

Beyond Oppression: The Evolution of Ukrainian Cohesion in a Post-Soviet Landscape

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Abstract

Victimhood unites. For those countries occupied by the Soviet Union, the search for independence as a form of actively embodying the victim identity united disparate Ukrainian and Eastern European diaspora communities into highly organized groups with close ties to their respective homelands. However, achieving independence meant removing this shared goal, changing relations between and within diaspora communities. By analyzing The Ukrainian Review, a journal chronicling diasporic affairs, this essay illuminates the Ukrainian diaspora's evolution from a mobilized, cohesive community during the struggle for independence to a fragmented one post-achievement of nationhood.

The fall of the Soviet Union saw the reassertion of independence in Ukraine, yet despite the new-found freedom of the Ukrainian state independence would later mean fragmentation across groups formerly united in the struggle against Soviet rule. During its period of subjugation under Soviet rule, Ukraine saw its identity as a free, sovereign nation forcibly stripped away. For those Ukrainians who fled to the West, the fight for independence continued even from abroad serving as a mechanism to internally unify the Ukrainian diaspora, unite the Ukrainian diaspora to the homeland, and encourage collaboration between the Ukrainian diaspora and the ethnic diasporas of neighboring Soviet Republics who similarly fought to liberate their countries. These were groups separated by ethnic, national, and ideological boundaries, yet the political and social mobilization stemming from their shared suffering unified these distinct groups under the umbrella of the victim identity. When independence was acquired, mobilization ended and the lack of defined consensus among the Soviet victims resulted in fragmentation as unity was lost. For the diaspora, this resulted in internal fragmentation across groups who previously engaged in cross-ideological relations while relations with the homeland became strained as Ukrainians rebuilding the independent state began to view diaspora members as foreign rather than native to the Ukrainian community.

Under Soviet occupation, the identity of victimhood was present among those suffering from the results of discriminatory policies and failing economic practices. The stripping of independence from formerly titular ethnicities such as Ukrainians, Latvians, Estonians, etc.—alongside their other sufferings—prompted shared grievance from which a consensus on the necessity of independence. Among the Western diaspora, this consensus was enabled by the large number of political emigrants who fled following Soviet occupation. This consensus on the plight of Soviet rule created shared ambitions for an independent Ukrainian state that was actively mobilized in the urgent fight for independence, effectively mobilizing the victim identity within and between Ukrainian and diasporic communities.

Yet, after independence, this shared goal was fulfilled, and perceptions of what comes next varied across groups of ideological divergence. Perceptions of salient problems varied that resulted in the fragmentation of this formerly united community. The internal variety of ideological preferences in the Western diaspora served to divide the community's political preferences for the homeland; as such, the community focused on projects specific to the needs of their respective ideological communities, limiting the collective action of the broader diaspora. The changing political and social needs of the homeland forced the Western diaspora to reconsider their interactions with the homeland as their input in the state-building process was rejected by national politicians, despite their previously engaged role in liberating the Ukrainian state.

These divisions were not simply the result of changing contexts in the post-Soviet world, as the ideological differences that divided these communities had been present all along—both prior to and during the process of independence. Instead, it was the loss of the transcendental victim's identity which cut across social cleavages that was created in the shared struggle against Soviet occupation that resulted in the post-independence fragmentation of groups who had previously worked together to achieve independence. National and transnational identities shifted with the collapse of the Soviet Union, dividing countries and peoples whose struggle against Soviet occupation had previously united them. While this effect may have only been marginally recognized by those titular ethnic groups whose dedication to their titular countries had always dominated concerns for their neighbors, for the Ukrainian diaspora in the West independence resulted in internal fragmentation and a more marginalized presence in the homeland.

To understand the fragmentation of previously united peoples that resulted due to the collapse of the Soviet Union and the achievement of Ukrainian

independence, this essay examines *The Ukrainian Review*, a quarterly journal of research and news for the Ukrainian diaspora. As evident in the evolution of the journal from 1990 to 1995, the push for independence worked to marginalize the diaspora from the larger goals of the homeland and resulted in weaker ties within the previously highly organized and connected diaspora community as well as dividing the communities of the former Soviet Republics who were previously united in their struggle against the Soviet machine. However, in order to best understand the impact of independence on previously shared identities, this analysis will be prefaced with an exploration of the victim identity.

Victimhood

Within the intricate tapestry of post-Soviet national identities, the concept of victimhood has played a pivotal role in delineating boundaries of inclusion and exclusion. This focus on victimhood, as a unifying force, has been instrumental in binding Ukrainians together, extending beyond mere ethnic practices or origins. Rather, the shared subjugation and suffering under the Soviet machine became a common thread that wove diverse communities into a cohesive narrative of resistance.

Victimhood as an identity is generally understood through an individualistic lens; however, abuses of power result in the suffering and harm of larger communities that adopt the collective victim identity in conjunction with national or ethnic identities.¹ Across collective victims, there is variety in the suffering experienced as some communities experience structural violence in which discriminatory social structures impact aspects of daily life while other communities are affected by direct violence. These processes of victimization can occur individually or simultaneously and can be ongoing processes or temporally isolated, short-term events.² For communities, this victim identity is not limited to those who experienced or witnessed the suffering; instead, this victimhood becomes tangentially attached to larger social identities such as national or ethnic identities, allowing those geographically removed from the community to vicariously experience victimization through the lives of directly affected community members.³ In seeking resolution or reparation for their suffering, victims

¹ Tami Amanda Jacoby, "A Theory of Victimhood: Politics, Conflict and the Construction of Victim-Based Identity," *Millennium: Journal of International Studies* 43, no. 2 (2015): 516.

