**Old Wars, New Wars: The Problem of Russia's War in Ukraine**

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Brian Mello, Ph.D.

Professor & Chair of Political Science

Muhlenberg College

[brianmello@muhlenberg.edu](mailto:brianmello@muhlenberg.edu)

**Introduction**

Mary Kaldor (2012) has argued that in the late 20th century, we saw a shift from old wars, which were fought by states, between states, to new wars, which are fought very often by non-state actors, within states. Old wars, while certainly not free from their own horrors, were ostensibly guided by certain rules and standards that sought to articulate the boundaries of legitimate war-making including those standards designed to demarcate the limits of combat, assure respect for captured combatants, and uphold the distinction between civilian and military, whereby targeting the former was seen as an ethical (and potentially legal) violation. New wars, on the other hand, have been characterized by the transcending of ethical and legal boundaries, by the direct targeting of civilian populations, by sexual violence as a tactic, and by greater levels of barbarism. For Kaldor, the violence in the former Yugoslavia in the 1990s, the violence in post-Saddam Iraq, and the violence of ISIS are each paradigmatic examples of new wars.

The central argument of I develop in this essay is that Russia's invasion of Ukraine has challenged this distinction between new and old wars. The Russian military has brought the tactics and ethical transgressions of new wars into a more traditional interstate conflict. This didn’t begin with the war in Ukraine—it may be a particular feature of contemporary Russian military doctrine—but the global significance of the war in Ukraine means that coming to terms with this raises important questions about the future nature of warfare and whether the efforts of the last century and a half to regulate and curb interstate warfare can sustain such a challenge.

The analysis of the problem created by Russia’s war in Ukraine develops in four parts: I begin with a brief overview of the major international treaties and conventions that define human rights law and the legal limits of war-making. From the doctrine of pre-emption that justified the invasion of Iraq to the classification of detainees as unlawful enemy combatants to the rules of engagement implemented at the second battle of Fallujah, US war-making hasn’t always provided a good example for upholding limits on war-making. Such blurring of the boundaries of the ethical and legal norms guiding limits and permissions on legitimate war making have, in turn, shaped the articulation of contemporary Russian military strategy. I argue that tactics that are for all intents and purposes war crimes, are emerging as central to new forms of Russian military strategy. In the second part of the paper I provide a brief overview of how the changing nature of war at the end of the 20th century and start of the 21st has challenged and made even more difficult the ability to prevent war crimes. Here I provide an overview of Mary Kaldor’s concept of new wars with a focus on two of their three distinguishing features—their goals and their methods. The third part, then, builds on this discussion of new wars and centers us back on Russia and the invasion of Ukraine. I will outline one way to understand Russia’s conduct that focuses on the way Russia incorporates the hallmarks of new wars into what was originally and old war by categorizing five types of war crimes Russia is responsible for in Ukraine. I argue that the goals of these tactics reflects the goals of new wars, and the methods, characterized by the transgression of ethical and legal boundaries, do so as well.

What does this seepage of the traits of new wars into an old war portend for the future of warfare in general, and for the prospects for peace in Ukraine?  Is it possible to hold Russia accountable for war crimes in Ukraine? What would this look like? And, if it is not, what message would this send to other states? How would it erode international efforts to prevent war crimes if Russian violations aren’t held accountable? At the present moment, the cosmopolitan solutions offered by Kaldor for addressing new wars don’t seem to offer much help. It may, pessimistically, be the case that the only way to address this is during the kinetic phase of the conflict itself. Despite trepidations, I conclude by arguing for a change in rhetoric from the emphasis on the protection of a democratic government to one that makes the case for supporting Ukraine as essential to preventing the normalization of new war methods and goals within “older,” interstate warfare

**War Crimes & the Laws of War**

My reading of Russia’s war in Ukraine is that it has proceeded from an initial effort at regime change through shock and awe to tactics of war criminality that more commonly seen in new wars. Thinking about war crimes a tricky for a couple of reasons: First, it is pretty easy to be skeptical of efforts to define war crimes—since the earliest efforts to codify rules and limitations for legitimate and legal war-making, violations—often egregious ones—have been a regular occurrence by both the “good guys” and the “bad guys.” Occasionally, both state and individual war criminals are brought to justice, and yet, war crimes often go unaccounted for and war criminals go unpunished. Additionally, since all wars bend the line between moral and immoral, there are many instances have not been defined as war crimes, but which make it difficult to enforce laws of war.

