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Repeating History: Russia Inflicting Crimes Against Humanity Upon the Crimean Tartars

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REPEATING HISTORY: RUSSIA INFLECTING CRIMES AGAINST HUMANITY UPON THE CRIMEAN TATARS

KATERINA DEE*

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I. INTRODUCTION

In 2014, Russia invaded Crimea, a region of land that was within the geographic bounds of the Ukraine, claiming that it was legally annexing the Peninsula from the Ukraine.¹ The international community viewed Russia’s annexation of Crimea in 2014 as a violation of international norms.² Since then, international

1. See Austin Charron, *Whose is Crimea? Contested Sovereignty and Regional Identity*, 5 REGION 225, 228–30 (2016) (describing the process of how Russia managed to invade Crimea).

2. See G.A. Res. 68/262, ¶¶ 5–6 (Mar. 27, 2014) (finding that the 2014 referendum has no validity and calling “on all States, international organizations,

organizations such as the Office of the United Nations High Commissioner of Human Rights (OHCHR) have reported human rights violations in Crimea.³ Many of these reports have revealed abuses directed against the Crimean Tatars,⁴ an ethnic minority that was victimized by the Union of the Soviet Socialist Republics (“U.S.S.R.”) in the 1940s.⁵ From 2014 until 2015 alone, the Tatar population in Crimea fell from 12% to 2%.⁶ Many international organizations and States have expressed concern for the Crimean Tatars, their safety, and their rights.⁷

This Comment argues that Russia committed crimes against humanity and thus violated customary international law because it started a campaign of forcible transfer, unlawful imprisonment and arbitrary detention, enforced disappearances, torture, and persecution directed at the Crimean Tatars. The international community considers the prohibition of crimes against humanity is a peremptory norm in

and specialized agencies not to recognize” the legality of the annexation); U.N. GAOR, 68th Sess., 80th plen. mtg. at 17, U.N. Doc. A/68/PV.80 (Mar. 27, 2014) (noting that 100 Member States voted in favor of adopting draft resolution 68/262).

3. See e.g., Hum. Rts. Council, Rep. on the Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol, Ukraine 13, ¶¶ 1, 8, U.N. Doc. A/HRC/39/CRP.4 (2018) [hereinafter HRC Report] (analyzing cases of human rights and humanitarian law violations in Crimea).

4. *Id.* ¶ 3 (highlighting the targeting of Tatars group in police raids and prosecutions that resulted in proceedings that violate human rights standards in Crimea).

5. See Brian Glyn Williams, *The Hidden Ethnic Cleansing of Muslims in the Soviet Union: The Exile and Repatriation of the Crimean Tatars*, 37 J. CONTEMP. HIST. 323, 324 (2002) (noting the history of ethnic cleansing and migration of Tatars and the lack of coverage of it in the West).

6. Application of International Convention for Suppression of Terrorism and of International Convention on Elimination of All Forms of Racial Discrimination (Ukr. v. Russ.), 2017 I.C.J. 8, Application Instituting Proceedings, ¶ 94 (Jan. 16) (citing to population census conducted by Ukraine in 2001 and one conducted by Russia in 2015).

7. See *id.* ¶ 6 (submitting an application to begin litigation against Russia for violations of the International Convention on the Elimination of All Forms of Racial Discrimination on behalf of the Crimean Tatars); see also EUR. PARL. ASS. RES. 2231, *Ukrainian Citizens Detained as Political Prisoners by the Russian Federation*, ¶¶ 2.2, 8.7 (June 28, 2018), <https://pace.coe.int/en/files/24994#trace-3> (recalling previous resolutions on deterioration of human rights and calling on the Russian Federation to stop the prosecution on the Crimean’s and those that represent them).

international law.⁸ Because Russia is bound by customary international law, it violated its obligations not to commit crimes against humanity.⁹

Part II of this Comment provides information about the annexation of Crimea, the Crimean Tatars, and their grievances since 2014.¹⁰ Part II also discusses the definition of crimes against humanity in customary international law.¹¹ Part III analyzes Russia's actions directed against the Crimean Tatars and applies them to the elements of crimes against humanity.¹² In Part IV, this Comment recommends that the U.N. demand that Russia allow international and non-governmental organizations back into Crimea so that they have the capability to investigate crimes perpetrated against the Tatars.¹³ Part IV also recommends that the Prosecutor for the International Criminal Court concludes her preliminary investigation in Crimea in order to issue arrest warrants and to interrogate individual perpetrators before Ukraine revokes its limited jurisdiction.¹⁴ Finally, Part IV recommends that the international community pressure Russia to investigate crimes committed by its de facto forces in order to avoid impunity.¹⁵ Part V concludes that since Russia committed crimes against humanity directed at the Crimean Tatars, it needs to provide them with the correct remedies according to international norms.¹⁶

II. BACKGROUND

A. TURMOIL IN CRIMEA: AN OVERVIEW OF THE CRIMEAN

8. Int'l Law Comm'n, Rep. on the Work of Its Seventy-Fourth Session, Supp. No. 10, U.N. Doc. A/74/10, pmb. (2019) [hereinafter ILC Draft Articles on Crimes Against Humanity] (recalling prohibition of crimes against humanity is a peremptory norm of general international law (*jus cogens*)).

9. See G.A. Res. 56/83, annex, Responsibility of States for internationally wrongful acts, art. 1 (Dec. 12, 2001) ("Every internationally wrongful act of a State entails the international responsibility of that State.").

10. See discussion *infra* Part II.A.

11. See discussion *infra* Part II.B.

12. See discussion *infra* Part III.

13. See discussion *infra* Part IV.A.

14. See discussion *infra* Part IV.B.

15. See discussion *infra* Part IV.C.

16. See discussion *infra* Part V.

TATARS' HISTORY AND OF RUSSIA'S ACTIONS SINCE 2014

1. The Crimean Tatars: A History of Displacement and Marginalization

The Crimean Tatars are a distinct ethnic minority that originates from the Crimean Peninsula.¹⁷ They constituted 12.1% of the Crimean population before Russia's annexation of Crimea.¹⁸

Over the last few centuries, many governments have oppressed and persecuted the Tatars.¹⁹ Suffering the worst under the U.S.S.R., Joseph Stalin deported the Tatars to Central Asia after claiming that they were traitors to the Soviet State.²⁰ The Soviet's treatment of the Tatars throughout the remainder of the Cold War constituted serious human rights violations.²¹

In the 1980s, the collapse of the Soviet Bloc coupled with a decree in 1989 allowing the Tatars to return from Central Asia to Crimea²²

17. See Charron, *supra* note 1, at 236–37 (discussing the self-rule era of Crimea and emergence of the Tatars ethnicity and identity that eventually became a part of the national identity of the Crimea Peninsula).

18. STATE STATISTICS COMMITTEE OF UKRAINE, *About the Number and Population of Autonomous Republic of Crimea by data All-Ukrainian population census*, UKR. CENSUS (last visited Sept. 5, 2020), <http://2001.ukrcensus.gov.ua/eng/results/general/nationality/Crimea>.

19. See generally Williams, *supra* note 5, at 236 (stating the history of colonial rule of Crimea for over a century which led to almost half a million Tatars leaving their homeland); accord Brian Glyn Williams, *Hijra and the Forced Migration from the Nineteenth-Century Russia to the Ottoman Empire: A Critical Analysis of the Great Crimean Tatar Emigration of 1860-1861*, 41 CAHIERS DU MONDE RUSSE 79, 79, 82–84, 86–88 (2000) (providing that Crimean Tatars were forcibly displaced from their homes during the Russo-Turkish Wars and that as many as 200,000 of the 300,000 Crimean Tatars fled the Crimean Peninsula after the Crimean War of 1853–56).

20. See Williams, *supra* note 5, at 331–36 (stating that Stalin had the Crimean Tatars surrounded in their villages and deported from Crimea as they suffered cruel treatment by armed soldiers on May 18, 1944, a day which is still commemorated by Crimean Tatars).

21. See Charron, *supra* note 1, at 237 (noting that “as many as 46% of deportees perished en route” and that the mass deportation was considered a genocide by the Crimean Tatars, which attempted to remove their national identity); see also Williams, *supra* note 5, at 338, 342–43 (restating an interview with Crimean Tartars, who describe the terrible living conditions in the settlements after their deportation and being forced to work 12 hours in fields and factories).

22. See generally *id.* at 323 (describing that a quarter of a million Crimean Tatars

prompted the Tatars to rebuild their communities in the Crimean Peninsula.²³ These efforts included reuniting families and resettling the southern coast of the Crimean Peninsula.²⁴ Other efforts included asserting political rights.²⁵ For example, they established the “Mejlis of the Crimean Tatar People,” or “Mejlis,” a representative and executive body for the Tatars.²⁶

However, while resettling the Peninsula, other ethnic groups opposed the return of the Tatars.²⁷ There was significant pushback from ethnic Slavs, who still viewed the Tatars as traitors who wanted to capitalize on the government’s promises.²⁸ Additionally, the Ukrainian government provided little support to help Tatars resettle.²⁹ Unable to reclaim the land that belonged to them before the 1944 exile, the Tatars began to squat unoccupied land.³⁰

migrated back to the Crimean Peninsula between 1989 to 1994, when President Mikhail Gorbachev allowed their return).

23. *Id.* at 340 (discussing the Crimean Tatars’ efforts in rebuilding their society after Soviet leader Nikita Khrushchev permitted their integration with Soviet society).

24. *Id.* at 323, 340 (expressing that initial task of the Crimean Tartars was uniting with families and discovering the magnitude of the loss in their communities).

25. See Charron, *supra* note 1, at 238 (explaining that the Crimean Tatars became politically active after their return to Crimea in the 1990s and felt attached to Ukrainian nationality).

26. See *General Information About the Mejlis*, MEJLIS OF THE CRIMEAN TATAR PEOPLE (last visited Sept. 9, 2020), <http://qtm.org/en/general-information-about-mejlis> (providing a general information on the Mejlis, an executive and representative of the Crimean Tatar people made up of 33 members including the Chairman).

27. See Charron, *supra* note 1, at 238 (stating that ethnic Slavs marginalized and discriminated against the Tatars once they began to resettle Crimea in 1989).

28. See DANIEL ROTHBART & KARINA V. KOROSTELINA, *WHY THEY DIE: CIVILIAN DEVASTATION IN VIOLENT CONFLICT* 55 (2011) (explaining that Slavic and Russian Crimeans still stigmatized the Tatars based on Stalin’s smear campaign after World War II, accused them of never living in the Peninsula, and resented the Tatars for claiming that Crimea was their homeland instead of the U.S.S.R.).

29. *Id.* at 55–56 (explaining that Ukraine did little to decrease tensions between Tatars and ethnic Slavs and “could not provide all returnees with affordable housing, equal educational opportunities, or adequate medical services.”).

30. See Charron, *supra* note 1, at 238 (conveying that returnees had to build homes on unoccupied after finding their land occupied by Slavs).

2. *Russia's Actions in Crimea Since 2014*

Tensions rose in Crimea after Russia annexed the Peninsula.³¹ In late 2013, protests erupted in Kyiv in response to Ukrainian President Yanukovich rejecting an association agreement with the EU in favor of closer economic ties with Russia.³² Without any evidence,³³ Russia framed the protests as a fascist movement hostile to Crimea's ethnic Russians.³⁴ On February 27, 2014, Russia sent armed men in unmarked uniforms to seize the capital of Crimea.³⁵ After holding a hasty referendum, Crimean authorities declared independence and sent a formal request to Russia for annexation on March 17, 2014.³⁶ As such, Russia annexed it and instituted a *de facto* government to oversee the Peninsula.³⁷

The international community declared that the annexation of Crimea violated international law.³⁸ Despite this, Russia began

31. See AMNESTY INT'L, CRIMEA IN THE DARK: THE SILENCING OF DISSENT, 1, AI Index EUR 50/5330/2016 (2016) [hereinafter AMNESTY INT'L, CRIMEA IN THE DARK] (reporting that, after the 2014 referendum and annexation, Russia began suppressing opposing voices and began targeting the Crimean Tatars).

32. See Charron, *supra* note 1, at 227 (stating that the Euromaidan protests resulted in deadly clashes with government forces and led to a shift to a more sympathetic coalition).

33. Off. of the U.N. High Comm'r for Hum. Rts., Rep. on the human rights situation in Ukraine, ¶ 89 (Apr. 15, 2014) [hereinafter OHCHR Report] ("It is widely assessed that Russian-speakers have not been subject to threats in Crimea.").

34. See Charron, *supra* note 1, at 228 (expressing Russian's response of deeming the protests hostile to Russian minorities in Ukraine, which became a strong and common narrative for the ethnic Russians in the two regions within Ukraine, where Russian were the regional majority).

35. *Id.* at 228–29 (noting that Russian authorities first claimed the armed men were present in Simferopol to protect Russian speakers, however, it was later revealed that they were military forces who then seized the Crimean Supreme Council building to preside over the session and dissolve Crimea's government).

36. *Id.* at 229–30 (stating that, although the referendum was held days after President Putin sent in his troops and "many observers doubt the veracity" of the referendum results, "Crimean authorities declared the region's independence on 17 March, and immediately issued a formal request to the Russian President for acceptance into the Russian Federation.").

37. See *id.* at 225, 230 (explaining that President Putin and representatives from Crimea and Sevastopol signed an agreement that gave Russia the authority to formally annex the territories).

38. See G.A. Res. 68/262, *supra* note 2, ¶¶ 5–6 (finding that the referendum held had no validity and calling upon states, international organizations, and other

implementing policies to solidify its control over the territory,³⁹ including efforts to create a more ethnically homogenous population in Crimea.⁴⁰

In 2014, Russia began violating Crimean citizens' human rights.⁴¹ At first, Russia restricted free access to information and began a propaganda campaign in Crimea.⁴² Russian authorities, including the Federal Security Service of the Russian Federation (FSB),⁴³ carried out one-sided arrests for participants of anti-Russian protests.⁴⁴

agencies not to recognize the annexation or any alterations to the Crimea on the basis of the referendum).

39. See AMNESTY INT'L, *CRIMEA IN THE DARK*, *supra* note 31, at 1 (reporting on the local authorities' actions to control and restrict the freedom to assemble and freedom of media to expand control and limit independent political and cultural events).

40. Application of International Convention for Suppression of Terrorism and of International Convention on Elimination of All Forms of Racial Discrimination (Ukr. v. Russ.), 2017 I.C.J. 8, Application Instituting Proceedings, ¶ 36 (Jan. 16) ("With effective control over Crimea established, the Russian Federation has imposed a policy of Russian dominance, seeking to erase the distinct cultural identities of the Peninsula's ethnic Ukrainian and Tatar communities through a pattern of discriminatory acts.").

41. See AMNESTY INT'L, *CRIMEA IN THE DARK*, *supra* note 31, at 1 (reporting on the Russian Federation's prosecution on trumped up charges, harassment, exile, disappearance, and characterization of those who oppose Crimea's annexation as terrorists).

42. See OHCHR Report, *supra* note 33, ¶ 72 (reporting on the widespread misuse of information and propaganda in Crimea); see also AMNESTY INT'L, *ONE YEAR ON: VIOLATIONS OF THE RIGHTS TO FREEDOM OF EXPRESSION, ASSEMBLY AND ASSOCIATION IN CRIMEA*, 9, AI Index EUR 50/1129/2015 (Mar. 2015) [hereinafter AMNESTY INT'L, *ONE YEAR ON*] (explaining that the Russian authorities imposed media restrictions on Crimean Tatar TV Channel ATR and other channels covering "events affecting the Tatar community.").