² Noor et al., "The Social Psychology of Collective Victimhood," *European Journal of Social Psychology*, (2017): 121-122, <https://doi.org/10.1002/ejsp.2300>.

³ Noor et al., "The Social Psychology of Collective Victimhood," 122.

pursue various forms, diverging from conventional notions of justice. Some seek truth and recognition, while others aim for monetary compensation, independence, or political representation.⁴ This drive for restoration or retribution can be an attempt to reduce the sense of degradation and restore dignity to the group or an attempt to delegitimize the actions of the perpetrators.⁵

For Ukraine, like most countries occupied by the USSR, post-independence nation-building established the victim identity as a part of the larger national identity. This was partially a result of the revision of history during the Soviet period which prioritized the image of the USSR as the hero of World War II; however, resistance against this narrative saw the end of WWII as the division of Europe and the beginning of an era of repression.⁶ The struggle for control over memory and the recognition of those victimized by Soviet repression resulted in many former Soviet Republics defining their self-image in terms of their oppression and suffering.⁷

For Ukraine, suffering under Soviet occupation was characteristic of both structural and direct violence. Structurally, failures of the communist economy and discriminatory policies resulted in widespread victimization culminating in tragedies such as the *Holodomor* which harmed groups by depriving them of their basic needs. Alternatively, suffering inflicted by deportations and similar crises resulted in direct violence: that is violence rendered onto the minority group by members of the majority.⁸ The tragic experiences of the Stalinist period, primarily the *Holodomor*, became integral to national myth effectively establishing Ukraine's victimhood and national identity, linking the two as inherently inseparable.⁹ While the *Holodomor* had ended decades prior to achieving independence, the perpetrators responsible for the crisis remained in power, and structural victimization—especially where related to the repression of Ukrainian culture, language, and identity—was ongoing.

⁴ Jacoby, "A Theory of Victimhood," 517.

⁵ Noor et al., "The Social Psychology of Collective Victimhood," 123.

⁶ Florence Fröhlig, "Victimhood and Building Identities on Past Suffering," in *CBEES State of the Region Report Constructions and Instrumentalization of the Past : A Comparative Study on Memory Management in the Region*, (2020): 23–24, <https://urn.kb.se/resolve?urn=urn:nbn:se:sh:diva-43937>.

⁷ Fröhlig, "Victimhood and Building Identities on Past Suffering," 25.

⁸ Noor et al., "The Social Psychology of Collective Victimhood," 121–122.

⁹ Ulrich Schmid, "Nation and Emotion: The Competition for Victimhood in Europe," *Melodrama after the Tears: New Perspectives on the Politics of Victimhood*, (2016): 287.

For diaspora communities, this victim identity was emphasized as emigration is typically spurred by victimization.¹⁰ Ukrainians had immigrated to the West in waves since 1708 when Hetman Ivan Mazepa and many of his supporters fled to Western Europe following the Russian occupation of Ukraine.¹¹ These immigrants were largely political emigres, fleeing political, social, and economic unrest in search of greater stability elsewhere.¹² For these groups, the ongoing victimization was a source of indirect suffering as the collective suffering of Ukrainians was felt within the diaspora due to their continued identification with the homeland. In this manner, victimhood was able to transcend national borders, anchoring the diaspora to the experiences of the homeland.

But for the Ukrainian diaspora in the West, victimization stemmed as much from the results of the emigration as it did from the prompts for their emigration. More specifically, the accusation of Ukrainian immigrants being Nazis or of Nazi sympathizers and the internment of Canadian Ukrainians in detention camps during the First World War resulted in the victimization of the Ukrainian diaspora in Western Europe and North America.¹³ Meanwhile, these expatriates shared in the victimization of their homeland, identifying with and working towards the recognition of the *Holodomor* as a genocide against the Ukrainian people.¹⁴ Like the Ukrainians in the homeland, the Ukrainian diaspora pushed for recognition of their victimization—both resulting from discrimination faced in the West and for the plight of the homeland under Soviet occupation—establishing a consensus across the diaspora that offered opportunities to relate to the homeland and to establish their unique identity as Ukrainian expatriates.¹⁵

¹⁰ Robin Cohen, “Four Phases of Diaspora Studies,” in *Global Diasporas*, Second (London & New York: Routledge, 2008): 2-4.

¹¹ Wsevolod W. Isajiw, “The Ukrainian Diaspora,” in *The Call of the Homeland: Diaspora Nationalisms, Past and Present* (Brill, 2010): 292, <https://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=360422&site=ehost-live>.

¹² Isajiw, “The Ukrainian Diaspora,” 293-295.

¹³ Vic Satzewich, “Ukrainians and Their Sense of Victimization,” in *The Ukrainian Diaspora* (London & New York: Routledge, 2002): 166; Andrew McIntosh, “Ukrainian Internment in Canada,” *The Canadian Encyclopedia*, accessed December 8, 2023, <https://www.thecanadianencyclopedia.ca/en/article/ukrainian-internment-in-canada>.

