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Transitional Justice Options for Russia¹

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Abstract

Over the course of its war in Ukraine, Russian forces have violated numerous principles of just warfare. When the war ends, two questions will arise: 1) how to restore normal diplomatic and economic relations with Russia; and 2) how to hold those guilty of war crimes and crimes against humanity accountable. The transitional justice literature sheds light on both issues. Building on the application of transitional justice to relevant postconflict cases, this article suggests how transitional justice principles could be used in postwar Russia.

Russian War Crimes

On February 24, 2022, Russian President Vladimir Putin, on the pretext of conducting a “special military operation” to defend Russians residing in the Donetsk and Luhansk regions, launched an all-out attack against the sovereign state of Ukraine. The blitzkrieg-style offensive did not go according to Putin’s plan. As the war has continued, the Russian army has violated one principle of just warfare after another.

According to the Geneva Convention, it is a war crime to target civilians in military operations. Yet as of September 2023, the United Nations Human Rights Monitoring Commission had recorded close to 10,000 civilian deaths and more than 17,000 people injured since Russia invaded Ukraine (UN News 2023).

The first figure includes casualties in the Donetsk and Luhansk regions (over 10,000) as well as other regions of Ukraine that were under the control of the Ukrainian government at the time civilian deaths and injuries occurred. This means that they resulted from bombings and air raids.

In total, by fall 2023, almost 500 children had been killed and more than 500 injured. By September 2023, the United Nations estimated that nearly 20,000 Ukrainian children had been abducted and deported to Russia (OHCHR 2023).

The estimates of total civilians killed vary widely, with some sources reporting 87,000 civilians killed in Mariupol alone (Shandra 2022).

Extensive use of sexual violence against Ukrainian women by Russian soldiers has also been documented. A UN report found evidence of rape of females—ranging in age from 4 to 80—in Russian-occupied provinces (OHCHR 2022b). Ukrainian prosecutors have found evidence of sexual violence in every place that has at some point been occupied by Russia (Gall 2023). On March 7, 2023, the European Union issued personal sanctions against two Russian commanders; in

the case of one of the commanders, the sanctions were motivated by the fact that “members of his unit systematically participated in sexual violence and rape in March/April 2022” (Reuters 2023).

Russia has also engaged in large-scale bombardment of civilian dwellings, schools, hospitals, and other objects that are not military targets.

Retreating Russian forces left behind evidence of torturing civilians in places like Bucha, where they did little to cover their tracks (OHCHR 2023).

All of the actions described above constitute war crimes under international law (United Nations 2023).

Reported estimates of the scale of Russian war crimes undoubtedly seriously understate the scale of the problem, as the figures are based only on documented cases. The actual figures are almost certainly far higher than those reported.

In this analysis, we review what options might be available and acceptable to both the international community and the postwar Russian leadership for holding the Putin regime accountable for its crimes.

The War and the Putin Regime

Putin has staked his regime on victory. Any outcome short of victory threatens his power. Therefore, regime change and a cessation of hostilities are interdependent: if Putin fails to achieve his war aims, it is likely that he will lose power. Likewise, if Putin is forced from power by others, his successors will likely look for a way to extricate Russia from this costly war and distinguish their regime from his. They may well accuse Putin of having driven Russia into the arms of China, having directed a significant share of Russia’s military and economic resources to an unnecessary war, and having set back Russia’s technological progress by decades.

Russia is now devoting a third of its public spending and six percent of its gross domestic product to the military (Reuters 2023b; Seddon and Stognei, October

1 A longer version of this article appeared in *Post-Soviet Affairs* 39, no. 6 (2023), <https://doi.org/10.1080/1060586X.2023.2265253>.

5, 2023), requiring increasingly high levies on domestic producers as well as capital controls. The war is depressing the economy. If Putin's successors want to reintegrate Russia into the world economy and win the lifting of economic sanctions, they will have to find a way to hold those responsible for the war and war crimes to account. The West will have to deem these procedures acceptable if Russia is to make any progress toward resuming normal economic and political relations.

Within Russia, prominent figures are increasingly willing to acknowledge that the war was a mistake. Rogue warlord Evgenii Prigozhin's scathing condemnation—"the war was needed so that a bunch of animals could simply exult in glory"—expresses the frustration of many Russians: frustration with the continuing waste of Russia's men and materiel, with its steady drift toward becoming a vassal of China, and with its isolation from the developed world. Prigozhin followed up this invective by leading his forces north into the Russian heartland. He paid dearly for his rebellion, of course, but he may have spoken for many others who fear to express opposition publicly. Yet while many Russians recognize that it was folly to launch the war, they also dread the consequences of defeat. For that reason, any postwar judicial proceedings that touch broad strata of the population would likely be destabilizing for a postwar regime.

Therefore, the world has a stake in the character of the postwar Russian regime. If the populace nurtures grievances over a supposed "victor's justice," a future Russian regime would likely return to a policy of imperial aggression and conquest. Germany after World War I is a case in point: the belief that Germany had not actually lost the war but had been betrayed from within fed militaristic nationalism and contributed to World War II.

