks along the way, manned by the DPR people's militia and, later, by the Russian National Guard and Kadyrov's "Chechen fighters".¹⁹⁸ People who underwent these filtration procedures said that they were checked for ties with the Azov regiment and the Ukrainian military, links to the Ukrainian authorities and pro-Ukrainian attitudes. The checks were carried out by questioning and interrogation applying both physical and psychological coercion; mobile phones and personal belongings were examined. When certain inhabitants of Mariupol aroused "concern" the filtration procedures continued in improvised police stations, at the prison in Dokuchaievsk,¹⁹⁹ the Yelenivka penal colony,²⁰⁰ and in other places of confinement.
157. The Human Rights Ombudsperson for the Ukrainian parliament explained, with a reference to sources in the Ministry of Defence, that the process of "filtration" at the various posts in the temporarily occupied territories of the Donetsk, Luhansk, Kherson and Zaporizhzhia Regions could

¹⁹⁷ "We had enough water to put out the fires: we took it from the river" (Ukr.), 0629 Mariupol city news website, 9 September 2022 – <https://www.0629.com.ua/news/3459204/vodi-dla-gasinna-pozez-vistacalo-brali-z-riki-u-nas-tehniku-rosiani-znisili-golovnij-pozeznik-mariupola-rozpoviv-ak-ratuvali-misto-foto-video> – [retrieved 24 July 2023].

¹⁹⁸ "Around Mariupol in the Zaporizhzhia direction the roadblocks are manned by Kadyrov's fighters, says mayor's aide" (Ukr.), 62 Donetsk website, 21 May 2022 – <https://www.62.ua/news/3393175/navkolo-mariupola-u-bik-zaporizza-na-blokpostah-postavlat-kadirovci-radnik-mera> – [retrieved 24 July 2023].

¹⁹⁹ "Two sisters from Mariupol" (Ukr.), KHPG, 1 November 2022 – <https://khpg.org/1608811333> – [retrieved 24 July 2023].

²⁰⁰ "Mariupol volunteer Anna Vorosheva spent one hundred days in Russian captivity" (Ukr.), Babel, 5 October 2022 – <https://babel.ua/texts/85139-mariupolska-volonterka-anna-vorosheva-100-dniv-provela-v-rosiyskomu-poloni-vona-sidila-v-kameri-z-azovom-stvoryovala-merezhu-zv-yazku-mizh-polonenimi-i-borolasya-z-administraciyevu-v-olenivci-istoriya> – [retrieved 24 July 2023].

last from a few hours to 20 days and nights. There are filtration posts of an open type, where the procedures are quickly completed, and filtration posts of a closed type, where the procedures might last for many days on territory that was guarded and fenced off. Barbed wire surrounded the latter and they were heavily guarded by soldiers carrying automatic weapons. Free entry to such a territory was forbidden.²⁰¹ In mid-April, filtration was introduced for movement in and out of Mariupol and for the receipt of humanitarian aid and other essential goods.²⁰²

158. Criminal deeds that took the form of coerced migration or forced migration to Russia, combined with filtration procedures, put the lives of no less than 15,000 Ukrainians in Mariupol at risk. They constituted a substantial part the national group of Ukrainians living in the city. This led to the effective destruction of the Ukrainian community in Mariupol. It not only posed a serious threat to the identity of the deported Ukrainians; in view of the way Ukrainians were treated during the filtration and the lack of information to this day about the fate of the majority of them, it also threatened their physical existence.
159. At the present stage in its conflict with Ukraine, Russia has resorted not only to the deportation of adults but also the forced transfer of Ukrainian children to Russia (this is described in Section 06).
160. Reports by the Ministry for the Reintegration of the Temporarily Occupied Territories,²⁰³ indicate that more than 61,000 private buildings and 2,300 private homes in Mariupol were damaged by Russian attacks, which represents the greatest destruction of Ukraine's housing stock since 24 February 2022. Official data are lacking on this count but we may assume that this refers to the destruction of the homes of more than 100,000 inhabitants of Mariupol.

(ii) the subjective element (*mens rea*)

161. The relevant *mens rea* is described in the "Elements of Crimes" as "the intention to destroy in whole or in part" the protected group, "as such". This is the general subjective element of any act of genocide as envisaged by point (a), Article 6 of the Rome Statute. The requirements as to intention and knowledge outlined in Article 30 are applicable to this element. Article 30 states that an individual "shall be criminally responsible and liable for punishment ... only if the material elements are committed with intent and knowledge". More specifically, the intent in relation to the act means that the person "means to engage in the conduct" and so far as the investigation is concerned, the person "means to cause that consequence or is aware that it will occur in the ordinary course of events". In this context, "knowledge" means an "awareness that a circumstance exists or a consequence will occur in the ordinary course of events". The analysis presented in this sub-section leads to the only possible conclusion, viz. that all the above-described criminal acts were committed with the awareness and intention of creating conditions that would eventually lead to the destruction of the group of Ukrainians in Mariupol.
162. The implementation of a genocidal intent in and around Mariupol in accordance with point (c) of Article 6 of the Rome Statute has certain distinctive features when compared with other places

²⁰¹ Special report by the Ombudsperson for human rights of the Supreme Rada of Ukraine on respect for the rights of those who have suffered as a result of Russian armed aggression against Ukraine (between 24 February and 31 October 2022).

²⁰² "Traitors from the OPFL helped the invaders destroy a store of humanitarian aid in Mariupol" (Ukr.), Today, 18 April 2022 — <https://www.segodnya.ua/ua/strana/podrobnosti/v-mariupole-predateli-iz-opzzh-pomogli-okkupantam-unichtozhit-sklad-s-gumanitarkoy-1615772.html> — [retrieved 24 July 2023].

²⁰³ "the ruins of Mariupol and the ashes of Avdeyeva..." (Ukr.), Ministry for the Reintegration of the Temporarily Occupied Territories — <https://minre.gov.ua/news/ruyiny-mariupolya-y-popil-avdiyivky-taktyka-spalenoyi-zemli-po-rosiysky> —

where one can assert with a high degree of probability that a policy of genocide was pursued against Ukrainians (in the Kyiv Region, in particular). The methods adopted for its implementation in and around Mariupol were [1] a shelling of the city using a variety of weapons that was both indiscriminate and targeted civilian facilities thereby depriving Ukrainians of fundamental necessities, needed for their life and survival, and [2] the coercive transfer of Ukrainians to Russia combined with filtration procedures.

163. As concerns the shelling and bombing of Mariupol, Russian forces engaged in an international armed conflict completely ignored the basic principles of international humanitarian law. An analysis of these rules as applied to the events in and around Mariupol from 24 February to 20 May 2022 are of key importance when establishing the subjective element of the crime of genocide in terms of point (c) of Article 6 of the Rome Statute. The basic principles of international humanitarian law are distinction, proportionality, caution and military necessity (the prohibition of superfluous injury and unnecessary suffering).
164. The **principle of proportionality**²⁰⁴ requires that the parties to an armed military conflict distinguish between civilians and civilian facilities, on the one hand, and combatants and military facilities, on the other. Attacks are only permitted on combatants and military facilities. This includes a ban on indiscriminate attacks, *i.e.*, the use of methods or means of conducting military operations that are not targeted against a specific military goal. It prohibits attacks employing means and methods of warfare the consequences of which cannot be contained, as required by international humanitarian law, and in each case affect indiscriminately both military targets and civilians or civilian facilities. It prohibits attacks using any methods or means of warfare when in place of a single military target there are a number of separate military goals spread across a village, town or city which is densely populated with civilians and contains a variety of civilian facilities.
165. The chaotic shelling of Mariupol (“the showering of the city with shells”) by the Russian forces violated the norms of international humanitarian law concerning the selectivity of targets. The Russian attacks were not directed at a specific military target. Multiple rocket launchers²⁰⁵ bombarded a particular area; planes carpet-bombed the city: in neither case were they directed at a specific military target – unless the city as whole was considered to be such. In these circumstances the Russian forces must have understood that the indiscriminate shelling of Mariupol did not minimise the consequences for the civilian population, a concern that lies at the heart of international humanitarian law. The Russians could not help but know that they were carrying out indiscriminate attacks on a densely-populated city and its civilian facilities. Russia must have been aware that it would thereby cause significant losses among the civilian population and make it impossible for them to access goods or services provided by those civilian facilities.
166. On the other hand, a number of instances show that the Russians knew exactly which facilities they were targeting. Guided by locals, for example, Russian forces shelled and destroyed warehouses where food was stored.²⁰⁶
167. Targeted attacks on other specific civilian facilities (Mariupol’s fire stations, for instance) show that the Russian forces were well aware of the reasons for making such attacks, even if direct proof of their intention to destroy them is lacking, and of the conditions they would thereby create for the Ukrainians living in the city. The principle of proportionality seeks to limit damage caused by military operations by requiring that the effects of the means and methods of warfare

²⁰⁴ 1977 Additional Protocol I to Geneva Conventions, Article 51(5)(b).

²⁰⁵ See §§6, 7 and 8, “A Description of Events”, (Appendix One).

²⁰⁶ “Enemy bombs Left-bank, Kommunalshchik enterprise and Kirov Square” (Ukr.), 0629 Mariupol city news website: <https://www.0629.com.ua/news/3341053/agresor-zavdav-artudaru-po-livoberizzu-kp-komunalnik-ta-plosi-kirova-foto> – [retrieved 24 July 2023].

be proportionate to the military advantage sought. The Russian side consciously and cynically disregarded these rules.

168. The Russian forces also consciously violated the **principle of caution**²⁰⁷ which demands that the attacking side to ensure that the targets of its attack are indeed military facilities. When Russia attacked the maternity hospital in Mariupol it denied the basic meaning of the principles of international humanitarian law by claiming that it was trying to dislodge "Ukrainian Nazis" who, it claimed, were based there. Seventeen women were wounded, as a result, and one of them died.²⁰⁸ Reports as to the number of "Ukrainian Nazis" who had been liquidated appeared nowhere in the Russian media. The Russian intention to strike the maternity hospital, as we know, was announced earlier.²⁰⁹
169. The shelling and bombardment of Mariupol was of two kinds, indiscriminate and targeted. Both were intended to create conditions of life for the inhabitants of the city that would with great likelihood lead to the destruction of the national group of Ukrainians. Russia also manipulated its violations of international humanitarian law in such a way as to commit the probable genocide of Ukrainians in Mariupol.
170. The other characteristic aspect of the Russian attack on Mariupol was the city's encirclement or blockade. International humanitarian law does not forbid the blockade of a district where only the forces of the enemy are concentrated, nor the encirclement of their reinforcements or the replenishment of their supplies, in order to secure their subsequent capitulation because of hunger. There are, however, rules governing blockades: (1) the side organising the blockade must observe the rules of discrimination, proportionality and precautionary measures while the defence should not use civilians as a human shield but keep apart military goals and civilians; civilians should be able to remain in their homes and not be forced to flee (there was no need for evacuation); (2) the side which has blockaded a town or city must permit humanitarian aid to enter the city, but only for the benefit of civilians, which requires complex negotiations and an agreement as to who should monitor, and how, the distribution of such aid to the civilian population only; (3) civilians must be allowed to leave the besieged territory.
171. As a rule, those under siege, in this case the Ukrainian side, are not interested in the departure of all the civilian inhabitants of a town or city. It will considerably ease the seizure of that population centre because every person who remains then becomes a legitimate target. Finally, although the besieging side is theoretically interested in the departure of all civilians from the district, in practice and when war is being waged against the entire population by a hostile State, it will not agree to the proposed conditions for their exit.²¹⁰ Humanitarian corridors should facilitate the entry of humanitarian aid for civilians and the exit of those civilians who wish to depart. For such a corridor to function, however, requires a genuine agreement between the military on both sides. Since artillery and rockets are in use, the agreement must cover a large area because the humanitarian corridor could come under fire from a distance. There must also be a minimal level of trust between the sides to ensure that one side does not exploit the ceasefire for military purposes.²¹¹

²⁰⁷ 1977 Additional Protocol I to Geneva Conventions, Article 57(1).

²⁰⁸ §14, "A Description of Events", (Appendix One).

²⁰⁹ "Maria Zakharova [of the Russian Ministry of Foreign Affairs] announced the bombing of the maternity hospital in Mariupol four hours before it happened" (Russ.), Obozrevatel, 10 March 2022 – <https://war.obozrevatel.com/zakharova-anonsirovala-bombezhku-roddoma-v-mariupole-za-chetyire-chasa-do-aviaudarov-video.htm> – [retrieved 24 July 2023].

²¹⁰ Report of the OSCE Moscow Mechanism's mission of experts (see fn. 139), 14 July 2022 – <https://www.osce.org/odihr/522616> – [retrieved 24 July 2023].

²¹¹ "Catastrophe in Mariupol and the lack of a green corridor. What's really happening in the city?"

172. As various sources report, Russia did not agree in March 2022 to the evacuation of civilian Ukrainians from Mariupol to Ukrainian-controlled territory, or else violated such agreements, firing at those who attempted to leave the city. On 5 March 2022 between 9 am and 4 pm there should have been a period of ceasefire and from 11 am onwards the evacuation of the civilian population was due to begin. A route that ran from Mariupol via Nikolske, Rozivka and Pologi to Zaporizhzhia was chosen as the humanitarian corridor. The evacuation was due to depart from three locations in the city: the Ilichevets sports complex at 53 Nakhimov Street; the drama theatre at 1 Theatre Square; and the Kalmius district administration at 193 on Metallurgov Avenue.²¹² The then Mayor of Mariupol Vadim Boychenko announced that an agreement had been reached with the Russian side for a ceasefire to allow the humanitarian corridor to be used. When all was ready for the evacuation to begin, however, the invaders again opened fire and disrupted the temporary ceasefire.²¹³ A second attempt at evacuation was made the following day. Convoys of vehicles carrying the local population could not leave the city limits: the Russians began to regroup their forces and subjected Mariupol to heavy shellfire.²¹⁴ A detailed description of the attempts to evacuate civilians of the unsuccessful attempts of humanitarian convoys to reach Mariupol are included in Appendix One “The Blockade of Mariupol” (§§38–41).

Clearly, the Russian side intended to create maximum risks to the life and safety of Ukrainians in Mariupol.

173. The forced transfer of the Ukrainians of Mariupol to Russia was not an incidental or sporadic movement. Those immediately engaged in their deportation were fully aware of what they were doing and Russia’s political and military leadership intended it to happen. Ukraine’s Council for National Security and Defence has information that from early 2022 the Kremlin was sending instructions to the Regions in Russia to which Ukrainians were being deported, detailing how many camps to set up for the deportees and the numbers they were to hold.

(iii) The contextual element

174. The “Elements of Crimes” states that the criminal acts were committed “in the context of a manifest pattern of similar conduct directed against that group” or those acts in themselves “could ... effect such destruction”. Evidently, this requirement can take two forms: conduct corresponding to the *actus reus* of the crime must be committed either as part of a policy or plan of genocide, or it must be capable of causing the total or partial destruction of the protected group.

175. With reference to the events that took place in Mariupol between 24 February and 20 May 2022 it would seem that both requirements of the contextual element of point (c) of Article 6 of the Rome Statute may be satisfied. As already mentioned in Section 5 of this Submission, the destruction of the inhabitants of the city became part of the invasion of Ukraine. The invasion itself was justified by the necessity of defending the Russian-speaking population of the Donbas from genocide,²¹⁵ which required the “denazification” and demilitarisation of Ukraine. Combined with the eliminationist rhetoric denying the existence of Ukraine and Ukrainians, this vividly illustrated

²¹² Telegram channel Mariupol city council (Russ.), 5 March 2022 — <https://t.me/mariupolrada/8730> — [retrieved 24 July 2023].

²¹³ “About the evacuation from Mariupol and Volnovakha” (Ukr.), — <https://www.youtube.com/watch?v=oeA73WSfYWg&t=6s> — [retrieved 24 July 2023].

²¹⁴ “The evacuation convoy could not leave Mariupol today because of shelling by the Russians” (Ukr.), Donetsk Region Administration, 6 March 2022 — <https://dn.gov.ua/news/evakuacijna-kolona-ne-zmogla-sogodni-viyihati-zamezhi-mariupolya-cherez-potuzhnij-obstril-mista-z-boku-rosijan> — [retrieved 24 July 2023].

²¹⁵ “Putin Orders a ‘Special Military Operation’ for Ukraine”, Bloomberg, 24 February 2022, — <https://www.bloomberg.com/news/videos/2022-02-24/putin-orders-special-military-operation-for-ukraine-video-l00nw4qc> — [retrieved 11 May 2023].

the intention to destroy the Ukrainian People. Mariupol was seen as a territory where this intent was implemented.

176. The above-described material acts, on the other hand, created conditions of life for the inhabitants of Mariupol that were aimed at their destruction: the city was shelled with complete disregard for the norms and principles of international humanitarian law and this led in the period under description to the cynical deprivation of the city's residents of basic necessities and soon put them at risk of permanent injury and death. There was a conscious and methodical destruction of places that supplied food and water, depriving Mariupol's inhabitants of their right to food and drinking water, leading in conditions of extreme danger to the likely deaths of many from starvation. There was a conscious and methodical destruction of healthcare institutions which under constant shelling and the lack of access to communications or the internet were fatal to the many direct and indirect victims of military aggression. The awareness of Mariupol's inhabitants was consciously manipulated. People were forcibly transferred to Russia: nothing is known to this day about the fate of most of them or we know that they were sent to remote towns and villages in Russia which indicates the intention of the invaders to deny Ukrainians their identity and "dilute" them among the Russian population. Even without exact data as to the number of people who suffered from such actions by the Russian side, it is evident that the nature and cumulative effect of such actions created a threat to the continued existence of the Ukrainian national group in and around Mariupol.