43. See HRC Report, *supra* note 3, ¶¶ 3, 4 (reporting that the Federal Security Service of the Russian Federation ("FSB") and other police forces disproportionately targeted Crimean Tatars through police raids, investigations, and prosecutions); see also INTERNATIONAL PARTNERSHIP FOR HUMAN RIGHTS, *INTERNATIONAL CRIMES IN CRIMEA: AN ASSESSMENT OF TWO AND A HALF YEARS OF RUSSIAN OCCUPATION* ¶¶ 84, 92 (2016) [hereinafter *INTERNATIONAL CRIMES IN CRIMEA*] (finding that proxy militias began targeting Crimean Tatars and that authorities in Crimea accepted and legalized their presence and conduct instead of punishing them).

44. Application Instituting Proceedings, 2017 I.C.J. at ¶ 91 (claiming that "the Russian Federation targeted ethnic Ukrainians and Tatars for their protests" during the referendum and "carried out one-sided arrests and prosecutions of [those] participants.").

Reports arose of abduction, physical violence, and unlawful detention of these peaceful anti-Russian protesters.⁴⁵

The de facto government then focused on targeting the Tatars' political freedoms.⁴⁶ In 2016, Russian and Crimean courts suspended the Mejlis for being an "extremist body" because its leaders vocally opposed the annexation.⁴⁷ Different local and international actors opposed the characterization of the Mejlis.⁴⁸ Some leaders of the Mejlis disappeared and were either found dead a few weeks later, or were arrested and currently remain in pre-trial detention.⁴⁹ Other members and supporters of the Mejlis were criminally prosecuted as extremists.⁵⁰ Additionally, Russian authorities prohibited celebration of *Sürgün*, a culturally significant holiday for Crimean Tatar history.⁵¹ Beyond this, the media restrictions disproportionately affected the Crimean Tatars.⁵²

45. See OHCHR Report, *supra* note 33, ¶ 85 (recording the various reports of civil society groups on the disappearance, arrests, harassment and violence against peaceful demonstrators some of whom had signs of torture and ill-treatment).

46. See generally AMNESTY INT'L, CRIMEA IN THE DARK, *supra* note 31, at 1–2 (reporting human rights violations such as restrictions on the freedoms of speech and assembly, banning the Mejlis, unlawful arrests and detentions, and enforced disappearances).

47. Ivan Nechepurenko, *Tatar Legislation is Banned in Crimea*, N.Y. TIMES, Apr. 27, 2016, at A10 (explaining that the Russian Justice Ministry and the Supreme Court of Crimea both banned the Mejlis as an extremist organization in 2016 and that the Tatars were the only activists to vocally oppose the annexation in 2014).

48. See, e.g., G.A. Res. 71/205, pmbl., ¶ 2(g) (Dec. 19, 2016) (calling on Russian authorities "[t]o revoke immediately the decision declaring the Mejlis of the Crimean Tatar People an extremist organization").

49. See, e.g., HRC Report, *supra* note 3, ¶ 33 (citing at least five cases of enforced disappearances of individuals that opposed the referendum with involvement in Crimean Tartar institutions).

50. See AMNESTY INT'L, CRIMEA IN THE DARK, *supra* note 31, at 3 (reporting on the prosecution of local organizations and supporters of the Mejlis following the declaration of the Mejlis as an extremist organization).

51. See AMNESTY INT'L, ONE YEAR ON, *supra* note 42, at 16 (reporting on the de facto authorities' ban of all public events in 2014, on the 70th anniversary of an important day for Crimean Tatars, May 18th, which is a date that commemorates events that occurred in 1944). See generally Charron, *supra* note 1, at 237 (defining *Sürgün* as the holiday commemorating the day that Stalin ordered the deportation of all Crimean Tatars to Central Asia).

52. AMNESTY INT'L, CRIMEA IN THE DARK, *supra* note 31, at 1 (reporting on the lack of access to media following the Peninsula's annexation by Russia, and the risk of prosecution for those that would broadcast any criticism of the Russian

Next, Russian authorities perpetrated raids and invasions of the Crimean Tatars' homes beginning in 2014.⁵³ Reports document uniformed men reclaiming property and land rights over the Tatars because the land previously belonged to ethnic Russians.⁵⁴ Russian authorities also disproportionately targeted Crimean Tatars in police raids and in criminal prosecutions.⁵⁵ Police conducted raids as a means to combat “terrorist” or “extremist” threats,⁵⁶ where authorities questioned Tatars for hours while searching their homes.⁵⁷

Other reports document fundamental human rights violations.⁵⁸ These include allegations of enforced disappearances and arbitrary detentions of Tatar leaders, their families, and their supporters.⁵⁹ De facto authorities also began to retroactively prosecute Tatars under Russian law based on acts committed before the 2014 annexation.⁶⁰

authorities); *see, e.g.*, AMNESTY INT’L, ONE YEAR ON, *supra* note 42, at 10–12 (reporting the suspension of Crimean Tatar TV Channel ATR).

53. *See* HRC Report, *supra* note 3, ¶ 31 (reporting that 53 of 57 raids conducted from 2017 to 2018 were of Crimean Tatar homes); CRIMEA SOS, CRIMEA SITUATION REPORT: 2019 (2020) (reporting that throughout 2019 police conducted 58 searches and 48 arrests of Crimean Tatars’ and Jehovah Witnesses’ homes).

54. Rita Izsák (Special Rapporteur on minority issues), *Rep. on Mission to Ukraine*, ¶ 51, U.N. Doc. A/HRC/28/64/Add.1 (Jan. 27, 2015) (reporting the statements of Tatar representatives that unidentified and uniformed men were claiming Tatar properties and land).

55. *See* HRC Report, *supra* note 3, ¶ 3 (recording 86% of documented property searches and police raids from January 1, 2017 until June 30, 2018 that targeted Crimean Tatars).

56. *Id.* ¶¶ 30–31 (reporting on the raids of private businesses, meeting places and subsequent arrests of Crimean Tatars which were premised on the allegation that they were members of a terrorist or extremist group without evidence to support such allegations).

57. U.S. COMM’N ON SEC. AND COOPERATION IN EUR., 114th CONG., HUMAN RIGHTS VIOLATIONS IN RUSSIAN-OCCUPIED CRIMEA 12 (Dec. 11, 2015) (briefing on the human rights violation that occurred when Crimean Tatars were subjected to many hours of interrogations as their homes are searched).

58. *See, e.g.*, HRC Report, *supra* note 3, ¶¶ 1–14 (reporting serious human rights violations from September 2017 to June 2018); AMNESTY INT’L, CRIMEA IN THE DARK, *supra* note 31, at 1–2 (reporting human rights violations against Crimean Tatars from 2014 until 2016).

59. *See* HRC Report, *supra* note 3, ¶¶ 30–32 (concluding that nine Crimean Tatars were victims of enforced disappearances from March 3, 2014 until June 30, 2018); *see, e.g.*, AMNESTY INT’L, CRIMEA IN THE DARK, *supra* note 31, at 5 (stating that Crimean Tatar activist Ervin Ibragimov went missing in May 2016).

60. *See* HRC Report, *supra* note 3, ¶ 19 (reporting on the prosecution of at least

Finally, Russian authorities arrested Tatars it accused of participating in Hizb ut-Tahrir, an Islamist organization that has been outlawed in Russia since 2003, but was not outlawed by Ukraine.⁶¹ Authorities pressured the accused to waive their privately-held lawyers in exchange for more lenient rulings.⁶² Authorities further harassed lawyers representing Tatars by threatening to revoke their licenses.⁶³

Since 2014, the Crimean Tatar population has dropped to 2%.⁶⁴ Despite reports showing human rights violations, Russia argues that its actions did not violate any international law norms. Rather, Russia claimed that its actions were justified because it was combatting extremism in Crimea.⁶⁵

B. CRIMES AGAINST HUMANITY DEFINED

1. *The Prohibition of Crimes Against Humanity is a Peremptory Norm in Customary International Law*

Normally, States that have ratified the Rome Statute, a treaty establishing the International Criminal Court (ICC), are bound by its

10 people, on acts committed before the occupation, based on Russian Federation law).

61. See INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, ¶¶ 132, 136–37, 205 n. 565 (identifying some detainees as alleged members of Hizb-ut-Takhrir, an organization that has been banned by the Russian federation).

62. See HRC Report, *supra* note 3, ¶ 21 (reporting on instances when defendants were warned against having private hired lawyers as it would damage their defense).

63. *Id.* (reporting that a Russian investigator warned a Crimean Tatar's lawyer that he would "'lose his license' and that it was a 'matter of time' before he became a defendant himself.").

64. Application of International Convention for Suppression of Terrorism and of International Convention on Elimination of All Forms of Racial Discrimination (Ukr. v. Russ.), 2017 I.C.J. 8, Application Instituting Proceedings, ¶ 94 (Jan. 16) (citing to population census conducted by Ukraine in 2001 and one conducted by Russia in 2015 showing a stark decrease of Crimean Tatar population).

65. Application of the International Convention for the Suppression of Financing Terrorism and of the International Convention on the Elimination of All Forms of Discrimination (Ukr. v. Russ.), 2018 I.C.J. 1, Preliminary Objections Submitted by the Russian Federation, ¶¶ 1, 464, & n. 642 (Sept. 12), <https://www.icj-cij.org/files/case-related/166/166-20180912-WRI-01-00-EN.pdf> (requesting that the International Court of Justice dismiss Ukraine's claims of violations to the International Convention on the Elimination of All Forms of Discrimination because their actions were justified in combatting extremism in Crimea).

provisions and are subject to the ICC's jurisdiction when they commit crimes against humanity.⁶⁶ However, neither Ukraine nor Russia have ratified the treaty, which would normally prevent Ukraine from referring the situation in Crimea to the Court.⁶⁷ Although Ukraine accepted limited ICC jurisdiction for events occurring in Ukraine and Crimea from February 20, 2014 onwards,⁶⁸ this does not guarantee ICC jurisdiction over the Peninsula. In fact, the number States who are parties to the Rome Statute are limited and reducing.⁶⁹ Refuting ICC jurisdiction while the Prosecutor is conducting her preliminary investigation severely limits the scope any claims.⁷⁰ Alternatively, the U.N. Security Council can refer a situation to the Court.⁷¹ This route

66. Rome Statute of the International Criminal Court arts. 1, 5, 7, July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute].

67. See *id.* art. 12(2) (requiring that a State referring a situation to the Prosecutor must have ratified the Rome Statute, and that the crime must have been conducted on the State's territory or the accused is a national of that State); *Russia Withdraws from International Criminal Court Treaty*, BBC (Nov. 16, 2016), <https://www.bbc.com/news/world-europe-38005282> (stating that Russia is not under the jurisdiction of the International Criminal Court as it never ratified the treaty); *Ukraine*, INTERNATIONAL CRIMINAL COURT, <https://www.icc-cpi.int/ukraine> (last visited Oct. 14, 2020) ("Ukraine is not a party to the Rome Statute.").

68. See THE INTERNATIONAL CRIMINAL COURT OFFICE OF THE PROSECUTOR, REPORT ON PRELIMINARY EXAMINATION ACTIVITIES 19 (2018) (explaining that Ukraine accepted limited ICC jurisdiction for "alleged crimes committed on its territory from 20 February 2014, with no end date" and that the Prosecutor extended this jurisdiction to include Crimea). See generally Rome Statute, *supra* note 66, art. 12(3) (declaring that States that are not party to the Statute can accept limited jurisdiction).

69. See, e.g., Franck Kuwonu, *ICC: Beyond the Threats of Withdrawal*, UNITED NATIONS (last visited Sept. 22, 2020), <https://www.un.org/africarenewal/magazine/may-july-2017/icc-beyond-threats-withdrawal> (reporting that three countries withdrew from the ICC in 2016). See generally *The States Parties to the Rome Statute*, INTERNATIONAL CRIMINAL COURT (last visited Sept. 22, 2020), https://asp.icc-cpi.int/en_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx#:~:text=123%20countries%20are%20States%20Parties,Western%20European%20and%20other%20States (listing the parties to the Rome Statute of the International Criminal Court).

70. See e.g., THE INTERNATIONAL CRIMINAL COURT OFFICE OF THE PROSECUTOR, *supra* note 68, at 15 (reporting that the Philippines' withdrawal from the Rome Statute limits the Prosecutor's temporal jurisdiction from the starting of the alleged crimes to the date of withdrawal).

71. Rome Statute, *supra* note 66, art. 13(b) (stating the Security Council's right

is also a nonstarter, since Russia would veto any Security Council resolution that would hold them legally accountable.⁷²

Regardless, a State is still liable for violating peremptory norms of customary international law.⁷³ The international community recognizes crimes against humanity as a peremptory norm.⁷⁴ Since World War II, customary international law has indoctrinated crimes against humanity in different cases, treaties, and State laws.⁷⁵

2. Customary International Law's Definition of Crimes Against Humanity

Crimes against humanity are defined as the commission of prohibited acts that are a part of a widespread or systematic attack and are perpetrated against a civilian population pursuant to State policy with knowledge of the widespread attack.⁷⁶ The four elements of

to refer crimes to the prosecutor under Chapter VII of the Charter of the United Nations).

72. See, e.g., UN: *Russia and China's Abusive Use of Veto "Shameful"*, AMNESTY INT'L (Feb. 28, 2017, 1:37 PM), <https://www.amnesty.org/en/latest/news/2017/02/un-russia-and-chinas-abusive-use-of-veto-shameful/> (stating that Russia vetoed Security Council resolutions for its own self-interests).

73. See G.A. Res. 56/83, annex, *supra* note 9, art. 40 (declaring that a State is responsible for violating peremptory norms).

74. See ILC Draft Articles on Crimes Against Humanity, *supra* note 8, at 11 ("Recalling also that the prohibition of crimes against humanity is a peremptory norm of general international law").

75. See, e.g., Rome Statute, *supra* note 66, pmb., art. 7 (prohibiting crimes against humanity); see also Statute of the International Tribunal for the Former Yugoslavia, art. 5, in *Rep. of the Secretary-General Pursuant to Paragraph 2 of the Security Council Resolution 808 (1993)*, U.N. Doc. S/25704, annex (May 3, 1993) [hereinafter *ICTY Statute*] (giving the International Tribunal jurisdiction to prosecute instances of crimes against humanity in the former Yugoslavia and defining the crime); S.C. Res. 955, art. 3 (Nov. 8, 1994) (giving the International Tribunal jurisdiction to prosecute instances of crimes against humanity in the Rwanda and defining the crime); Statute of the Special Court for Sierra Leone art. 2, Jan. 15, 2002, 2178 U.N.T.S. 145 (granting jurisdiction for Special Court to prosecute perpetrators of crimes against humanity in Sierra Leone); Sean D. Murphy (Int'l Law Comm'n Special Rapporteur for Crimes Against Humanity), *First Report on crimes against humanity*, ¶ 58, U.N. Doc. A/CN.4/680 (Feb. 17, 2015) [hereinafter *ILC First Report*] (stating that as of 2013, 54% of U.N. Member States have national laws relating to crimes against humanity).