¹⁴ Isajiw, “The Ukrainian Diaspora,” 299.

¹⁵ Satzewich, “Ukrainians and Their Sense of Victimization,” 166-197, 188-189.

Victimhood as Unity

Ukrainian communities—including ideologically unique diaspora communities and the homeland—were bound to each other not only because of their ethnic practices or origins but also due to their subjugation and suffering under the Soviet machine. Yet, the victim identity alone cannot smooth the tensions of collection action as seen in the collaborative, inter-group functionality of these groups; however, victimhood created shared ideals and shared experiences that created a broad consensus on the necessity of independence for the Ukrainian territory and peoples. This consensus translated into political mobilization against the Soviet state, an active process that benefited from the large-scale collaboration and a shared goal that overcame collective action dilemmas.

For the diaspora, victimhood unified their communities by emphasizing the shared experiences of the group and the consensus on the future of the homeland and offered a channel through which diasporic communities could meaningfully support the homeland—whether through financial, political, or ideological means. This resulted in strengthening ties between the diaspora and the homeland. It similarly worked to unite different ethnic diasporas from the Soviet Union's whose homelands were also fighting for independence. Given the Soviet history of ethnoterritorial federalism, the fight for independence was divided primarily based on the federalist structure and existing divisions between groups.¹⁶ Yet, the fight for independence spurred solidarity and collaboration across group divisions.

Within the diaspora community, the struggle for independence created a highly organized community whose social associations worked domestically and abroad to support the homeland. The community was largely democratically created: first local organizations were formed, and later umbrella organizations formed to unite the widely dispersed community.¹⁷ This included the international umbrella—the World Congress of Free Ukrainians established in 1967—under which various national and local organizations of varying ideological, political, religious, and demographic construct. As such, the community maintained a variety of correlating groups who shared ideological perspectives but appealed to different demographics, as such larger identities of the groups such as religion or political affiliations would consist primarily

¹⁶ Edward W. Walker, *Dissolution: Sovereignty and the Breakup of the Soviet Union* (Rowman & Littlefield Publishers, 2003), 41, 44-46.

¹⁷ Isajiw, "The Ukrainian Diaspora," 295-296.

of three unique organizations targeting the broader Ukrainian population, the female population, and the youth.¹⁸ Given the level of organization and the divisions across gender, age, and ideology through which the community sorted themselves, the umbrella organizations connected these groups and represented their interests on a larger unified platform.

For nearly all of these groups, independence was the goal. Despite the variety of ideologies—communist, nationalist, liberal nationalist, etc.—these groups cohesively viewed independence as a legitimate claim and necessary goal of the Ukrainian people.¹⁹ Glasnost allowed the diaspora to reconnect with the homeland and in response the diaspora worked to represent Ukraine’s interests on an international scale, pressuring Western governments to recognize Ukraine’s sovereignty, supporting the struggle for independence against the Soviet Union, and educating Western peoples about the plights of the Ukrainian peoples.²⁰ The World Congress of Free Ukrainians—now the Ukrainian World Congress—was by far the largest umbrella group encompassing hundreds of organizations and claiming to represent 20 million Ukrainians worldwide for which independence of the Ukrainian state was demanded. Despite the ideological diversity present in the Ukrainian diaspora, the representatives of the diaspora advocated for independence on behalf of their diverse communities whose agreement on such demand was concrete.

In *The Ukrainian Review* (TUR), various successes of the diaspora’s contributions to the homeland are recorded throughout selected articles. One such two-part article—“The Canadian League for the Liberation of Ukraine”—published in the Spring and Summer 1990 edition, details the creation of the League, an umbrella organization that unified various local and national Ukrainian Canadian organizations, representing some 10,000-12,000 Ukrainian Canadians, to contribute to the liberation of the homeland, as established in the organization’s by-laws.²¹ The functions of the League focused on two primary purposes: engaging and representing the Ukrainian diaspora (internal activities) and political activism “supporting the liberation of Ukraine from Soviet Russia,” (external activities).²²

¹⁸ Ibid.

¹⁹ Isajiw, “The Ukrainian Diaspora,” 303-305.

²⁰ Isajiw, “The Ukrainian Diaspora,” 303-309.

²¹ Slava Stetsko et al., eds., “The Ukrainian Review,” (The Association of Ukrainians in Great Britain, Organization for the Defense of Four Freedoms for Ukraine, Uncrainica Research Institute, Spring 1990), Hoover Archives, 7-9.

²² Stetsko et al, “The Ukrainian Review,” 7.

On the internal front, the League focused on connecting with existing community organizations and stated that in their recruitment processes ties to extant organizations should be maintained and do not have to be severed to join the League, which ultimately allowed for the mission of liberation to transcend extant ideological divides without requiring the diaspora to abandon their ideals to participate in the League activities.²³ Whereas other diaspora organizations contributed to internally dividing the broader community, organizations such as the League in Canada and the World Congress of Free Ukrainians internally unified the diverse Ukrainian diaspora and anchored it to the homeland by prioritizing the consensus on independence without setting forward any additional ideological preferences.