6.3 – FORCIBLY TRANSFERRING CHILDREN OF THE GROUP TO ANOTHER GROUP

The objective aspect (*actus reus*)

177. On 22 March 2022, speaking on behalf of the Russian Ministry of Defence, Colonel general Mikhail Mizintsev announced that since the beginning of the "special military operation" on 24 February that year 366,182 people had been evacuated from Ukraine and the Occupied Territories, of whom 77,062 were children.²¹⁶ In all probability, some of the children must have come from Mariupol.
178. The situation surrounding the children in one of Mariupol's healthcare institutions is indicative. In March 2022, 19 children without parents remained in the Krupskaya Sanatorium in Mariupol. The Donetsk Region Sanatorium for Children with Osteo-Articular Tuberculosis was built after the Second World War (and named after Lenin's wife, Nadezhda Krupskaya). On 18 March 2022, Oleksandr Yaroshenko, a dermatologist and head of the Mariupol football federation, came to the Sanatorium and attempted to take 17 of the children to the city of Zaporizhzhia; the other two were taken home by acquaintances. The 17 children were loaded into an ambulance. That same day the vehicle carrying the children was halted at the very first roadblock in the town of Manhush, 20 kilometres west of Mariupol, by fighters from the DPR. The children were transferred to temporary accommodation in Manhush. On 19 March 2022, a bus arrived. Accompanying Eleonora Fyodorenko, adviser on children's rights to the head of the unrecognised DPR, were a woman from the Russia Today TV channel and two camera operators. As eyewitness Timofei realised, they wanted to film a news item about the 'saving' of these children. The children were taken to Donetsk and placed in the local TB hospital.²¹⁷

²¹⁶ "19,400 people evacuated to Russia in past 24 hours from Ukraine, the LPR and DPR" (Russ.), TASS, 22 March 2022 – <https://tass.ru/armiya-i-opk/14150857> – [retrieved 26 July 2023].

²¹⁷ "I brought the kids back healthy and alive', how six children survived in Mariupol, were stranded in the 'DPR' and reached Europe" (Ukr.), BBC News from Ukraine, 18 July 2022 – <https://www.bbc.com/ukrainian/features-62164267> – [retrieved 26 July 2023].

179. On the morning of 10 April 2022, Russian media reported, a trainload of refugees from Ukraine arrived in the Leningrad Region. It was said that they came from Mariupol. There were more than six hundred people altogether, four of them children.²¹⁸
180. A little later, 23 April 2022, the first reports of the adoption of children from the Donbas appeared on the site of the RF Presidential Commissioner for Children's Rights, Maria Lvova-Belova. With her assistance, it was said, 27 orphans from the DPR had been placed temporarily under the care of ten Russian families in the Moscow Region (the Bogorod, Domodedovo, Volokolamsk, Serpukhov, Taldom, Chekhov and other town districts).²¹⁹ This was the first announcement we have recorded confirming the adoption of Ukrainian children on the official website of any Russian official.
181. On 27 April 2022, the site of the RF Presidential Commissioner for Children's Rights announced that the first meetings had taken place to harmonise legislation concerning the adoption of orphans in Russia, the LPR and the DPR.²²⁰ The contents of the announcement make it clear that the discussion concerned the development of means for adopting Ukrainian children and to continue efforts for their forced transfer from the Occupied Territories.
182. On 30 May 2022, the Russian President's edict of that date (No. 330) was published on the official internet portal for legal information.²²¹ "... [O]rphans and children left without parental care, disabled persons, who are citizens of the Donetsk People's Republic, the Lugansk People's Republic or Ukraine" said the Edict, "may acquire Russian citizenship by a simplified procedure according to part 8 of Article 14 of the Federal Law of 31 May 2002 (No. 62-FZ "Concerning citizenship of the Russian Federation")." By signing this law President Putin officially confirmed at the highest political level the policy of the forced transfer of Ukrainian children to Russia.
183. The following day, Petro Andryushchenko, aide to the mayor of Mariupol, posted information on social networks that Russians were holding 540 orphans from the Donetsk Region at the Romashka sport & fitness centre in the village of Zolotaya Kosa (Rostov Region, South Russia). 267 of the children were from Volnovakha and Mariupol.²²² We fully concur with Andryushchenko's suggestion that the children were being fast-tracked for Russian citizenship and subsequent transfer to Russian families.
184. A notable event took place on 5 July 2022. That day the Moscow Region administration held a ceremony during which it awarded orphans and abandoned children from the DPR documents confirming they were now citizens of Russia. Fourteen children received citizenship from the hands of the regional governor, Andrei Vorobyov. These were part of the group (see §177) who had been entrusted on 23 April 2022 to the care of adoptive families in the Moscow Region. Altogether they numbered 27, and the other children received these documents when they returned from

²¹⁸ "A trainload of refugees has reached the Leningrad Region" (Russ.), *Komsomolskaya pravda* (St. Petersburg), 10 April 2022 – <https://www.spb.kp.ru/online/news/4700604/> – [retrieved 26 July 2023].

²¹⁹ "First orphans from Donbas assigned to temporary care of Russian families" (Russ.), RF Presidential Commissioner for Children's Rights, 23 April 2022 – <http://deti.gov.ru/articles/news/pervye-deti-siroty-iz-donbassa-ustroeny-v-rossijskie-sem-i-pod-vremennuyu-opeku> – [retrieved 26 July 2023].

²²⁰ "First meetings to harmonise legislation in Russia, the LPR and the DPR concerning the adoption of orphans" (Russ.), RF Presidential Commissioner for Children's Rights, 27 April 2022 – <http://deti.gov.ru/articles/news/sostoyalis-pervye-zasedaniya-shtabov-po-sinhronizacii-zakonodatelstva-rossii-lnr-i-dnr-v-voprosah-semejnego-ustrojstva-detej-sirot> – [retrieved 26 July 2023].

²²¹ "Edict of the President of the Russian Federation, 30 May 2022, No. 330 (Russ.) – <http://publication.pravo.gov.ru/Document/View/0001202205300008?index=0&rangeSize=1> – [no longer available]. "Putin has signed an edict simplifying the award of Russian citizenship to children from DPR, LPR and Ukraine" (Russ.), RIA Novosti, 30 May 2022 – https://t.me/rian_ru/165351 – [retrieved 27 July 2023].

²²² "267 orphans from Mariupol and Volnovakha are being held in the Romashka sport & fitness centre" (Ukr.), Andryushchenko Telegram channel, 31 May 2022 – [§§https://t.me/andriyshTime/1174](https://t.me/andriyshTime/1174) – [retrieved 26 July 2023].

holiday. The children were adopted by ten families that had already had experience of bringing up orphans.²²³ Having formally received Russian citizenship, these children forcibly transferred from Ukraine could be permanently adopted under Russian law. In these circumstances, they lost all legal and other ties (cultural, social) with Ukraine.

185. At this stage we must analyse if Russia's actions in this respect were compatible with the requirements of the Fourth Geneva Convention "the protection of civilian persons in time of war". Article 50 states "The Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage. It may not, in any case, change their personal status, nor enlist them in formations or organizations subordinate to it." Article 24 envisages that "The Parties to the conflict shall facilitate the reception of such children in a neutral country for the duration of the conflict with the consent of the Protecting Power". In other words, if we consider possible ways of defending the interests of children under Russian control, the most appropriate measure would be to transfer them to a third (neutral) country where [1] they would be safe and [2] could be identified and later returned to Ukraine. Conferring citizenship on these children followed by their rapid adoption raises doubts that Russia's actions are, as claimed, motivated solely by the desire to defend them and meet their most basic needs.
186. On 15 July 2022, the latest post on the site of the RF Presidential Commissioner for Children's Rights announced that in the near future 108 children from the DPR would be taken into care. The report indicated that the process of transferring children from Ukraine was now functioning smoothly. Separately, in the site's news section, it was stated that the children would be granted Russian citizenship even if they were transferred to relatives already living in Russia.²²⁴
187. Further confirmation of this process appeared on 23 August 2022 on the site of the Krasnodar Department for the Family and Childhood. More than one thousand children from "liberated" Mariupol had already found new families, it stated, in west Siberia (Tyumen, Kemerovo and the Altai Krai) and east (Irkutsk) Siberia. A further 300 children were temporarily accommodated in specialised institutions in South Russia (Krasnodar Krai) and "could not wait" to meet their new families. The text later noted that people who wanted to adopt children from Ukraine would be entitled to special payments.²²⁵²²⁶ This post was subsequently taken down and the link now leads to a page describing the supposed 'hacking' of the site which led to publication of the information about these children.²²⁷ This may be interpreted as a wish to destroy the evidence, but archiving services for the web gave us unimpeded access to the deleted publication.
188. A report on Russian television showed the welcoming by the Murmansk Region (Northwest Russia) of 11 children from the DPR.²²⁸ We should note that the climate in the Regions where children from Ukraine have been adopted differs considerably from the areas where they lived before.

²²³ "Children from DPR have begun to receive Russian citizenship under simplified procedures" (Russ.), RF Presidential Commissioner for Children's Rights, 5 July 2022 — <http://deti.gov.ru/articles/news/deti-iz-dnr-nachali-poluchat-grazhdanstvo-rossii-v-uproshennom-poryadke> — [retrieved 26 July 2023].

²²⁴ "In the near future families in six Russian Regions will take 108 children from the DPR into their care" (Russ.), RF Presidential Commissioner for Children's Rights, 15 July 2022 — <http://deti.gov.ru/articles/news/v-blizhajshee-vremya-priemnye-sem-i-6-regionov-rossii-voz-mut-pod-opeku-108-detej-iz-dnr> — [retrieved 26 July 2023].

²²⁵ "Children from Mariupol are looking for new families" (Russ.), Krasnodar Department for Family and Childhood — <https://archive.ph/q03Uw#selection-765.0-765.282> — [retrieved 26 July 2023].

²²⁶ "More than one thousand children from Mariupol are being forcibly held by families in Russia" (Ukr.), Bukvy website, 23 August 2022 — <https://bykvu.com/ua/bukvy/ponad-1000-ditei-iz-mariupolia-prymusovo-perebuvaiut-v-rodynakh-u-rosii/> — [retrieved 26 July 2023].

²²⁷ "Information about a cyber-attack" (Russ.), Krasnodar Department for Family and Childhood — <https://uvsd.ru/news/important/340-informacija-o-kiberatake.html> — [retrieved 26 July 2023].

²²⁸ "The Murmansk Region has welcomed 11 children from DPR" (Russ.), TV company 21: Murmansk — <https://www.youtube.com/watch?v=bcaaoK29Kqs> — [retrieved 26 July 2023].

189. The actions of Maria Lvov-Belova, the RF Presidential Commissioner for Children's Rights who is frequently mentioned here, are also revealing. On 21 September 2022, she announced on her Telegram channel that her adoptive son Filipp (Pylyp) had received Russian citizenship. "...for my adoptive son from Mariupol" she wrote, "this event is proof that he is now one of us: of our country and society, among his contemporaries".²²⁹ On 16 July it was stated that Maria Lvova-Belova, who already has a large family, had adopted a 16-year-old boy from Mariupol. Filipp was born in the city and before she met him, Lvova-Belova said, she had no plans to enlarge her family. Getting to know him changed everything, she said. After they became acquainted (it appears that Filipp was then in a sanatorium after being moved from Mariupol) Lvova-Belova "understood that I very much wanted him to become one of us."²³⁰ Subsequently, on 26 November 2022, on her Telegram channel, the RF Presidential Commissioner for Children's Rights published a fragment of a documentary in which she talks about how she adopted Filipp.²³¹
190. As noted, this behaviour by an official figure is revealing. The purpose is to advertise such actions among the Russian population. Emphasis is laid on the adoption of Ukrainian children, although a great many other children in Russia who are not citizens of Ukraine still await adoption. We cannot help but notice the terms used by Lvova-Belova, "one of us".
191. Amazing stories of particular families have been published. The Associated Press, for instance, reported how Timofei, a young lad from Mariupol, had to look after his younger brothers and sisters in order to survive. They tried to escape the fighting and leave the city but he and his siblings were held up at a Russian roadblock. They were not allowed through but were sent to a hospital in the DPR. Officials then told Timofei that a court would deprive their mother and her husband of control over the children; his brothers and sisters would then be sent to a children's home and after that to new families in Russia. Only thanks to the extraordinary efforts of others, in particular volunteers, were the children able to join their mother in France.²³² The Russian media outlet Meduza told another story. Before the invasion Yevgeny worked as a mechanic. After Russia invaded Yevgeny and his children hid from the shelling in the basements of Mariupol. The Russian soldiers "evacuated" them and other city inhabitants. Yevgeny was held in the Yelenivka penal colony and underwent filtration procedures; his children were taken to a rest home in the Moscow Region and narrowly avoided being sent to an adoptive family. In mid-July 2022 Yevgeny's son Matvei rang him and said: "Papa, you have five days to get us out of here. Otherwise, we'll be adopted." Social workers offered Matvei a choice: either be adopted or go to a children's home.²³³
192. In one of its reports, Amnesty International also raises the issue of the forced transfer of Ukrainian children. It describes how children who tried, without parents or other guardians, to reach Ukrainian-controlled territory were stopped at Russian roadblocks and handed over to the Russian-controlled authorities in Donetsk. The example is quoted of an 11-year-old boy, separated from

²²⁹ "Filipp was waiting for this day more than anyone else in our family. Today he received the passport of a citizen of Russia and will not let go of it! He is overcome by emotion, he admitted" (Russ.), Lvova-Belova Telegram channel, 21 September 2022 — <https://t.me/malvovabelova/578> — [retrieved 26 July 2023].

²³⁰ "My heart missed a beat', Maria Lvova-Belova has adopted a 16-year-old teenager from Mariupol" (Russ.), Readovka website, 16 July 2022 — <https://readovka.news/news/104603> — [retrieved 26 July 2023].

²³¹ "A short fragment from a documentary in which my adoptive son shares his personal story" (Russ.) Lvova-Belova Telegram channel, 26 November 2022 — <https://t.me/malvovabelova/809> — [retrieved 26 July 2023].

²³² «How Moscow grabs Ukrainian kids and makes them Russian», Associated Press, 17 March 2023 (updated from October 2022) — <https://apnews.com/article/ukrainian-children-russia-7493cb22c9086c6293c1ac7986d85ef6> — [retrieved 9 July 2023].

²³³ "Dad, you've got five days at most to get us out of here'. Meduza tells the story of a father from Mariupol who was held in the notorious Yelenivka penal colony but did not let the Russians adopt his children" (Russ.), Meduza, 3 November 2022 — <https://meduza.io/feature/2022/11/03/pap-u-tebya-est-maksimum-pyat-dney-chtoby-nas-zabrat> — [retrieved 26 July 2023].

- his mother, during filtration. "They led my mother off to another tent," he told Amnesty. "She was interrogated ... They said they'd take me away from my Mum ... I was in a state of shock ... They didn't say where they were taking her... I haven't heard from her since."²³⁴
193. The US Institute for the Study of War (ISW) has also touched on this subject. In its 16 November 2022 report it noted that Russian sources and official spokesmen and women have openly promoted the forced adoption of Ukrainian children by Russian families. On 9 November 2022, well-known pro-Russian "military bloggers" began to post a multi-part documentary series about several Ukrainian children from Donbas adopted by Russian families. It was asserted that in 2022 alone Russian officials had evacuated more than 150,000 children from the Donbas.²³⁵ The head of the Chechen Republic Ramzan Kadyrov also stated that he was working with the Commissioner for Children's Rights Maria Lvova-Belova. "Difficult teenagers" from various parts of Russia and the occupied Donetsk and Luhansk Regions of Ukraine were being sent to Chechnya, he said, for "prophylactic treatment" and "military-patriotic upbringing".²³⁶ The ISW also refers to the adoption by Lvova-Belova of a youth from Mariupol (see §186).
194. According to information obtained by Pavel Lysnyansky, director of the Institute for Strategic Studies and Security (Ukraine), the Russians have been changing the names and surnames of deported Ukrainian children in order to complicate any subsequent attempt to find them. Their new "parents" may change the name and surname of the child and give him or her their patronymic. "Take, for example, a child called Sasha," he writes. "He was given to a new 'family'. The new 'father' said to Sasha: 'I dreamt about having a son called Denis. You will be Denis.' What was the child to do?"²³⁷
195. On 23 December 2022, a Russian publication wrote about the Tokushev family, who live in the Tyumen Region (west Siberia). The family is bringing up 11 children, three of whom were recently transferred from the LPR. The adoptive father Stanislav says: "They offered us children. At first, they casually suggested: 'See how it goes.' We replied, 'Okay, then.' 'Think about it, you can take them or not.' I and the wife had a think: 'Give us a month.' An hour later they wrote to us: 'Well, have you decided? Are you taking them?' We were shocked."²³⁸ Although the children had been transferred from the LPR, it is important to emphasise the speed of the process. It is not hard to see that there is a special attitude towards Ukrainian children shown by the rapidity with which they are adopted.
196. At the end of December 2022, the Molfar Agency published its own investigation of the forced transfer of Ukrainian children. It has been confirmed that one organisation responsible for forcible transfer is the "Children Direct" project. The project is headed by the Presidential Commissioner for Children's Rights Maria Lvova-Belova. The fund supporting the project cooperates in the following way with fighters from the DPR and LPR. The fighters find children who may have

²³⁴ «Ukraine: Russia's unlawful transfer of civilians a war crime and likely a crime against humanity – new report», Amnesty International, 10 November 2022 – [retrieved 26 July 2023]. <https://www.amnesty.org/en/latest/news/2022/11/ukraine-russias-unlawful-transfer-of-civilians-a-war-crime-and-likely-a-crime-against-humanity-new-report/> – [retrieved 9 July 2023].

²³⁵ «Childhood, the Return", series 3 & 4 (Russ.), Kotsnews, 9 November 2022 – <https://t.me/sashakots/37079> –; Voenkorkotyonok, 16 November 2022 – <https://t.me/voenkorkotenok/42776> – [retrieved 26 July 2023].