76. See Rome Statute, *supra* note 66, art. 7 (defining and listing out prohibited acts or crimes against humanity).

crimes against humanity, their requirements, and their interpretation are explained in the following paragraphs.⁷⁷

a. Crimes Against Humanity Require the Perpetration of Prohibited Acts

Crimes against humanity require the perpetration of prohibited and enumerated acts.⁷⁸ Thus, there is a nexus between the prohibited act and the widespread or systematic attack.⁷⁹

The prohibited acts that are discussed in this Comment include: the deportation or forcible transfer of a population; imprisonment or other severe deprivation of physical liberty; enforced disappearances; torture; and persecution against an identifiable group or collectivity.

i. Deportation or Forcible Transfer of a Population is a Prohibited Act

Deportation occurs when a perpetrator “deported or forcibly transferred, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts.”⁸⁰ There are two requirements for forcible displacement: displacement and coercive acts.⁸¹

First, perpetrators must have “displaced” individuals against their will.⁸² This element does not require that victims move across borders

77. See discussion *supra* Part II.A.2.a–d.

78. See Charter of the International Military Tribunal art. 6(c), Aug. 8, 1945, 251 U.N.T.S. 284 (prohibiting murder, extermination, enslavement, and deportation); *ICTY Statute*, *supra* note 75, art. 5(e–h) (adding imprisonment, torture, rape, persecution on political, racial and religious grounds as prohibited acts), art. 3(e–h) (adding imprisonment, torture, rape, persecution on political, racial and religious grounds as prohibited acts); Rome Statute, *supra* note 66, art. 7(1)(j) (including apartheid as a prohibited act).

79. Prosecutor v. Bemba, ICC-01/05-01/08-3343, Judgment pursuant to Article 74 of the Statute, ¶¶ 164–65 (Mar. 21, 2016) (stating the requisite nexus between the acts and the widespread or systemic attack).

80. See INTERNATIONAL CRIMINAL COURT, ELEMENTS OF CRIMES 6 (2011) [hereinafter ELEMENTS OF CRIMES] (explaining the elements of deportation or forcible transportation crimes elements).

81. See Prosecutor v. Stakić, Case No. IT-97-24-A, Judgment in the Appeals Chamber, ¶ 279 (Int’l Crim. Trib. for the Former Yugoslavia Mar. 22, 2006) (discussing the requirement of involuntary displacement for an act to be deported).

82. See generally ELEMENTS OF CRIMES, *supra* note 80, at 6.

permanently.⁸³ Instead, victims can be displaced within a State or territory.⁸⁴ However, perpetrators must be aware that the victims were lawfully present in the places that they inhabited.⁸⁵

Second, perpetrators must have displaced victims through “coercive acts.”⁸⁶ This element requires force or threat of force.⁸⁷ Coercive acts include physical force, fear of violence, duress, detention, psychological oppression, or abuse of power.⁸⁸

ii. Prohibited Acts Include Imprisonment or Other Severe Deprivation of Physical Liberty

A second prohibited act under crimes against humanity is unlawful imprisonment.⁸⁹ Unlawful imprisonment consists of imprisonment or deprivation of physical liberty in violation of international law.⁹⁰ A violation occurs if persons are detained without any reason to believe that they pose a threat to the security of the Detaining Power.⁹¹

83. See *Prosecutor v. Krnojelac*, IT-97-25-A, Judgment in the Appeals Chamber, ¶ 218 (Int'l Crim. Trib. for the Former Yugoslavia Sept. 17, 2003) (explaining that there is no requirement for the displacements to take place across national borders).

84. See *id.* (holding that forced displacement requires “criminal responsibility of the perpetrator”, not a specific destination for the victim).

85. ELEMENTS OF CRIMES, *supra* note 80, at 7 (requiring that “[t]he perpetrator was aware of the factual circumstances that established the lawfulness of such presence.”).

86. *Stakić*, Case No. IT-97-24-A at ¶ 279 (“The definition of deportation requires that . . . the relevant persons had no genuine choice in their displacement.”).

87. ELEMENTS OF CRIMES, *supra* note 80, at 6 & n. 12 (stating that a perpetrator must have physically forced, threatened, or coerced the victim to leave).

88. *Prosecutor v. Krnojelac*, Case No. IT-97-25-T, Judgment, ¶ 475 (Int'l Crim. Trib. for the Former Yugoslavia Mar. 15, 2002) (finding that the essential element of deportation was that the displacement was involuntary and that coercive acts were not limited to physical force); *Stakić*, Case No. IT-97-24-A at ¶ 279 (reaffirming coercive acts listed in the trial judgement of *Krnojelac*).

89. See, e.g., Rome Statute, *supra* note 66, art. 7(1)(e).

90. See *Murphy*, *ILC First Report*, *supra* note 75, ¶ 158 (explaining the crime of imprisonment as part of crimes against humanity, which occurs when there is a deprivation of physical liberty and violation of international law).

91. See Geneva Convention Relative to the Protection of Civilian Persons in Times of War arts. 42, 43, Aug. 12, 1949, 75 U.N.T.S. 287 [hereinafter Fourth Geneva Convention] (declaring that detainment is only lawful if it is “absolutely necessary” to protect a State’s security and if the State provides the detainee with procedural safeguards); *Prosecutor v. Kordić*, Case No. IT-95-14/2-A, Judgment in the Appeals Chamber, ¶¶ 114–15 (Int'l Crim. Trib. for the Former Yugoslavia Dec.

Unlawful imprisonment also occurs when perpetrators deprive victims of procedural safeguards.⁹²

Alternatively, the unlawful deprivation of liberty includes arbitrary detention.⁹³ Arbitrary detention is the “deprivation of liberty of the individual without due process of law.”⁹⁴ Arbitrary detention can occur when perpetrators do not inform a victim about his charges at the time of his arrest; do not provide the victim with a trial within a reasonable amount of time; or do not provide the victim a trial in front of a neutral judge.⁹⁵

iii. Enforced Disappearances as Prohibited Acts

Customary international law also prohibits enforced disappearances.⁹⁶ This crime is defined as the “arrest, detention, or abduction” of persons with State support or authorization, and a refusal to either give information on their whereabouts or to acknowledge their disappearance.⁹⁷ There are two inseparable elements: the deprivation of a person’s freedom and the suppression of information of his whereabouts.⁹⁸ Because the State must provide

17, 2004) (stating that the standards of the Fourth Geneva Convention, except for the existence of an international armed conflict, applies to unlawful imprisonment in crimes against humanity).

92. *Id.* (noting that failure to comply with procedural safeguards required by Article 43 of the Geneva Convention regarding detained individuals will make the imprisonment unlawful even if it was lawful initially).

93. *Id.* ¶ 116 (finding that unlawful imprisonment under crimes against humanity includes arbitrary detention); *see also* Murphy, *ILC First Report*, *supra* note 75, ¶ 158 (recognizing that unlawful imprisonment includes arbitrary detention under customary international law).

94. *Kordić*, IT-95-14/2-A at ¶ 116 (agreeing with the trial court, on the findings regarding arbitrary imprisonment).

95. International Covenant on Civil and Political Rights art. 9, Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

96. *See, e.g.*, Murphy, *ILC First Report*, *supra* note 75, ¶ 157 (stating that removal of individuals without purposes permitted by international law is considered a forcible transfer or deportation).

97. Rome Statute, *supra* note 66, art. 7(2)(i) (defining the term ‘enforced disappearance of persons’); International Convention for the Protection of All Persons from Enforced Disappearance art. 2, Dec. 20, 2006, 2716 U.N.T.S. 3 (describing the crime of ‘enforced disappearance of persons’).

98. *Situation in the Republic of Burundi*, ICC-01-17-X-US-Exp, Public Redacted Version of “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi”, ¶

information about the victim's whereabouts, it must also conduct an investigation into the disappearance.⁹⁹ This crime continues so long as the victim remains missing and/or no information about his whereabouts surfaces.¹⁰⁰

iv. Torture May Amount to a Crime Against Humanity

Torture is also a prohibited act under the definition of crimes against humanity.¹⁰¹ Throughout multiple treaties, torture is defined as the intentional infliction of suffering on a person in custody.¹⁰² Suffering can include physical or mental pain.¹⁰³ However, the torturer must have wanted a certain result,¹⁰⁴ which can include "obtaining information or a confession; punishing, intimidating or coercing the victim or a third person; or discriminating, on any ground, against the victim."¹⁰⁵

118 (Oct. 25, 2017) [hereinafter *Situation in Burundi*] (highlighting the inseparability of the two elements).

99. *Id.* (stating the obligation of the state authorities to acknowledge, give information, or investigate an individual's whereabouts).

100. *Id.* ¶ 121 (stressing the continuity of the crime so long as the person is missing and information is concealed).

101. Rome Statute, *supra* note 66, art. 7(1)(f) (listing torture as one of the acts considered to amount to crimes against humanity); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment pmbl., art. 1, Dec. 10, 1984, 1465 U.N.T.S. 109 [hereinafter CAT] (discussing the meaning of the crime torture and the convention's agreement).

102. Rome Statute, *supra* note 66, art. 7(2)(e) (defining the crime of torture); see ANTONIO CASSESE, INTERNATIONAL LAW 446 n. 20 (2d ed. 2005) (explaining that the Rome Statute's definition of torture reflects international caselaw, the 1984 Convention Against Torture, and other legal instruments).

103. See ELEMENTS OF CRIMES, *supra* note 80, at 7 (discussing the elements of the crime of torture); Prosecutor v. Krnojelac, Case No. IT-97-25-T, Judgment, ¶ 182 (Int'l Crim. Trib. for the Former Yugoslavia Mar. 15, 2002) (using the following factors to analyze suffering: the "context of the infliction of pain", premeditation, "physical condition of the victim", the "manner and method used", and victim's "position of inferiority").

104. CAT, *supra* note 101, art. 1 (stating the elements of the crime of torture as including intent of the person inflicting the pain or suffering); see also *Krnojelac*, IT-97-25-T at ¶ 184 (stating that the act of torture requires intent or purpose).

105. *Krnojelac*, IT-97-25-T at ¶ 185 (listing different prohibited purposes that could be the motivations of acts of torture).

v. *Persecution as a Prohibited Act*

Finally, persecution is a prohibited act as understood within crimes against humanity definition.¹⁰⁶ This crime has two distinct elements: a persecutory act or omission that deprives victims of fundamental human rights, and the intent to target individuals “because of their membership in the group or collectivity.”¹⁰⁷

First, there must be a persecutory act or omission.¹⁰⁸ The act or omission must either connected to other prohibited acts falling within crimes against humanity, war crimes, or genocide.¹⁰⁹ The act must be of equal gravity to other crimes against humanity.¹¹⁰ Persecution under customary international law can take different forms, including serious bodily and mental harm, infringements of freedom, and attacks against property.¹¹¹ For example, the courts in both *Kordić* and *Blaškić* considered willful killing, plundering and pillaging, forcible displacement, inhumane treatment of civilians, and attacks on towns and cities as acts that can amount to persecution.¹¹² However, these acts still must deny or infringe upon fundamental rights under

106. See, e.g., Rome Statute, *supra* note 66, art. 7(1)(h) (listing persecution as one of the recognized crimes against humanity).

107. See Murphy, *ILC First Report*, *supra* note 75, ¶ 168 (citing to multiple sources of international law on the elements and crime of persecution); Prosecutor v. Blaškić, Case No. IT-95-14-A, Judgment in the Appeals Chamber, ¶ 131 (Int’l Crim. Trib. for the Former Yugoslavia July 29, 2004) (listing the two elements of the crime of persecution).

108. *Blaškić*, IT-95-14-A at ¶ 135 (considering the act or omission which must be of equal weight to the other crimes against humanity).

109. Rome Statute, *supra* note 66, art. 7(1)(h) (defining the crime of persecution); ELEMENTS OF CRIMES, *supra* note 80, at 10 (stating the elements of the crime of persecution).

110. Prosecutor v. Kordić, Case No. IT-95-14/2-A, Judgment in the Appeals Chamber, ¶ 102 (Int’l Crim. Trib. for the Former Yugoslavia Dec. 17, 2004) (stating that acts alone or together with other acts must be of equal weight to other crimes against humanity); *Blaškić*, IT-95-14-A at ¶ 139 (noting that not all acts perpetrated with discriminatory intent amount to persecutions under crimes against humanity).

111. *Blaškić*, IT-95-14-A at ¶ 136 (affirming the Trial Chamber’s list of different forms of persecution based on jurisprudence in the Nuremberg Tribunal and the ICTY).

112. *Id.* ¶¶ 143–59 (considering whether the underlying acts that are the basis for the persecution crime, constituted a crime under international law); *Kordić*, IT-95-14/2-A at ¶¶ 104–09 (analyzing the various acts underlying the persecution crime).

customary international law.¹¹³

Second, perpetrators must target individuals based on their identification with a group.¹¹⁴ A perpetrator must have discriminated based on gender, political, cultural, national, religious, ethnic or racial grounds.¹¹⁵ Other prohibited acts that are a part of the attack could constitute persecution if the perpetrators had discriminatory intent.¹¹⁶

b. For Crimes Against Humanity, There Must be an Attack “Against a Civilian Population”

Under the definition of crimes against humanity, there must have been an attack “against a civilian population.”¹¹⁷ This requirement can be separated into three distinct elements: 1) an attack 2) that is directed against a civilian population and 3) is pursuant to State policy.¹¹⁸

i. There Must be an “Attack” for There to be Crimes Against Humanity

To be classified as a crime against humanity, customary international law requires that an attack occurred.¹¹⁹ The occurrence of an armed conflict involving civilians is dispositive evidence for an “attack”.¹²⁰ However, the attack does not need to be military in

113. *Kordić*, IT-95-14/2-A at ¶ 103 (stating that the acts committed must be in violation of a right established in international customary law to constitute the crime of persecution).

114. ELEMENTS OF CRIMES, *supra* note 80, at 10.

115. Rome Statute, *supra* note 66, art. 7(1)(h); *see also Blaškić*, IT-95-14-A, ¶ 137 (explaining that victimized persons were selected on grounds linked to their belonging to a particular community).

116. *Blaškić*, IT-95-14-A at ¶¶ 134–35.

117. *See* ELEMENTS OF CRIMES, *supra* note 80, at 5 (stating that the attack must be against a civilian population).

118. *Situation in the Republic of Kenya*, ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, ¶¶ 80–93 (Mar. 31, 2010) [hereinafter *Situation in Kenya*].

119. *See* ELEMENTS OF CRIMES, *supra* note 80, at 5 (explaining that crimes against humanity require conduct which is impermissible under generally applicable international law).

120. *See* Prosecutor v. Kunarac, Case No. IT-96-23-T, Judgment in the Trial Chamber, ¶¶ 412–14 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 22, 2001) (discussing existence of an armed conflict); Prosecutor v. Tadić, Case No. IT-94-1-T, Opinion and Judgment, ¶ 628 (Int'l Crim. Trib. for the Former Yugoslavia May 7, 1997) (discussing the existence of armed conflicts); Fourth Geneva Convention,

nature¹²¹ because an attack on a civilian population may “precede, outlast, or continue during” an armed conflict.¹²² Courts such as the International Criminal Tribunal for the Former Yugoslavia’s Appeals Chamber in *Prosecutor v. Kunarac* recognized that an attack against a civilian population “encompasses any mistreatment of the civilian population.”¹²³

ii. The Attack Must be “Directed Against a Civilian Population”

The attack must be “directed against a civilian population.”¹²⁴ Under customary international law, a “civilian population” typically includes all persons who are civilians and/or are not members of armed forces.¹²⁵ Even when certain individuals are actively participating in hostilities, there still may be a civilian population.¹²⁶ A civilian population can consist of a national, ethnic, or otherwise homogeneous group.¹²⁷

Additionally, the “directed against” language indicates that the civilian population must be the primary object of the attack.¹²⁸ Even though the perpetrators cannot target “randomly selected

supra note 91, art. 2 (“The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.”).