These unifying effects were not limited to the Canadian diaspora in any way. Collaboration between organizations representing the various Ukrainian diasporas was a prominent feature of the broader diaspora involvement in the independence movement. This is evident within the construction of TUR, as a collaborative project between the American, Canadian, and British Ukrainian diasporas. Akin to the efforts of the League, the creation of TUR was enabled via the cooperation of representative community organizations, in this case, the Association of Ukrainians in Great Britain, the Organization for the Defense of Four Freedoms for Ukraine based in the US, and the Ucrainica Research Institute in Canada. Similar cooperation was evident in the creation of the “Memorandum on Decolonization of the USSR,” a call on the UN to support the liberation of the Soviet Republics, issued by the Ukrainian, Belarussian, Estonia, Latvian, and Lithuanian World Congresses in 1978.²⁴ Despite the national and ethnic cleavages between these groups, their suffering under the same perpetrator left each with similar experiences of victimhood that translated into a collective desire for the liberation of occupied territories.

These inter-organizational collaborations, enabled by umbrella organizations, were widely spread throughout the diaspora and did not only focus on publishing collective diaspora perspectives such as in TUR and the “Memorandum.” Even for smaller national organizations such as the League, inter-diasporic unity was a primary focus of organizational effort and was enabled by events such as the annual Gathering of the Ukrainians – the League’s “single most important yearly event” which reunited

²³ Stetsko et al, “The Ukrainian Review,” 8.

²⁴ Anna Vakhnyanyin, “The Third World Congress of Free Ukrainians as a Component of Struggle for the Rights of the Ukrainian Nation,” *Scientific Journal of Polonia University* 59, no. 4 (November 16, 2023): 194-195, <https://doi.org/10.23856/5925>.

12-15,000 American and Canadian Ukrainians in various educational, political, and social events.²⁵ These international diasporic interactions were pursued by diaspora organizations in the name of liberating Ukraine via the masses, a mission that was largely popular within the diaspora due to the community consensus on independence.

Interactions between the homeland and the Ukrainian diaspora were limited under the Iron Curtain; however, Glasnost provided opportunities to directly interact with those in the homeland who were fighting for independence. For many diaspora groups, interaction with these groups was pursued through conferences and reunions that brought together Ukrainian community leaders from the diaspora and the homeland to discuss the struggle for liberation.²⁶ Additional efforts of the diasporic communities focused on fundraising to financially support their homeland counterparts, utilizing the economic advantages of their Western residences to support the efforts of liberation.²⁷ For the diaspora, the independence of the homeland was a salient collective goal, yet to instill independence from external positions was difficult without engaging with those groups pursuing the same goals would fail to uphold the democratic ideals that drove the calls for independence.

During the period of Soviet occupation, the Ukrainian diaspora mobilized on their collective need to liberate the homeland and through such actions found unity within the group, closer relations with the homeland, and cooperation with other Eastern European diasporas who were similarly united in their pursuit of national independence. These interactions were all enabled by the shared victimhood – resulting from Soviet occupation and repression – which prompted the collaborative mobilization of these groups. Traditionally, interactions between communities face challenges such as collective action dilemmas arising from divergent goals, limited trust, and potential freeriding. However, the Ukrainian diaspora, united by a singular goal – independence, overcame these hurdles. Shared victimhood experiences fostered trust among diverse groups, validating their calls for independence and establishing a consensus across Soviet Republics regarding the delegitimization of Soviet rule.

Post-Independence

Yet, independence was a finite goal. For those groups unified by their shared struggle, independence meant success. But the loss of that shared struggle meant the

²⁵ Slava Stetsko et al., eds., “The Ukrainian Review,” 11.

²⁶ Stetsko et al., “The Ukrainian Review,” 11.

²⁷ Stetsko et al., “The Ukrainian Review,” 11.

loss of their former unity. For the diaspora, the effect of this shift was most prominent as the diverse ideological preferences of the diaspora were no longer suppressed by the salient need for independence. Internally this meant that the rally-around-the-flag effect that had unified the diaspora was moot. Previously, the shared struggle served to anchor the diaspora to the homeland, but achieving independence caused the tether to fray and the diaspora was reduced to a more marginalized role in Ukrainian affairs.

These shifting perspectives and group relations are evident in the discussions of *The Ukrainian Review* following the success of independence. Prior to independence, interactions between the diaspora and the homeland were featured in the journal. This included the 1990 two-part article published in the Spring and Summer editions which detailed the work of the Canadian League for the Liberation of Ukraine. Despite their absence from the homeland, the diaspora was active and involved in the search for independence, and as such news on the topic detailed the contributions of the Ukrainian diaspora both in the West, in the homeland, and in relation to the other Soviet Republics.

Following independence, the diaspora was less involved with the politics of the homeland, not for a lack of trying, but due to the rejection of their ideological contributions which were seen as foreign to the Ukrainian state. As detailed in the editorial piece “Democracy or Dictatorship?” in the Autumn 1992 edition, this rejection of the diaspora came to a head in 1992 when President Kravchuk became “publicly agitated” as leaders of the diaspora called on his government to push democratic, anti-corruption reforms. In response to this critique, Kravchuk likened the interference of the foreign-based Ukrainian diaspora to Russian interference in Ukrainian governance. The editorial response summarized the Ukrainian perspective as: “...beloved diaspora, give us your money and brains, but not your constructive advice. Keep that overseas.”²⁸ This rejection was not welcomed by the diaspora who “contributed in no small measure to Ukraine’s independence,” yet were ostensibly threatened with expulsion from the homeland for criticizing the new government.²⁹ Where previous addresses to the diaspora have lauded their support for Ukraine and expressed gratitude for their continuous action, achieving independence meant that the

²⁸ Slava Stetsko et al., eds., “The Ukrainian Review,” (The Association of Ukrainians in Great Britain, Organization for the Defense of Four Freedoms for Ukraine, Uncrainica Research Institute, Autumn 1992), Hoover Archives, 2.