²³⁶ "As part of the 'Teenagers of Russia' programme, 200 difficult teenagers from various parts of Russia including the LPR and DPR have arrived in Chechnya" (Russ.), Kadyrov 95, 16 November 2022 – https://t.me/RKadyrov_95/3104 – [retrieved 26 July 2023].

²³⁷ "Russians change the names and surnames of deported children, complicating the search for them, say rights activists" (Ukr.), Zmina, 8 December 2022 – <https://zmina.info/news/rosiyany-zminyuyut-imena-ta-prizvyshha-deportovanyh-ditej-shho-uskladnyuye-yihnij-poshuk-pravozahysnyky/> – [retrieved 26 July 2023].

²³⁸ "The Tokushev's 11 children. The life of a large Tyumen family that took in orphans from LPR" (Russ.), 72 ru, Tyumen online, 23 December 2022 – <https://72.ru/text/gorod/2022/12/23/71881781/> – [retrieved 26 July 2023].

been orphaned as a result of Russia's war against Ukraine or children whose father and mother have been deprived of their parental rights by order of the occupation authorities. The fighters then pass the children to the office of "Children Direct", which deals with their deportation and subsequent fate. In practice, the process is rather more complicated and involves the participation of a certain number of intermediary partner organisations including the Russian Red Cross, the Gulfstream charitable fund and others.²³⁹

197. On 13 January 2023, a Ukrainian publication reported the statement made by Michael Carpenter, US ambassador to the OSCE, during a special sitting of that organisation's permanent council in Vienna. "... [I]n the course of the past few weeks we have observed how Russia has redoubled certain of its most repugnant activities in Ukraine," he said. "This includes the ongoing forced abduction of children from their families and homes in Ukraine and their transfer to Russia. There are reports that since the New Year Russia has stolen up to two thousand children from Ukraine and moved them to Russia, to defend them, supposedly, from the violence of the war it itself unleashed."²⁴⁰

The subjective aspect (*mens rea*)

198. The crime of genocide in this instance is distinguished by the presence of two intentions. The perpetrator not only commits the act of forcibly transferring children from one group to another; he (or she) does so with the particular intention of destroying in whole or in part a national, ethnic, racial or religious group, as such.
199. So far as the proof of the crime of genocide is concerned, the greatest difficulty is posed by the need to demonstrate the particular intention, also referred to as the *dolus specialis*. As indicated by the case of Jean-Paul Akayesu:²⁴¹ "Genocide is distinct from other crimes inasmuch as it embodies a special intent or *dolus specialis*. Special intent of a crime is the specific intention, required as a constitutive element of the crime, which demands that the perpetrator clearly seeks to produce the act charged. Thus, the special intent in the crime of genocide lies in 'the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such'."
200. The above approach was in practice implemented by the ICJ in the case of Bosnia vs Serbia. The court ruled that in order to establish the crime of genocide had been committed the prosecutor must prove that the perpetrator had a special intent in addition to the elements of the crime listed in Article 2 of the 1948 Convention. According to the Court:²⁴²

"Article II requires a further mental element. It requires the establishment of the 'intent to destroy, in whole or in part, . . . [the protected] group, as such'. It is not enough to establish, for instance in terms of paragraph (a), that deliberate unlawful killings of members of the group have occurred. The additional intent must also be established, and is defined very precisely. It is often referred to as a special or specific intent or *dolus specialis*; in the present Judgment it will usually be referred to as the 'specific intent (*dolus specialis*)'. It is not enough that the members of the group are

²³⁹ "Ukrainian children stolen by Russia: how many have been taken, who is behind it, whereabouts of children", Molfar, 30 December 2022 – <https://molfar.com/en/blog/ukrainian-children-stolen-by-russia> – [retrieved 25 July 2023].

²⁴⁰ "Since the beginning of the year Russia has stolen about 2,000 children from Ukraine, OSCE" (Ukr.), Ukrinform, 13 January 2023 – <https://www.ukrinform.ua/rubric-society/3651945-z-pocatku-roku-rosia-vikrala-v-ukraini-blizko-dvoh-tisac-ditej-stati-v-obse.html> – [retrieved 26 July 2023].

²⁴¹ The Prosecutor vs Jean-Paul Akayesu, Judgement, 2 September 1998, Case (ICTR-96-4-T) – <https://www.dipublico.org/1551/akayesu-case-ictr-96-4-t/> – [retrieved 26 July 2023].

²⁴² The Case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina vs Serbia and Montenegro), Judgement, 26 February 2007, – <https://www.icj-cij.org/public/files/case-related/91/091-20070226-JUD-01-00-EN.pdf> – [retrieved 11 May 2023].

targeted because they belong to that group, that is because the perpetrator has a discriminatory intent. Something more is required. The acts listed in Article II must be done with intent to destroy the group as such in whole or in part. The words 'as such' emphasize that intent to destroy the protected group."

201. Let us turn to the practical aspect of this crime. When we talk of the forcible transfer of Ukrainian children, we are referring to a specific Russian policy that has been confirmed by its political leadership, and by the president himself. As concerns the latter, a special intent can be traced in Vladimir Putin's article "On the Historical Unity of Russians and Ukrainians", published on 12 July 2021, less than a year before Russia's full-scale invasion of Ukraine:²⁴³

"During the recent Direct Line, when I was asked about Russian-Ukrainian relations, I said that Russians and Ukrainians were one people – a single whole. These words were not driven by some short-term considerations or prompted by the current political context. It is what I have said on numerous occasions and what I firmly believe. I therefore feel it necessary to explain my position in detail and share my assessments of today's situation. [...] modern Ukraine is entirely the product of the Soviet era. We know and remember well that it was shaped – for a significant part – on the lands of historical Russia. To make sure of that, it is enough to look at the boundaries of the lands reunited with the Russian state in the 17th century and the territory of the Ukrainian SSR when it left the Soviet Union. [...] The anti-Russia project has been rejected by millions of Ukrainians. The people of Crimea and residents of Sevastopol made their historic choice. And people in the southeast peacefully tried to defend their stance. Yet, all of them, including children, were labeled as separatists and terrorists. [...] All the subterfuges associated with the anti-Russia project are clear to us. And we will never allow our historical territories and people close to us living there to be used against Russia. And to those who will undertake such an attempt, I would like to say that this way they will destroy their own country. [...] Together we have always been and will be many times stronger and more successful. For we are one people."

202. These excerpts amply represent the context offered by the author of the text. Certain conclusions may be drawn. One, Putin stresses the "artificial nature" of Ukraine and refers to it as "entirely a product of the Soviet era". Two, he suggests that certain parts of Ukraine, in particular the southeast (including Mariupol) are historically part of Russia. He refers to the status of its inhabitants as "our people", "people who are close to us". Three, an interesting point, he claims that Ukraine has labelled even children living in the southeast as "separatists and terrorists". As a whole, therefore, we can say that the publication expresses doubts about the existence of the Ukrainian State and names Russia's main aim as "defending people". It is clear that the Russian president does not acknowledge the right of the Ukrainian national group to exist.
203. As far back as summer 2021, the head of the Russian State set out his own position, raising doubts about the status of Ukraine as a separate and independent State and, consequently, he adopted an almost nihilistic approach to the possible existence of Ukrainians as a separate national group. This particularly concerns those Regions that, in President Putin's opinion, were "historically part" of Russia. His article should be regarded as an idiosyncratic "declaration" that attempted to explain and justify the armed attack on Ukraine and the crimes committed there, including genocidal acts towards the People of Ukraine.
204. A key event, of which we have already written in the section on the objective aspect of the crime, was the adoption of Presidential Edict No. 300 (30 May 2022), simplifying the granting of Rus-

²⁴³ Vladimir Putin, "On the Historical Unity of Russians and Ukrainians", 12 July 2021 – <http://en.kremlin.ru/events/president/news/66181> – [retrieved 25 July 2023].

sian citizenship to Ukrainian children (see §179). On 9 March 2022, Putin had already informed the Presidential Commissioner for Children's Rights Lvova-Belova that the situation with regard to children had reached "an extreme stage and, I think, we must consider not bureaucratic heel-dragging but the interests of children. Make proposals and we shall make changes in the law. We shall appeal to the State Duma and I am sure the deputies will support you." At the end of this exchange, it was added that the lack of a Russian passport should not obstruct the adoption and temporary accommodation of children in Russia. The above-mentioned Edict was passed at the end of May. The cited text shows that the fast-track acquisition of citizenship was established for three categories of individual: citizens of the DPR, LPR and Ukraine. In other words, it was exclusively intended for citizens of Ukraine: granting them citizenship of the DPR and LPR had no legal consequences since those children remained citizens of Ukraine. The Russian President quite consciously adopted this Edict to reduce any chance that these children might again become part of the Ukrainian national group.

205. Examining Putin's actions in context the policy of forcibly transferring Ukrainian children to Russia and their fast-track citizenship and adoption is easily explained. A policy of terror and physical destruction using military and other means were applied to adult Ukrainians who, as a national group, refused to become part of a "single whole with the Russian People". The policy of forcible transfer was applied to Ukrainian children because they were unable to resist in the same way. This was particularly true of Ukrainian orphans.
206. Of special interest when considering the subjective aspect of the crime are the comments made by Perez Perozo of Venezuela during discussion of the draft Genocide Convention.²⁴⁴ "The convention should not restrict the concept of genocide to the physical destruction of the human groups whom it was intended to protect", he said.

"The definition given in Article II did not specifically lay down that the destruction of a group had to be physical destruction; it might be argued that the first four sub-paragraphs of Article II referred only to concrete acts of physical destruction, but it should be borne in mind that the Committee had included a fifth point covering the "forced transfer of children to another human group" ; thus the Committee implicitly recognized that a group could be destroyed although the individual members of it continued to live normally without having suffered physical harm. Sub-paragraph 5 of Article II had been adopted because the forced transfer of children to a group where they would be given an education different from that of their own group, and would have new customs, a new religion and probably a new language, was in practice tantamount to the destruction of their group, whose future depended on that generation of children. Such transfer might be made from a group with a low standard of civilization and living in conditions both unhealthy and primitive, to a highly civilized group as members of which the children would suffer no physical harm, and would indeed enjoy an existence which was materially much better ; in such a case there would be no question of mass murder, mutilation, torture or malnutrition; yet if the intent of the transfer were the destruction of the group, a crime of genocide would undoubtedly have been committed. The Venezuelan delegation was aware that the human conscience was particularly shocked by those acts of genocide which constituted mass murder and those covered by sub-paragraph 3 of Article II ; yet less spectacular crimes should not be overlooked and the concept of genocide should extend to the inclusion of acts less terrible in themselves but resulting in 'great losses to humanity in the form of cultural and other contributions', for which it was indebted to the destroyed human group."

²⁴⁴ Eighty third meeting, held at Palais de Chaillot, Paris, on Monday, 25 October 1948: [6th Committee, General Assembly, 3rd session], – <https://digitallibrary.un.org/record/604635?ln=en> – [retrieved 9 July 2023].

Furthermore, as explained by the ICTR,²⁴⁵ “with respect to forcibly transferring children of the group to another group [...] the objective is not only to sanction a direct act of forcible physical transfer, but also to sanction acts of threats or trauma which would lead to the forcible transfer of children from one group to another.”

207. Besides President Putin, the other official Russian figure responsible for the transfer of Ukrainian children was Maria Lvova-Belova, the Presidential Commissioner for Children's Rights. We have already discussed certain of her actions and statements (see §186). At one press conference, she described how Ukrainian children behaved after they had been forcibly transferred from Mariupol. They spoke badly of the Russian President, sang the Ukrainian national anthem and also cried, “Glory to Ukraine”. After they had been handed over to Russian families, however, and to the Commissioner's own family in particular, a process of integration began.²⁴⁶
208. There are other Russian publications, incidentally, concerning “integration”. The Tatarstan Commissioner for Children's Rights Irina Volynets announced that those wishing to adopt a child from the temporarily occupied territories of Ukraine should first attend a school for adoptive parents and gain a positive assessment. The procedure follows that for any adoption, but in addition the potential adoptive parents of Ukrainian children must take “courses in ideological preparation”. It was announced at the Omsk centre for family education in Siberia that a programme was being developed to prepare families who wished to adopt a child from the temporarily occupied territories of Ukraine. During this programme, it was stated, a senior lecturer from the faculty of theology, philosophy and cultural studies of Omsk University, a certain Vyacheslav Danilov, had been invited to instruct the families. He would explain the nuances of ideological upbringing for Ukrainian children.²⁴⁷
209. The children were not only being forcibly transferred, but the aim was to re-educate them and integrate them into the “Russian reality”. The Ukrainians were to be given an education that differed from that they had previously received, and they would acquire new customs and a new religion (adopting the values of the Russian Orthodox Church) and, in particular, they would communicate in a new language that excluded the possibility of using Ukrainian. It would be very difficult for these children to return to their national group and their removal would substantially influence its development.

Can an assertion as to the “interests of the child” exclude the crime of genocide?

210. The problem of “defending the interests of the child” occupies a special place in a discussion of the motives behind the crime of genocide. Below we shall cite a vivid example of such a case. First let us establish certain general principles.
211. This issue has been quite thoroughly examined in Kurt Mundorff's dissertation on forcible child transfers. Present debates on the issue often focus on a single basic argument: the transfer was carried out with friendly intentions and, therefore, it cannot “by definition” be classified as genocide. Mundorff uncovers the parameters of genocidal intent and proposes that mixed motives

²⁴⁵ Prosecutor v. Alfred Musema, Case No. ICTR-96-13-T, Judgement (TC), 27 January 2000, para. 159; Prosecutor v. George Rutaganda, Case No. ICTR-97-20-T, Judgement (TC), 6 December 1999, ICTR, para. 54; Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgement (TC), 2 September 1998, para. 509

²⁴⁶ “At a press briefing before the Public Chamber Children's Commissioner Maria Lvova-Belova talked about the adaptation of Ukrainian children to Russian realities and their conscious choice in favour of Russia” (Russ.), Lvova-Belova Telegram channel, 28 September 2022 – <https://t.me/malvovabelova/605> – [retrieved 26 July 2023].

²⁴⁷ Analytical report: the forcible transfer of children to Russia (Russ.), Eastern Human Rights Group and Institute for Strategic Studies, December 2022 – <https://drive.google.com/file/d/1hChKv3DosrZPSWym-YdOhfrE4ySjcrX4/view?fbclid=IwAR0dG3GzV0dc9OxecPwe3zE-drvUBimolAyhilw6eILsN9gfkALuSRiPtvg> – [retrieved 26 July 2023].

and good intentions cannot “save” the individuals who commit such actions from legal responsibility. The majority of those who planned and introduced programmes for the forcible transfer of children, he suggests, sincerely and wrongly believed that they were serving “the best interests” of the children. Yet such a conviction cannot justify an act of genocide. A kindly attitude towards certain individuals cannot justify a crime committed against the group as a whole. The Convention on Genocide carefully defines five actions aimed at the destruction of a group and does not include a legal defence based on acting in perceived interests of some members of the group. If that were permitted, the subjective convictions of the perpetrator would be allowed to outweigh the crime. It would create a dangerous precedent, especially in the historical context of genocide when the criminals often committed appalling crimes in pursuit of what they considered to be the common good.²⁴⁸

212. A commentary by the Russian Presidential Commissioner for Children's Rights offers a striking illustration.²⁴⁹ Lvova-Belova says that when Ukrainian deputy prime minister Iryna Vereschuk appealed to her, demanding that she return the forcibly transferred children, she refused citing the interests of the child. This is not the only example of its kind. At one of the sessions to harmonise legislation concerning the adoption of orphans in Russia, the LPR and the DPR, the head of the citizenship department of the RF Ministry of Internal Affairs Nikolai Yevdokimov stressed, “When using its powers to grant citizenship of Russia, including those who are no longer under the care of their parents, the Ministry of Internal Affairs has always given priority to the interests of the child.”²⁵⁰ The Russian President, as we recall (see §201, also emphasised the interests of the child.
213. Russian officials have actively invoked the defence of “the interests of the child”. Such assertions must be critically examined, in light of the question under consideration, for they are linked to the genocidal intent to destroy the Ukrainian national group as a whole.
214. At this point, it should be mentioned that when it comes to forcible transfers, “forced” is not to be interpreted in a restrictive manner, such as being limited to physical force. It may include the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment. The essential element is that the transfer be involuntary in nature, where the relevant persons had no real choice.”²⁵¹

Some comments on the protected group

215. As we now know, the forcible transfer of children generally involves several stages: [1] the removal (transportation) of children to Russian territory; [2] their assignation to places of temporary accommodation (sanatoria, children's homes and other institutions); [3] fast-track award of Russian citizenship; [4] adoption by families in Russia. Thanks to the extraordinary efforts of others, some children have returned to Ukraine or to their families. As we shall see, this was usually only possible before the child had received Russian citizenship or been formally adopted.

²⁴⁸ Kurt Mundorff, *Taking 2(E) seriously : forcible child transfers and the convention on the prevention and punishment of the crime of genocide*, 2007, University of British Columbia – <https://open.library.ubc.ca/soa/cIRcle/collections/ubctheses/831/items/1.0077727> – [retrieved 9 July 2023].

²⁴⁹ “press briefing before the Public Chamber” (Russ.), Lvova-Belova Telegram channel, 28 September 2022, (see fn. 239) – <https://t.me/malvovabelova/605> – [retrieved 26 July 2023].

²⁵⁰ “First meetings to harmonise legislation in Russia, the LPR and the DPR” (Russ.), Commissioner for Children's Rights, 27 April 2022 (see fn. 214) – <http://deti.gov.ru/articles/news/sostoyalis-pervye-zasedaniya-shtabov-po-sinhronizacii-zakonodatelstva-rossii-lnr-i-dnr-v-voprosah-semejnego-ustrojstva-detej-sirot> – [retrieved 26 July 2023].