Here, I wish to provide a brief overview of some of the major efforts over the last 150 years to articulate understandings of the limits of legitimate war making. This brief exercise is not intended to be comprehensive so much as it is to set the stage for the analysis of Russia’s tactics as violations of many of the prohibitions that have defined efforts to develop rules of war. Let’s begin with the Hague Conventions of 1899 & 1907 as a starting point for thinking about the history of international law related to the topic of war crimes.

As part of the 1899 Hague Conference, there were four major conventions negotiated and variously signed by a variety of states. These include a convention that created a court of arbitration as a means for the peaceful settlement of international disputes; a convention that governed war-making on land, which included provisions for the humane treatment of prisoners of war and of wounded combatants. It also sought to forbid the use of poison, looting, attacks on undefended towns, the killing of enemy combatants who surrender, and forms of collective punishment. A third convention governed war-making on sea, and included prohibiting attacks on marked hospital ships, and the humane treatment of enemy wounded or shipwrecked sailors. Finally, the fourth convention sought to regulate the types of weapons that could be used, or more accurately prohibited in war-making. This included prohibitions on gas, as well as ammunition (bullets) designed to fragment on the entry of the body. Interestingly, this convention, following on the first use of aerial bombing by Austrians against Venice in 1849, sought temporarily to prohibit explosives from balloons.[[1]](#footnote-1) I think about this almost every day as videos in my social media and news feeds present links to the latest videos of Ukrainian drones rigged to drop grenades into a Russian tank or trench.

Following the Russo-Japanese war in 1905 a second Hague Conference led to 13 additional treaties, most of which reaffirmed or slightly expanded on the provisions adopted in 1899. Of note, and relevant to the discussion of Russia’s invasion of Ukraine, “the Hague Conventions banned attacks on hospitals and the destruction of culture” (Hirsch 2023: 18).

Some of the important categories for regulating war-making that emerge here include:

1. There are efforts to limit the kinds of weapons that can be used;
2. There are limits on the ability to subject non-combatants to harm;
3. There are protections for enemy combatants who are wounded or taken prisoner;
4. And the formulation of notions about attacks on civilian targets of no discernable military value being forbidden.

The first Geneva Conventions were articulated prior to the Hague Conventions, and the latter did indeed build on them in important ways, and the post-World War II Geneva Conventions move beyond The Hague Conventions in articulating international laws of war. The first Geneva Conventions (1864, 1906, & 1929) focused exclusively on guaranteeing the humane treatment of enemy combatants whether wounded, prisoner of war, or shipwrecked. Each subsequent agreement expanded on prior agreements and addressed real conditions of subsequent wars.

Following the horrors of the second world war, the set of conventions we commonly think of when we hear the term Geneva Conventions were put forth in 1949. In addition to reaffirming the protections provided to combatants, the fourth Geneva Convention focused on protections for civilians in combat zones. This includes the prohibition of the murder, summary execution, torture, or unlawful detention of noncombatants. The protection of civilians included an expansion on attacks against hospitals and humanitarian safety zones, which included guaranteeing the passage of food and medical supplies, as well as the ability of the wounded to have safe passage from combat zones. Even the private property of non-combatants is to be respected and not arbitrarily destroyed. Additionally, while temporary transfers of civilians are permitted by the Occupying power under exigent circumstances, the forced deportation of large numbers of civilians is explicitly proscribed.

As the nature of warfare continued to evolve and change, including the on-set of state collapse and civil war, several subsequent protocols were added to the original 1949 Geneva Conventions: Protocol I, adopted in 1977, extended combatant protections to anti-colonial fighters resisting colonial, racist regimes, where such fighters were seeking to exercise their right to self-determination. Protocol II, also adopted in 1977, extended civilian protections to non-combatants in civil wars. (A third subsequent protocol put forth in 2005 created an ecumenical medical symbol (the red crystal) to replace either the red cross or red crescent as a means to mark medical personnel and facilities against which attacks were forbidden).