121. *Prosecutor v. Katanga*, Case No. ICC-01/04-01/07, Judgment pursuant to article 74 of the Statute, ¶ 1101 (Mar. 7, 2014).

122. *Prosecutor v. Kunarac*, Case No. IT-96-23 & IT-96-23/1-A, Judgment in the Appeals Chamber, ¶ 86 (Int’l Crim. Trib. for the Former Yugoslavia June 12, 2002).

123. *Id.*

124. *Tadić*, IT-94-1-T at ¶¶ 639–43 (reviewing sources of customary international law for the legal basis of the element).

125. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) art. 50(1)–(2), June 8, 1977, 1125 U.N.T.S. 3; *Tadić*, IT-94-1-T at ¶ 637 (discussing the meaning of civilian); *Kunarac*, IT-96-23 & IT-96-23/1-A at ¶ 91 (noting that, in peace-time, civilians includes everyone except for law enforcement officers).

126. *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment in Chambre I, ¶ 582 (Sept. 2, 1998); *see also Tadić*, IT-94-1-T at ¶ 643 (holding that the presence of persons who actively participated in resistance movements does not prevent a population from being civilian).

127. *Situation in Kenya*, ICC-01/09, ¶ 81.

128. *Kunarac*, IT-96-23 & IT-96-23/1-A at ¶ 91; *Prosecutor v. Bemba*, ICC-01/05-01/08-3343, Judgment pursuant to Article 74 of the Statute, ¶ 154 (Mar. 21, 2016).

individuals,”¹²⁹ the attack does not have to be directed at every single civilian.¹³⁰ Instead, courts determine whether an attack is targeting the civilian population based on the collective nature of the crimes.¹³¹ Courts examine the “means and methods of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, [and] the resistance to the assailants at the time. . . .”¹³² Finally, an attack occurs even if a State targeted its own civilian population instead of the opponent’s civilian population.¹³³

iii. The Attack Must be Pursuant to “State Policy”

The third element requires that attack must be “pursuant to or in furtherance of a State or organizational policy to commit such an attack.”¹³⁴ The existence of a policy shows that a State or organization meant to directly attack a civilian population.¹³⁵ A policy “requires that ‘the State or organization actively promote or encourage such an attack against a civilian population’” and may include “a deliberate failure to take action.”¹³⁶ In *Prosecutor v. Katanga*, the policy intended to pit ethnic groups against one another so that the State could gain

129. *Situation in Kenya*, ICC-01/09, ¶ 81.

130. *See* *Prosecutor v. Katanga*, Case No. ICC-01/04-01/07, Judgment pursuant to article 74 of the Statute, ¶ 1105 (Mar. 7, 2014) (explaining that it is not necessary for Prosecution to prove that the entire geographic area was targeted at the time of the attack).

131. *See id.* (stating that an attack does not need to target the entire population and occurs if “civilians were targeted during the attack in sufficient number or in such a manner that the attack was effectively directed against the civilian population”).

132. *Kunarac*, IT-96-23 & IT-96-23/1-A at ¶ 91.

133. *See* Murphy, *ILC First Report*, *supra* note 75, ¶ 135 (stating an attack can be committed against any civilian population).

134. Rome Statute, *supra* note 66, art. 7(2)(a); *see also* *Prosecutor v. Tadić*, Case No. IT-94-1-T, Opinion and Judgment, ¶ 653 (Int’l Crim. Trib. for the Former Yugoslavia May 7, 1997)(recognizing that crimes against humanity arose historically from some form of policy “to [deliberately] target a civilian population”).

135. *Katanga*, ICC-01/04-01/07 at ¶ 1113. *See generally* *Situation in Kenya*, ICC-01/09, ¶ 84 (explaining that a regional government, local government, or organization can also create policy so long as they had the capacity to commit the attack).

136. *Katanga*, ICC-01/04-01/07 at ¶ 1108.

control over a territory.¹³⁷

A State policy does not have to be formal and can be inferred.¹³⁸ Courts and tribunals have used different factors when determining whether such a policy exists.¹³⁹ For example, the ICC examines the scale of the attack, geo-political background of the attack, and mobilization of armed forces.¹⁴⁰ Additionally, the court in *Kupreškić* inferred a State policy when police officers were committing the prohibited acts.¹⁴¹

A policy can include the failure of a State to act. The failure to act must be “consciously aimed at encouraging such attack.”¹⁴² For example, a State fails to act if it does not investigate the perpetration of any prohibited acts.¹⁴³

c. Perpetrators of Crimes Against Humanity Must Have “Knowledge of the Attack”

An individual must have had “knowledge of the attack” when perpetrating prohibited acts.¹⁴⁴ This Comment does not explore this element because it focuses on a State’s responsibility instead of an individual’s.¹⁴⁵

d. The Attack Must be “Widespread or Systematic” to Amount to

137. *Id.* ¶ 1127.

138. *Id.* ¶ 1109 (stating that because it is rare for a State or an organization to create a “pre-established design or plan” to attack a civilian population, this policy can be inferred).

139. See Prosecutor v. Blaškić, Case No. IT-95-14-T, Judgment, ¶ 204 (Int’l Crim. Trib. for the Former Yugoslavia Mar. 3, 2000) (outlining historical and political background of the attack, the creation of political structures, a general political or media program, discriminatory measures, the scale of violence, etc. are elements that show policy).

140. OPEN SOCIETY JUSTICE INITIATIVE, UNDENIABLE ATROCITIES: CONFRONTING CRIMES AGAINST HUMANITY IN MEXICO 51 (2016).

141. Prosecutor v. Kupreškić, Case No. IT-95-16-T, Judgment, ¶¶ 555, 760 (Int’l Crim. Trib. for the Former Yugoslavia Mar. 31, 2010).

142. ELEMENTS OF CRIMES, *supra* note 80, at 5 n. 6; *Kupreškić*, IT-95-16-T at ¶¶ 551–55.

143. OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 140, at 51.

144. ELEMENTS OF CRIMES, *supra* note 80, at 5.

145. See OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 140, at 49 (explaining that the perpetrators’ intent is not necessary for prosecutors to show that a State committed crimes against humanity).

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There must be a “widespread or systematic attack” for there to be crimes against humanity.¹⁴⁶ The attack, not the individual act, has to be widespread or systematic¹⁴⁷ in order to exclude isolated or random acts of violence.¹⁴⁸ Although “widespread” and “systematic” are disjunctive elements,¹⁴⁹ they share many of the same requirements and can exist simultaneously.¹⁵⁰

A widespread attack is defined as “the large-scale nature of the attack and number of victims.”¹⁵¹ An attack could be widespread depending on the effects of “multiple inhumane acts” or “a single inhumane act of great magnitude.”¹⁵² Courts use case-by-case analyses because there is no qualitative or quantitative measure for a widespread attack.¹⁵³

Courts use different factors to determine whether an attack is widespread. For example, the Trial Chamber in *Blaškić* determined that there was a widespread attack based on the number of victims within the area.¹⁵⁴ Other courts, such as the ICC’s Pre-Trial Chamber in *Prosecutor v. Bemba*, hold that multiple atrocities are widespread when perpetrated across “a large geographical area or an attack in a small geographical area directed against a large number of civilians.”¹⁵⁵

Alternatively, an attack can be “systematic” based on “the

146. ELEMENTS OF CRIMES, *supra* note 80, at 5.

147. *Prosecutor v. Kunarac*, Case No. IT-96-23 & IT-96-23/1-A, Judgment in the Appeals Chamber, ¶ 86 (Int’l Crim. Trib. for the Former Yugoslavia June 12, 2002).

148. *Prosecutor v. Tadić*, Case No. IT-94-1-T, Opinion and Judgment, ¶ 646 (Int’l Crim. Trib. for the Former Yugoslavia May 7, 1997).

149. *Prosecutor v. Bemba*, ICC-01/05-01/08-3343, Judgment pursuant to Article 74 of the Statute, ¶ 162 (Mar. 21, 2016)

150. OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 140, at 86.

151. *Kunarac*, IT-96-23 & IT-96-23/1-A at ¶ 94.

152. ILC First Report, *supra* note 75, ¶ 130.

153. *Bemba*, ICC-01/05-01/08 at ¶ 163.

154. *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Judgment, ¶ 206 (Int’l Crim. Trib. for the Former Yugoslavia Mar. 3, 2000); *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Judgment in the Appeals Chamber, ¶ 102 (Int’l Crim. Trib. for the Former Yugoslavia July 29, 2004) (affirming the Trial Chamber’s analysis of a widespread or systematic attack).

155. *Prosecutor v. Bemba*, Case No. ICC-01/05-01/08, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute, ¶ 83 (June 15, 2009).

organized nature of the acts of violence and improbability of their random occurrence.”¹⁵⁶ As demonstrated in *Prosecutor v. Akayesu* and *Prosecutor v. Kunarac*, courts can examine whether the attack “was thoroughly organized” and “followed a regular pattern on the basis of a common policy involving substantial public or private resources.”¹⁵⁷

III. ANALYSIS

Russia committed crimes against humanity when it mistreated the Tatar civilian population by allowing de facto authorities to perpetrate prohibited acts in furtherance of State policy. The following section analyzes crimes against humanity, further dissects their elements, and applies the appropriate tests to the facts. It then debunks Russia’s argument that its actions were legal in confronting violent extremism in Crimea.

A. RUSSIA COMMITTED CRIMES AGAINST HUMANITY

Russia is liable if it committed prohibited acts that were a part of a widespread and systematic attack against a civilian population in pursuance of a policy.¹⁵⁸ The foregoing analysis shows how Russia fulfilled every element of the crime.

1. *Russia Committed Crimes Against Humanity by Perpetrating Multiple Prohibited Acts*

Based on reports and allegations, Russia perpetrated the following prohibited acts: deportation or forcible transfer; unlawful imprisonment; enforced disappearances; torture; and persecution against an identifiable group.¹⁵⁹ The following paragraphs discusses each prohibited act.

a. *Russia Committed Prohibited Acts under Crimes Against*

156. *ILC First Report*, *supra* note 75, ¶ 131 (quoting *Prosecutor v. Mrkšić*, Judgment in the Trial Chamber, Case No. IT-95-13/1, ¶ 437 (Int’l Crim. Trib. for the Former Yugoslavia Sept. 27, 2007)).

157. *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment in Chambre I, ¶ 580 (Sept. 2, 1998); *Kunarac*, IT-96-23 & IT-96-23/1-A at ¶¶ 94–95.

158. *See Rome Statute*, *supra* note 66, art. 7(1) (defining what constitutes a crime against humanity).

159. HRC Report, *supra* note 3, ¶¶ 3–14 (listing human rights violations).

Humanity when It Forcibly Transferred the Crimean Tatar Population

Beginning in 2014, Russian authorities have forcibly displaced Crimean Tatars, which constitutes a prohibited act under crimes against humanity.¹⁶⁰ Primarily, figures showing that the Tatar population dropped from 12% in 2014 to 2% in 2016 demonstrate displacement across borders.¹⁶¹ Other figures from 2016 show that approximately 15,000 to 30,000 Crimean Tatars fled the territory since 2014.¹⁶²

The Tatars were forcibly displaced due to coercive acts.¹⁶³ Although these acts did not include physically moving Tatars out of Crimea, there is enough evidence to suggest that Russian authorities threatened to use force.¹⁶⁴ Specifically, the Tatars most likely fled Crimea due to fear of violence and duress.¹⁶⁵ For example, Russian courts sent expulsion orders to various members of the Tatar community, which deprived victims of a choice to stay.¹⁶⁶ Other Tatars fled “because they

160. See Application of International Convention for Suppression of Terrorism and of International Convention on Elimination of All Forms of Racial Discrimination (Ukr. v. Russ.), 2017 I.C.J. 8, Application Instituting Proceedings, ¶ 94 (Jan. 16) (observing a ten-percent drop in the Tatar population between 2001 and 2015); Prosecutor v. Stakić, Case No. IT-97-24-T, ¶ 706 (Int'l Crim. Trib. for the Former Yugoslavia July 31, 2003) (noting the reduction of certain populations).

161. Application Instituting Proceedings, 2017 I.C.J. at ¶ 94.

162. INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, ¶ 154. See generally *6 years of Occupation: Demographic Changes and Violations of Freedom of Religion and Self-Determination*, CRIMEA SOS (Mar. 11, 2020, 10:45 AM), <https://krymsos.com/en/news/5e68a5beb4e35/> (reporting that 60,000 people have fled from Crimea to Ukraine since 2014).

163. See generally Prosecutor v. Krnojelac, Case No. IT-97-25-T, Judgment, ¶ 474 (Int'l Crim. Trib. for the Former Yugoslavia Mar. 15, 2002) (defining deportation as the forced displacement of persons by expulsion or coercive acts).

164. *Id.* ¶ 475 (explaining that fear of violence is a coercive act).

165. See INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, ¶ 155 (observing that the majority of Tatars who left did so because of coercive acts, and some were physically expelled); Prosecutor v. Ntaganda, Case No. ICC-01/04-02/06, Judgment, ¶ 1061 (July 8, 2019) (stating that the Chamber considers the first element of the crime against humanity of deportation or forcible transfer of population is fulfilled also in relation to the individuals who fled as soon as they noticed the first signs of fighting).

166. INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, ¶ 91 n. 453 (finding that Chubarov, chairman of the Mejlis, was banished through an order that was made *in absentia* and outside of the Crimean Peninsula).

have experienced violence or fear of violence and harassment by the authorities and paramilitary groups.”¹⁶⁷ Police raids, disappearances, detentions, and uniformed men asserting property rights probably instilled this fear.¹⁶⁸ Like in *Stakić*, where Muslims fled from Prijedor because of the pervasive “coercive atmosphere” deprived them of any genuine choice to leave,¹⁶⁹ the Tatars felt pressured to leave Crimea because of the geopolitical climate.¹⁷⁰

b. Russia Committed Prohibited Acts by Unlawfully Imprisoning and Severely Depriving Crimean Tatars of Their Physical Liberty

Abuses perpetrated against the Crimean Tatars by Russian authorities include unlawful imprisonment and arbitrary detention.¹⁷¹

First, Russian authorities unlawfully arrested Tatar leaders and other activists because there was no real evidence that they posed a threat to Russia’s control over Crimea.¹⁷² Because there was no evidence that arrested Tatars actually violated any law, Russia deprived them of their rights guaranteed by the Geneva Conventions and customary international law.¹⁷³ The Russians unlawfully detained three different Tatar groups: those that supported the Mejlis, those that

167. *Id.* ¶ 160.

168. *See id.* ¶ 155 (claiming that the Russian authorities’ actions created a “coercive atmosphere”).

169. *See* Prosecutor v. Stakić, Case No. IT-97-24-T, ¶¶ 688–91, 707 (Int’l Crim. Trib. for the Former Yugoslavia July 31, 2003) (finding that Muslims fled Prijedor because of a “coercive atmosphere”, which was created through a propaganda campaign, rising tensions between Serbs and Muslims, and threats to themselves or to their property).

170. INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, ¶ 164 (stating that Crimean Tatars fled because of the “threat of loss of liberty, violence and threat of violence, harassment, and the general climate of fear and prosecution . . .”).