²⁵¹ *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-T, Judgement (TC), 15 March 2002, para. 475.

217. We have already cited stories of this kind in the section on the objective aspect of the crime (see §188). Other examples can be found online. For instance, an under-age inhabitant of Mariupol Oleksandr Radchuk told his story while the World Economic Forum was taking place in Davos. In March 2022, Russian soldiers took 12-year-old Oleksandr and his mother Snežana from Mariupol and sent them to filtration centres. During filtration the family was separated: Oleksandr saw his mother for the last time. The Russians did not allow him to call his relatives and told him that he would be adopted by a new family in Russia. However, the Oleksandr managed to contact his grandmother and avoid deportation. She says that Russian social workers tried to dissuade her from bringing back her grandson. It would not be easy, they said: she would need to put together many documents and go through bureaucratic procedures.²⁵²
218. Another example is that of 16-year-old David who before the war also lived in Mariupol. He was able to leave the city thanks to the help of a woman who presented herself at roadblocks as his guardian. When the bus from Mariupol arrived at the terminus in west Russia the local authorities confiscated his passport. David was taken to a children's home and told he would stay there until he turned 18. In early October 2022, David learned by chance that he could leave the children's home if his mother (who remained in Mariupol) gave her written consent: the staff had not told him this before. Russian volunteers came to help David and brought him a mobile phone. It took several weeks to persuade his mother to go to a notary to verify her letter. David stayed with one volunteer after another until he finally found himself in Kyiv.²⁵³
219. Despite this, we must emphasise that the transferred children did not consist solely of those who were orphans or deprived of parental care. There were also children in this category who had been physically separated from their parents or from those who accompanied them during the filtration procedure.

The elements of the crime recorded in the Rome Statute

220. Before we summarise our conclusions, we would like to present the elements of the crime as documented in the International Criminal Court's publication of that name.²⁵⁴ Taking the cited materials into account, we shall comment on each of the Elements.
- Point (e) of Article 6 of the Rome Statute requires:
1. **The perpetrator forcibly transferred one or more persons.**
(Footnote: The term "forcibly" is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment.)
221. At present, it is certainly known that there were mass forcible transfers of children from Mariupol to Russia. One child who lived in the city was adopted by the RF Presidential Commissioner for Children's Rights Maria Lvova-Belova. Since this was happening during military operations to children under the age of 18, they had no means of resisting or otherwise rejecting the decision

²⁵² "Ukraine is You", live broadcast of Opening and Discussion, Day 1 (Ukr.), Victor Pinchuk Foundation – <https://www.youtube.com/watch?v=ARC8In2VeIE> – [retrieved 26 July 2023].

²⁵³ "I saw it was over": the boy who tried to escape war in Ukraine via Russia", *The Guardian*, 5 January 2023 – <https://www.theguardian.com/world/2023/jan/05/boy-who-tried-to-escape-war-in-ukraine-via-russia> – [retrieved 9 July 2023].

²⁵⁴ International Criminal Court, Elements of Crimes. 2011, – <https://www.icc-cpi.int/sites/default/files/ElementsOf-CrimesEng.pdf> – [retrieved 9 July 2023].

to transport them to Russia. Additional evidence of the enforced nature of this transfer is that parents and children were often forcibly separated during filtration procedures.

2. Such person or persons belonged to a particular national, ethnical, racial or religious group

222. All the children forcibly removed from Mariupol had Ukrainian citizenship. On these grounds and others, the Kharkiv Human Rights Protection Group argues that Russian actions were aimed at the partial or total destruction of the Ukrainian national group.

3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such

223. Major Russian officials, among them President Putin himself and his subordinates, in particular the Commissioner for Children's Rights Maria Lvova-Belova, were striving through the forcible transfer of Ukrainian children to destroy, in whole or in part, the Ukrainian national group. The doubts expressed in Putin's article about the existence of the Ukrainian national group, actions to fast-track the award of Russian citizenship, the adoption of those children by Russian families and their subsequent ideological re-education all testify to the presence of a special genocidal intent.

4. The transfer was from that group to another group

224. Awarding Ukrainian children Russian citizenship and their subsequent adoption by families in Russia; the physical transfer of those children to remote parts of the country all confirm that they were being transferred from one group to another.

5. The person or persons were under the age of 18 years

225. The evidence provided to confirm the objective aspect of this substantiation shows that the people being transferred were, beyond any reasonable doubt, under the age of 18.

6. The perpetrator knew, or should have known, that the person or persons were under the age of 18 years

226. Russia's political leadership is fully aware that those being transferred were under the age of 18. Presidential Edict No. 300 of 30 May 2022 explicitly stated that the simplified procedure for the acquisition of citizenship was exclusively provided for children. When the Commissioner for Children's Rights referred to her adoption of a Ukrainian boy, she stressed that he was 16-years-old.

7. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction

227. This element is common to all forms of genocide laid down in the Rome Statute. It is also referred to as the contextual element. As was indicated in the ICC decision on the arrest of Omar al-Bashir (§§123–124):²⁵⁵

[123] "The Majority ... observes that, according to this contextual element provided for in the Elements of Crimes, the conduct for which the suspect is allegedly responsible, must have taken place in the context of a manifest pattern of similar conduct directed against the targeted group or must have had such a nature so as to itself effect, the total or partial destruction of the targeted group.

[124] "In the view of the Majority, according to this contextual element, the crime of genocide is only completed when the relevant conduct presents a concrete threat to the existence of the targeted group, or a part thereof. In other words, the protection offered by the penal norm defining the crime

²⁵⁵ ICC, "Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad, Al Bashir", 4 March 2009 – <https://www.icc-cpi.int/court-record/icc-02/05-01/09-3> – [retrieved 26 July 2023].

of genocide – as an ultima ratio mechanism to preserve the highest values of the international community – is only triggered when the threat against the existence of the targeted group, or part thereof, becomes concrete and real, as opposed to just being latent or hypothetical.”

228. Before assembling all the evidence concerning this particular element, we must provide a more detailed analysis of its interpretation. In discussion of the case of Radislav Krstic before the ICTFY the following comments were made:²⁵⁶

[223] “The offence of extermination as a crime against humanity requires proof that the proscribed act formed a part of a widespread or systematic attack on the civilian population, and that the perpetrator knew of this relationship. These two requirements are not present in the legal elements of genocide. While a perpetrator’s knowing participation in an organized or extensive attack on civilians may support a finding of genocidal intent, it remains only the evidentiary basis from which the fact-finder may draw this inference. The offence of genocide, as defined in the Statute and in international customary law, does not require proof that the perpetrator of genocide participated in a widespread and systematic attack against civilian population.”

[224] “In reasoning otherwise, the Trial Chamber relied on the definition of genocide in the Elements of Crimes adopted by the ICC. This definition, stated the Trial Chamber, ‘indicates clearly that genocide requires that ‘the conduct took place in the context of a manifest pattern of similar conduct.’ The Trial Chamber’s reliance on the definition of genocide given in the ICC’s Elements of Crimes is inapposite. As already explained, the requirement that the prohibited conduct be part of a widespread or systematic attack does not appear in the Genocide Convention and was not mandated by customary international law. Because the definition adopted by the Elements of Crimes did not reflect customary law as it existed at the time Krstic committed his crimes, it cannot be used to support the Trial Chamber’s conclusion.”

229. This issue was raised more definitively in the Trial Chamber’s examination of the case of Karadzic and Mladic:²⁵⁷ “In all cases, it is the submission of the Prosecution that in the interests of international justice,” reads that comment, “genocide should not be diluted or belittled by too broad an interpretation. Indeed, it should be reserved only for acts of exceptional gravity and magnitude which shock the conscience of humankind and which, therefore, justify the appellation of genocide as the ‘ultimate crime’.”
230. Claus Kress has discussed this issue in relation to the case of Ahmad al-Bashir. Analysing the caselaw of other tribunals, he indicated that on the whole the intention to commit genocide must be a real threat and involve more than the hope of a single perpetrator who wished for reasons of hatred to destroy as a whole or in part the corresponding group. Adopting that realistic interpretation of intent, which is fully compatible with the formulation of the legal term, it is possible to offer a consistent explanation of the contextual element. A solitary criminal may operate with a realistic intention to destroy as a whole or in part the targeted group if his conduct in itself is capable of implementing that destruction. In almost every case, however, that is not what occurs. For practical purposes, therefore, the intent of the perpetrator requires that his conduct take place “in the context of a manifest pattern of similar conduct directed against that group”. According to this approach, the last element becomes the objective point of departure for a genocidal intent. There is only a slight analytical nuance between this concept of genocidal intent and the wide-

²⁵⁶ ICTFY: Prosecutor v. Radislav Krstic, Judgement, Case No. IT-98-33-A, 19 April 2004, – <https://www.icty.org/x/cases/krstic/acjug/en/> – [retrieved 9 July 2023].

²⁵⁷ ICTFY: The Prosecutor of the Tribunal v. Radovan Karadzic and Ratko Mladic, 27 June 1996, Case No. IT-95-5-R61, para. 29 – <https://www.icty.org/x/cases/karadzic/trans/en/960627it.htm> – [retrieved 9 July 2023].

- spread judicial practice of regarding a genocidal campaign as “only the evidentiary basis from which the fact-finder may draw the inference” that a genocidal intent exists.²⁵⁸
231. Faced with the need to establish intent in its ruling in the case of al-Bashir, the Pre-Trial Chamber took an approach very close to the concept of realistic intention. The Chamber distinguished between what it termed the “genocidal intention of the Sudanese government” and the genocidal intent of al-Bashir and, it appears, was of the opinion that there could not be an individual intent without a collective intention. “If ‘governmental intent’ is translated into a ‘plan to carry out a genocidal campaign’,” wrote Kress, “it becomes clear that the Chamber is of the view that the overall genocidal plan amounts to an objective point of reference for Al Bashir’s (realistic) intent.” He continued: “On the basis of such a concept of genocidal intent, a separate mental requirement concerning an objective circumstance element is superfluous. The Chamber has thus come half-way in adopting the concept of realistic intent and it is suggested that it should fully endorse this idea when the next opportunity arises.”²⁵⁹
232. On the one hand, the Chamber evidently established too high a threshold for committing the crime of genocide. It interpreted the last common element in such a way that the crime of genocide could only be completed when “the threat against the existence of the targeted group, or part thereof, becomes concrete and real, as opposed to just being latent or hypothetical.” How exactly the Chamber understood the ‘concrete threat’ is not clear. There is a risk that this phrase will be understood as creating an obstacle too great to be overcome.
233. As Judge Anita Usacka rightly commented in her separate and partly dissenting opinion, the precondition of a “concrete threat” verged on “results-based evidence”, a requirement that the genocidal campaign had reached a point where destruction of the protected group might take place. A result of that kind, in other words, was imminent. Yet not one of the above-listed arguments requires the introduction of such a strict threshold and this applies to previous caselaw. As distinct from what the Pre-Trial Chamber apparently believed, the last common element does not require the emergence of such a dangerous situation. The alternative included in this element (“conduct that could itself effect such destruction”) refers to conduct that could potentially lead to such a result.
234. As concerns the formulation of the first part of this element, it should be sufficient that the genocidal campaign could of its nature lead to the planned destruction of the protected group. This interpretation is confirmed by the comment in the introduction to the Elements of Crimes that the phrase “in the context” shall include the initial actions of a model in process of formation. This means that the crime of genocide is completed by the first act of the campaign of genocide. At that moment, however, the threat to the targeted group as such, or to a significant part of the group, will not yet be concrete. It follows, therefore, that to select an objective starting point to assess the intentions of the perpetrator in a typical case of genocide requires no more than the existence of a realistic collective goal of destroying the targeted group as a whole or in part. The court must clarify this issue, Kress suggested, the next time it assembles.²⁶⁰
235. Returning to the core of our substantiation we must answer the following question when elucidating the last element: does the forced transfer of Ukrainian children represent a real and concrete threat to the existence of the Ukrainian national group or a part of that group rather than a merely latent and hypothetical threat?

²⁵⁸ Claus Kreß, “The Crime of Genocide and Contextual Elements: A Comment on the ICC Pre-Trial Chamber’s Decision in the Al Bashir Case”, *The Journal of International Criminal Justice*, 2009 – <https://www.legal-tools.org/doc/ec3f98/pdf/> – [retrieved 9 July 2023].

²⁵⁹ Claus Kreß, “The Crime of Genocide”, see note 41.

²⁶⁰ Claus Kreß, “The Crime of Genocide”, see note 41.

236. We fully concur with the argument that the requirement for specific conduct need not be understood as demanding a direct and specific result leading to the destruction, in part or in whole, of the protected group. Therefore, we must show whether such conduct was able by its very nature to lead to partial or complete destruction and extermination.
237. Taking into account the conditions we listed as the objective aspect of the crime, the forcible transfer of children began almost immediately after Mariupol was occupied. As we compile this Substantiation, Russia continues to pursue its policy of transporting Ukrainian children out of the city: a substantial number of such cases have been recorded. Apart from physical transportation Russia's actions also embrace the fast-track award of Russian citizenship to these children with their subsequent permanent adoption in Russia.
238. Compared to the physical destruction of members of the protected group, as per point (a) of Article 6 of the Rome Statute, the actions that make up the forcible transfer of children have their own distinctive features, that involve the future onset of negative consequences. There can be no doubt that the measures already undertaken by the Russian side are sufficient to have a destructive effect on the Ukrainian national group, the inhabitants of Mariupol. Since those children have lost cultural and other ties with the Ukrainian national group, they will not make a contribution to the development of their native community, thereby causing substantial future harm to the national group.

07 CONCLUSIONS

239. All the prerequisites to begin an investigation into the commission of the crime of genocide against the protected national group of Ukrainians in a particular territory, the city of Mariupol and its immediate surroundings, have been met in accordance with points (a) to (c) of Article 53(1) of the Rome Statute. We therefore call on the Office of the Prosecutor of the ICC to take account of the materials and evidence presented in this Submission and begin an investigation, as soon as possible, into the crime of genocide described therein, in order to resolve the issues of injustice and impunity on behalf of the protected national group of Ukrainians in a particular territory, the city of Mariupol and its immediate surroundings.





APPENDIXES

APPENDIX ONE

A DESCRIPTION IN CHRONOLOGICAL ORDER OF EVENTS THAT TOOK PLACE IN AND AROUND MARIUPOL BETWEEN 24 FEBRUARY AND 21 MAY 2022

From Saturday 26 February 2022 onwards, Russia's armed forces began an indiscriminate shelling and bombing of civilian objects in the city of Mariupol that had no military purpose or current military use.

From early March onwards, Mariupol was subjected to a barrage of shelling by Russian rocket artillery. Residential buildings in almost all the city's districts suffered from bombing by Russia's armed forces. Among other buildings that were hit were a maternity hospital and a children's hospital where mothers who had recently given birth and their infants were located. Places where civilians were seeking shelter (the Mariupol drama theatre, a swimming pool and an arts college) were also shelled and bombed.

[A] SHELLING AND BOMBING OF MARIUPOL AND NEARBY POPULATION CENTRES (§§1–37)

24 February to 14 March (§§1-14)

15 March to 21 May 2022 (§§15-37)

[B] THE BLOCKADE OF MARIUPOL (§§38-41)

[C] FORCED POPULATION TRANSFER TO RUSSIA (§§42-46)

[D] FILTRATION CAMPS (§§47-48)

[E] DEPORTATION OF CHILDREN TO RUSSIA (§§49-50)

[A] SHELLING AND BOMBING OF MARIUPOL AND NEARBY POPULATION CENTRES, THE MARIUPOL TERRITORIAL COMMUNITY (SEE §48, SECTION 5.2.1)

FEBRUARY 2022

1. Thursday, 24 February

05.37 am – First reports of explosions on Left Bank of the city appeared in the “Mariupol, a Safe City” Telegram channel, hereinafter MSCtc (– https://t.me/Bezpechnuy_Mariupol/134305 –).

05.39 am – Information on MSCtc of a powerful explosion on Guramishvili Street in the tiny suburb of Gorky (pop. 70; 2001) which forms part of Toretsk town council (– https://t.me/Bezpechnuy_Mariupol/134320 –).

05.40 am – It was reported that a shell had landed in the East district of Mariupol. There was said to be a direct hit on a building on Lazo Street, next to School No. 51 (– https://t.me/Bezpechnuy_Mariupol/134327 –; – https://t.me/Bezpechnuy_Mariupol/134337 –; – https://t.me/Bezpechnuy_Mariupol/134340 –; – https://t.me/Bezpechnuy_Mariupol/134420 –).

06.13 am – MSCtc reported that a fire broke out after an explosion on Zoya Kosmodemyanskaya Street in Mariupol (– https://t.me/Bezpechnuy_Mariupol/134753 –).

06.19 am – Explosions could already be heard, according to MSCtc, in Mariupol's 23rd micro-district, at the Pivdenna coach station (AS2), the Primorsky district and the Moryaki suburb (– https://t.me/Bez-pechnuy_Mariupol/134332 –).

The city's Eastern district was shelled, two people were wounded (– <https://www.youtube.com/watch?v=vMKfkPv7sYk> –; – <https://youtu.be/fUSJOuHuGHQ> –).

To the north of Mariupol, the town of Sartana (pop. 10,350; 2019) was shelled (– <https://www.youtube.com/watch?v=7IUQVTaRY6I> –).

2. Friday, 25 February

Shells hit School No 48 and a 12-storey building. Three people were hurt (– <https://www.0629.com.ua/news/3338250/vtrati-voroga-z-pocatku-vijni-povidomlae-stab-zsu> –; – <https://www.0629.com.ua/news/3338522/v-seti-poavilos-video-posledstvij-obstrela-os-no48-i-domov-v-levoberezhnom-rajone-video> –).