The most important addition the Geneva Conventions offered to The Hague Conventions was the thorough extension of protections to non-combatants; to civilian infrastructure; and the articulation of responsibilities to protect both for warring parties. War Crimes are also articulated in a series of laws protecting human rights, which include the Genocide Convention, The International Covenant on Civil & Political Rights, and the International Covenant on Economic, Social, and Cultural Rights. Combined, these agreements help articulate what we understand as crimes against humanity. Sexual violence was added as a type of crime against humanity following the tribunals that demonstrated the use of sexual violence as a weapon of war by Serbian nationalist forces against Bosnian Muslim women in the 1990s.

There is, of course, also the question of what makes a state’s decision to go to war legal in the first place. The UN Charter is explicit on this questions, even if it hasn’t stopped interstate conflicts from breaking out. The UN Charter forbids states from resolving conflicts through war; it demands states “refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.” Yet, there exists a self-defense exemption to this, which allows a state or a collection of states to exercise the right to self-defense. Russia has explicitly evoked this right to self-defense as justification for its military actions in Ukraine (Baruch & Beeri 2022).

We know that war crimes can be committed by both individuals and states, and that both individuals and states can be held accountable. The International Criminal Court has a specially defined role in investigating war crimes, and indeed, has recently brought charges against Vladimir Putin, but it is not the only organization doing this work. A number of European and Ukrainian bodies, for example, have been investigating Russian war crimes, and a host of academic organizations and private think tanks have contributed to this effort as well. Despite the evidence gathered, whether any particular individuals or the Russian state can or will face consequences, let alone any Ukrainian personnel, remains doubtful.

**Emergence of New Wars**

Given the checkered history of compliance with the laws of war, questions of war crimes were complicated enough when the primary focus of international conflict involved states and their militaries. Let’s consider, for example, two elements of recent US war-making that pushed the boundaries of legality in ways that make it harder to hold other states accountable: 1. Pre-emptive self-defense and the 2003 War in Iraq, and 2. Blurring the distinction between combatant and non-combatant in the second battle of Fallujah in 2004.

The justification for the War in Iraq was an exercise in imagining the conditions for legitimate inter-state war based on pre-emptive self-defense. The Bush administration drew together “evidence” that Saddam Hussein’s regime had and maintained a weapons of mass destruction program, and that the regime had ties to al Qaeda in ways that implicated the state in providing support for the perpetrators of the September 11 attacks. Despite evidence presented by Secretary Powell at the United Nations, over time, the entire edifice of these claims to self-defense were proven to be built more on creatively interpreted pieces of evidence and half-truths. Iraq had no greater ties to al Qaeda in March of 2003 than Ukraine had to Nazis in March of 2022. The Iraq War, however, undermines efforts to hold Russia to higher standards for respecting sovereignty and self-determination.

In certain ways, the US prosecution of the War in Iraq also makes efforts to uphold the laws of war more complicated. In April 2004 the second US assault on Fallujah, for example, offered a model of urban siege warfare that included a military blockade; an exodus of between 70 and 80% of the civilian population; and the adoption of the perspective that all who remained in the city were deemed likely to be insurgents and thereby legitimate targets. Limitations on movement of people and goods; mass displacement of civilians; and the breakdown of the distinction between civilian and non-civilian provide a troubling model for Russian actions in Syria and Ukraine.

In addition to these sort of complicating factors, shifts in the nature and purpose of war over the later decades of the 20th century and first decades of the 21st complicate the effort to prevent war crimes and hold war criminals accountable even further. Mary Kaldor has argued that in the late 20th century, we saw a shift from old wars, which were fought by states, between states, to new wars, which are fought very often by non-state actors, within states. Old wars, as the history of international law presented above demonstrates were ostensibly guided by certain rules and standards designed to demarcate the limits of combat, respect for captured combatants, and the distinction between civilian and military, whereby targeting the former was seen as an ethical (at times, even legal) violation. New wars, on the other hand, have been characterized by the transcending of ethical boundaries, by the direct targeting of civilian populations, by sexual violence as a tactic, and by greater levels of barbarism and intimate brutality.