Yet even if Russia cooperates with international war crimes tribunals or holds trials of the top leadership at home, it must still confront the enormous task of dealing with tens of thousands of Putin's enablers.

Transitional Justice

Some in Russia and the West might well demand "de-Putinization," analogous to the "de-Nazification" that took place in Germany after World War II (Heusgen 2023). However, that process had barely begun before it was curtailed by the mutual consent of the Allies and the postwar German leadership. German chancellor Konrad Adenauer resisted the process, declaring that "the division of the German people into the just and the unjust must finally end" and that Nazi "fellow travelers" should be left in peace. Adenauer also pragmatically observed that Germany could not do without the expertise of those officials who had served in the previous regime. It took three generations for Germans to confront the

facts of the Nazi past (Neiman 2019). In the meantime, however, Germany succeeded in building the foundations of a stable, prosperous democratic society.

If a comprehensive de-Putinization is ruled out, what methods might nonetheless be available for dealing with members and collaborators of the former authoritarian regime? These procedures are known in the literature as *transitional justice*.

Readers may be familiar with transitional justice in the form of truth commissions, such as the Truth and Reconciliation Commission established in South Africa following the fall of the apartheid regime. However, the range of mechanisms for dealing with past authoritarian crimes is much broader: it includes denazification (a form of purge) or potentially de-putinization.

Research on transitional justice processes teaches us to distinguish processes that reveal difficult truths about the past from institutions that render justice through trials and purges (Nalepa 2022). Mikhail Gorbachev's *glasnost* is a good example of the former. The South African Truth and Reconciliation Commission created after the fall of apartheid is another.

By uncovering the truth about the past, transparency regimes make it impossible for enemies of the new regime to blackmail politicians by threatening to reveal dark secrets from their past (popularly known as *kompromat*). Transparency dissuades those with tainted pasts from assuming positions of responsibility and keeps the political elite honest. Transparency can—but need not—be accompanied by criminal prosecutions. In South Africa, members of the apartheid regime or of the African National Congress who held back the truth about their engagement in violence left themselves open to criminal prosecutions for crimes committed in the past. Many, among them Winnie Mandela, the spouse of the famous dissident Nelson Mandela, faced such prosecutions. But those who participated in the commission's hearings and fully explained their responsibility for violence received amnesty from criminal prosecutions.

Another transparency mechanism is lustrations, in which those persons running for or holding public office have their pasts verified for traces of collaboration, while the rest of the public are able to keep their secrets. Politicians who, in this process, are discovered to have collaborated with the former autocrats are banned from enjoying political careers. Several countries in Eastern Europe that used lustrations following the fall of communism included a mechanism similar to the South African TRC: an incentive for disclosing the truth about the past. In Poland, for instance, the lustration law allowed a politician to run office on condition that he or she fully disclosed how and for how long he or she had collaborated with the secret police. Hence, candidates for political office in Poland faced a similar tradeoff to the

perpetrators of apartheid in South Africa: fess up to their “skeletons in the closet” and be allowed to run for office or run the risk that such skeletons would come out in the lustration process. In the case of the TRC hearings, perpetrators who disclosed the nature of their collaboration were able to avoid criminal (although not civil) litigation.

In Russia, the outpouring of revelations in the late 1980s about many of the darkest pages of Soviet history did not lead to any attempt to hold those responsible to account. Nor, after the USSR’s breakup, did Boris Yeltsin’s regime demand that anyone be held legally liable for their crimes. Yet glasnost had exposed some truths that could not be reburied.

A different approach was taken in the aftermath of another famous regime change, this time dating back to classical Greece. Following Athens’ defeat in the Peloponnesian War, a victorious Sparta forced on Athens a tyrannical oligarchic regime known as “the Thirty.” Their rule was brutal: as many Athenians died under the Thirty as had died during the entire Peloponnesian War. The tyrants were assisted by a large network of Athenian collaborators. When the rule of the Thirty finally ended, Athens had to deal not only with the tyrants, but also with their numerous collaborators.

Keen to prevent a renewal of the cycles of regime breakdown and retribution that plagued other Greek city-states, the Athenians devised an innovative solution based on their existing practice of requiring officials to account for their use of public resources at the end of their terms of office, a procedure known as *euthuna*. The Athenians adapted this procedure by combining a small number of trials with an amnesty for the rest. As a result, the Thirty themselves and their supporting council (the Eleven) were prosecuted and, in most cases, sentenced to death, but all 3,000 of their supporters were amnestied and allowed to seek refuge outside of Athens—unless “they had killed another man with their own hands.” Moreover, those officials of the Thirty who were tried and convicted of crimes were given a choice. They could

accept exile or, if they chose to remain in Athens, they had to accept any punishment that the court meted out. In the meantime, all members of the Assembly were prohibited from “remembering past grievances” in the public sphere. Pursuing vengeance against their former tormentors was forbidden by law.