3. Saturday, 26 February

From Saturday 26 February 2022 onwards, Russia's armed forces began an indiscriminate shelling and bombing of civilian objects in the city of Mariupol that had no military purpose or current military use.

At 2.30 pm Russia's air-force dropped bombs on private houses in the town of Sartana, north of Mariupol. Two were killed and six, injured (– <https://www.0629.com.ua/news/3338735/obstrilali-sartanu-pocilili-u-budinok-golovi-mariupolskogo-rajonu> –).

Four died and nine were wounded in further air attacks on Sartana (– <https://www.0629.com.ua/news/3338932/rosijski-vijska-znovu-obstrilali-sartanu-kilkist-zertv-zrosla> –).

There were air attacks on the town of Sopyno. There were no casualties (– <https://www.0629.com.ua/news/3338747/v-rezultate-aviaudara-poselok-sopino-otrezan-ot-civilizacii> –).

4. Sunday, 27 February

In the morning there were air attacks on the towns of Sartana and Talakivka (pop. 4,113; 2015) 19 kms north of Mariupol (– <https://www.0629.com.ua/news/3339095/utrom-sartanu-snova-obstrelali-iz-poselka-vedetsa-evakuacia-zitelej-dopolneno> –).

There were airstrikes on Berdyanske village, which forms part of the Mariupol Territorial Community.

There were also reports of air attacks on the Left Bank district of Mariupol. Buildings were hit at 115 Victory (Победы) Avenue and at 4 & 6 Gorlovskaya Street, as was the Construction College (– <https://www.0629.com.ua/news/3339310/obstrilali-budivelnij-tehnikum-na-livomu-berezi-z-livoberezhnogo-rajonu-budut-evakujovuvati-ludej-cii-budinki-postrazdali> –).

Sartana town was shelled (– <https://www.0629.com.ua/news/3339580/sartana-znovu-zaznala-obstrilu> –).

In Mariupol, a multi-storey building on Freedom Avenue (пр. Свободы), and School No. 48 were bombed by Russian artillery (– <https://www.youtube.com/watch?v=o5v7zUR4LLw> –; – <https://youtu.be/o5v7zUR4LLw> –).

5. Monday, 28 February

Russia carried out yet another air raid on the town of Sartana, north of Mariupol (– <https://t.me/mariupoltopnews/4088> –; – <https://www.youtube.com/watch?v=7IUQVTaRY6I> –; – https://lb.ua/society/2022/02/26/507024_rosiya_vchinila_avianalit_s_sartana.html –; – <https://t.me/mariupolnow/9725> –; – <https://www.0629.com.ua/news/3339850/sartana-vcergove-popala-pid-vorozij-obstril-pid-zavalami-ludi-aki-potrebuut-evakuacii> –).

Between Thursday 24 February and Monday 28 February 2022 the deaths of five people and the destruction of 52 residential buildings were recorded.

MARCH 2022

6. Tuesday, 1 March

From early March 2022 onwards, Mariupol endured a barrage of Russian multiple-launch rocket artillery, while air attacks by Russia's armed forces struck residential buildings in almost all the city's districts.

As of 1 March, according to Pavlo Kirylenko, head of the Donetsk Region civilian-military administration, 21 people had been wounded; there was no information that anyone had been killed. Russian soldiers, in Kirylenko's words, were intentionally targeting and destroying the city's critical and communal infrastructure: one volley hit the "Kommunalnik" (garbage collection, etc) agency and threatened to damage an organisation that keeps the city running (– <https://www.ukrinform.ua/rubric-ato/3417136-kirilenko-mariupol-pid-skvalom-reaktivnoi-artilerii-rf-obstrili-ne-pripinautsa.html> –).

2 pm – shells hit buildings on Shevchenko Boulevard (– <https://t.me/mariupolrada/8660> – ; – <https://www.0629.com.ua/news/3341053/agresor-zavdav-artudaru-po-livoberizzu-kp-komunalnik-ta-plosi-kirova-foto> –). There was one fatality, 16-year-old Denys Savchenko (– <https://www.0629.com.ua/news/3341681/vid-obstriliv-zaginuv-16-ricnij-denis-savcenko-foto> –).

A dormitory on Yakov Gugel Street was hit by shellfire (– <https://www.0629.com.ua/news/3341146/agresor-obstrilav-prihistok-dla-pereselenciv-na-vulici-gugela> –).

Mariupol came under fire from rocket artillery. The homes of civilians on the left bank of the River Kalmius and in the Central district were damaged, as were the premises of the "Kommunalnik" utility contractor. One person died, three were injured. Several buildings and School No. 16 were destroyed.

About 5.30 pm Russian shelling of Mariupol resumed (– <https://www.0629.com.ua/news/3341216/zavilos-video-ak-neludi-obstriluut-nas-ridnij-mariupol-smiucis-i-peredauci-vitanna-vid-dnr-video> –).

The city's Left-bank district was shelled from helicopters (– https://www.tiktok.com/@_konstantinova_/video/7070036322466958598?is_from_webapp=v1&item_id=7070036322466958598 –).

7. Wednesday, 2 March

Shelling of School No. 42 in the Kalmiussky district (– <https://www.0629.com.ua/news/3341529/sogodni-zranks-pid-obstril-popala-skola-u-kalmiusskomu-rajoni> –).

Shelling from rocket artillery of a maternity home on the left bank of the River Kalmius (– <https://www.0629.com.ua/news/3341409/tvarini-z-rosijskimi-trikolorami-nakrili-gradami-pologovij-budinok-na-livoberezzi> –).

Shelling of Manhush town using 'Grad' ground-to-ground missiles. As a result of enemy action Peace Street in the centre of Manhush, the town community centre, the Pantheon of Glory and certain five-storey buildings all sustained damage (– <https://www.0629.com.ua/news/3341681/vid-obstriliv-zaginuv-16-ricnij-denis-savcenko-foto> –).

Shelling by rocket artillery of the Khatastroj district on the left (east) bank of the river Kalmius (– <https://www.0629.com.ua/news/3342098/ce-budinok-moih-batkiv-mariupolec-pokazav-so-putin-zrobiv-z-jogo-malou-batkivsinou-foto> –).

Shelling of the Eastern micro-district (– <https://t.me/mariupolnow/59> –).

Electricity and water supplies were cut off.

8. Thursday, 3 March

10.45 am – A shell exploded near the city's dermatological outpatient clinic on Bakhmut Street (– <https://www.0629.com.ua/news/3342784/bila-dermatovinerologicnogo-dispanseru-rozirvavsasnarad-foto> –).

The following districts and streets in Mariupol were hit by shellfire:

- Mariupol's 17th and 22nd micro-districts; a blood-transfusion centre was hit.

- Kuprin Street, Central district (– <https://t.me/mariupolnow/15956> –).
- Meotydy Square, Left-bank district (– <https://t.me/mariupolnow/343> –).
- A shell hit a multi-storey building on the Warrior-Liberators (Воинов Освободителей) Street (– <https://t.me/mariupolnow/568> –).
- residential buildings on Ilych Avenue (– <https://t.me/mariupolnow/432> –).
- Buildings on Rovnaya Street were damaged (– <https://t.me/mariupolnow/328> –; – <https://t.me/mariupolnow/287> –).
- the Metal-workers Avenue, Central district (– <https://t.me/mariupolnow/348> –).
- the Eastern micro-district (– <https://t.me/mariupolnow/251> –).

Russian troops shelled the Epicentre shopping mall, the 17th and 22nd micro-districts and a blood transfusion centre. The shelling continued throughout the day and the situation in Mariupol remained tense (– <https://pr.ua/news/rosiyisqki-viyisqka-obstrilyali-22-yi-ta-17-yi-mikrorayioni-mariupolya-trivavue-evakuacsiya-z-volnovahi> –).

9. Friday, 4 March

Several districts in Mariupol were shelled (– <https://www.0629.com.ua/news/3343249/mariupol-visim-dniv-pid-bombami-foto> –):

- Victory Avenue in the Left-bank district (– <https://www.youtube.com/watch?v=UuZyGAYWfAA> –);
- Azovstal Street (– <https://t.me/mariupolnow/682> –);
- Morskoi Boulevard (– <https://t.me/mariupolnow/674> –);
- 3 Poltava Street (– <https://t.me/mariupolnow/655> –);
- 31 Karasevskaya Street, Central district (– <https://t.me/mariupolRIP/25440> –; – <https://t.me/mariupolnow/1056> –).

Latyshev Street in the city's Primorsky district came under shellfire (– <https://t.me/mariupolnow/609> –).

Buildings near the "One Thousand Trifles" (1000 мелочей) shop, at the intersection of the Construction-workers (Строителей) and Peace Avenues, were shelled (– <https://t.me/mariupolnow/498> –).

The shelling of Mariupol by the Russian invaders continued; the situation inside the city grew critical. There was no light, water, heating, phone connections or food in Mariupol. Because of the constant shelling, public service repair-workers could not restore either water or electricity supplies.

That evening, Mayor Boychenko said, three hundred of Mariupol's inhabitants had been wounded. In the city council it was announced that they expected a plan to be drawn up for a humanitarian corridor to be used during lulls in the fighting. Addressing the civilian population, the Mayor declared that the main task now was to establish a corridor through which food and basic necessities could be delivered during periods of calm (– <https://web.archive.org/web/20220304215527/> –; – <https://www.rbc.ua/ukr/news/proishodit-mariupole-seychas-situatsiya-4-1646398709.html> –).

10. Saturday, 5 March

Artillery attack on Meotydy Boulevard (– <https://t.me/mariupolnow/1045> –).

Shells hit multi-storey buildings on Boulevard Shevchenko, Central district (– <https://t.me/mariupolnow/1034> –).

Private homes were destroyed on Semenishin Street (– <https://t.me/mariupolnow/1015> –).

Leningrad Street in the Left-bank district was hit (– <https://t.me/mariupolnow/1004> –), as were Mariupol's 23rd micro-district, and the area near the Port City shopping mall (– <https://t.me/mariupolnow/955> –; – <https://t.me/mariupolnow/905> –; – <https://t.me/mariupolnow/904> –).

11. Sunday, 6 March

Gas supplies were cut throughout the city.

An 18-month-old child was killed (<https://www.0629.com.ua/news/3344882/rosia-vbivae-ditejv-marupoli-zaginu-18-misacnij-hlopcik-foto> –).

The following districts and streets were shelled:

- The Primorsky district. Private buildings were destroyed on Yakornaya, Matrosskaya and Yungovskaya Streets, and at 98 Nakhimov Avenue (<https://t.me/mariupolnow/11190> –; <https://t.me/mariupolnow/17495> –).
- The Left-bank district was shelled, damaging Pashkov Street and the Street of Ukrainian Cossacks (<https://t.me/mariupolnow/1277> –).
- Levchenko Street in Mariupol's Kalmiussky district (<https://t.me/mariupolnow/1123> –).
- Shevchenko Boulevard, Central district (<https://t.me/mariupolnow/1102> –).
- Zelinsky Street, Central district (<https://t.me/mariupolnow/1078> –).

12. Monday, 7 March

Shevchenko Boulevard and the Zaporizhzhia Highway were hit by an artillery attack (<https://t.me/polkazov/3994> –).

The city's Eastern micro-district was shelled (<https://t.me/mariupolnow/1279> –; <https://t.me/mariupolnow/1277> –).

13. Tuesday, 8 March

As a result of dehydration, a six-year-old girl died in Mariupol. Her mother had been killed when the city was being shelled and the child was left alone under the ruins of their home (<https://www.0629.com.ua/news/3345401/pavlo-kirilenko-pro-provokacii-pid-cas-sprob-evakuacii-meskanciv-mariupola-so-vlada-bude-robit-dali-video> –; <https://www.0629.com.ua/news/3345740/u-mariupoli-vid-znevodnenna-zaginula-ditina> –).

There was an airstrike on the intersection between Peace Avenue and Torgovy Street. Two bombs fell on the organisations near the International Red Cross and its Ukrainian branch. A shopping mall and residential buildings were destroyed (<https://www.0629.com.ua/news/3345740/u-mariupoli-vid-znevodnenna-zaginula-ditina> –; <https://t.me/mariupoltopnews/7149> –; <https://www.infobae.com/ua/2022/03/31/satellite-photos-showing-before-and-after-the-russian-bombing-of-the-red-cross-office-in-mariupol/> –).

The city's Left-bank district was shelled (<https://youtube/UuZyGAYWfAA> –; <https://t.me/mariupolnow/1701> –; <https://t.me/mariupolnow/1700> –).

An artillery attack on Mariupol's 23rd micro-district. 111 Orlik Street was destroyed in the ensuing fire (<https://t.me/mariupolnow/1687> –). 75 Orlik Street was also hit (<https://t.me/mariupolnow/1651> –).

14. Wednesday, 9 March

There were airstrikes on 82 Nakhimov Avenue (<https://t.me/mariupolnow/2019> –; <https://www.0629.com.ua/news/3346498/trupi-rozkidani-po-mistu-mariupol-ne-vstigae-hovati-zagiblih-rozprovodaemo-so-vidbuvaetsa-foto> –) and on the buildings of the metallurgy plant construction institute (Гипромет) and the Priazovsky State Technical University (<https://t.me/mariupolnow/1728> –).

The city's central communications building was destroyed. One bomb fell in the very centre of Mariupol, next to a pedestrian underpass (<https://t.me/mariupolnow/1728> –).

15 Rovensky Street (переулка Ровенского) was hit by shellfire (<https://t.me/kalmiussmari/7409> –).

Multi-storey buildings on Morskoi Boulevard in Mariupol's Left-bank district were shelled (<https://t.me/mariupolnow/1776> –).

In the space of two weeks, reported deputy mayor Sergei Orlov, **no less than 1,170 civilians had died.**

On 9 March Russia's armed forces carried out an airstrike on Mariupol's maternity home and children's hospital. Three people were killed, including an infant; 17 were injured.

According to the city council, several bombs were dropped on the hospital during the raid (– <https://www.youtube.com/watch?v=2EhsJomegW0> –).

15. Tuesday, 15 March

There was an airstrike on the dormitory at 20 Kazantsev Street in Mariupol. At the time, the building was full of inhabitants of Sartana, and other residents of Mariupol evacuated from dangerous areas of the city. According to Galina Morokhovets, the dormitory manager, between 130 and 140 people were there at any one time (– <https://www.currenttime.tv/a/nikogo-ne-zhaleyut-ni-detey-ni-beremennyh-prosto-ubivayut-vseh-podryad-semya-iz-mariupolya-vyzhila-posle-popadaniya-snaryada/31791239.html?fbclid=IwAR14jkVxjOwBXy3CiLap9ZT5xclSE0WRSID-iA4MN7neIDRYYPVBZeLDveMY> –).

Other parts of Mariupol were shelled:

- Tram Street (переулок Трамвайный), Central district (– <https://t.me/mariupolRIP/18496> –).
- the vicinity of the Internal Affairs department of the October district (– <https://t.me/c/1277164908/1285> –).
- the vicinity of the Bakhchivandji market (– <https://t.me/c/1277164908/1288> –).
- the city's Primorsky district (– <https://t.me/c/1277164908/1289> –).

16. Wednesday, 16 March

A Russian warplane dropped a heavy-duty bomb on Mariupol's drama theatre where civilians were taking shelter from the constant shelling. The city council announced that approximately three hundred people died as a result of the attack. A video released a week earlier, on 10 March 2022, on the AZOV-media YouTube channel (– <https://www.youtube.com/watch?v=Lg3JYn2JukA> –) showed that a great many people, hiding from the constant shellfire, were then living at the theatre. About one thousand people had taken shelter there, said the report.

Satellite imagery from Monday 14 March 2022 shows the word "Children" («Дети», in Russian) written in two places near the theatre in an attempt to identify the building to the invaders as a civilian shelter in which children, not soldiers, were hiding. Spokesmen for the Mariupol city council stated that the theatre was the largest single bomb shelter in the city. At the moment of the attack only women and children were to be found there. A week before, on Thursday 10 March, the local Telegram channel "Mariupol online" reported that there were civilians, including many children, at the theatre (– <https://t.me/c/1277164908/1117> –).

According to Yevgeny Zabogonsky, then caretaker at the theatre, "... to begin with people did not stay at the theatre. They came there only during heavy shellfire; when things calmed down, they went back home. Several days later the situation changed. Whole families started to come and to stay the night", (– <https://svoi.city/articles/213201/komendant-ubezhischa-v-dramteatre-mariupolya> –; – <https://www.youtube.com/watch?v=kvLz6TdE8gQ> –; – <https://www.youtube.com/watch?v=1xndTU5slgA> –; – <https://www.youtube.com/watch?v=4ZMKkGWyplA> –; – <https://t.me/dvvideo/316> –; – <https://www.youtube.com/watch?v=4ZMKkGWyplA> –; – <https://t.me/suspilnedonbas/4412> –).

There are interviews with people who survived the attack (– <https://www.facebook.com/watch/?ref=saved&v=670612094145566> –; – <https://www.facebook.com/watch/?ref=saved&v=431869132042924> –).

Witnesses talk of the numbers of victims and describe the circumstances of the Russian airstrike on the theatre (– <https://web.archive.org/web/20220325142258/> –; – <https://www.0629.com.ua/news/3357271/teatr-mariupolskoi-drami-so-naspravdi-vidbulosa-16-berezna-v-centri-mariupola-svidoctvo-ocevidciv-tragedii> –).

On the same day, Russian troops struck the Neptune swimming pool in Mariupol, which then contained pregnant women and children (– <https://www.youtube.com/watch?v=UiyHo00e5OM> –).

The following buildings in Mariupol were hit by shells:

- 75(b) Peace Avenue; 17a, 19a & 20 Kazantsev Street, Central district (– <https://t.me/mariupolRIP/1315> –).
- 89 Peace Avenue (– <https://t.me/c/1277164908/1377> –).
- 108 Metropolitan (Митрополитская) Street, Central district (– <https://t.me/mariupolnow/9725> –).