Kaldor identified 3 key differences between new wars and old wars (goals, methods, and financing). Whereas old wars were often fought either between states over territory, or between states with different political ideologies, new wars are primarily fought within states and over different political identities. This “new “identity politics “tend to relate to an idealized nostalgic representation of the past” (Chinkin and Kaldor 2017). Here we may think about the Islamic State’s desire to impose a way of life based on their understanding of a reading of Sunni Islam as it was during the time of the Prophet Muhammad. For Kaldor, the initial case that inspired her framework involved Serbian nationalism. New wars, that is, are about advancing “the claim to power on the basis of a particular identity” (Kaldor 2012: 7).

Old wars, in Kaldor’s framework, use conventional military tactics to capture territory, or fight against states with opposing ideologies; new wars deploy guerilla tactics, terrorism, sexual violence, ethnic cleansing, and extraordinary brutality directly targeted at civilians, to instill fear in populations and cause them to move, thereby allowing control over territory. Refugees and displaced people are the point of new wars, not an unintended consequence (Kaldor 2012: 9). As a result, while old wars might contribute to war crimes, war criminality is the defining feature of new wars. Kaldor asserts, “Behavior that was proscribed according to the classical rules of warfare and codified in the laws of war in the late nineteenth century and early twentieth century, such as atrocities against non-combatants, sieges, destruction of historical monuments, etc. constitutes an essential component of the strategies of the new mode of warfare” (2012: 9). In the next section I argue that Russia's invasion of Ukraine has challenged this distinction between new and old wars. The Russian military has brought the tactics and ethical transgressions of new wars into a more traditional interstate conflict. **Russia, new war tactics, and war crimes in Ukraine**

In one sense, the Russian invasion of Ukraine has many characteristics that Kaldor ascribes to old wars. It is a war between 2 states whose militaries are arrayed against each other on the field of battle, and it was justified on grounds of preventive self-defense over Russia’s ostensible security concerns over potential NATO expansion, and over the security concerns of Russian-speaking populations in disputed territorial regions faced with an alleged resurgence of neo-Nazism. But, in many ways, the failure of Russia to utilize shock and awe techniques in order to establish regime change in Kiev and secure Russification of the Ukrainian regions of Luhansk, Donetsk, Zaporizhzhia, and Kherson, caused Russia’s tactics to rapidly transform.

This transformation involved, in part, incorporating techniques of contemporary warfare that have become part of Russian war doctrine, and which were developed and perfected in conflicts in Chechnya and Syria (Berzins 2020). Here, I want to suggest we can think about Russia’s tactics as reflecting the characteristics of new wars, each of which highlights the ways in which the commission of war crimes is central to, rather than an unintended consequence of the way Russia has engaged in warfare in Ukraine. I divide these tactics into 5 groups: 1. Attacks on cultural heritage sites; 2. Urban siege warfare; 3. The targeting of schools, hospitals, shopping centers, and other civilian targets; 4. Forced mass deportations; and 5. The use of sexual violence, torture, and summary execution against civilians.

1. *Attacks on Cultural Heritage Sites*

A June 8, 2022 Report from the combined efforts of the Virginia Museum of Natural History, Cultural Heritage Monitoring Lab (CHML); University of Maryland, Center for International Development & Conflict Management (CIDCM); and Smithsonian Institution, Smithsonian Cultural Rescue Initiative (SCRI), publishing via the [Conflict Observatory website](https://hub.conflictobservatory.org/portal/apps/sites/#/home/), provided the first comprehensive overview of Ukrainian cultural sites that have been damaged or destroyed by the Russian invasion. The report, controlled for the proximity of cultural sites that were damaged or destroyed by Russian military attacks, including identifying the proximity of such sites both to military targets or strategic civilian targets like airports or bridges. Their findings pointed to 21 cultural sites that were greater than 3 kilometers from the nearest military or strategic targets. This suggested that attacks on these locations cannot be easily explained as unintended or collateral damage. Given the importance of cultural sites in the creation and reinforcement of identity, assaults on heritage sites can be understood as an example of the politics of identity—they are about undermining or reshaping the way identities are reinforced—and about erasing architecture that reinforced distinctly Ukrainian forms of identity. Ukrainian Culture Minister, Oleksandr Tkachenko, quoted in a December 2022 *Politico* analysis of the cultural dimensions of Russia’s war, has said, “Behind [Russian] tactics is a fight against our identity” (Hyde 2022).