171. *Compare* Prosecutor v. Kordić, Case No. IT-95-14/2-A, Judgment in the Appeals Chamber, ¶ 114 (Int’l Crim. Trib. for the Former Yugoslavia Dec. 17, 2004) (explaining when imprisonment of civilians is unlawful); *with* HRC Report, *supra* note 3, ¶¶ 29–31 (discussing arbitrary arrests and detentions of the Tatars).

172. *See* HRC Report, *supra* note 3, ¶ 30 (finding that Russia arrested Crimean Tatars with little evidence that they posed any threat). *See generally* Fourth Geneva Convention, *supra* note 91, art. 42 (allowing States to forcibly displace persons when it is “absolutely necessary” for a State’s security).

173. *See* HRC Report, *supra* note 3, ¶ 30 (stating justifications underpinning the arrests of alleged terrorists provided little evidence); *Kordić*, IT-95-14/2-A at ¶ 609 (finding that there was no foundation to arrest the detainees for security reasons).

Russia accused of participating in Hizb ut-Tahrir, and those that participated in protests before Russia's annexation in 2014.¹⁷⁴

Russia primarily targeted the Mejlis leaders and their supporters in its campaign of unlawful arrests.¹⁷⁵ Russia, however, argues that these individuals' opposition to Russia's occupation and annexation of Crimea violated Russia's laws and constitutional order.¹⁷⁶ Specifically, the Russian Supreme Court and the Supreme Court of Crimea held that international terrorist organizations supported the Mejlis and that the Mejlis "aim[ed] to destroy Russia's territorial integrity."¹⁷⁷ Despite these accusations, the international community still regards the Mejlis as a democratic and executive institution.¹⁷⁸ Multiple States and international organizations, such as the US the European Parliament, have since condemned the suspension of the Mejlis.¹⁷⁹

De facto Russian authorities also arrested other Crimean Tatars for

174. INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, ¶¶ 156, 205 n. 565.

175. *See, e.g.*, AMNESTY INT'L, ONE YEAR ON, *supra* note 42, at 12 (reporting that de facto authorities arrested Mejlis Deputy Leader Akhtem Chiygoz); CRIMEA SOS, SITUATION REPORT: 2019, *supra* note 53 (reporting that on January 29, 2019 the Supreme Court of Crimea held that Mejlis member Eskender Bariev should be brought in as a defendant after upholding a lower court's decision to detain him, and that both decisions were made in absentia).

176. *See* Application of the International Convention for the Suppression of Financing Terrorism and of the International Convention on the Elimination of All Forms of Discrimination (Ukr. v. Russ.), 2018 I.C.J. 1, Preliminary Objections Submitted by the Russian Federation, ¶ 464, & n. 642 (Sept. 12) (conveying the Supreme Court of the Republic of Crimea's 2016 decision that the extremist acts of the Tatar people violated the integrity of the Russian Federation).

177. Nechepurenko, *supra* note 47.

178. *See* Eur. Parl. Ass., *Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities*, Res. No. 2133, ¶ 8 (2016) (discussing how the Tatars live in a climate of severe intimidation created by human rights violations and how they have lost their democratic representation as a result of the Supreme Court of the Russian Federation's decision banning the Mejlis).

179. *See* Press Statement, Mark C. Toner, Deputy Department Spokesperson, U.S. Dep't of State, Bureau of Pub. Aff., Russian Supreme Court's Illegitimate Decision to Ban the Mejlis of the Crimean Tatar People (Sept. 30, 2016), <https://2009-2017.state.gov/r/pa/prs/ps/2016/09/262627.htm> (stating that the United States does not recognize the legitimacy of the ruling banning the Mejlis); EUR. PARL. ASS., *Humanitarian Consequences of the War in Ukraine*, Doc. No. 14463, ¶ 9.4 (Jan. 5, 2018) (calling for Russia to lift the ban on the Mejlis).

allegedly participating in Hizb ut-Tahrir, an Islamist organization.¹⁸⁰ Although Russia banned Hizb ut-Tahrir in 2003, almost all other European countries have not.¹⁸¹ However, the accused were simply meeting in mosques, were asserting their right to assemble, and were not connected to Hizb ut-Tahrir.¹⁸²

Finally, Russian authorities arrested and detained activists who protested Russian occupation before the 2014 annexation,¹⁸³ which violates international custom of non-retroactivity.¹⁸⁴

Additionally, Russia committed arbitrary detention by seriously depriving Crimean Tatars of their liberty without due process of the law.¹⁸⁵ First, Russia deprived the Tatars of their right to humane treatment while in detention.¹⁸⁶ Reports accuse Russian authorities of

180. HRC Report, *supra* note 3, ¶ 30.

181. *Crimea: Persecution of Crimean Tatars Intensifies*, HUMAN RIGHTS WATCH (Nov. 14, 2017), <https://www.hrw.org/news/2017/11/14/crimea-persecution-crimean-tatars-intensifies#>.

182. See HRC Report, *supra* note 3, ¶ 30 (stating that three persons who were arrested mentioned three meetings “at a mosque, during which the defendants discussed world-wide political developments”); *Crimea: Persecution of Crimean Tatars Intensifies*, *supra* note 181 (explaining that persons were arrested “on charges of participating in” Hizb ut-Tahrir “solely for acts—often in private—of expression, assembly, opinion, or religious and political belief”); CRIMEA SOS, SITUATION REPORT: 2019, *supra* note 53 (finding that in March 2019, authorities arrested twenty Crimean Tatar journalists and activists “for alleged involvement” with Hizb ut-Tahrir).

183. INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, ¶ 134.

184. See generally HRC Report, *supra* note 3, ¶ 19 (explaining that at least ten people were tried under Russian federal law for crimes committed before Russian annexation); EUR. CT. H.R., *Guide on Article 7 of the European Convention on Human Rights – No punishment without law: the principle that only the law can define a crime and prescribe a penalty*, ¶ 47 (Apr. 30, 2020) (stating “[t]he principle of non-retroactivity is infringed in cases of retroactive application of legislative provisions to offenses committed before those provisions came into force.”) [hereinafter ECHR, *Guide on Article 7*].

185. See generally Prosecutor v. Kordić, Case No. IT-95-14/2-A, Judgment in the Appeals Chamber, ¶ 114 (Int’l Crim. Trib. for the Former Yugoslavia Dec. 17, 2004) (noting that arbitrary detention occurs when victims are deprived of procedural safeguards and are subject to inhumane treatment).

186. See HRC Report, *supra* note 3, ¶¶ 22, 26 (reporting that detainees were subject to torture); *Kordić*, IT-95-14/2-A at ¶¶ 592, 594, 605, 610 (explaining the trial chambers finding that detainees were subjected to poor conditions and mistreatment); *Almonacid-Arellano et al. v. Chile*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 154, ¶ 99 (Sept.

holding unduly long pre-trial detentions of Crimean Tatars.¹⁸⁷ Russian authorities also used coercion and torture tactics in order to extract confessions.¹⁸⁸ Authorities sent several arrested Tatars to mental institutions without any evidence that they required treatment.¹⁸⁹

Second, Russia arbitrarily detained Crimean Tatars when it denied them equal access to the law.¹⁹⁰ Russia has either threatened the Tatars' lawyers¹⁹¹ or has denied the lawyers access to information about their clients' whereabouts or well-being.¹⁹² Additionally, Russians violated the Tatars' due process rights through police raids that occurred before arrest as a means to investigate suspects.¹⁹³ These police raids of the Tatars' homes, private businesses, and meeting places often lead to harassment of occupants and/or searches that went beyond the scope of the warrant.¹⁹⁴

c. Russia Committed Prohibited Acts by Forcibly Making Crimean

26, 2006) (finding that Chile committed arbitrary detention as a part of crimes against humanity when police officers shot a man in detention who later died of his wounds).

187. See AMNESTY INT'L, CRIMEA IN THE DARK, *supra* note 42, at 4–5 (reporting that Crimean Mejlis leader Akhtem Chiyyoz was held in pre-trial detention for more than 15 months).

188. See HRC Report, *supra* note 3, ¶ 29 (reporting that “a judge approved a guilty plea agreement despite evidence that the accused had been unlawfully detained several days prior to the documented date of arrest. During the period preceding official arrest, he was tortured and subjected to mock execution.”).

189. See, e.g., AMNESTY INT'L, CRIMEA IN THE DARK, *supra* note 42, at 3–4 (describing the Russian authorities forcing Ilmi Umerov to undergo psychiatric evaluations and committing him); CRIMEA SOS, SITUATION REPORT: 2019, *supra* note 53 (explaining the existence of a practice of putting defendants accused of participating in Hizb ut-Tahrir in psychiatric hospitals).

190. See generally ICCPR, *supra* note 95, art. 14(1) (stating that “all persons shall be treated equally before the courts and tribunals.”).

191. See HRC Report, *supra* note 3, ¶ 21 (explaining that Tatar defendants facing extremism charges were “pressured into waiving their privately-hired lawyers” in exchange for leniency).

192. *Id.* ¶ 29.

193. See *id.* ¶ 31 (explicating that some searches were “house observations” which required no judicial supervision when the owner gives consent).

194. *Id.* (“The raids often involved excessive use of force and an extent of searches not warranted by circumstances, going beyond the lawful objective of preventing crime and protecting the rights and freedoms of others.”).

Tatars Disappear

Because several reports show that the Crimean Tatars forcibly disappeared at the hands of Russian authorities, Russia satisfied the first element of enforced disappearances.¹⁹⁵ Persons who have disappeared include members of the Mejlis, their supporters, and their family members.¹⁹⁶ Moreover, a number of disappeared persons either remain missing or their bodies have been found.¹⁹⁷

Russia satisfied the second element of enforced disappearances because it has suppressed the information of the victims' whereabouts.¹⁹⁸ Reports arising in Crimea reveal that authorities have not disclosed any information about those that remain missing.¹⁹⁹

The same reports show that Russia was involved with the enforced disappearances, thus satisfying the requisite nexus between the disappearances and the State.²⁰⁰ Russia approved of these acts when it allowed de facto authorities to perpetrate these disappearances.²⁰¹

195. See *id.* ¶ 32 (stating that from March 3, 2014 to June 30, 2018, at least forty-two persons were victims of forced disappearances); INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, at 43–44 (documenting seven enforced disappearances of Crimean Tatars). See generally *Situation in Burundi*, ICC-01-17-X-US-Exp, ¶ 118 (noting that the crime of enforced disappearance requires “deprivation of liberty, and the ensuing denial or suppression of information.”).

196. See INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, at 43–44 (reporting that Islyam Djepparov, the son of a Mejlis leader; Djevdet Islyamov, the nephew of a Mejlis leader; and Eldar Selyamiev, a supporter of the Mejlis disappeared); *Situation in Burundi*, ICC-01-17-X-US-Exp, ¶¶ 39, 129 (holding that political opponents disappearing amounted to the deprivation of freedom).

197. See *Crimea: Enforced Disappearances*, HUMAN RIGHTS WATCH (Oct. 7, 2014), <https://www.hrw.org/news/2014/10/07/crimea-enforced-disappearances> (reporting that on October 6, 2014, the body of a missing Crimean Tatar man who had no political ties was found hanged).

198. See *Situation in Burundi*, ICC-01-17-X-US-Exp, ¶ 118 (expressing that the suppression of information includes the “refusal to acknowledge or give information encompasses outright denial or giving false information about the whereabouts of the victim”).

199. See HRC Report, *supra* note 3, ¶ 35 (stating “[i]n relation to the last ten victims, the authorities have either refused to register a case or suspended previously initiated investigations. This lack of progress in the investigations raises questions about their effectiveness”).

200. *Situation in Burundi*, ICC-01-17-X-US-Exp, ¶ 119 (holding that state involvement through authorization, support, or acquiescence perpetrates the crime).

201. See INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, ¶ 103 (stating “there is evidence supporting the allegation that the initial abductions took place by or on

Russia also was complicit in the enforced disappearances when it failed to investigate the victims' whereabouts.²⁰² Victims remain listed as "missing" and the perpetrators have not been brought to justice.²⁰³

d. Russian Authorities Tortured Crimean Tatars While They Were Imprisoned, Which Amounted to Acts Prohibited Under Crimes Against Humanity

Reports of Russian authorities torturing Tatars have arisen since the 2014 annexation.²⁰⁴ The reports document an intentional infliction of suffering on detained Tatars, which fulfills the first element of torture.²⁰⁵ Methods used include physical violence, threats of sexual violence, mock executions, and electro-shock therapy.²⁰⁶ These acts most certainly brought physical and mental suffering upon the victims.²⁰⁷

Allegations also accuse Russians of torturing for a prohibited

behalf of the occupying authorities").

202. Compare HRC Report, *supra* note 3, ¶ 34 (documenting that the "Crimean self-defense" group, FSB, and Armed Forces of the Russian Federation perpetrated the disappearances of the Crimean Tatars), *with Situation in Burundi*, ICC-01-17-X-US-Exp, ¶ 119 (holding that when "State agents, such as the police, the intelligence service and the army" perpetrate enforced disappearances, then so does the State).

203. See HRC Report, *supra* note 3, ¶ 35 (stating that seven persons remain missing and for at least ten victims "the authorities have either refused to register a case or suspended previously initiated investigations."); *Situation in Burundi*, ICC-01-17-X-US-Exp, ¶ 118 (holding that the State is required to investigate enforced disappearances).

204. See *generally* Prosecutor v. Kunarac, Case No. IT-96-23 & IT-96-23/1-A, Judgment in the Appeals Chamber, ¶ 134 (Int'l Crim. Trib. for the Former Yugoslavia June 12, 2002). (defining the crime of torture).

205. See HRC Report, *supra* note 3, ¶¶ 23–24 (describing physical mistreatments the Tatars were subjected to); Prosecutor v. Krnojelac, Case No. IT-97-25-T, Judgment, ¶¶ 234–36 (Int'l Crim. Trib. for the Former Yugoslavia Mar. 15, 2002) (holding that beating, depriving victims of food, and subjecting victims to solitary confinement inflicted suffering onto victims); *Kunarac*, IT-96-23 & IT-96-23/1-A at ¶ 150 (finding that rape gives rise to severe pain or suffering whether it be mental or physical, which justifies its characterization as an act of torture).

206. HRC Report, *supra* note 3, ¶¶ 5, 23–24; INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, at 53 (documenting instances of torture on detainees).

207. Cf. *Krnojelac*, Case No. IT-97-25-T at ¶¶ 234–35 (holding that mistreatment that were aimed at obtaining information were torture); *Kunarac*, IT-96-23 & IT-96-23/1-A at ¶ 150 (finding rape is physical violence).

purpose, which fulfills the second element of torture.²⁰⁸ Specifically, reports allege that authorities used ill-treatment and methods of torture to illicit involuntary confessions.²⁰⁹ These allegations are similar to the facts in *Prosecutor v. Krnojelac*, where the accused beat detainees to gain information on an escaped prisoner.²¹⁰ Reports also allege that Russian authorities used torture as a punishment, “deterrence,” or “investigative technique.”²¹¹

e. Russian Authorities have Persecuted Crimean Tatars Since 2014, thus Committing other Prohibited Acts

Finally, Russian perpetrators have persecuted Tatars since 2014.²¹² Russian authorities’ actions are of the same gravity as other crimes against humanity because they deprived Tatars of basic human rights.²¹³ Like the victims in *Blaškić*, the Russians inflicted serious physical and mental harm on the Tatars, infringed on their freedoms, and attacked their property.²¹⁴ The Crimean Tatars enduring physical and mental harm at the hands of Russians²¹⁵ show violations to every person’s right to physical and mental integrity.²¹⁶ Russian authorities

208. See *Krnojelac*, IT-97-25-T at ¶ 179 (holding that perpetrators must intend to obtain a certain result by torturing victims).