²⁹ Stetsko et al., “The Ukrainian Review,” 2.

political affairs of Ukraine could be internalized within the territory of Ukraine and interference from abroad was no longer welcome.

By 1993, *The Ukrainian Review* recognized the changing relations between the homeland and the diaspora and in response revised the structure and focus of the journal to reflect those changes. From 1993 to 1995 the journal no longer reported on the activities of the diaspora nor were the interactions between the diaspora and homeland reported in any form. In an editorial prefacing the Spring 1993 edition, the editors of the *Ukrainian Review* detailed the changing international position of Ukraine—identifying independence as the prompt for these changing international relations—and in response to these changes the editors ascribe a new purpose to the journal: “making Ukrainian history, literature and culture known to the new, wider public who, for the first time perhaps, find Ukraine and things Ukrainian on their personal or business agendas.”³⁰ While previously the journal had focused almost exclusively on the political state of the country, its international positioning, and the contributions of the diaspora, now the journal was not even intended to inform the diaspora and was rebranded to inform the broader Western audience due to the fraying ties between the diaspora and homeland that marginalized the role of a journal focused on such relations.

Conclusion

Achieving independence had closed the domestic Ukrainian community and removed one of the main avenues for interaction between the homeland and diaspora. The rejection of the diaspora involvement in politics left Ukrainians abroad shut out of the state-building process while internally the diaspora lost their consensus on the future of the homeland. Where prior to independence the diaspora found their efforts for independence welcomed by those in the homeland, their post-independence involvement in the political sphere was viewed as unwelcome foreign interference by the political elites. The consensus that was once shared by mobilized Ukrainians no longer facilitated relations; instead, divergent ideas and goals for the homeland abounded leading to tension and conflict between previously cooperative groups.

³⁰ Slava Stetsko et al., eds., “The Ukrainian Review,” (The Association of Ukrainians in Great Britain, Organization for the Defense of Four Freedoms for Ukraine, Uncrainica Research Institute, Spring 1993), Hoover Archives, 2.

Victimhood remained within the newly independent countries, as collective memory maintained the salient image of Ukraine as a historical victim. Yet, this victimhood was no longer an ongoing process; as such, there was no overarching need to address one specific issue as had been under Soviet occupation. For the diaspora, this meant the limited need for mobilization as well as social division among previously extant ideological cleavages. Since organizations prioritized representing these social cleavages by dividing groups by both ideology and demographics, the focus returned to the local, more personal organizations rather than focusing on the larger, umbrella organizations that had advocated for independence.

As evident in the actions and reactions of the diaspora community during this time as recorded in *The Ukrainian Review*, independence contributed to the fragmentation of groups who were previously united in their effort to achieve independence for Ukraine and its peers. In this manner, the political mobilization of the victim identity contributed to a temporary period of collectivization that transcended national borders, yet this ended upon the realization of independence. For Ukraine, this effect was notable in the relationships with and within the Western Ukrainian diaspora.

The War in Ukraine: Ukrainian Violations of International Humanitarian Law

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Abstract

Since the start of the war in Ukraine, focus has been on war crimes committed by Russian soldiers, a warranted attention given their overwhelming number. However, such blind focus allows Ukrainian war crimes to go unpunished, potentially damaging peace negotiations and post-war reconstruction. As a result, this paper uses human rights organizations' reports, video footage, and the Geneva Conventions to analyze Ukrainian violations of hors de combat and civilian protections. It finds that victims of both violations have a right to legal restitution, but victims of the latter may have more difficulty obtaining it due to their claims being unorthodox.

I. Introduction

While Russia's violations of international humanitarian law in the Ukrainian War are well-documented, Ukrainian violations are less covered and less well-known. Over the past two years, major human rights bodies and organizations have released multiple publications on Russian war crimes, with Human Rights Watch reporting on Russian rapes of local civilians¹ and the Independent International Commission of Inquiry on Ukraine (IICIU) looking into Russian soldiers killing and torturing civilians.² Even the International Criminal Court, the highest international legal authority on war crimes, issued an arrest warrant on March 17, 2023 for President Vladimir Putin of Russia for unlawfully deporting and transferring children, a violation of Article 8(2)(a)(vii) and (viii) (unlawful transfer of populations and the taking of hostages).³ In contrast, the only major report on the topic of Ukrainian

¹"Ukraine: Apparent War Crimes in Russia-Controlled Areas," *Human Rights Watch*, April 3, 2022, <https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas>.

²"War Crimes, Indiscriminate Attacks on Infrastructure, Systematic and Widespread Torture Show Disregard for Civilians, Says UN Commission of Inquiry on Ukraine," *United Nations*, March 16, 2023, <https://www.ohchr.org/en/press-releases/2023/03/war-crimes-indiscriminate-attacks-infrastructure-systematic-and-widespread>.