Russian warships began to shell Mariupol (– <https://suspilne.media/226929-20-pacientiv-tazkina-dnipropetrovsini-likuut-ponad-80-poranenih-iz-kramatorska-novi-podrobici/> –).

The following streets and areas were shelled:

- Prozhektornaya Street (– <https://t.me/kalmiusmari/2274> –).
- the area next to the ATB shop on Karpinsky Street (– <https://t.me/kalmiusmari/2334> –).
- Semashko Street (– <https://t.me/kalmiusmari/4702> –).

17. Friday, 18 March

Shelling of area near the communications building (здания связи) on Peace Avenue (– <https://t.me/c/1277164908/1328> –).

The bodies of dead civilians were lying out on the streets (– <https://t.me/c/1277164908/1337> –).

There were airstrikes on Nakhimov Avenue in the Primorsky district (– <https://t.me/mariupolnow/4429> –).

A video of Mariupol was shot that day from a drone (– https://youtu.be/M9au_9A2YRo –).

18. Saturday, 19 March

Russia's military dropped bombs on Art School No. 12 in Mariupol's Left-bank district. About 400 of the city's inhabitants (women, children and elderly people) were sheltering there, reported the Mariupol city council (– <https://t.me/mariupolrada/8917> –).

The following streets and buildings were shelled:

- 3, 9, 11, 13 & 17 Lomizov Street, Left-bank district (– <https://t.me/c/1277164908/3308> –; – <https://t.me/mariupolnow/7614> –).
- Pokryshkin Street (– <https://t.me/kalmiusmari/2429> –).
- Kuprin Street (– <https://t.me/kalmiusmari/2918> –).

19. Sunday, 20 March

Mariupol was constantly shelled (– <https://t.me/kalmiusmari/3163> –). Buildings 5 & 6 in the 25th Quarter were hit by shellfire (– <https://t.me/kalmiusmari/3772> –).

School No. 20 was destroyed in a Russian artillery attack (– <https://t.me/kalmiusmari/4094> –).

59 Dundich Street was hit by shellfire (– <https://t.me/kalmiusmari/7496> –).

20. Monday, 21 March

The following streets and buildings were shelled:

- Guards (Гвардейская) Street and Meotydy Boulevard in the city's Left-bank district (– <https://t.me/mariupolRIP/15965> –; – <https://t.me/mariupolnow/3252> –).
- 87 Metal-workers (Металлургов) Boulevard (Pokryshkin Street) (– <https://t.me/kalmiusmari/4274> –).

21. Tuesday, 22 March

Shelling of 88 Donskaya Street, Left-bank district (– <https://t.me/mariupolRIP/28809> –).

The motor vehicle of a man bringing humanitarian aid into Mariupol was attacked (– <https://t.me/mariupolnow/5016> –).

22. Wednesday, 23 March

The following districts and buildings in Mariupol were shelled:

- 120 Poletayev Street, Left-bank district (– <https://t.me/mariupolRIP/18264> –).

- the Kalmiussky district (– <https://t.me/kalmiussmari/6430> –).
- 11 Lomizov Street, Left-bank district (– <https://t.me/kalmiussmari/6496> –; – <https://t.me/mariupolnow/3472> –; – <https://t.me/mariupolnow/6466> –; – <https://t.me/mariupolnow/10812> –).

23. Thursday, 24 March

Various districts of Mariupol were shelled:

- Kalmiussky Street, Kalmiussky district (– <https://t.me/kalmiussmari/7310> –).
- 219(a) Metal-workers Avenue (– <https://t.me/kalmiussmari/7106> –).
- Kuindji Street (– <https://t.me/kalmiussmari/7202> –).
- The Kurchatov micro-district (– <https://t.me/kalmiussmari/7486> –).
- Schools in the 17th micro-district (– <https://t.me/kalmiussmari/7529> –).
- 119, 123 & 125 Victory Avenue (– <https://t.me/kalmiussmari/7624> –).
- shelling of buildings near the “tank” area, Kalmiussky district (– <https://t.me/kalmiussmari/7864> –).

24. Friday, 25 March

The following streets and buildings in Mariupol were shelled:

- Heroes / Eastern (Героической / Восточный) Street (– <https://t.me/kalmiussmari/8453> –).
- The city as a whole (– <https://t.me/kalmiussmari/8455> –).
- 100 Metal-workers Avenue (– <https://t.me/kalmiussmari/8520> –).
- 138 Nikopolsky Avenue (– <https://t.me/kalmiussmari/8585> –).
- The 25th Quarter, Kalmiussky district (– <https://t.me/kalmiussmari/8610> –).
- Kirov Square; the Metal-workers Avenue (– <https://t.me/kalmiussmari/8668> –).
- The area around the Neptune swimming pool (– <https://t.me/kalmiussmari/9422> –).

25. Saturday, 26 March

Buildings at the following addresses in Mariupol were shelled:

- 25 Bachivandji Street, Central district (– <https://t.me/mariupolRIP/11245> –).
- Raketnaya Street (– <https://t.me/kalmiussmari/9339> –).

26. Sunday, 27 March

Buildings around the Port City shopping mall were shelled (– <https://t.me/kalmiussmari/10023> –; – <https://t.me/kalmiussmari/10025> –).

Video of destroyed buildings (– <https://youtu.be/x-R3NC9octo> –).

27. Monday, 28 March

Shelling of Relefnaya Street, Kalmiussky district (– <https://t.me/mariupoltopnews/6980> –; – <https://t.me/mariupolnow/4168> –).

28. the end of March 2022

Shelling of 20(a) Morskoi Boulevard, Left-bank district (– <https://t.me/mariupolRIP/18683> –).

29. Thursday, 31 March

Shelling of Tsibulko Street, Primorsky district (– <https://t.me/mariupolRIP/15842> –).

APRIL 2022

30. Friday, 1 April

Shelling by a tank of residential buildings in Mariupol's Left-bank district (– <https://www.youtube.com/watch?v=aUUz9d9z7ps> –).

31. Sunday 3 to Sunday 10 April

Streets in Mariupol's Primorsky district were subject to airstrikes: Amur Street; 25, 2 & 31 Latshev Street; and 30/18 Moscow Street (– <https://t.me/mariupolnow/13033> –; – <https://khpq.org/1608811333> –).

32. Friday, 15 April

Eupatoria Street was shelled (– <https://khpq.org/1608811082> –).

33. Saturday, 23 April

Civilians waited in the basement areas of the Azovstal factory for a humanitarian corridor to open (– <https://www.facebook.com/watch/?v=413987610554604> –).

34. Tuesday, 26 April

The premises of the Azovstal factory were shelled; some of the shells were phosphorus bombs (– <https://youtu.be/Q5KGFlipyTs> –).

35. Wednesday-Thursday, 27-28 April

A dozen times during the night of 27-28 April the Russian military tossed bombs at the Azovstal plant, where civilians were also sheltering (– <https://mrpl.city/news/view/po-azovstali-v-mariupole-bylnanesjon-massirovannyj-aviaudar-est-pogibshie> –; – <https://tsn.ua/ru/ukrayina/eta-noch-eto-prosto-kolossalnoe-kolichestvo-fosfornyh-bomb-50-aviaudarov-azov-ob-obstrele-mariupolya-2048458.html> –).

As of Thursday 28 April 2022, a spokesman for the Mariupol city council announced, 90% of the city's buildings and other structures had been destroyed and **more than 21,000 civilians had been killed** (– <https://kanaldom.tv/mariupol-novi-dani-shhodo-zagybylyh-ta-rujnuvan-sytuaciyu-v-misti-obgovoryuyemo-iz-zastupnykom-mera-sergiyem-orlovym/> –).

MAY 2022**36. Saturday, 14 May**

The Azovstal factory was shelled (– <https://news.zerkalo.io/world/14316.html> –).

37. Saturday, 14 May

The indiscriminate bombing of residential buildings, hospitals, the drama theatre, a swimming pool and schools led to many deaths among the inhabitants of Mariupol. There is testimony on Telegram channels to impromptu burials next to 58 Morskoi Boulevard (– <https://t.me/mariupolRIP/14668> –).

There is information that the bodies of those who died were kept in a department of the New Post Office building in the city's Primorsky district (Cheryomushki district) (– <https://t.me/mariupoltopnews/9855> –).

People were buried in the courtyards of residential buildings (– https://youtu.be/s5iiMZrk_60 –) in common graves (– <https://youtu.be/-Q7KuqBQblo> –).

There were reports of makeshift burials of the dead in Mariupol's 23rd micro-district (– <https://t.me/mariupolRIP/20674> –).

People were buried

- near 106 Zelinsky Street (– <https://t.me/mariupolRIP/17695> –),
- next to School No. 10 (– <https://t.me/mariupolRIP/243> –)
- and in other places (– <https://t.me/mariupolnow/2086> –).

The bodies of one hundred dead civilians were discovered in the basement of a single building at the intersection of Meotydy Boulevard and Victory Avenue (– <https://hromadske.radio/news/2022/06/27/pid-zavalamy-odnoho-z-rozbomblenykh-budynkiv-u-mariupoli-vyavyly-shche-100-zahyblykh> –).

When the ruins of the former October factory premises at Kuindji Street were cleared the bodies of about seventy dead people were found (– <https://t.me/mariupoltopnews/10013> –).

The above-mentioned premises were the one place where people attempted to take cover from the constant airstrikes; they had no links with military installations.

On Sunday 13 March 2022, a Mariupol city council spokesman reported **the deaths of 2,184 individuals** (– <https://www.slovoidilo.ua/2022/03/13/novyna/suspilstvo/mariupolya-znovu-ne-pustyly-hum-dopomohu-ta-kolonu-evakuacziyi> –).

As of Monday 21 March, it was announced that **three thousand inhabitants of Mariupol had died** (– <https://web.archive.org/web/20220323141629/> –; – <https://zn.ua/ukr/UKRAINE/u-mariupoli-zahinuli-ponad-3-tisjachi-mirnikh-zhiveliv-html> –).

As of 30 August 2022, information from various official Ukrainian sources indicated that **the total numbers of civilians who have died in Mariupol is 87,000** (– <https://socportal.info/ua/news/mariupol-skii-morg-viiskovi-rf-vbili-blizko-90-tisyach-liudei/> –).

The true scale of the killing will not be known until there is access to the city.

[B] THE BLOCKADE OF MARIUPOL

No access to food, water, medicaments and other necessities

38.

Before **Wednesday 2 March 2022**, Russian troops surrounded Mariupol by land from the west, north and east; Russia's forces also blockaded the city from the south with motorboats in the Azov Sea. Food and water could not be delivered to Mariupol, and medicaments were not manufactured in the city. This was made worse by the lack of water, electricity, gas and heating. The Russian military was based 15 kilometres from Mariupol and constantly shelled the city.

From Wednesday 2 March onwards there was no electricity, water, gas or heating and mobile phone links because of the blockade. It was impossible to deliver water, food, medicine and baby food to the city because of the blockade. The inhabitants of Mariupol were forced to gather rainwater to drink and cook outside in the open. The dead were buried in common graves next to the buildings.

There was no food in the city. People were obliged to get water from wells and anyone without access to such a source took water from the central heating system instead.

Snow fell on **Tuesday 8 March** and the inhabitants collected and melted snow in place of water. It was reported on 8 March that a six-year-old girl died from dehydration under the ruins of her home in Mariupol (– <https://kp.ua/ua/incidents/a645358-u-mariupoli-jakij-zablokuvali-rosijski-okupanti-pomerlavid-znevodnennja-6-richna-divchinka> –).

Local residents testified that Russian troops shelled lines of those queuing up for water. Mines were planted in some springs. Mariupol resident Mariya Vdovichenko reported that two people died because a spring had been mined (– <https://khp.org/1608810994> –).

The city's inhabitants were unable to leave Mariupol because of the Russian blockade and the constant shelling.

The following reports testify

- to the lack of electric light, water, gas and phone connections;
- the impossibility of obtaining medical assistance;
- the constant shelling;
- and the search for medicaments, water and food of any kind

(– <https://khp.org/1608811082> –; – <https://khp.org/1608811047> –; – <https://khp.org/1608810994> –; – <https://khp.org/1608810890> –; – <https://khp.org/1608810724> –; – <https://khp.org/1608810737> –; – <https://khp.org/1608810701> –; – <https://khp.org/1608810639> –; – <https://khp.org/1608810532> –;

– <https://khp.org/1608810403> –; – <https://khp.org/1608810403> –; – <https://khp.org/1608810420> –; – <https://khp.org/1608810187> –; – <https://khp.org/1608811178> –).

Telegram channels in Russia confirmed the humanitarian catastrophe then faced by Mariupol (– <https://t.me/wargonzo/6118> –).

News reports confirm that the city was surrounded by Russian forces: "On Tuesday 1 March the Russian invaders shelled the communal enterprises (garbage collection, etc) of Mariupol. Because of the constant shellfire repair teams were unable to restore electricity and heating supplies to the city", (– <https://t.me/mariupolrada/8657> –).

News reports from the "Donetsk people's republic" stated that "The encirclement of Mariupol by our troops ('Donetsk people's republic') supported by the Russian armed forces will be complete on Tuesday 1 March," (Eduard Basurin, deputy head of people's militia of the Donetsk people's republic). "Today Mariupol will be totally encircled," declared Basurin, speaking on the Rossiya-24 TV channel.

The deputy head of the people's militia commented that Russia's armed forces and the people's militia of the "Donetsk people's republic" were organising two humanitarian corridors to enable Mariupol's civilian population leave the city. They would be able to leave the city, he said, "until Wednesday 2 March", (– <https://iz.ru/1298631/2022-03-01/v-dnr-zaiavili-o-planakh-vziat-mariupol-v-koltco-1-marta> –).

"Eduard Basurin, spokesman for the people's militia of the Donetsk people's republic announced on **Wednesday 2 March** that the city of Mariupol was under blockade. 'Everything is going according to plan,' he said, speaking on the Rossiya-24 TV channel. 'Mariupol has been blockaded. The troops will now move so as to enable us to cease shelling the residential areas of population centres not only here [in the Donetsk Region] but also among our neighbours in Lugansk,' he said (– <https://iz.ru/1299181/2022-03-02/v-dnr-zaiavili-o-blokirovanii-mariupolia> –).

39.

During the shelling of Mariupol, a large number of people were seriously wounded. Doctors who stayed and worked in the city during active hostilities testified to their injuries (– https://www.facebook.com/permalink.php?story_fbid=pfbid023Fx4Txv4xqXYECgGLk7CFcPXk3zDhiczbAVnCdryvaFPJdHrERtNsZ6aoyTWy3yl&id=100008930616342 –; – <https://fakty.ua/400035-trupy-na-derevyah-i-na-zemle-kuski-chelovecheskoj-ploti-bratskie-mogily--vrach-intern-ob-ade-v-mariupole> –; – <https://vchasnoua.com/donbass/73459-try-doby-ne-vykhodyv-iz-likarni-istoriia-travmatoloha-iakyi-riatuvav-poranenykh-z-kramatorska-i-mariupolia> –).

The bodies of those killed lay in the hospital basement and outside in the streets (– <https://www.dw.com/ru/ad-na-zemle-shokirujushhie-kadry-iz-mariupolja/video-61181308> –).

Many people in Mariupol who suffered from chronic ailments died because of a lack of essential medicaments (– https://zaxid.net/27_richnij_likar_rozpoviv_yak_ryatuvav_zhittya_pid_obstrilami_v_mariupoli_n1541875 –).

40.

On **Friday 4 March 2022**, information appeared on the Telegram channels of Russian Federation officials that humanitarian corridors had opened eastwards, towards Bezimenne village. After being processed in Bezimenne, said the officials, people would be sent to Russia or the "Donetsk people's republic" (– <https://t.me/wargonzo/6107> –).

On the weekend of 5-6 March there was an attempt by Ukrainians to send evacuation convoys west from Mariupol towards the unoccupied city of Zaporizhzhia.

Between 9 am and 4 pm on **Saturday 5 March 2022**, according to the city's Coordinating Group (run by the city police), there was to be a peaceful interlude and the evacuation of the civilian population

would begin after 11 am. A westward route from Mariupol to Zaporizhzhia (via Nikolske, Rozivka, Pologi and Orekhov) was chosen as a humanitarian corridor. The evacuation would proceed from three locations in the city:

- the Ilichevets Sports Arena at 53 Nakhimov Avenue;
- the city's Drama Theatre at 1 Theatre Square; and
- the Kalmius district administration building at 193 Metal-workers Avenue (– <https://t.me/mariupolrada/8730> –).

Irina Vereshchuk, Ukrainian deputy prime minister with responsibility for the Reintegration of the Temporarily Occupied Territories, also announced that a west-bound humanitarian corridor had been organised. The Red Cross guaranteed that there would be a ceasefire (– https://t.me/OP_UA/5794 –).

That day, Pavlo Kyrilenko, head of the Donetsk Region civilian-military administration, wrote: "As of 10.55 am there was a lull in hostilities in the Donetsk Region. Further along the designated route in the Zaporizhzhia Region, however, the fighting continued", (– https://t.me/pavlokyrylenko_donoda/2511 –).

The Mayor of Mariupol Vadim Boychenko announced that an agreement had been reached with the Russian side to observe a ceasefire in order to create a humanitarian corridor. When everything was ready for the evacuation to begin, however, the occupying forces again opened fire and put an end to the temporary lull in the fighting (– <https://www.youtube.com/watch?v=oeA73WSfYWg&t=6s> –).

A video illustrating the conditions for evacuation on Saturday 5 March (– <https://youtu.be/RiO03b-5VSyg> –) and information from Mariupol's police patrols (– <https://t.me/mariupolnow/1040> –).

On **Sunday 6 March 2022**, there was a second attempt to evacuate the civilian population from Mariupol (– <https://t.me/mariupolrada/8739> –).