In December of 2022 Human Rights Watch released a report outlining the Russian “pillage” of Kherson cultural institutions, the full extent of which only became clear after Ukrainian forces retook control of the city. According to their report, “Russian military forces and civilians operating under their orders pillaged thousands of valuable artifacts and artworks from two museums, a cathedral, and a national archive in Kherson,” throughout the 8-month duration of Russian military control (Wille 2022). HRW’s report was based on site visits conducted in November 2022, and interviews with 8 representatives of institutions directly involved. In one specific case, the deputy director of the Kherson Regional Art Museum provided evidence that suspected Russian art specialists stole 10,000 items from the museum’s collection.

As of December 2022, UNESCO had officially verified damage to more than 200 historical/heritage sites across Ukraine (Hyde 2022). An updated report from the Conflict Observatory published on March 6, 2023 identified damage at 1,595 (out of 28,618) cultural heritage sites that have been identified in the entirety of Ukraine. This includes: 691 memorials or monuments; over 500 churches or cemeteries; and 126 museums. While the number of attacks on cultural sites has declined since the opening months of the war, evidence of efforts to erase Ukrainian culture in areas occupied by Russian forces suggest that damage to cultural sites is not an unintended consequence of Russian war-making, rather it appears fundamental to its nature. It is, of course, a war crime that reflects the goals and methods of new wars.

1. *Urban Siege Warfare.*

According to Kaldor, new wars tend to rely less on heavy weaponry and more on small arms to terrorize and assert control over urban areas, killing off or causing undesired identity groups to flee. Russia’s method of urban siege warfare follows a similar logic through the deployment of heavier weaponry, which results in the purging space of populations of undesired identity groups through death, fear, or movement as refugees or deportees. This is the logic that underpins the siege warfare Russia has deployed in Ukraine, but which became part of Russian military doctrine during the second Chechen War and during Russia’s military operation in Syria. While no region has been entirely spared attacks from rockets, missiles, and airplanes, the siege on urban centers has been concentrated in the east and south of the country—areas, historically of the largest Russian speaking populations, and areas that became targets for Russian annexation. The essential logic of this siege warfare is to depopulate this space of the non-Russian aligned population with the goal of obtaining control over these regions as part of any settlement to end the war, as well as to create the conditions for rigged referenda supporting Russian annexation.

According to Janis Berzin’s analysis of contemporary and emergent Russian military doctrine, part of Russia’s current logic of war-making is defined by the concept of controlled chaos. Essentially, the “objective is the geopolitical destruction of the victim state by a set of measures to neutralize any geopolitical advantage the enemy might have, such as economic power, military might, international status, size of territory, and population” (Berzin 2020: 362). The use of force, particularly, directed at urban areas, therefore, is designed to turn an enemy into a failed state into which the Russian military can emerge as a stabilizing force. In urban areas this is to be accomplished, in part, by using tactics similar to those deployed by the US during the second battle of Fallujah.[[2]](#footnote-2) Blockades, the prevention of aid from flowing in, the prevention of enemy combatants from leaving, driving the civilian population to leave, etc. all aid in undermining the viability of Russia’s opponents from holding onto space, and raise the costs for their adversaries’ ability to engage in post-war reconstruction (Berzin 2020: 375 and Fox 2022).

The UN Office of the High Commissioner for Human Rights has been keeping an updated total of civilian casualties in Ukraine. As of 13 March 2023, they had recorded 8,231 killed and 13,734 injured. The Donetsk and Luhansk regions saw the highest level of casualties, but no region is without civilian casualties. Moreover, the UN continues to believe that the number they are reporting may be low given the difficulty of accessing several areas and cities under Russian control, including Mariupol.

Russia’s urban siege warfare constitutes war crimes in several potential ways: the denial of aid (food and medicine) to civilians is in direct violation of international rules of war; the goal of depopulating cities, which as we’ll talk about below also involves forced deportation, and even the forced placement of children into Russian homes, violates rules limiting occupying forces from engaging in mass expulsion; and as will become clear in the next category, urban siege warfare targets civilian infrastructure and targets in ways that violate international rules and norms, destroying protected types of infrastructure as well as private property.