³"Situation in Ukraine: ICC Judges Issue Arrest Warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova," *International Criminal Court*, March 17, 2023, <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>.

violations of international humanitarian law, Amnesty International’s “Ukraine: Ukrainian Fighting Tactics Endanger Civilians,” faced widespread criticism for fueling Russian propaganda narratives, resulting in many members of Amnesty International resigning.⁴

Nevertheless, as Professor Lesley Wexler of the University of Illinois argues convincingly in an article, “Justice needs to be justice for all. That means accountability for Ukrainian war crimes committed against Russian troops.”⁵ She explains that prosecuting Ukrainian violations in addition to Russian violations would support the legitimacy of the proceedings, as it did for the international criminal tribunals for both Yugoslavia and Rwanda, as well as uphold the standard of international humanitarian law by showcasing its unwavering application to both parties.⁶

With Professor Wexler’s comments in mind, this paper will explore two violations perpetrated by the Ukrainian army and government: the endangerment of civilians and the killing and torturing of *hors de combat* troops. To be clear: this paper will not support the ignoring of Russian violations, nor justify Russia’s actions; instead, it aims to provide the basis for equitable peace in Ukraine.

II. The Violation of Article 58 of Additional Protocol I to The Geneva Conventions

Two human rights organizations, Human Rights Watch and Amnesty International, have provided evidence that the Ukrainian army is violating Article 58 of Additional Protocol I to the Geneva Conventions, a protocol to which Ukraine is a party.⁷ Article 58 states:

- The Parties to the conflict shall, to the maximum extent feasible:
- (a) without prejudice to Article 49 of the Fourth Convention, endeavor to remove the civilian population, individual civilians, and

⁴Lillian Posner, “Amnesty Announces Review as Ukraine Report Backlash Continues,” *Atlantic Council*, August 25, 2022, <https://www.atlanticcouncil.org/blogs/ukrainealert/amnesty-announces-review-as-ukraine-report-backlash-continues/>.

⁵Lesley Wexler, “Accountability for Ukrainian War Crimes Ought to Include Ukrainian War Crimes,” *Verdict, Justia*, Mar. 16, 2023, <https://verdict.justia.com/2023/03/16/accountability-for-ukrainian-war-crimes-ought-to-include-ukrainian-war-crimes>.

⁶Wexler, “Accountability for Ukrainian War Crimes.”

⁷“Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977,” International Humanitarian Law Databases, *International Committee of The Red Cross*, accessed May 23, 2023, <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/state-parties>.

- civilian objects under their control from the vicinity of military objectives;
- (b) avoid locating military objectives within or near densely populated areas;
- (c) take the other necessary precautions to protect the civilian population, individual civilians, and civilian objects under their control against the dangers resulting from military operations.⁸

Amnesty International interviewed civilians living in the Donbas, Kharkiv, and Mykolaiv regions, all of whom testified that the Ukrainian military was basing itself within major civilian areas, resulting in heightened danger for those civilian neighbors.⁹ On June 10, 2022, a civilian died from a strike after troops had been based in a building next to his house for several days.¹⁰ On May 6, the Russian army used cluster munitions on a Donbas town because the Ukrainian army was based nearby.¹¹ In Bakhmut, the Ukrainian army used a building less than twenty meters away from a residential high-rise, and in a city east of Odesa, the military used civilian areas to prepare for an offensive, resulting in several civilian deaths over the period from April to June.¹² One witness from Lysychansk even commented, “I don’t understand why our military is firing from the cities and not from the field.”¹³

HRW interviewed fifty-four civilians for its July 2022 report and found that the Ukrainian military had based itself three times in civilian areas, resulting in death and destruction for local civilians and civilian infrastructure.¹⁴ In Pokotylivka, the Ukrainian military used a disease control center as a base; when the Russians attacked

⁸*Protocol Additional to The Geneva Conventions of 12 August 1949, and Relating to The Protection of Victims of International Armed Conflicts (Protocol I)*, Geneva, June 8, 1977, *United Nations Treaty Series*, vol. 1125, No. 17512, p. 29, <https://treaties.un.org/doc/Publication/UNTS/Volume%201125/volume-1125-I-17512-English.pdf>.

⁹“Ukraine: Ukrainian Fighting Tactics Endanger Civilians,” *Amnesty International*, Aug. 4, 2022, <https://www.amnesty.org/en/latest/news/2022/08/ukraine-ukrainian-fighting-tactics-endanger-civilians/>.

¹⁰“Ukraine: Ukrainian Fighting Tactics Endanger Civilians.”

¹¹“Ukraine: Ukrainian Fighting Tactics Endanger Civilians.”

¹²“Ukraine: Ukrainian Fighting Tactics Endanger Civilians.”

¹³“Ukraine: Ukrainian Fighting Tactics Endanger Civilians.”

¹⁴“Russian, Ukrainian Bases Endangering Civilians: Basing Forces in Populated Areas Creates Unnecessary Risk,” *Human Rights Watch*, July 21, 2022, <https://www.hrw.org/news/2022/07/21/russian-ukrainian-bases-endangering-civilians>.

the base on April 28, six civilians were wounded.¹⁵ The military also used the Seleksiine village cultural center as a base and did not evacuate civilians, so, when the Russian army attacked, there was widespread destruction of civilian infrastructure.¹⁶ The third instance of the use of civilian areas was in Yakovlivka, where a Russian attack on March 2nd killed four civilians.¹⁷

The Ukrainian military has clearly been placing military bases, which the Russians targeted, in densely populated civilian areas, possibly violating Article 58(b). Furthermore, based on the witness statements above, the Ukrainian soldiers made no effort to evacuate civilians or to protect them in other ways, potentially violating Articles 58(a) and 58(c).