These mechanisms allowed Athens to nurture a convenient myth that most Athenians had been victims of the Thirty rather than active or passive collaborators. Athenians promoted their way of handling transitional justice as a shining reflection of their democratic values (Wolpert 2002; Lanni 2010).

Conclusion

We recognize how remote these ideas are from the current time. If it is the case, as many fear, that the war has settled into a stalemate, Putin may be counting on Ukraine’s exhaustion and the erosion of Western support for Ukraine. Even if the war may yet continue for years, however, the cost to Russia of sustaining its present level of effort is high, in terms of both manpower and treasure. Inflationary pressures are mounting and the regime is preparing for the 2024 presidential election.

There are too many contingencies in play to offer predictions about when and how the war might end. Our purpose here is not to make a forecast, but to sketch out a way in which a postwar, post-Putin regime might hold those responsible for the crimes of the war to account while building a new foundation of legitimacy.

Our review of past experience offers some ideas. Postwar Russia might consider combining transparency mechanisms, such as glasnost, with a limited number of trials and mechanisms committing former Putiner officials, to the extent possible, to serving the state honorably under the new regime. If the West accepted it, such a strategy might help to stabilize a first-generation postwar regime. That would be, at the very least, a necessary step before Russia could begin to undertake the far more arduous and protracted task of remaking its political culture.

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References

- Charap, Samuel. 2023. “An Unwinnable War: Washington Needs an Endgame in Ukraine,” *Foreign Affairs*, 102 (4): 22–35.
- Gall, Carlotta. 2023. “‘Fear Still Remains’: Ukraine Finds Sexual Crimes Where Russian Troops Ruled,” *New York Times*, January 5, <https://www.nytimes.com/2023/01/05/world/europe/ukraine-sexual-violence-russia.html>.

- Heusgen, Christoph. 2023. *Führung und Verantwortung: Angela Merkels Außenpolitik und Deutschlands künftige Rolle in der Welt*. Kindle. München: Siedler Verlag.
- Lanni, Adriaan. 2010. "Transitional Justice in Ancient Athens: A Case Study." *University of Pennsylvania Journal of International Law* 32 (2): 551–594.
- Malkisian, Carter. 2023. "The Korea Model: Why an Armistice Offers the Best Hope for Peace in Ukraine," *Foreign Affairs*, 102 (4): 36–51.
- Neiman, Susan. 2019. *Learning from the Germans: Race and the Memory of Evil*. New York: Farrar, Straus and Giroux. <https://us.macmillan.com/books/9780374715526/learningfromthegermans>.
- OHCHR. 2022a. "Human Rights Committee Considers Report of the Russian Federation in the Absence of a Delegation, Experts Raise Issues on the Persecution of Journalists and the Arrests of Protesters," October 20, <https://www.ohchr.org/en/news/2022/10/human-rights-committee-considers-report-russian-federation-absence-delegation-experts>.
- OHCHR. 2022b. "Independent International Commission of Inquiry on Ukraine – Note by the Secretary-General," A/77/533, <https://news.un.org/en/story/2023/09/1141417><https://www.ohchr.org/en/documents/reports/a77533-independent-international-commission-inquiry-ukraine-note-secretary>.
- OHCHR. 2023. "UN Commission of Inquiry on Ukraine Finds Continued Systematic and Widespread Use of Torture and Indiscriminate Attacks Harming Civilians," September 25, <https://www.ohchr.org/en/press-releases/2023/09/un-commission-inquiry-ukraine-finds-continued-systematic-and-widespread-use>.
- Reuters. 2023. "Exclusive: Russia doubles 2023 defense spending plan as war costs soar," August 4, <https://www.reuters.com/world/europe/russia-doubles-2023-defence-spending-plan-war-costs-soar-document-2023-08-04>.
- Seddon, Max, and Anastasiia Stognei. 2023. "Russia Struggles to Finance Ballooning Cost of Ukraine War," *Financial Times*, October 5, <https://www.ft.com/content/1e5d63a6-d5f8-4206-81fc-4ff324789ac3>.
- Shandra, Alya. 2022. "87,000 Killed Civilians Documented in Occupied Mariupol – Volunteer." Euromaidan Press. August 30, <https://euromaidanpress.com/2022/08/30/87000-killed-civilians-documented-in-occupied-mariupol-volunteer/>.
- UN News. 2023. "Ukraine: Report Documents Mounting Deaths, Rights Violations," October 4, <https://news.un.org/en/story/2023/10/1141872>.
- United Nations. 2023. "War Crimes," United Nations Office on Genocide Prevention and the Responsibility to Protect, <https://www.un.org/en/genocideprevention/war-crimes.shtml>.
- Wolpert, Andrew. 2002. *Remembering Defeat: Civil War and Civic Memory in Ancient Athens*. Baltimore: Johns Hopkins University Press.