1. *Attacks on schools, hospitals, and shopping centers, and other civilian targets*

A June 2022 report by the Yale University School of Public Health utilized satellite data from the Luhansk Oblast (the eastern most) region of Ukraine, which experienced some of the heaviest conflict between Ukrainian and Russian as well as Russian-backed paramilitary forces, during the early months of the war, and identified what they call “Widespread, Indiscriminate, and Persistent Damage to Protected Civilian Objects.” The report identified 21 healthcare facilities, which accounted for an astonishing 70% of the medical facilities in the cities the report focused on, and 30 public primary and secondary schools damaged or totally destroyed by bombardment by Russia and Russia-aligned and affiliated forces between 24 February and 13 June 2022. Many of these schools and medical facilities experienced multiple waves of attack. In only two of these sites did satellite imagery reveal Ukrainian military assets in close proximity, which might, in turn justify targeting.

A more comprehensive analysis of civilian harm has been undertaken by Bellingcat, an organization that uses open source data to track the effects of war on civilians. Bellingcat’s chief executive, Christo Grozev, testified before the House Foreign Affairs Subcommittee on Europe, Energy, The Environment, and Cyber just a couple of weeks into the war. “In just 19 days of war,” Grozev testified, “Bellingcat has recorded more than 350 incidents that have caused harm to civilians, most of this deadly harm” (2022: 7). At the same hearing, Bonnie Docherty from Human Rights Watch, testified that “Destruction of infrastructure, such as power plants or water treatment facilities, interferes with basic services including health care and education, and, in turn, infringes on human rights” (2022: 31). As of 13 March 2023 Bellingcat’s interactive map documents 1049 specific instances of civilian harm, which includes attacks on individuals, as well as damage to purely civilian infrastructure such as grocery stores. Each case is confirmed through geolocation and chronological evidence with images and video evidence provided.

These attacks on civilian targets may amount to war crimes under international law, and certainly were part of a campaign to make enduring the Russian incursion unsustainable. They were, that is, intended to push Ukrainians to flee and thereby open the land for Russian-identified control.

1. *Forced Deportations*

Mass forced deportations are a direct violation of the Geneva Conventions, according to Secretary of State Blinken, the United States believes between 900,000 and 1.2 million people of have been forcibly deported from Ukraine into Russia. These deportations also include children from Ukrainian orphanages who, it has been said, have been put up for adoption with Russian families. It is precisely this dimension of forced displacement that constitutes one of the main ICC war crimes charges levied against Vladimir Putin. As far back as March 2022, and in the context of the siege on Mariupol, the BBC provided initial reports of thousands of people forcibly relocated to Russia.

With no plans in place for repatriation, and with no international agencies able to oversee, track, or evaluate these deportations, forced deportations are, again, designed to change the demographic realities in order to strengthen Russian claims that legitimate both annexation of Ukrainian territory and Russian military use of force. They are, again, war crimes with logics of displacement that are hallmarks of new wars.

1. *Sexual Violence, Torture, and Summary Execution*

Finally, in moments of more intimate conflict more directly characteristic of new wars, there’s growing evidence of the use of sexual violence, torture, and summary execution on Ukrainian civilians by Russia and Russian-aligned forces in Ukraine. Evidence of torture and summary execution of civilians, most notably in Bucha, led Ukraine to open investigations into 12,000 wrongful civilian deaths. And, in particular, out of Kherson, there are documented reports of widespread Russian torture of Ukrainian citizens. According to media and NGO reports, over 1000 bodies, most of whom had gunshot wounds, several of which were burned, some of whom had bound hands, were found in mass graves and widely dispersed in and around Bucha, outside of Kiev. The *New York Times* coverage of Bucha highlights the two new war goals of this brutality: first, it involves the use of terror to assert control, and relatedly it is designed to instill broad fear and thereby to force undesirable ethnic groups to flee, thereby changing the “identity” of the land. In addition, over 400 bodies, most with evidence of violent death, were recovered after Ukrainian forces regained control over Izium.