However, a key clause exists in Article 58 that could validate the Ukrainian military's actions. Article 58 states, as shown above, that each party must implement the article "to the maximum extent feasible."¹⁸ If the Ukrainian military could prove that its military objectives required the placement of military objects within civilian areas and that it was unfeasible to evacuate civilians from those areas, then it would be in compliance with Article 58. The comment from a witness from Lysychansk (mentioned earlier) that the military could have been setting up in the fields nearby, not in the city itself,¹⁹ suggests that the military's actions in this city do not pass the test of unfeasibility, and so the military can be held accountable for endangering civilians. Nevertheless, this is only one comment; Amnesty International's legal panel on its report emphasized the fact that the organization had failed, with its data, to show that it was feasible for the Ukrainian military to set up in other locations or evacuate civilians.²⁰ Consequently, more specific information on military objectives and tactics is needed to evaluate the feasibility and the violation of this article.

III. Violations of *Hors de Combat* Protections

Ukraine's violations of international humanitarian law with regard to prisoners of war and wounded soldiers are slightly clearer than its violations of Article

¹⁵"Russian, Ukrainian Bases Endangering Civilians."

¹⁶"Russian, Ukrainian Bases Endangering Civilians."

¹⁷"Russian, Ukrainian Bases Endangering Civilians."

¹⁸*Protocol Additional*, 29.

¹⁹"Ukraine: Ukrainian Fighting Tactics Endanger Civilians."

²⁰"Report of The Legal Review Panel on The Amnesty International Press Release Concerning Ukrainian Fighting Tactics of 4 August 2022," *Amnesty International*, Aug. 4, 2022, <https://www.amnesty.org/en/documents/org60/6731/2023/en/>.

58 of AP I, though some claims are still not fully substantiated. This category of violation applies to three known cases, two of which came into public knowledge through social media videos.

In the first video, reported on April 6, 2022, a Ukrainian soldier on the outskirts of Dmytrivka shoots a Russian soldier, who is clearly injured, at close range.²¹ A IICIU report describes that the video showed other Russian soldiers lying on the ground, with one soldier, with hands tied behind his back, bearing a gunshot wound in the head.²² In the second video, Ukrainian soldiers recapturing Makiivka in November 2022 record Russian soldiers surrendering, coming out of a farmhouse, and lying down on the ground, weaponless.²³ Everything is going smoothly until one soldier comes out shooting; the video then cuts out and, when it resumes, all the soldiers are dead.²⁴ The last incident was not circulated on social media, but it was still reported in the IICIU's October 2022 report. The IICIU noted that, in March of 2022, Ukrainian soldiers shot three Russian prisoners of war at close range in the legs during an interrogation in Mala Rohan.²⁵

Both the third incident (March 2022) and first video (April 2022) clearly show the Ukrainian army violating *hors de combat* protections. According to Article 41(1) of AP I, "A person who is recognized or who, in the circumstances, should be recognized to be 'hors de combat' shall not be made the object of attack."²⁶ Article 41(2) clarifies that *hors de combat* status applies to a combatant who (a) "is in the power of an adverse Party," (b) "clearly expresses an intention to surrender," or (c) "has been rendered unconscious or is otherwise incapacitated by wounds or sickness, and therefore is incapable of defending himself," as long as the combatant "abstains from any hostile act and does not attempt to escape."²⁷

²¹Evan Hill, "Video Appears to Show Ukrainian Troops Killing Captured Russian Soldiers," *The New York Times*, April 6, 2022, <https://www.nytimes.com/live/2022/04/06/world/ukraine-russia-war-news/russia-pows-ukraine-executed?smid=url-share>.

²²United Nations, General Assembly, *Report of the Independent International Commission of Inquiry on Ukraine*, A/77/533 (Oct. 18, 2022), p. 87, <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/77/533&Lang=E>.

²³Malachy Browne et al., "Videos Suggest Captive Russian Soldiers Were Killed at Close Range," *The New York Times*, Nov. 20, 2022, <https://www.nytimes.com/2022/11/20/world/europe/russian-soldiers-shot-ukraine.html>.

²⁴Browne et al., "Videos Suggest."

²⁵United Nations, *Report*, 87.

²⁶Protocol Additional, 22.

²⁷Protocol Additional, 22.