The evacuation convoy was unable to get further than the outskirts of the city. Russian forces began to regroup and subject Mariupol to a heavy barrage of shelling (– <https://dn.gov.ua/news/evakuacijna-kolona-ne-zmogla-sogodni-viyhati-za-mezhi-mariupolya-cherez-potuzhniy-obstril-mista-z-bokurosiyan> –).

Spokesmen for the "Donetsk people's republic" and the Russian Federation reported that inhabitants of the city refused to leave Mariupol and travel northwest towards Zaporizhzhia because the roads had been mined (– <https://t.me/wargonzo/6120> –) and said that the city's residents were being evacuated towards the "Donetsk people's republic" (– https://t.me/mariupol_z/356 –).

The Telegram channels of the "Donetsk people's republic" tried to intimidate people by saying they would be shot by Ukrainian soldiers (– https://t.me/chp_donetsk_vz/10517 –; – https://t.me/mariupol_z/374 –; – https://t.me/chp_donetsk_vz/10768 –).

On **Monday 7 March**, spokesmen for the "Donetsk people's republic" announced that civilians would be led eastwards out of the city via the village of Vynohradne (– https://t.me/chp_donetsk_vz/10639 –). A first convoy of humanitarian aid carrying food, medicaments and basic necessities set off that day from Zaporizhzhia towards Mariupol (– <https://t.me/mariupolrada/8740> –).

Pavlo Kyrilenko, head of the Donetsk Region civilian-military administration, announced that the evacuation convoy had been unable to leave Mariupol on **Monday 7 March**. The humanitarian convoy, meanwhile, was still on its way to the blockaded city. That day, Deputy Prime-Minister Iryna Vereshchuk spoke on Ukrainian radio about the very grave situation in Mariupol and Volnovakha (pop. 21,166; 2022 est). "Almost all lines of communication have been cut in Mariupol," she explained. The Russian occupying forces had not permitted humanitarian aid to enter the city, she said: eight truckloads of medicaments and food had been sent to Mariupol, and 30 buses to evacuate the population.

On **Tuesday, 8 March 2022**, Ukraine tried to reach agreement with the Russian side to establish new civilian evacuation routes, especially northwards from Mariupol towards Volnovakha. "We sent the Russian side and the Red Cross fully developed routes for humanitarian corridors," said Vereshchuk: "via Volnovakha north to Zaporizhzhia; from Mariupol to Zaporizhzhia, Kyiv and the Kyiv Region towards

western Ukraine; and also from Kharkiv city and the Kharkiv Region towards western Ukraine," (<https://www.rbc.ua/ukr/news/proishodit-mariupole-seychas-situatsiya-4-1646398709.html> –; <https://t.me/meduzalive/53907> –).

A second attempt was made to send humanitarian aid to Mariupol. The city council announced that humanitarian aid had left Zaporizhzhia on its way to Mariupol, which was under fierce attack by the Russian invaders. The humanitarian situation within Mariupol was serious (<https://t.me/mariupolrada/8755?single> –). More than fifty buses and nine trucks stood ready to leave Zaporizhzhia for Mariupol just as soon as the Russian military ceased shelling the city and were prepared to respect a "green corridor" into Mariupol, said Oleksandr Starukh, the head of the Zaporizhzhia Region's military administration (<https://www.rbc.ua/ukr/news/proishodit-mariupole-seychas-situatsiya-4-1646398709.html> –).

A convoy of humanitarian aid crossing the Zaporizhzhia Region towards Mariupol came under fire from ground-to-ground (Grad) missiles despatched by the Russian invaders, who also attacked the convoy from the air (https://gazeta.ua/articles/np/_niyakogo-natyaku-na-zelenij-koridor-gumkonvoj-yakij-yihav-do-mariupolya-obstrilyali-z-gradiv/1074609 –; <https://www.ukrinform.ua/rubricato/3429661-rosijski-vijska-dosi-ne-propustili-gumanitarnu-kolonu-do-mariupola.html> –).

The situation in Mariupol as of Wednesday morning, **9 March**, was as follows.

Humanitarian aid had not been able to reach the city. Mariupol remained under attack and Russian airstrikes hit the Red Cross building in the city. There was no water, electricity, gas, food or medicine in the city. On Saturday 12 March information appeared that the 'green corridor' was open. The convoy of humanitarian aid left Zaporizhzhia for Mariupol (<https://t.me/c/1277164908/1192> –).

On **Sunday 13 March**, the convoy was still on its way to Mariupol (<https://t.me/c/1277164908/1230> –). Later information was published that the convoy had once again not been allowed into the city (<https://www.slovoidilo.ua/2022/03/13/novyna/suspilstvo/mariupolya-znovu-ne-pustyly-humdopomohu-ta-kolonu-evakuacziyi> –).

41.

On **Monday 14 March 2022**, a first group of Mariupol inhabitants left the city in a column of private vehicles. Not everyone could leave, however: petrol stations in the city were not working and there was no petrol (<https://t.me/c/1277164908/1270> –).

About 4 pm on **Wednesday 16 March 2022**, the Russian military shelled a column of motor vehicles containing civilians with ground-to-ground missiles (MLRS Grad BM-21) as they moved towards Zaporizhzhia from Mariupol (<https://nikopolnews.net/region/na-zaporizhzhii-okupanti-rozstrilyali-z-gradiv-kolonu-bizhenciv-z-mariupolya-sered-poranenih-ditina-video/> –).

Spokesmen for the "Donetsk people's republic" wrote that the blockade of Mariupol had been lifted because, supposedly, the main Ukrainian Armed Forces near the city had been destroyed. Corridors had now opened, they said (<https://t.me/opersvodki/1665> –). Two hundred buses had arrived in the city, they reported, to take people eastwards towards Russia (https://t.me/mariupol_z/475 –; <https://t.me/c/1227266881/404> –; https://t.me/chp_donetsk_vz/11557 –).

Russia's foreign minister Sergei Lavrov announced that 33,000 inhabitants of Mariupol had agreed to be evacuated eastwards towards Russia (https://t.me/chp_donetsk_vz/11590 –).

On **Tuesday 15 March**, it was announced that the trucks carrying humanitarian aid (food and medicine) from Zaporizhzhia had turned back towards the village of Berdyanske (<https://t.me/c/1277164908/1272> –).

Inhabitants of Mariupol left the city on foot, walking westwards towards territory unoccupied by Russian forces (<https://khp.org/1608810560> –).

People were forced to walk towards the "Donetsk people's republic", and then decide if they wanted to stay in there or travel further to Russia (– <https://www.bbc.com/ukrainian/news-60871609> –).

Information reached the outside world about the forced transfer of doctors and patients from the I.K. Matsuk hospital, No. 4 (– <https://t.me/mariupoltopnews/7151> –). The Occupying Power confirmed the fact (– https://t.me/chp_donetsk_vz/12954 –).

[C] FORCED TRANSFER OF CIVILIANS TO RUSSIA

42.

On Friday **4 March 2022**, information appeared on the Telegram channel of Russia's spokesmen about the opening of humanitarian corridors from Mariupol towards the village of Bezimenne (pop. 2,638; 2001), 30 kms east of the city on the Azov Sea coast. One source said that after people's details had been taken in Bezimenne, they would be sent to Russia or the "Donetsk people's republic" (– <https://t.me/wargonzo/6107> –).

Eyewitnesses say that on **Tuesday 15 March 2022** Russian forces ordered women and children to leave the bomb-shelters of Mariupol. One witness said that 200-300 women and children were taken by force on buses eastward to the town of Novoazovsk (pop. 11,051; 2022 est.). There they were forced to wait on the buses for several hours until they were ordered to walk through a group of tents to a 'filtration camp'. The Russian government newspaper "Rossiiskaya gazeta" reported that 5,000 Ukrainians were being held in the Bezimenne camp. There they were underwent a cross-check to ensure that "Ukrainian nationalists, dressed as refugees to avoid punishment, could not enter Russia", (– <https://www.theguardian.com/world/2022/apr/04/hundreds-of-ukrainians-forcibly-deported-to-russia-say-mariupol-women> –).

Russian teams moved through the occupied districts of Mariupol: Zaporizhzhia was taking no more refugees, they told local residents, Russia had captured Odesa, and the only way to leave the city now was to head east towards Rostov-on-Don in South Russia, because Ukraine had left Mariupol to cope on its own.

The 15,000 inhabitants of the Left-bank district in the east of Mariupol were in particular danger. The occupying forces forced them to move to Russian territory and confiscated their official documents and mobile phones. Russian troops transported the civilian population to filtration camps where they were cross-checked and encouraged to move to the Sakhalin Region (Far East) and other depressed areas of the Russian Federation.

"They named a number of northern Regions, especially [the island of] Sakhalin as our final destination. Official job referrals were 'offered' via employment centres. Those who agreed, received official papers that prohibited them from leaving Russia's Regions for the next two years," says a statement issued by the intelligence service of the Ukrainian Ministry of Defence (– <https://texty.org.ua/articles/106643/vohon-i-stal-hronolohiya-vijny-u-mariupoli/> –).

43.

On Monday **14 March 2022**, information appeared in Telegram channels about the evacuation of Mariupol's inhabitants to Russia and to areas temporarily not under Ukrainian control.

"Two hundred buses have been organised to evacuate Mariupol's inhabitants; the first 50 have already reached the city, announced the Russian Ministry of Defence. A successful operation to unblock access to Mariupol has enabled the opening since 3 pm of humanitarian corridors for civilians to leave and the beginning of the mass evacuation of the population who for a long while were held hostage by the neo-Nazis.

"Four columns of 200 buses (50 are already in Mariupol) have been formed to evacuate the city's residents. All inhabitants of Mariupol who wish to leave will be taken to temporary accommodation.

"Columns of vehicles carrying humanitarian aid have been despatched. The first column has already reached Mariupol and delivered 450 tons of aid: medicine, daily necessities and foodstuffs, including baby food", (- <https://t.me/kalmiusmari/1264> -; - <https://t.me/kalmiusmari/1295> -).

On Telegram channels people wrote that they were not being allowed to use their mobile phones. Inhabitants of parts of Mariupol controlled by the "Donetsk people's republic" were evacuated east to the city of Taganrog in Russia's Rostov Region (- <https://t.me/kalmiusmari/1685> -). Later there were reports that some of the people were being evacuated to other Regions in Russia (- <https://t.me/kalmiusmari/1853> -).

44.

On **Saturday 26 March 2022**, according to eyewitness statements, the invaders forcibly deported to an unknown destination medical personnel, patients and Mariupol residents hiding from enemy fire in the basements of a medical establishment. One report noted that there had been about seven hundred people at the hospital (- <https://t.me/mariupolrada/9156> -).

45.

The experiences of 36-YEAR-OLD YELENA and the members of her family confirm the stories of forcible deportation from the city.

Yelena and her nine-year-old daughter were hiding from the shelling in the basement of a local kindergarten in Mariupol when they were forced to leave the shelter. The invaders made them to travel to Russia. There she and her family found themselves in Kazan (Tatarstan, Volga Federal District) where they were questioned every day by Russian social services and investigators. Even her under-age daughter was questioned.

The sequence of events was as follows.

On Friday 25 March 2022, people in military uniform wearing white armbands came to the basement of the Mariupol kindergarten where Yelena and others had taken refuge. The soldiers drew up a list of those present: it was needed, they said, for the provision of humanitarian aid. When the list had been completed other soldiers (Chechen fighters) appeared. They told people to get ready because the city would now be cleared of Ukrainian soldiers, and they could only return in two days' time. They did not need to take their belongings as they would be taken to a safe place and then return. The Chechen fighters formed a corridor of soldiers at 50-metre intervals and led people along the seafront towards Vynohradne, a village on the eastern approaches to Mariupol.

Yelena and the others were driven to Bezimenne, a village on the shore of the Azov Sea, 30 kilometres east of the city. There they were housed in a school. There were beds on the ground floor, occupied by elderly people who could only move with difficulty. Others were placed on the first and second floors of the school building. There were not enough beds for everyone. The school was full to overflowing, and more and more people were being brought there. Police from the "Donetsk people's republic" and school staff had been sent to work there.

Yelena was brought to the school with 540 other people. Six days later buses arrived; they took away people with children first of all. They did not say where they were being taken. People learned on the way that they were being driven to Russia without undergoing filtration. The bus arrived at a checkpoint in the town of Kuibyshev (Rostov Region) where they were interrogated.

At first, the checkpoint was manned by police from the "Donetsk people's republic": they worked out of a container standing in a field. A total of ten buses arrived. At the roadblock people's details were

entered in a dB, their documents were scanned, and their mobile phones were examined. Next came a roadblock of the “Donetsk people’s republic”. There military officers questioned people and examined their belongings. This was a former Ukrainian customs checkpoint. People were questioned there without their family.

To begin with Yelena was questioned by one man. Then she was sent to the waiting-room. Her mobile phone remained with her interrogator. Her mother and child were in another room. Yelena was called back for further questioning. Where did she work, they asked, who were her friends, what was she doing after the fighting began? What was her attitude to “Russia’s military operation”? The questioning went on for about 90 minutes. They took Yelena’s fingerprints and photographed her from all sides (– <https://www.slidstvo.info/warnews/desyat-dniv-dopytiv-u-kazani-istoriya-zhinky-z-mariupolya-yaku-z-mamoyu-ta-donkoyu-nasylnovyvezly-do-rosiyi/> –).

46.

Other inhabitants of Mariupol have given similar testimony (– <https://khp.org/1608810586> –).

People were forced to leave the city and head towards the “Donetsk people’s republic”. Then they were given a choice: stay in the “Donetsk people’s republic” or travel on to Russia (– <https://www.bbc.com/ukrainian/news-60871609> –; – <https://khp.org/1608810861> –). There was also a report that doctors and patients from city hospital No. 4 (the I.K. Matsuk hospital) were forcibly transported elsewhere (– <https://t.me/mariupoltopnews/7151> –). The Occupying Power confirmed this information (– https://t.me/chp_donetsk_vz/12954 –).

[D] FILTRATION CAMPS

47.

During the evacuation of inhabitants of Mariupol, from **Thursday 17 March 2022** onwards, the Russian military and fighters from the “Donetsk people’s republic” began to detain Ukrainian citizens for filtration procedures. “Filtration camps” were set up. People who represented a risk to Russian control over Ukraine were subjected to filtration, including all who held pro-Ukrainian views.

Information began to appear in the media: Russian occupying forces were holding more than **three thousand civilians from Mariupol** in a “filtration prison” located in former Corrective Colony No. 52 in the town of Olinivka (pop. 4,549; 2019) in the Donetsk Region (– <https://www.ukrinform.ua/rubric-society/3485437-rosiani-utrimuut-ponad-tri-tisaci-mariupolciv-u-filtracijnij-vaznici.html> –). They were being held in “Olinivka at the former Yenakijeve Strict-Regime Colony No. 52. It was here that former law-enforcement officers, pro-Ukrainian activists and journalists were held. It has since become known that there was a second filtration prison, based at the former Yenakijeve Corrective Colony No. 120”, (– <https://konkurent.ua/publication/97685/bilya-mariupolya-znayshli-drugiy-filtratsiyinyi-tabir-video/> –).

The numbers in such camps and prisons constantly grew. “Over the past two weeks, the number of people held in the filtration camps of Bezimenne and Kozatske village near Mariupol has almost doubled, reaching three to four thousand”, (– <https://www.ukrinform.ua/rubric-regions/3488001-pid-mariupolem-za-dva-tizni-kilkist-ludej-u-filtracijnih-taborah-zroslo-udvici.html> –). In the course of 24 hours, 416 residents of Mariupol, including 46 children, were sent to the filtration camp in Bezimenne. After being processed, 512 people were deported to Russia (– <https://www.ukrinform.ua/rubric-regions/3488256-z-mariupola-za-dobu-do-filtracijnogo-taboru-dostavili-416-osib-z-nih-46-ditej.html> –). Throughout Sunday 22 May, 257 inhabitants of Mariupol, including 30 children, were transported to the filtration

camp in Bezimenne (– <https://www.ukrinform.ua/rubric-regions/3490290-iz-mariupola-do-filtracijno-go-taboru-za-dobu-vivezli-30-ditej-i-ponad-220-doroslih.html> –).

The Mariupol Mayor's adviser Petro Andryushchenko reported on his Telegram channel that **95,000 residents of the city** were being held in special camps in Russia. "Inhabitants of Mariupol are being held in 66 camps across Russia. The total planned capacity of those camps is 95,000 inmates. A British researcher obtained such results after checking the information we have provided about deportation." "For the most part, they are being held in the Russian Far East. When we began talking about this almost no one believed us. Now the whole world can see the truth about this inhumane behaviour. It's sad, but it's a victory in the battle to provide information about Mariupol.

"We're living in the 21st century, but Russia has not changed its centuries-long attitude to Ukrainians: deportation, camps, Siberia", (– <https://t.me/andriyshTime/919> –).

On **Friday 27 May 2022**, Andryushchenko reported that during the past 24 hours 280 inhabitants of Mariupol, including 36 children, had been transported to the filtration camp near Bezimenne (– <https://t.me/andriyshTime/1099> –).

A video from a filtration camp (– <https://t.me/andriyshTime/662> –). Witnesses are shown making a film about the conditions in which they were held (– <https://www.youtube.com/watch?v=1AJVKOQfeWY> –).