[Recordings from calls](https://www.nytimes.com/interactive/2022/09/28/world/europe/russian-soldiers-phone-calls-ukraine.html) between Russian soldiers and home highlight civilian killings, including killings of unarmed civilians at the order of military commanders for fear of having positions revealed. The calls also highlight widespread looting. UN experts presented evidence of Russian atrocities after visiting 27 towns in Ukraine and interviewing local residents. The UN Independent International Commission of Inquiry on Ukraine released a statement on 23 September 2022 outlining some early findings of war crimes. These include a critique of Russian targeting of civilian populations indiscriminately; wide use of explosives that has directly contributed to one third of the Ukrainian population being forced to flee the city of Kharkiv, for example; and cases of sexual and gender-based violence where, “the age of victims of sexual and gender-based violence ranged from four to 82 years.” According to a January 2023 *New York Times* article, Ukrainian officials were investigating at least 154 separate cases of sexual violence (Gall 2023).

**What Is to be Done?**

There are a number of implications of this analysis. For starters, it means that regardless of whether the war itself violated international law, the deployment of new war tactics means that war crimes have been a central part of Russia’s military strategy after its initial efforts at shock and awe failed. The weight of evidence for this is overwhelming, and arriving every day in real time. What, then, is to be done lest Russia demonstrate that engaging in the criminality of new war tactics is a successful method for states to advance their old war ambitions?

Russian war crimes can be declared universal crimes allowing any state to prosecute individuals accused of such violations of human rights. Yet, unless individual perpetrators are identified and captured (and part of Bellingcat’s work has been to do this) this seems hard to imagine. Equally hard to imagine is how to account for the non-state actors, whether of the Wagner group, or of pro-Russian militias operating under territory annexed by Russia and under Russian security protections. In her analysis of new wars, Kaldor argues that justice requires holding perpetrators of new war transgressions accountable. She calls for cosmopolitan policing to restore security, and even for marginalizing the perpetrators of atrocities in any international discussions to establish peace. But, when one party to a new war is a nuclear armed super power, these solutions seem neither appropriate nor realistic. We’re left puzzling through how to prevent Russia’s engagement in new war tactics, which are fundamentally linked to its war criminality, from being positively reinforced.

This begs the question: how can we imagine a negotiated resolution to this conflict when one party’s war-making is centered on war criminality, and when the reasonable chances of holding either individual or state actors accountable are slim. Paradoxically, punishment on the battlefield, and continued international isolation, might be the only reasonable mechanisms available to the international community. This suggests, perhaps, that the Biden administration, and other backers of Ukraine, might consider reframing on-going justifications for financially and militarily supporting the Ukrainians away from the discourse about the future of democracy, and toward laying out of the war crimes evidence and allegations in order to make the case for punishing Russia during the conflict phase of the war itself.

Nothing about this topic makes me terribly optimistic. Transgressions by the so-called good guys in their war-making has set the example and undercut efforts to hold the bad guys accountable. The ability to hold a nuclear armed superpower accountable makes it feel like the nuclear umbrella provides an additional layer of indemnity to states (and this is worrisome as we think about nuclear proliferation). If somehow waging interstate war through new war methods defined by war criminality are seen as successful, what does this portend for the unleashing of a new era of interstate war unbound by the last 150 year’s effort to constrain war-making? It may not be possible, and it may unleash more problematic unintended consequences, but the strongest case for confronting Russia on the battlefield is to prevent the essential criminality of new war goals and methods from pointing toward the future of interstate conflict. Indeed, that such goals and methods have become essential parts of Russian military strategy reflects the ways prior successes have not been challenged.

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1. Grayling’s (2006) analysis of aerial bombing during the second world war provides a comprehensive discussion of how the failure to enshrine such a prohibition contributed to the ethical dilemmas involved in the targeting of civilians during later bombings on urban centers. [↑](#footnote-ref-1)
2. According to Fox (2022), about 350,000 people, or 81% of the population, fled Mariupol during the Russian siege. A similar percentage of the civilian population was said to have fled Fallujah prior to the second US assault on the city in April 2004. [↑](#footnote-ref-2)