209. HRC Report, *supra* note 3, ¶¶ 5, 29 (stating that Russian authorities who detained Crimean Tatars often used “torture or ill-treatment” to “obtain specific information or extract filmed confessions” and to punish prisoners).

210. *Krnojelac*, IT-97-25-T at ¶ 234.

211. See INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, ¶ 116 (explaining authorities used torture as a deterrence or investigative technique); *Krnojelac*, IT-97-25-T at ¶¶ 231–32 (describing Zekovic being beaten to obtain information).

212. See generally *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Judgment in the Appeals Chamber, ¶ 131 (Int’l Crim. Trib. for the Former Yugoslavia July 29, 2004).

213. See HRC Report, *supra* note 3, ¶¶ 21–24, 27–28, 30, 32 (listing violations of fundamental human rights); *Stakić Appeals Judgment*, IT-97-24-A, ¶ 326; *Blaškić*, IT-95-14-A at ¶¶ 143–59 (describing acts that may be considered acts of persecution).

214. See HRC Report, *supra* note 3, ¶¶ 23–24 (providing examples of torture and unlawful detention); INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, ¶¶ 174–76 (discussing seizure of private property); *Blaškić*, IT-95-14-A at ¶¶ 143–59 (describing acts that amount to acts of persecution).

215. See INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, at 55–56, 58 (identifying cases of authorities physically abusing detainees and subjecting them to inhumane conditions); HRC Report, *supra* note 3, ¶ 23 (reporting the abduction and torture of a Tatar man).

216. See generally HRC Report, *supra* note 3, ¶ 22 (stating applicable human

also targeted the Crimean Tatars' private and public property.²¹⁷ Attacks against private property include defacing local businesses²¹⁸ and ousting Crimean Tatars from land where they had asserted squatters' rights in the 1990s.²¹⁹ Beginning in 2015, public memorials which commemorated significant moments in Crimean Tatar history have also been destroyed.²²⁰ Finally, Russia persecuted the Tatars by committing the prohibited acts discussed in the foregoing analysis.²²¹

Because there is evidence of Russia intentional targeting of individuals since they were ethnically Crimean Tatar, Russia satisfied the discriminatory intent element of persecution.²²² For example, Police raids and Russian policies disproportionately targeted the Crimean Tatars.²²³ Additionally, Russian authorities attacked members of Crimean Tatar political groups and their family members.²²⁴ Moreover, the Slavic and ethnic Russian's treatment of the Crimean Tatars since the eighteenth century²²⁵ shows a pattern of marginalization and discrimination.

2. *Because Russia Directed an Attack Against the Tatar Civilian*

rights law “prohibit torture and other cruel inhumane treatment”).

217. See INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, ¶ 205 (discussing documented attacks on property owned by Tatars). See generally *Blaškić*, IT-95-14-A at ¶ 149 (stating the destruction of property may constitute a crime of persecutions).

218. See INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, ¶ 182 (stating that Tatar shops have been attacked and defaced).

219. See HRC Report, *supra* note 3, ¶¶ 65–66 (discussing dismissal of squatters as “ghosts” or “fake squatters”).

220. See INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, at 98 nn. 522 & 525 (noting the destroying of monuments that were memorials to the Tatar deportation and were of cultural significance to the Tatars).

221. See discussion *supra* Part III.A.1.a–d (discussing four scenarios in which Russia perpetrated crimes against humanity).

222. Compare HRC Report, *supra* note 3, ¶ 3 (stating that attacks disproportionately targeted Tatars' personal integrity and property), with *Prosecutor v. Ntaganda*, Case No. ICC-01/04-02/06, Judgment, ¶ 1013 (July 8, 2019) (holding that attacks disproportionately targeted Lendu because of their ethnicity).

223. HRC Report, *supra* note 3, ¶ 3.

224. See, e.g., INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, at 72 (reporting that a Tatar activist was arrested with his three sons, one of whom was less than three years old).

225. See Williams, *supra* note 5, at 326 (stating that Russian colonial rule in the 18th century oppressed the Crimean Tatars).

Population, It Committed Crimes Against Humanity

Russia directed an attack against the Tatars when it perpetrated multiple prohibited acts against Tatar civilians.²²⁶ Each requirement for an attack, which Russia fulfilled, are discussed below.

a. Russia Directed an Attack Against the Tatars

First, there was an attack against the Crimean Tatars. Like many of the cases cited above,²²⁷ the conflict in Crimea was military in nature because Russia sent armed men in unmarked uniforms into Crimea.²²⁸ However, Russia vehemently argues that the annexation of Crimea was legal because of the referendum.²²⁹ Even if the international community found that there was no armed conflict because the annexation of Crimea was legal,²³⁰ there was ultimately still an attack because of Russia's mistreatment of the Crimean Tatars.²³¹ Like *Kunarac*,²³² Russia mistreated Tatars when it perpetrated prohibited

226. See generally Rome Statute, *supra* note 66, art. 7(1) (stating that crimes against humanity is the perpetration of prohibited acts "as a part of a widespread or systematic attack against a civilian population").

227. See THE OFFICE OF THE PROSECUTOR, *supra* note 20, at 19 (noting that the Office's analysis of the situation in Crimea depends largely on its own assessment of the conflict between Ukraine and Russia); Prosecutor v. Tadić, Case No. IT-94-1-T, Opinion and Judgment, ¶ 628 (Int'l Crim. Trib. For the Former Yugoslavia May 7, 1997) ("an armed conflict exists whenever there is a resort to armed force between States"); Fourth Geneva Convention, *supra* note 91, art. 2 (declaring that armed conflicts includes "all cases of partial or total occupation of the territory" of a Member State "even if the said occupation meets no armed resistance.").

228. Charron, *supra* note 1, at 228–30.

229. *Id.* at 229–31.

230. But see G.A. Res. 68/262, *supra* note 2, ¶ 6 (calling on all Members States not to recognize the annexation of Crimea); Fourth Geneva Convention, *supra* note 91, art. 2 (indicating that armed conflict occurs in "all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.").

231. See generally Prosecutor v. Kunarac, Case No. IT-96-23 & IT-96-23/1-A, Judgment in the Appeals Chamber, ¶ 86 (Int'l Crim. Trib. For the Former Yugoslavia June 12, 2002) (holding that an attack is not limited to armed conflict and "encompasses any mistreatment of the civilian population.").

232. See Prosecutor v. Kunarac, Case No. IT-96-23-T, Judgment in the Trial Chamber, ¶¶ 570–80 (Int'l Crim. Trib. For the Former Yugoslavia Feb. 22, 2001) (finding an attack because the Serbs mistreated, imprisoned, and even killed the Muslims in the regions at issue).

acts.²³³

b. The Tatars Constituted a Civilian Population

Second, because they were a part of a distinct ethnic group within Crimea, the Crimean Tatars constituted a civilian population.²³⁴ The Mejlis members, who were categorized as extremists, were also civilians.²³⁵ Alternatively, if some Tatars were extremists just by participating in a representative organization and protesting,²³⁶ their presence in Crimea would not taint the other Tatars' civilian status.²³⁷ Too many other victims outside of the Mejlis negate the attack against a civilian population.²³⁸

Russia's actions reveal that its attack was "directed against" the Tatars. There were patterns among forcible displacements, torture, and arbitrary detention, which indicate that there were similar "means and method of the attack."²³⁹ Additionally, the disproportionate targeting

233. See discussion *supra* Part III.A.1 (discussing the forcible transfer of the Crimean Tatar population).

234. See generally *Prosecutor v. Tadić*, Case No. IT-94-1-T, Opinion and Judgment, ¶ 638 (Int'l Crim. Trib. For the Former Yugoslavia May 7, 1997) (stating that the civilian population must be "predominantly civilian in nature"); *Situation in Kenya*, ICC-01/09, ¶ 81 (stipulating that ethnic, national, or other distinct groups can constitute a civilian population).

235. See AMNESTY INT'L, CRIMEA IN THE DARK, *supra* note 31, at 3 (explaining that the Mejlis is "an informal all-Crimean Tatar assembly . . . to represent the community vis-à-vis the local and central authorities" and its members have been subject to persecution by Russian de facto authorities).

236. See Application of the International Convention for the Suppression of Financing Terrorism and of the International Convention on the Elimination of All Forms of Discrimination (Ukr. v. Russ.), 2018 I.C.J. 1, Preliminary Objections Submitted by the Russian Federation, ¶ 464, & n. 642 (Sept. 12) (arguing that Russian measures in detaining Tatars were valid because the Supreme Court of the Republic of Crimea declared that the Mejlis was an extremist organization).

237. See *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment in Chamber I, ¶ 582 (Sept. 2, 1998) (explaining that there still may be a civilian population when certain individuals are actively participating in the hostilities).

238. See, e.g., INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, ¶¶ 44, 101, 154 (finding that at least 15,000 Tatars fled Crimea from 2014-2016, that Russian de facto authorities unlawfully detained Tatars, and that most victims of enforced disappearances were Crimean Tatars).

239. See *id.* ¶¶ 100-01, 103, 115-16 (finding patterns such as: Crimean Tatars disappearing at the hands of de facto Russian authorities; "documented forms of torture" including "the use of electricity, firearm wounds, mutilation, severe

of Tatars demonstrates the “discriminatory nature of the attack.”²⁴⁰

c. Russia had State Policy to Attack the Crimean Tatars

Third and finally, the allegations from Crimea show Russia’s policy to attack the Tatars. Although Russia did not have a planned attack from the outset, the evidence of a reoccurring pattern of violence against the Tatars shows that a policy was crystalized over time.²⁴¹ As in *Prosecutor v. Kupreškić*, Russia used its domestic police force as resources to further the commission of prohibited acts, such as arbitrary detentions, police raids, and physical and psychological harm.²⁴² Like *Prosecutor v. Katanga*,²⁴³ Russia’s policy was to target the Tatars in order to gain more control over the Peninsula.²⁴⁴ This policy became evident when Russia banned the Mejlis, began targeting its supporters and other Tatars, and began implementing

beatings, and strangulation” for the purpose of punishment and extracting confessions; and arbitrary detention). See generally *Prosecutor v. Kordić*, Case No. IT-95-14/2-A, Judgment in the Appeals Chamber, ¶¶ 114–15 (Int’l Crim. Trib. For the Former Yugoslavia Dec. 17, 2004) (examining the “means and methods” to determine whether there was an attack against a civilians).

240. See INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, ¶¶ 101, 154 (finding that a majority of victims of enforced disappearances and forced displacements were Crimean Tatars). See generally *Kordić*, IT-95-14/2-A at ¶ 96 (holding that the “discriminatory nature of the attack” may show whether an attack was directed against a civilian population).

241. See *Prosecutor v. Katanga*, Case No. ICC-01/04-01/07, Judgment pursuant to article 74 of the Statute, ¶¶ 1108–10 (Mar. 7, 2014) (explaining that, because a formal policy is rare, a majority of cases involving crimes against humanity occur when a State policy is crystalized over time through repetitive prohibited acts).

242. Compare *Prosecutor v. Kupreškić*, Case No. IT-95-16-T, Judgement, ¶¶ 761–62 (Int’l Crim. Trib. For the Former Yugoslavia Mar. 31, 2010) (finding that the Military Police forcibly displacing the Muslim population through murder and property destruction reached the level of a State policy), with HRC Report, *supra* note 3, ¶¶ 31, 33–34 (noting that police disproportionately targeted Crimean Tatars through raids, arbitrary detention, and enforced disappearances).

243. See *Katanga*, ICC-01/04-01/07 at ¶¶ 1127, 1155 (stating that there was a policy to use a “broader campaign of reprisals” against the Hema ethnic group, pit two ethnic groups against each other, and organize an attack against a village in order to secure control over an area).

244. See Application of International Convention for Suppression of Terrorism and of International Convention on Elimination of All Forms of Racial Discrimination (Ukr. v. Russ.), 2017 I.C.J. 8, Application Instituting Proceedings, ¶¶ 13–14 (Jan. 16) (noting the Russian goal to achieve “ethnic dominance” “through cultural erasure.”).

actions that impeded on Tatar cultural affairs.²⁴⁵

Russia's actions also fit the ICC's factors test for a State policy to commit an attack.²⁴⁶ The number of Tatars that became victims at the hands of de facto authorities fulfills the ICC's "scale" factor.²⁴⁷ For example, the number of Tatars that were forcibly displaced should alone satisfy this factor.²⁴⁸ The allegations of each prohibited acts satisfies the "scale" factor.²⁴⁹ The geopolitical background of the attack against the Tatars also shows a State policy since the Tatar's history is one of continuous persecution and marginalization.²⁵⁰

Finally, Russia's inaction towards perpetrators is a "failure to act."²⁵¹ It has not investigated the perpetrators yet, nor has it brought any of the victims to justice.²⁵²

3. *Because Russia's Actions Constituted a "Widespread or*

245. See HRC Report, *supra* note 3, ¶¶ 33, 54, 67, 69 ("Other victims include five individuals with links to Crimean Tatar groups or institutions, including the Mejlis. . .").

246. See OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 140, at 51 (listing ICC factors for finding a state policy, which include the scale of violent acts, historical and political background, and the mobilization of armed forces).

247. *Cf. id.* at 51 (arguing that the ICC scale factor was satisfied because of increases of enforced disappearances, killings, and torture in Mexico during the given time period).

248. See INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, ¶ 154 (documenting figures from 2016 showing that 15,000 to 30,000 Tatars fled Crimea).

249. See *Situation in Kenya*, ICC-01/09, ¶ 87 (stating that the "scale of the violence of the acts perpetrated" includes "murders and other acts of violence, rape, arbitrary Imprisonment, deportations and expulsions or the destruction of non-military property").

250. Vladimir Ryzhkov, "Russia's Treatment of Crimean Tatars Echoes Mistakes Made by Soviets", THE GUARDIAN (Nov. 25, 2014 6:02 AM), <https://www.theguardian.com/world/2014/nov/25/-sp-russia-crimean-tatars-soviet-ukraine>.

251. *Cf.* OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 140, at 58–60 (explaining that Mexico fulfilled the policy element through its failure to adequately regulate the use of force and its failure to investigate and prosecute the commission of atrocities).

252. See AMNESTY INT'L, ONE YEAR ON, *supra* note 42, at 8 (stating that investigations into enforced disappearances remain open); HRC Report, *supra* note 3, ¶ 3 ("OHCHR findings confirm the continuing failure of the Russian Federation authorities . . . to adequately guarantee and protect a wide range of human rights in Crimea.").

Systematic Attack”, There Were Crimes Against Humanity

The attack in Crimea was both widespread and systematic. First, the reports and figures emerging show that the attack was widespread.²⁵³ As in *Blaškić*,²⁵⁴ the attack in Crimea was widespread because of the number of victims. The fact that the Crimean Tatar population dropped to 2% since 2014 indicates that the prolonged attack resulted in a large number of victims.²⁵⁵ Again, Russia forcibly displaced 15,000 to 30,000 Crimean Tatars,²⁵⁶ forcibly disappeared at least seven victims,²⁵⁷ and arbitrarily detained²⁵⁸ and tortured²⁵⁹ dozens more.