The creation of a significant number of filtration camps supports the suggestion that Russian military actions were aimed at the destruction of a part of the Ukrainian nation. This is the full list of eleven filtration facilities for inhabitants of Mariupol and the surrounding Mariupol district (Donetsk Region):

- Donetsk – 56 Aksakov Street, Lenin district (the "district department" of the DPR Ministry of Internal Affairs [hereinafter MIA]);
- Dokuchaievsk – 19 Independence (Независимости) Street ("MIA district department");
- Starobeshevo – 30 Pasha Angelina Street ("MIA district department");
- Amvrosievka – 65 Karl Liebknecht Street (the Uspenka filtration camp);
- Nikolske – the "MIA district department";
- Manhush – 63 Titov Street ("the MIA district department");
- Bezimenne – 48 Soviet Street (the Bezimenne filtration camp);
- Novoazovsk – 69 Street of the Communards (Коммунаров) ("the MIA district department");
- Buhas – 35 Soviet Street (the village's occupation administration);
- Odesa-Melitopol-Novozovsk Motorway – 619th km (the Manhush filtration post);
- Snezhnoe-Marinovka Road – 11th km (the Stepanovka filtration post).

The list was published by Andryushchenko on his Telegram channel (– <https://t.me/andriyshTime/1054> –).

48.

People were "sentenced" to 30 days in a filtration camp [if they did not pass the filtration procedures, tr.] This was extended for a further month for "particularly unreliable" inmates (activists, former soldiers, law-enforcement officers).

During the filtration process the Russian military sought to identify those citizens who, in their opinion, posed a threat to Russia's control over Ukraine. When Russian soldiers found confirmation of their assessment, or if someone aroused their 'suspicion', that person would be subjected to torture, disappearance or even death.

During the filtration procedure the Russian military also, unlawfully, collected the civilians' biometric data, carried out searches and interrogations, arresting, beating and torturing their detainees to obtain the desired information – or simply to film yet another clip for propaganda purposes.

[E] DEPORTATION OF CHILDREN TO RUSSIA**49.**

Information from Russian sources and testimony by Mariupol's inhabitants confirm that children in the temporarily occupied territories of Ukraine have been deported to the city of Donetsk and to the towns and cities of the Russian Federation.

Children who lost their parents during the hostilities were taken to hospitals in Donetsk. Their relatives had to apply to all levels of administration in the "Donetsk people's republic" and to Russian humanitarian agencies based in Mariupol to find out where they were.

Edict No. 330 issued by Russian President Vladimir Putin on **30 May 2022**, about the fast-track conferral of RF citizenship on children transferred from Ukraine to Russia, is confirmation of the targeted deportation of children from the city of Mariupol.

50.

We know of several fully confirmed instances of the unlawful deportation of children from Mariupol to the city of Donetsk.

(a)

In March 2022, **19 children without parents** remained in the Krupskaya Sanatorium in Mariupol. The Donetsk Region Sanatorium for Children with Osteo-Articular Tuberculosis was built after the Second World War (and named after Lenin's wife, Nadezhda Krupskaya).

On 18 March 2022, Oleksandr Yaroshenko, a dermatologist and head of the Mariupol football federation, came to the Sanatorium and attempted to take 17 of the children to the city of Zaporizhzhia; the other two were taken home by acquaintances. The 17 children were loaded into an ambulance. That same day the vehicle carrying the children was halted at the very first road-block in the town of Manhush, 20 kilometres west of Mariupol, by fighters from the "Donetsk people's republic". The children were transferred to temporary accommodation in Manhush.

On 19 March 2022, a bus arrived. Accompanying Eleonora Fyodorenko, adviser on children's rights to the head of the unrecognised "Donetsk people's republic", were a woman from the Russia Today TV channel and two camera operators. As eyewitness Timofei realised, they wanted to film a news item about the 'saving' of these children. The children were taken to Donetsk and placed in the local TB hospital (– <https://www.bbc.com/ukrainian/features-62164267> –).

(b)

On 17 March 2022, the father of **12-year-old Kira Obedinska** died. With some acquaintances the young girl tried on 25 March to move to Ukrainian-controlled territory. During their evacuation from Mariupol Kira was wounded and stopped at the road-block in Manhush by representatives of the "Donetsk people's republic". The occupying forces seized Kira and took her in an ambulance to Donetsk.

Today, according to a report by Pavlo Kirylenko, Kira is in Donetsk. She was deported there with the people with whom she was sharing a shelter. The invaders took away all the Ukrainians' ID documents, says Kirylenko's post, and promised to issue them with new Russian documents so that they could at some time in the future be sent to Russia. Kira has relatives in Ukraine. Her grandfather Oleksandr Obedinsky was ready to act as her guardian. Kirylenko appealed to all the sporting community (Kira's father was a sportsman), and to humanitarian and human rights organisations to help return the 12-year-old to her family (Ukr. – https://sport.24tv.ua/donka-zagiblogo-vaterpolista-obedinského-zalishilasya-sirotoy_u_n1928228 –).

Kira's grandfather was able to bring the girl back to her family (Ukr. – <https://health.fakty.com.ua/ua/novyny/istoriya-kiry-batko-zagynuv-a-poranenu-12-richnu-divchynku-okupanty-ne-viddavaly-didusyu/> –).

Nine-year-old Ilya Matvienko returned with Kira from the Occupied Territories. His mother was killed during the bombing of Mariupol. Ilya's only relation, his grandmother, also appealed to the Ukrainian ombudsperson [Denisova], asking her to be her grandson's guardian (Ukr. – https://24tv.ua/12-richnu-kiru-obedinsku-yaku-okupanti-vkrali-mariupoli-povernuli_n1963638 –).

(c)

There has also been information on websites of the "Donetsk people's republic" about **a ten-year-old girl**, taken to a hospital in Donetsk.

"Anya Filippova is ten. She comes from a deprived background. Her parents are divorced," it says. "When the war began Anya was living with her grandmother in Mariupol. With other children she hid from the shelling in the basement of a nine-storey block. The last hit was so powerful, however, that the building was destroyed. Anya was the only one to survive of all those in the basement. Pinned down by a concrete slab, she spent six days among their corpses before the rescuers found her."

Anya's relatives asked the @wargonzo team to find her.

"Working with Vyacheslav Ponomaryov, the Mayor of Slavyansk, we found Anya in a Donetsk hospital. As a result of physical and psychological trauma, Anya's outlook had changed: she did not accept some of the information reaching her from a hostile (as she believes) outside world. At first Anya was in a state of constant anxiety. In hospital her condition improved, and she began to eat again and to mix with others.

"The @wargonzo team also managed to locate Anya's grandmother and father. Today her granny is with her on the hospital ward. Soon her father will come to her from Mariupol after passing through all filtration procedures", (– <https://t.me/wargonzo/6705> –; – <https://zen.yandex.ru/media/wargonzo/62623dd82eb3b607e01a6af3> –).

(d)

On 31 May 2022, a spokesman for the Mariupol city council wrote on a Telegram channel that **15 children had been deported** to an unknown destination.

"The Occupying Power has begun to identify and pick up homeless children in Mariupol. Provisionally, these are children who have been separated from or lost their parents during the occupation of Mariupol. It is known, in particular, that about fifteen children, housed at 18 Meotydy Boulevard, were picked up by Russian soldiers and driven off to an unknown destination. We are working to establish where they went and the location of our new orphans / lost children" (– <https://t.me/andriyshTime/1151> –).

(e)

The disappearance of Bogdan (b. 2011) and Artyom Kuranda (b. 2013).

Between 5 and 8 March 2022 two people died at 101, Construction-workers (Строителей) Avenue as a result of a Russian artillery attack. One of them was mother-of-three Anna Kuranda. Her mother reported the death of her grand-daughter and disappearance of her two grandsons and began to search for them using Telegram channel groups and Viber.

Later it was reported via a Telegram channel that her grandsons were alive and in Donetsk children's hospital No. 5 (– <https://t.me/c/1532641156/4474> –). Their grandmother subsequently confirmed that the missing boys were indeed in Donetsk (– <https://t.me/c/1532641156/5735> –).

(f)

On 23 April 2022, a broadcast on the 'Emergency Situation [ChP] Donetsk Z' Telegram channel of the "Donetsk people's republic" talked about **the transfer of 27 orphans to foster families** in the Moscow Region of the Russian Federation.

"Today we transferred 27 orphans from the Donetsk People's Republic to the temporary care of families in the Moscow Region. The oldest was a girl of 17; the youngest is a three-year-old boy. The kids are already at home, recovering from the journey. Before they lived in children's homes. Next week there will be a meeting of the agency working to harmonise the legislation concerning aspects of adoption of the Russian Federation and the republics of the Donbas", (– https://t.me/chp_donetsk_zv/14440 –).

(g)

On Wednesday 6 July 2022, the 'ChP Donetsk Z' Telegram channel announced that **14 children from the Donbas had received Russian citizenship**.

"Fourteen kids from the Donbas have been granted Russian citizenship. Congratulations!

"When we first met the children off the train and asked where they were going, they replied 'Home'. Now Russia and the Moscow Region have truly become home to them. The children are being cared for by families where they're loved: they enjoy after-school clubs and are relaxing in summer camps. We've drawn up birth certificates for them, showing that they're Russian citizens, given them medical insurance and are helping their [new] parents with adoption documents", (– https://t.me/chp_donetsk_zv/23164 –).

(h)

On 14 July 2022, the 'ChP Donetsk Z' Telegram channel reported that **seven children had been transferred** from Donetsk to the Russian Federation:

"Seven brothers and sisters arrived today in the Moscow Region from the Donbas. They had been left without parental care. Two more children from the same family will fly in this evening. To begin with all the children lived in different children's homes in Donetsk. Then the kids were evacuated [to South Russia]: some ended up in Kursk, others in Rostov.

"For a long while, no one could find a family that was ready to take nine children at once. Then Tatyana and Dmitry from Lyubertsy [city southeast of Moscow, tr.] took the plunge", (– https://t.me/chp_donetsk_zv/24217 –).

APPENDIX TWO

INFORMED CONSENT FORM

This informed consent is given to the Kharkiv Human Rights Protection Group ("KHPG") and the Danish Institute against Torture ("DIGNITY").

Your informed consent is required to both collect and use information you provide for the purpose of criminal investigation and/or prosecution and broader accountability efforts in response to alleged serious violations of international law, such as international crimes and human rights violations committed since Russia's invasion of Ukraine on 24 February 2022.

By giving your informed consent, you acknowledge that you have been informed and that you understand the nature and the scope of documentation activity, accept to participate in it and accept that the information you provide can be shared with the competent national and/or international investigative authorities, including the Office of the Prosecutor of the International Criminal Court.

You also accept that the provided information may be shared with other international bodies, such as the European Court of Human Rights, UN treaty bodies and/or other international/regional mechanisms mandated to foster accountability efforts in Ukraine.

By signing this document, you are providing your informed consent.

I hereby acknowledge and confirm that:

- This is a voluntary process and I have provided information, documentation or physical items freely, without any form of coercion, threat or duress.
- I was informed that the information, documentation or physical items I have provided might be used in criminal investigations and/or prosecutions and be shared with the competent national and/or international investigative authorities, including the Office of the Prosecutor of the ICC.
- I was informed that the information, documentation or physical items I have provided might be also used in international human rights litigation, UN human rights procedures and/or reparations proceedings.
- I was informed about my right to withdraw my consent at any time prior to such information being shared with the competent international and/or national authorities.
- I am aware that my identity, as well as any information I have provided, might be disclosed to the parties in future criminal and/or other legal proceedings.
- I understand the nature and the purpose of the documentation activity, the potential use of the information I have provided, as well as all the potential risks associated with my participation in this activity.

I hereby consent to:

1. Check consented activity

- give an account of what you have experienced or witnessed;
- hand over information, documentation or other items;
- being photographed and having physical injuries documented;
- dissemination of information in media and on the Internet;

- other [please describe]
2. Sharing the information, documentation or physical items that I have provided with:
 - the Office of the Prosecutor of the ICC and their use in criminal investigations and/or prosecutions;
 - competent Ukrainian national authorities and their use in criminal investigations and/or prosecutions;
 - competent foreign national authorities acting under the principle of universal jurisdiction and their use in criminal investigations and/or prosecutions abroad;
 - other competent international mechanisms and their use in human rights litigation and/or other broader accountability efforts, UN human rights procedures and/or reparations proceedings.
 3. Any limitations (please elaborate):
-
-
-

Name: _____

Signed: _____

Dated: _____

On processing of personal data:

I accept that the KHPG holds personal data and my informed consent to the processing of my personal data by KHPG and its partner organization DIGNITY – acquired by KHPG documenters/lawyers in the process of their documentation activities and/or legal aid work – for the purpose of advancing accountability arising out of the Russia-Ukraine war since 24 February 2022.

I have read the KHPG/DIGNITY Statement on Processing of Personal Data in full and understand their policies regarding collection and the use of my personal data, as well as the exercise of my privacy rights in accordance with the Law of Ukraine No 2297 “On Personal Data Protection” (“PDP”), and the European Union General Data Protection Regulation (“GDPR”) when the information is shared with the KHPG’s partner institution DIGNITY, headquartered in Denmark.

STATEMENT ON PROCESSING OF PERSONAL DATA

This statement explains how and why the Kharkiv Human Rights Protection Group (“KHPG”) and the Danish Institute against Torture (“DIGNITY”) use the personal data you provide in the course of your interview. The reason we need to explain this before the interview is to ensure you are fully informed of your right to data protection and privacy that you are entitled to in accordance with the Law of Ukraine No 2297 “On Personal Data Protection” (“PDP”) and the EU General Data Protection Regulation (“GDPR”) once the information has been further processed by DIGNITY (headquartered in Copenhagen, Denmark).

I. Information we collect

In the course of this interview, the KHPG will collect **personal data** about you that will be further processed by the KHPG and its partner organisation DIGNITY. The types of personal data which we may collect from you include your name, address, and contact details; your date and place of birth; your edu-

cational background; information about incidents and events involving you as a victim or witness (for example, details of torture or other alleged crimes you have been subjected to or witnessed). We may also collect and use **special categories of personal data** about you including your racial or ethnic origin, political opinions, physical and mental health, religious or philosophical beliefs, trade union membership, sexual orientation and gender identity.

1. How we use this information

We collect, store, review, and further process this personal data to:

- Share the information regarding alleged international crimes with competent national and/or international investigative and prosecutorial bodies, including the Office of the Prosecutor of the International Criminal Court, for the purpose of criminal investigations and prosecutions.
- Share the information regarding alleged international crimes and human rights violations with other international accountability mechanisms, which have been set up since Russia's invasion of Ukraine on 24 February 2022.
- Provide you with information and support, where needed and possible; and
- Allow us to contact you in the future if we need to.

We will only collect the amount of personal data required to fulfil these functions effectively.

1. Sharing personal data

The KHPG and DIGNITY may share your personal data with the following third parties:

- The Office of the Prosecutor of the ICC and their use in criminal investigations and/or prosecutions.
- Competent Ukrainian national authorities and their use in criminal investigations and/or prosecutions.
- Competent foreign national authorities acting under the principle of universal jurisdiction and their use in criminal investigations and/or prosecutions abroad.
- Other competent international mechanisms and their use in human rights litigation and/or other broader accountability efforts, UN human rights procedures and/or reparations proceedings.

When we have given you enough information to enable you to make an informed decision, we will be asking you if you consent to the sharing of your personal data with these third parties. We may also share your personal data where the person or entity who is receiving it has a legitimate interest for which processing is necessary and proportionate.

In very exceptional cases, we may be required to share your personal data with other bodies if we are under a legal duty to do so, where doing so would not violate international human rights law. This may be where we are required to do so by a court order or for the purposes of prevention of fraud or other crime.

2. Storing personal data

We will store and transfer your personal data using methods that are secure in order to prevent your personal data from being accessed in an unauthorised way, altered, or lost. We monitor for any suspected data breach and will notify you and any applicable regulator of a suspected breach where we are legally required to do so.

3. International Data Transfer

When your personal data is being transferred from the legal jurisdiction of Ukraine to the European Union, a third country or an international organization, this may only be done if the third country or the international organization in question meets the legal requirements of providing an adequate level of protection for individuals' rights to privacy and data protection.

4. Data retention

We will only retain your personal data for as long as necessary to fulfil the purposes for which we collected it, including for the purposes of satisfying accounting, or reporting requirements. When determining the retention period, we consider the amount, nature, and sensitivity of the information, the potential risk of harm from unauthorised use or disclosure of your personal data, the purposes for which we process your personal data and whether we can achieve those purposes through other means, and the applicable legal requirements.

5. Your rights

Under certain circumstances, by law you have the right to:

- **Withdraw consent** at any time.
- **Request access** to your personal data (commonly known as a “data subject access request”). This enables you to receive a copy of the personal data we hold about you and to check that we are lawfully processing it.
- **Ask us to correct personal data** that we hold about you that is incorrect, incomplete, or inaccurate.
- **Ask us to erase your personal data** from our files and systems where there is no good reason for us continuing to hold it.
- **Object to us using your personal data** to further our legitimate interests.
- **Ask us to restrict or suspend the use of your personal data**, for example, if you want us to establish its accuracy or our reasons for using it.
- **Ask us to transfer your personal data** to another person or organisation, for example a medical or legal professional supplying services to you.

6. Contact

If you want to exercise any of your rights, wish to withdraw consent, complain or have any queries about the processing of your personal data or the safeguards we put in place to protect it, please contact:

- **Email:** KHPG at consent@khpg.org and DIGNITY at gdpr@dignity.dk
- **Mail:** KHPG, 27 Svobody Street, #4, Kharkiv, 61002, Ukraine
DIGNITY, Bryggervangen 55, 2100 København, Denmark

7. Complaints

You also have the right to make a complaint at any time to the data protection regulator in the country in which your data is being processed.

Complaints regarding processing of personal data could be filed respectively with.

In **Ukraine**, the Ombudsman / Commissioner for Human Rights – <https://ombudsman.gov.ua>.

In **Denmark**, where DIGNITY is located, the Danish Data Protection Agency – datatilsynet.dk.

Інформаційне видання

Катерина Буряковська,
Євген Захаров,
Микола Комаровський,
Михайло Романов,
Тетяна Самодерженкова

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Щодо актів геноциду, імовірно вчинених російськими військами
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