



Question of “Just” War – Can Ukraine Strike Russia for Acts of Genocide in Ukraine?

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Shortly after Russia’s invasion of Ukraine last February, Ukraine quickly filed a case before the International Court of Justice (ICJ) claiming that Russia had “plann[ed] acts of genocide in Ukraine” by “intentionally killing and inflicting serious injury on members of the Ukrainian nationality.”¹ This, if true, fits directly within the *actus reus* of genocide under Article II of the Genocide Convention.² Many state parties intervened,³ highlighting the “utmost importance” of preventing and punishing genocide.⁴ If the matter is so crucial, can Ukraine be

¹ Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Press Release, 2022 I.C.J. 4 (Feb. 27).

² *Id.*; see also Convention on the Prevention and Punishment of the Crime of Genocide art. 2, Jan. 12, 1951, 78 U.N.T.S. 277.

³ As of November 10, 2022, formal interventions were made by the following nation states: Australia, Austria, Croatia, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, New Zealand, Poland, Portugal, Romania, Spain, Sweden, United Kingdom, and United States, see *Written Proceedings*, Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation) – Intervention, I.C.J., <https://www.icj-cij.org/en/case/182/intervention> [<https://perma.cc/HU4U-PY37>] (last visited Nov. 10, 2022).

⁴ See generally *id.*

justified in sending its forces into Russian Territory should the ICJ find that Russia did in fact committed crimes of genocide? The short answer is that it is highly unlikely.

First, it will be extremely difficult for Ukraine to justify its military actions into Russia as “just” and “appropriate” military response, especially when it has already fully mobilized its military in self-defense. By modern standards, self-defense is the “only unambiguously legitimate justification for the use of force.”⁵ It is commonly recognized that revenge or seeking “justice” cannot be proper aims of war, although states may resort to military actions to restore peace.⁶ When Ukraine is already using its full military capacity to repel the Russian invasion, it is highly unlikely that military action into Russian territory will gain the same justification and support Ukraine has enjoyed so far.

The other difficult bar for Ukraine is the principle of proportionality. Just because a state has a right to exercise self-defense, one is not entitled to engage in “*any* military action it wants.”⁷ Specifically, when the state is acting against a specific incident or attack, “the nation’s exercise of military self-defense must be proportional to the interest that it seeks to vindicate.”⁸ Furthermore, the principle of discrimination—the injunction that soldiers, not civilians, are legitimate targets of violence in war—always follows military actions.⁹ It is unclear how one could proportionally vindicate against the acts of genocide, typically committed against civilians, without breaking the principle of discrimination.

⁵ Neta C. Crawford, *Just War Theory and the U.S. Counterterror War*, 1 PERSP. ON POL. 5, 7 (2003).

⁶ *See id.*

⁷ Textbook at 397.

⁸ *Id.*

⁹ *See* Hanne M. Watkins & Simon M. Laham, *The Principle of Discrimination: Investigating Perceptions of Soldiers*, 23 GRP. PROCESSES & INTERGROUP RELS. 3, 3-4 (2020).

Finally, these two nations are already at war. Although the Ukrainian forces have made a significant push to retake their once-lost port city of Kherson, the war is still raging on.¹⁰ A merely “retaliatory” attack into Russian territory is less likely to be a priority over more pressing strategic and tactical targets which can be sought after by the Ukrainian forces. Furthermore, it is also unlikely that the ICJ will come up with a conclusive ruling over the case of *Ukraine v. Russian Federation* when the warfront is shifting daily. Perhaps, the more apt focus should not be on the responsive attack into Russian Territory, but on how the international can work together to bring perpetrators of horrible wartime atrocities to justice in the court of law.

¹⁰ See Michael E. Miller et al., *Ukraine Live Briefing: Kherson Tries to Rebuild Infrastructure; White House Pledges More Aid*, THE WASHINGTON POST (Nov. 13, 2022, 5:47 PM), <https://www.washingtonpost.com/world/2022/11/13/russia-ukraine-war-latest-updates/> [<https://perma.cc/Y3HJ-P77T>].

Endnotes