The attack was also widespread because it encompassed a large geographic area. Specifically, it encompassed the Crimean Peninsula.²⁶⁰ These facts are similar to those in *Prosecutor v. Bemba*, where the Pre-trial Chamber found that there was a systematic attack because of the widespread, consistent, and regular targeting in various locations over the span of five months.²⁶¹ Here, Russians have

253. See generally *Prosecutor v. Kunarac*, Case No. IT-96-23 & IT-96-23/1-A, Judgment in the Appeals Chamber, ¶ 94 (Int’l Crim. Trib. for the Former Yugoslavia June 12, 2002) (defining widespread as “the large-scale nature of the attack and number of victims”).

254. See *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Judgment, ¶¶ 206, 784 (Int’l Crim. Trib. for the Former Yugoslavia Mar. 3, 2000) (holding that a widespread attack occurs with a large number of victims and that there were a high number of victims in the case at hand).

255. Application of International Convention for Suppression of Terrorism and of International Convention on Elimination of All Forms of Racial Discrimination (Ukr. v. Russ.), 2017 I.C.J. 8, Application Instituting Proceedings, ¶ 94 (Jan. 16).

256. INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, ¶ 154.

257. See, e.g., HRC Report, *supra* note 3, ¶ 32 (documenting that from March 3, 2014 to June 30, 2018 there were forty-two cases of enforced disappearances, nine of whom were Crimean Tatar); INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, ¶¶ 102–03 (documenting seven enforced disappearances of Crimean Tatars from 2014 until 2016).

258. See INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, 70–86 (citing 44 cases of Crimean Tatars who were either unlawfully arrested or arbitrarily detained from 2014 until 2016); CRIMEA SOS, SITUATION REPORT, *supra* note 53 (“In 2019, Crimea SOS recorded the largest number of criminal cases against Crimean Tatars since the beginning of the occupation.”).

259. See INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, at 53 (finding five cases of torture against Crimean Tatars from 2014 to 2016).

260. See HRC Report, *supra* note 3, ¶¶ 1, 3 (finding serious human rights violations throughout Crimea).

261. *Prosecutor v. Bemba*, Case No. ICC-01/05-01/08, Decision Pursuant to

committed the crimes throughout the Crimean Peninsula since 2014.²⁶² Thus, like in *Blaškić*, there was a large-scale attack and a high number of victims.²⁶³

Evidence also demonstrates that the attack was systematic. Like *Akayesu*, there was a regular pattern of abuse and criminal activity.²⁶⁴ Patterns in Crimea included: police disproportionately targeting Crimean Tatars;²⁶⁵ authorities attacking Tatar businesses, monuments, and mosques;²⁶⁶ and the courts suppressing the Tatars' political voice.²⁶⁷ Most of these facts are eerily similar to those in *Kunarac*, where the Trial Chamber found a systematic attack because the Serbs removed Muslims from their social and professional lives, used aggressive propaganda, attacked Muslim homes and property, and assaulted and killed Muslims.²⁶⁸

The attack was also systematic because it centered around a policy to target the Tatars, which Russian institutions demonstrated through their actions.²⁶⁹ For example, the Russian and Crimean Supreme Courts' decision to ban the Mejlis for being an extremist organization²⁷⁰ demonstrates the intent to target the group.

Article 61(7)(a) and (b) of the Rome Statute, ¶ 486 (June 15, 2009)

262. See INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, at 7 (stating that the International Partnership for Human Rights began collecting information about perpetration of prohibited acts since September 2014).

263. Prosecutor v. Blaškić, Case No. IT-95-14-A, Judgment in the Appeals Chamber, ¶ 131 (Int'l Crim. Trib. for the Former Yugoslavia July 29, 2004).

264. See Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment in Chambre I, ¶ 580 (Sept. 2, 1998) (deciding whether the attack was "thoroughly organized"; followed "a regular pattern"; had "a common policy"; and involved "substantial public or private resources").

265. HRC Report, *supra* note 3, ¶ 3.

266. INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, ¶¶ 179, 180–81.

267. See, e.g., HRC Report, *supra* note 3, ¶ 54 (reporting that Russia banned the Mejlis).

268. Prosecutor v. Kunarac, Case No. IT-96-23-T, Judgment in the Trial Chamber, ¶¶ 571–78 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 22, 2001); see also Prosecutor v. Kunarac, Case No. IT-96-23 & IT-96-23/1-A, Judgment in the Appeals Chamber, ¶ 97 (Int'l Crim. Trib. for the Former Yugoslavia June 12, 2002) (affirming the Trial Chamber's holding that the attack was systematic).

269. Compare *Akayesu*, ICTR-96-4-T at ¶ 580 (stating that there must be "a common policy involving private and public resources."), with HRC Report, *supra* note 3, ¶¶ 3–4 (finding that de facto Russian courts, police, and other authorities targeted Tatars).

270. HRC Report, *supra* note 3, ¶ 54.

Additionally, local police forces enforced the State policy when they committed prohibited acts.²⁷¹

4. By Mistreating the Tatar Civilian Population in Allowing De Facto Authorities to Perpetrate Prohibited Acts in Furtherance of State Policy, Russia Committed Crimes Against Humanity

The situation in Crimea meets every requirement for customary law's definition of crimes against humanity.²⁷² Russia has perpetrated prohibited acts since it allowed de facto authorities to forcibly transfer the Crimean Tatar population, severely deprive Tatars of their liberty, refuse to give information about Tatars who remain missing; torture detained Tatars; and persecute the Tatar population.²⁷³ Next, Russia directed an attack against the Crimean Tatars because Russia mistreated the civilian Tatar population.²⁷⁴ In addition, Russia's State policy was evidenced in its reoccurring violence against the Tatars, its mission to shut down the Tatars' political voice, and its failure to stop de facto authorities from committing prohibited acts.²⁷⁵ Finally, Russia's mistreatment of the Tatars was widespread and systematic because of the continuous and related acts that resulted in many victims and the use of official State actors to perpetrate the prohibited acts.²⁷⁶ Therefore, Russia has committed crimes against humanity.

B. DEBUNKING RUSSIA'S ARGUMENT THAT ITS EFFORTS TO COMBAT EXTREMISM WAS LAWFUL UNDER INTERNATIONAL LAW

Russia has argued ad nauseum that its actions against the Crimean

271. See *id.* ¶ 18 (noting in particular that police forces used coercive tactics). See generally *Situation in Burundi*, ICC-01-17-X-US-Exp, ¶ 119 (finding that the State was guilty of crimes against humanity when State police officers committed them).

272. See discussion *supra* Part II.B.2 (discussing Crimes Against Humanity and its definition under Customary International Law).

273. See discussion *supra* Part III.A.1 (discussing crimes against humanity perpetrated by Russia).

See discussion *supra* Part III.A.2 (analyzing the way in which Russia's attack on Tatar civilians constituted the commission of various crimes against humanity).

275. See discussion *supra* Part III.A.2 (discussing the specific anti-Tatar policies and violence against the civilian population).

276. See discussion *supra* Part III.A.3 (discussing Russia's use of a "Widespread or Systematic Attack" and the ways in which this attack constituted a crime against humanity).

Tatars were legal under internal and international law because Russia legally annexed Crimea after a referendum,²⁷⁷ and Russian authorities had an obligation to detain extremists.²⁷⁸ Thus, its actions in detaining the members of the Mejlis and its supporters, detaining individuals that it accused of being in the Hizb ut-Tahrir, violating their rights, and restraining the media²⁷⁹ were all warranted actions.²⁸⁰

However, the international community has refuted both of these points multiple times.²⁸¹ First, most international organizations and States have opposed Russia's annexation of Crimea as a violation of international norms, particularly Article 1 of the U.N. Charter.²⁸²

Second, Russia's justification for targeting Mejlis members and other Tatars because they posed a threat to Crimeans' safety²⁸³ is incorrect. The core of Russia's argument is that the Mejlis is an

277. William Englund, *Kremlin Says Crimea is Now Officially Part of Russia After Treaty Signing, Putin Speech*, THE WASHINGTON POST (Mar. 18, 2014), https://www.washingtonpost.com/world/russias-putin-prepares-to-annex-crimea/2014/03/18/933183b2-654e-45ce-920e-4d18c0ffec73_story.html.

278. Application of the International Convention for the Suppression of Financing Terrorism and of the International Convention on the Elimination of All Forms of Discrimination (Ukr. v. Russ.), 2018 I.C.J. 1, Preliminary Objections Submitted by the Russian Federation, ¶ 464, & n. 642 (Sept. 12)

279. AMNESTY INT'L, CRIMEA IN THE DARK, *supra* note 31, at 1–2.

280. See Preliminary Objections, 2018 I.C.J. at ¶¶ 464–65 (holding that the Crimean and Russian Supreme Court decisions “did not address in substance the issue of alleged violations of CERD” by Russia against the Crimean Tatar population).

281. See G.A. Res. 68/262, *supra* note 2, ¶¶ 5–6 (finding that the 2014 referendum has no validity and calling “on all States, international organizations, and specialized not to recognize” the legality of the annexation); U.N. GAOR, U.N. Doc. A/68/PV.80, *supra* note 2, at 17 (noting that 100 Member States voted in favor of adopting draft resolution 68/262).

282. See, e.g., G.A. Res. 68/262, *supra* note 2, ¶¶ 5–6 (finding that the 2014 referendum has no validity and calling “on all States, international organizations, and specialized not to recognize” the legality of the annexation); Will Dunham, *Kerry Condemns Russia's 'Incredible Act of Aggression' in Ukraine*, REUTERS (Mar. 2, 2014, 9:13 AM), <https://www.reuters.com/article/us-ukraine-crisis-usa-kerry/kerry-condemns-russias-incredible-act-of-aggression-in-ukraine-idUSBREA210DG20140302> (reporting that U.S. Secretary of State John Kerry called the annexation of Crimea an act of aggression). See generally U.N. Charter art. 1, ¶ 1 (prohibiting acts of aggression).

283. See Preliminary Objections, 2018 I.C.J. at ¶ 464 & n. 642 (arguing that the Supreme Court of the Republic of Crimea banned the Mejlis because its members perpetrated acts of extremism).

extremist organization.²⁸⁴ Thus, Russia argues that it has the authority to exercise appropriate power to detain these individuals because it has a duty under international law to fight extremism.²⁸⁵ However, the Mejlis leaders and other Crimean Tatars did not perpetrate any criminal activity.²⁸⁶ According to Russian criminal law, extremism is defined as the commission of violent acts that are meant to “fright[en] the population and creat[e] the threat of death of a person, significant property damage or of other grave consequences” and are meant to destabilize or influence the decision-making process of public authorities, local self-government bodies, or international organizations.²⁸⁷

However, the Mejlis leaders did not meet any of the criteria. It did not commit any acts of violence towards people or property, and their only action was to denounce Russia’s annexation of Crimea.²⁸⁸ There is no evidence that the Crimean population felt threatened by the Mejlis.²⁸⁹ Additionally, a critique of a government does not rise to an

284. See *id.* at ¶ 464 & n. 642 (arguing that Russia’s actions in Crimea were valid because the Mejlis was a terrorist organization that perpetrated “discriminatory conduct”).

285. See *id.* at ¶¶ 464–65 (claiming that Russia detained certain Tatars for their participation in extremism). See generally Postanovlenie Plenuma Verkhovnogo Suda Rossiiskoi Federatsii “O nekotorykh voprosakh sudebnoy praktiki po ugovolnym delam o prestupleniyakh terroristicheskoy napravlenosti s izmeneniyami, vnesennymi postanovleniyem plenuma ot 3 noyabrya 2016 g. No. 41” 9 fevralya 2012 g., § 1 [Russian Federation Supreme Court Plenary Ruling “on Certain Issues of Judicial Practice in Criminal Cases regarding Terrorist Crimes as amended by Plenary Ruling No. 41 of 3 November 2016” 9 February, 2012, ¶ 1] BIULETEN’ VERKHOVNOGO SUDA RF [BVS] [Bulletin of the Supreme Court of the Russian Federation] 2012, No. 1, p. 1–2 (Russ.) (listing the international instruments that prohibit terrorism and explaining that the Russian Constitution codifies the legal basis for countering terrorism).

286. See AMNESTY INT’L, CRIMEA IN THE DARK, *supra* note 31, at 3 (referring to the charges levied against the Mejlis as “trumped up”).

287. UGOLOVNO-PROTESESSUAL’NYI KODEKS ROSSIISKOI FEDERATSII [UPK RF] [Criminal Code] art. 205 (Russ.) [hereinafter Russian Criminal Code].

288. Mustafa Jemilev: *It Is an Absurd to Decide Issue of Belonging of Any Territory, Region or Settlement to Any State on “Referendum”*, MEJLIS OF THE CRIMEAN TATAR PEOPLE (Apr. 1, 2014), <http://qtm.org/en/news/4432-mustafa-jemilev-it-is-an-absurd-to-decide-issue-of-belonging-of-any-territory-region-or-settlement-to-any-state-on-referendum>.

289. See Gwendolyn Sasse, *Terra Incognita – The Public Mood in Crimea*, ZENTRUM FÜR OSTEUROPAUND INTERNATIONAL STUDIEN REP., no. 3, 2017, at 14–

attempt to forcibly change a decision-making power.²⁹⁰ The international community has since affirmed that the Mejlis was not an extremist organization.²⁹¹

Similarly, Russia has argued that Crimean Tatars were perpetrating criminal activities by participating in protests before the 2014 annexation and by joining Hizb ut-Tahrir.²⁹² Firstly, Russia is not allowed to prosecute protesters from before the annexation because it violates the customary international norm of non-retroactivity.²⁹³ Secondly, there was no substantial proof that the Hizb ut-Tahrir was committing criminal activity in Crimea.²⁹⁴ NGOs' reports from Crimea show that the accused were simply meeting in a mosque.²⁹⁵ Thus, under its own laws, Russia has no authority to claim that the Mejlis, the Hizb ut-Tahrir, and their supporters were extremists.

Third, even if Russia's ends were legitimate, its means in prohibiting criminal activity were not.²⁹⁶ Russia could have prosecuted those it thought were extremists through legitimate means that

15 (finding that a majority of Crimeans believe that ethnic groups lives harmoniously and that at least 20% of Crimeans fully disapproved of banning the Mejlis).

290. See Russian Criminal Code, *supra* note 287, art. 205 (stating that the Russian government has the authority to punish those that commit violent acts and frighten civilians to destabilize or influence the State).

291. See, e.g., G.A. Res. 72/190, ¶ 3(j) (Dec. 19, 2017) (urging Russia to revoke its decision declaring the Mejlis an extremist organization and to reinstate the Mejlis).

292. See HRC Report, *supra* note 3, ¶¶ 19, 30 (stating that Russia arrested 2013 protesters and alleged Hizb ut-Tahrir members with little to no proof that the individual was a threat to society).

293. See ECHR, *Guide on Article 7*, *supra* note 184, ¶ 47 ("The principle of non-retroactivity is infringed in cases of retroactive application of legislative provisions to offenses committed before those provisions came into force.").

294. See *Crimean Tatars Face Unfounded Terrorism Charges*, HUMAN RIGHTS WATCH (July 12, 2019, 12:00 AM), <https://www.hrw.org/news/2019/07/12/crimean-tatars-face-unfounded-terrorism-charges#> (stating that Crimean men who were arrested in May 2019 were accused of being members of Hizb ut-Tahrir, a party that "seeks the establishment of a caliphate but does not espouse violence to achieve its goals."); HRC Report, *supra* note 3, ¶ 30 (reporting that there was little evidence that the victims were connected to extremist organizations).

295. HRC Report, *supra* note 3, ¶¶ 3–4.

296. Cf. OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 140, at 14 (arguing that Mexico's policy to combat cartels was not legitimate because it resulted in crimes against humanity).

protected Tatars' human rights and safety.²⁹⁷ Instead, it pursued path that led to a widespread and systematic attack against the Tatar civilian population, or in other words, that led to crimes against humanity.²⁹⁸ Again, customary international law demands that under no circumstances can crimes against humanity be perpetrated by an individual or a State,²⁹⁹ which makes them absolutely non-derogable by any action or treaty.³⁰⁰ There is no policy nor argument that Russia can claim to justify its actions against the Crimean Tatars.

IV. RECOMMENDATIONS

A. RUSSIA NEEDS TO PROVIDE RELIEF FOR THE CRIMEAN TATARS

First and foremost, Russia needs to provide remedial measures for the Crimean Tatars. Russia should interrogate the authorities who committed prohibited acts and who directed them against the Crimean Tatars.³⁰¹ In doing so, it should find those responsible and prosecute them.³⁰² Russian authorities should also provide release to those in being held in arbitrary detention and/or bring those who are currently held in prolonged pre-trial detention in front of a fair trial.³⁰³ It should

297. See S.C. Res. 1373, ¶¶ 1(b), 3(f) (Sept. 28, 2001) (calling on States to enforce appropriate laws in order to incriminate terrorist activities while respecting their human rights and ensuring that they have equal access to the law).

298. See discussion *supra* Part III.A (discussing the various Russian actions that can/should be classified as crimes against humanity that were taken against Crimean civilians).

299. See ILC Draft Articles on Crimes Against Humanity, *supra* note 8, pmb1. (“Recalling also that the prohibition of crimes against humanity is a peremptory norm of general international law (*jus cogens*)” and “affirming that crimes against humanity . . . must be prevented in conformity with international law”).

300. See G.A. Res. 56/83, annex, *supra* note 9, art. 40–41 (prohibiting the recognition of actions that breach article 40 as lawful).

301. See generally AMNESTY INT’L, CRIMEA IN THE DARK, *supra* note 31, at 11–12 (noting the NGO’s recommendations for rectifying the situation in Crimea). See also HRC Report, *supra* note 3, ¶ 87(h) (requiring states “ensure effective investigation” of alleged violations of international law).

302. See generally AMNESTY INT’L, CRIMEA IN THE DARK, *supra* note 31, at 11 (recommending the prosecution of perpetrators of crimes against humanity). See also HRC Report, *supra* note 3, ¶ 87(h) (requiring that perpetrators of crimes against humanity be held accountable for their actions).

303. See generally AMNESTY INT’L, CRIMEA IN THE DARK, *supra* note 31, at 11–12 (recommending the liberation of those individuals being arbitrarily subjected to legal proceedings for the exercise of the internationally recognized right to peaceful

also disclose the whereabouts of persons who have disappeared.³⁰⁴ Finally, it should provide all victims of torture and unlawful detention with reparations.³⁰⁵

Russia must implement the International Court of Justice's order to "[refrain] from maintaining or imposing limitations on the ability of the Crimean Tatar to conserve its representative institutions, including the *Mejlis*."³⁰⁶ Thus, Russia must follow the mandate, reinstate the *Mejlis*, and reverse the Russian Supreme Court's and Crimean Supreme Court's decisions which banned the *Mejlis* for being an extremist organization.³⁰⁷ It should also lift media restrictions in Crimea.³⁰⁸

Finally, Russia needs to give international organizations, non-governmental organizations, U.N. human rights mechanisms, and journalists access the Crimean Peninsula.³⁰⁹ Only then can these groups better assess the damage that de facto authorities have inflicted.³¹⁰ In particular, Russia should allow the Organization for Security and Cooperation in Europe's (OSCE) Special Monitoring

protest). See also HRC Report, *supra* note 3, ¶ 87(i)–(j) (requiring the protection of individuals peacefully voicing a non-discriminatory, non-violent opinion and the protection of individuals from arbitrary searches).

304. AMNESTY INT'L, CRIMEA IN THE DARK, *supra* note 31, at 11.

305. See G.A. Res. 56/83, annex, *supra* note 9, art. 34 (stating that reparation can include "restitution, compensation and satisfaction").

306. Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukr. v. Russ.), 2017 I.C.J. 104, Provisional Measures, ¶ 102 (Apr. 29).

307. AMNESTY INT'L, CRIMEA IN THE DARK, *supra* note 31, at 11; HRC Report, *supra* note 3, ¶ 87(r).

308. AMNESTY INT'L, CRIMEA IN THE DARK, *supra* note 31, at 11.

309. See generally HRC Report, *supra* note 3, ¶¶ 15–17 (explaining that the U.N. General Assembly passed resolutions urging Russia to recognize human rights monitoring mechanisms, as well as international and national human rights organizations and that Russia declared that it was not bound by these resolutions); Tanya Lokshina, *Crimea Bans Journalists Are Choking the Truth*, HUMAN RIGHTS WATCH (Jan. 21, 2020), <https://www.hrw.org/news/2020/01/21/crimea-bans-journalists-are-choking-truth> (interviewing journalist who was banned from Crimea for covering human rights violations perpetrated against Tatars).

310. See HUMAN RIGHTS WATCH, RIGHTS IN RETREAT: ABUSES IN CRIMEA 6 (2014) (urging that the United Nations, Organization for Security and Cooperation in Europe, and other bodies "[c]ontinue to request documentation and public reporting . . . on human rights conditions in Crimea").

Mission in Ukraine, OHCHR, and the Human Rights Monitoring Mission in Ukraine (HRMMU) into Crimea.³¹¹ Because these groups had compiled the most information on Russia's human rights violations against the Crimean Tatars,³¹² they are best equipped to continue the work.

B. THE PROSECUTOR FOR THE INTERNATIONAL CRIMINAL COURT SHOULD START AN INVESTIGATION INTO THE CRIMES AGAINST HUMANITY PERPETRATED BY RUSSIA AGAINST THE TATARS

The ICC Prosecutor should hold Russia and individual perpetrators accountable by beginning an investigation into the crimes against humanity perpetrated against the Tatars. As previously mentioned, the ICC has limited jurisdiction over Crimea since Ukraine accepted jurisdiction relating “to alleged crimes committed on its territory from 20 February 2014 onwards, with no end date” and since “the Prosecutor announced the extension of the preliminary examination . . . to include alleged crimes occurring after 20 February 2014 in Crimea and eastern Ukraine.”³¹³ Currently, the Office of the Prosecutor is still conducting its preliminary examination.³¹⁴

For the Prosecutor to begin an official investigation, she needs to first complete the preliminary examination, which has multiple requirements.³¹⁵ Specifically, she must decide whether: the information sent in a request is reliable;³¹⁶ the Court would have jurisdiction;³¹⁷ whether a case is admissible based on complementarity

311. AMNESTY INT'L, CRIMEA IN THE DARK, *supra* note 31, at 12.

312. *See id.* at 12 (urging OSCE to continue monitoring human rights violations in Crimea); HRC Report, *supra* note 3, ¶ 17 (explaining that HRMMU provided a majority of the information for OHCHR's report on human rights violations in Crimea).

313. THE OFFICE OF THE PROSECUTOR, *supra* note 68, at 19.

314. *Id.*

315. *See* BETH VAN SCHAACK & RONALD C. SLYE, INTERNATIONAL CRIMINAL LAW AND ITS ENFORCEMENT: CASES AND MATERIALS 143–52 (3d ed. 2015) (stating that the preliminary examination has four phases and describing the requirements for each phase).

316. *See id.* at 144 (explaining that during Phase 1 the Prosecutor will filter out matters that are outside the Court's jurisdiction, are already subject to an investigation, or need further information).

317. *See* Rome Statute, *supra* note 66, arts. 11–13 (requiring temporal, national/territorial, and subject matter jurisdiction for cases that are not Security

and gravity;³¹⁸ and whether a trial would serve the interest of justice.³¹⁹ If the Prosecutor decides to begin an investigation, she may request the Pre-Trial Chamber to issue arrest warrants or a summons to appear³²⁰ for committing crimes against humanity.

In this situation, there is enough information to warrant an investigation into Russia's actions against the Crimean Tatars. The Prosecutor has already declared that the Court has jurisdiction over the Peninsula,³²¹ thus fulfilling the first two requirements. Moreover, the case is admissible because Russia would be unwilling to prosecute individuals since Russia has yet to investigate disappearances, instances of torture, or other violent acts committed against the Tatars.³²² The case has enough evidence to be grave enough to fulfill the definition of crimes against humanity.³²³ Finally, holding individual perpetrators accountable and investigating the fate of Tatar victims would provide justice for the victims and their families.³²⁴ Since there is enough evidence to meet all of the requirements of an investigation, the Prosecutor should quickly conclude the preliminary investigation before Ukraine revokes its limited jurisdiction.³²⁵ Doing

Council refers); *see also* VANN SCHAACK & SLYE, *supra* note 315, at 144–45 (stating that “[t]he Prosecutor must believe that there is a rational basis for temporal, national/territorial, and subject matter jurisdiction to exist”).

318. Rome Statute, *supra* note 66, art. 17; *see also* VANN SCHAACK & SLYE, *supra* note 315, at 146, 148 (defining complementarity as the ability and willingness of a State to investigate or prosecute perpetrators and gravity as the “scale, nature, [and] manner of commission of the crimes”).

319. Rome Statute, *supra* note 66, art. 53(1)(c); *see also* VANN SCHAACK & SLYE, *supra* note 315, at 150 (explaining that the Prosecutor will determine whether an investigation will serve the interests of justice based on the gravity of the crimes, number of victims, and other concerns).

320. Rome Statute, *supra* note 66, art. 58.

321. THE OFFICE OF THE PROSECUTOR, *supra* note 68, at 19.

322. *See* AMNESTY INT’L, ONE YEAR ON, *supra* note 42, at 8 (stating that investigations into enforced disappearances remain open); HRC Report, *supra* note 3, ¶ 3 (“OHCHR findings confirm the continuing failure of the Russian Federation authorities . . . to adequately guarantee and protect a wide range of human rights in Crimea.”).

323. *See* discussion *supra* Part III (analyzing the crimes against humanity perpetrated by Russia against the Crimean Tatars).

324. *See* *Crimea: Enforced Disappearances*, *supra* note 197 (reporting that Tatar victim’s family was still waiting for information about his whereabouts).

325. *Cf.* THE OFFICE OF THE PROSECUTOR, *supra* note 68, at 15 (reporting that the Philippines withdrew from the Rome Statute in 2011 which severely limited the

so would allow the Prosecutor to arrest and interrogate individual perpetrators,³²⁶ thus providing justice to the victims.

C. THE INTERNATIONAL COMMUNITY NEEDS TO HOLD RUSSIA RESPONSIBLE FOR PERPETRATING INTERNATIONALLY WRONGFUL ACTS AGAINST THE TATARS

Finally, the U.N. should send a peace-keeping mission to Crimea to hold Russia accountable for these targeted crimes. Russia has ignored every recommendation from international organizations and human rights bodies.³²⁷ The Security Council, which is typically the organ that typically punishes States for committing crimes against humanity,³²⁸ would not be able to pass a resolution over a Russian veto.³²⁹ Instead, the U.N. General Assembly can pass a resolution for a peace-keeping mission if the Security Council fails to act.³³⁰ Because Russia has not acted, the U.N. General Assembly should send a peace-keeping mission to investigate, observe, and maintain premises over Crimea.³³¹

States are also obligated to stop violations of peremptory norms.³³² Thus, they should act outside of international institutions.³³³ For example, they could continue to impose economic sanctions on

temporal jurisdiction of the preliminary investigation).

326. Rome Statute, *supra* note 66, art. 58.

327. See HRC Report, *supra* note 3, ¶ 8 (citing specific circumstances when Russia has been called upon to remedy its behavior and the continuing state of being in which no rectifying actions have been taken).

328. See Sean D. Murphy (Int'l Law Comm'n Special Rapporteur for Crimes Against Humanity), *Third Report on crimes against humanity*, ¶ 214, U.N. Doc. A/CN.4/704 (2017) (defining the U.N. Security Council's function).

329. See *UN: Russia and China's Abusive Use of Veto "shameful"*, *supra* note 72 (citing instances of Russia vetoing resolutions that did not suit its interests).

330. See G.A. Res. 377(V)(A), ¶¶ 1–3 (Nov. 3, 1950) (establishing a peace-keeping mission when the Security Council failed to).

331. See THOMAS G. WEISS ET AL., *THE UNITED NATIONS AND CHANGING WORLD POLITICS* 68 (7th ed. 2014) (listing functions of U.N. peace-keeping mission).

332. See G.A. Res. 56/83, annex, *supra* note 9, art. 41(1) (States shall cooperate to bring to an end through lawful means any serious breach . . . “).

333. See *Draft articles on responsibility of States for internationally wrongful acts*, in *Report of the International Law Commission to the General Assembly*, 56 U.N. GAOR Supp. No. 10, U.N. Doc. A/56/10 (2007), reprinted in [2007] 2 Y.B. Int'l L. Comm'n 114, U.N. Doc. A/CN.4/SER.A/2001/Add.1 (Part 2) (stating that States can act outside of institutions to hold other States responsible).

Russia.³³⁴ However, it would be more helpful if States sent international organizations funds so that they could continue to conduct research in the Crimea.³³⁵ States could also send aid to the Tatars that remain in Crimea.³³⁶

V. CONCLUSION

The actions of Russian authorities in Crimea, which includes arbitrarily detaining Crimean Tatars, torturing them, forcibly displacing them, denying their whereabouts when they disappeared, depriving them of their homes, and attacking their private and public property, constitute crimes against humanity under customary international law. Russia therefore oversaw the commission of prohibited acts that were part of a widespread and systematic attack against a civilian population that was pursuant to State policy. Russia needs to immediately grant the Crimean Tatars remedial provisions. Additionally, the ICC Prosecutor should begin an investigation in Crimea for crimes against humanity committed against the Tatars. Finally, if Russia fails to implement these remedies, as it has done since 2014, then the U.N. Security Council should not hesitate to send a peace-keeping mission under its Chapter VI powers.

334. See INTERNATIONAL CRIMES IN CRIMEA, *supra* note 43, ¶ 39 (reporting that countries put economic sanctions on Russia after the annexation of Crimea).

335. See, e.g., *OHCHR's Funding and Budget*, OHCHR (last visited Sept. 21, 2020), <https://ohchr.org/EN/AboutUs/Pages/FundingBudget.aspx> (reporting that OHCHR relies heavily on State contributions).

336. See, e.g., Natalie Zinets, *Turkey Offers \$50 million Loan to Ukraine, Urges Protection of Crimean Tatars*, REUTERS (Mar. 20, 2015, 5:41 AM), <https://www.reuters.com/article/us-turkey-ukraine/turkey-offers-50-million-loan-to-ukraine-urges-protection-of-crimean-tatars-idUSKBN0MG0VZ20150320> (reporting that the Prime Minister of Turkey offered \$10 to Ukraine that they could use to protect the Crimean Tatars).