In the first video, the Ukrainian soldier shoots a Russian soldier who is clearly wounded and thus fits Article 41(2)(c). Since the soldier was making no attempt to escape and was not attacking the Ukrainian soldier, he firmly fits into the category of *hors de combat* and should not have been shot. Furthermore, although we do not know the conditions under which the Russian soldier on the ground with a gunshot wound to the head was shot, by the fact that he had his arms tied behind his back we can assume that he could not have attacked the Ukrainian soldiers nor tried to flee. Consequently, he was at the mercy of the Ukrainian soldiers, fitting *hors de combat* definition under Article 41(2)(a), so he also should not have been shot. Similarly, in the third incident, the Russian soldiers are clearly under the control of the Ukrainian soldiers, since they are being interrogated. As a result, they also fit the *hors de combat* definition under Article 41(2)(a) and should not have been harmed. I also want to note that the Ukrainian soldiers in this incident did not only violating *hors de combat* rules, but they also violated the *jus cogens* norm on the prohibition of torture. Under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, torture is defined in Article 1 as “any act by which severe pain or suffering...is intentionally inflicted on a person for such purposes as obtaining from him...information or a confession...when such pain or suffering is inflicted by...a public official or other person acting in an official capacity.”²⁸ The Ukrainian soldiers, who are part of the Ukrainian government, by shooting the Russian soldiers in the legs, are inflicting pain during an interrogation, which has as its purpose, by definition, the obtaining of information, fitting Article 1’s definition perfectly. Thus, this incident is not only a clear violation of *hors de combat* rules but also of the prohibition on torture.

The second incident listed (November 2022), on the other hand, is less clear-cut. The Russian soldier who exited the farmhouse while shooting at the Ukrainian soldiers violated the requirements of AP I’s Article 41 definition of *hors de combat*, as he did not abstain from a hostile act, so the Ukrainian soldiers lawfully shot him. However, it is unclear whether the deaths of those who had already surrendered were lawful. If they had stayed lying on the ground, they would remain protected under *hors de combat* rules, so their killings would be unlawful. Evidence exists to support this position, even though the video cut out during the shooting. Dr. Rohini Haar, a

²⁸*Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, New York, Dec. 10, 1984, *United Nations Treaty Series*, vol. 1465, No. 24841, 113-114, <https://treaties.un.org/doc/Publication/UNTS/Volume%201465/v1465.pdf>.

forensics expert who analyzed the footage, argues that the Russian soldiers were on the ground with their hands outstretched or behind their backs right before the shooting, and pools of blood can be seen after the shooting, suggesting that the Ukrainian soldiers did violate *hors de combat* protection.²⁹ More detailed analysis of the footage, as well as testimony, is needed to clarify this potential violation.

IV. Prosecution of Violations

What can Ukrainian civilians affected by the Ukrainian military's use of civilian areas and Russian soldiers whose *hors de combat* protections were violated do? The question is easier to answer for the latter. By the Rome Statute, the statute founding the International Criminal Court (ICC), violations of *hors de combat* rules amount to war crimes. Article 8(2)(a) defines war crimes as including "Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention," and, under such acts, includes (i) "willful killing" and (ii) "torture or inhumane treatment."³⁰ As *hors de combat* is included in Additional Protocol I to the Geneva Conventions as a protected status, the killing or torture of *hors de combat* persons fits Article 8(2)(a)'s definition of war crimes. Since Ukraine has accepted the jurisdiction of the ICC from February 20, 2014, onwards,³¹ and the ICC has jurisdiction over war crimes (per Article 8(1)),³² the ICC could prosecute these incidents, providing justice for the Russian soldiers even after their deaths.

Ukrainian civilians face a much more uncertain path. Though the violations they face also fall under AP I, suggesting that the ICC should cover them, the Rome Statute only focuses on attacks on civilians, not on failing to protect civilians.³³ These civilians would likely have to sue the Ukrainian government in national courts. According to Article 9 of the constitution of Ukraine, "international treaties that are in force, agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine. The conclusion of international treaties that contravene the Constitution of Ukraine is possible only after introducing relevant amendments to the

²⁹Browne et al., "Videos Suggest."

³⁰*Rome Statute*, 4.

³¹"Ukraine," *International Criminal Court*, accessed May 24, 2023, <https://www.icc-cpi.int/situations/ukraine>.

³²*Rome Statute*, 4.

³³See Article 8(2)(b)(i), (ii), (iv), and (v).

Constitution of Ukraine.”³⁴ Since, as mentioned above, Ukraine has ratified AP I, this article suggests that AP I has become part of national law in Ukraine, and so national courts have jurisdiction over it, allowing Ukrainian civilians to bring cases on this protocol against the Ukrainian government. Nevertheless, it would be difficult for victims to do so, as countries typically oppose the application of international law in their domestic courts.

V. Conclusion

The Russian military has committed massive atrocities in Ukraine, and this paper does not deny this fact, nor object to the prosecution of these atrocities. Nevertheless, in the spirit of equitable justice, and the application of international humanitarian law to both parties in the Ukrainian War, this paper has explored two violations of international humanitarian law by Ukrainian forces: violations of Article 58 of AP I, on the placement of military bases near civilian areas, and violations of Article 41 of AP I, on protections afforded to *hors de combat* soldiers. While violations of Article 58 are still unclear, given the article’s feasibility clause, several acts against Russian soldiers under Ukrainian control committed by Ukrainian soldiers clearly violate Article 41, demanding prosecution as war crimes by the ICC. Though Ukraine already faces 70,000 cases of war crimes,³⁵ the vast majority Russian-committed, the ICC and Ukraine itself must find the resources to prosecute Ukrainian-committed crimes; otherwise, any peace will be based on a one-sided justice.

³⁴*Constitution of Ukraine*, February 7, 2019, <https://www.refworld.org/pdfid/44a280124.pdf>.

³⁵Fredrik Wesslau, “A Tribunal Like No Other: Prosecuting Russia’s Crime of Aggression in Ukraine,” European Council on Foreign Relations, Feb. 23, 2023, <https://ecfr.eu/article/a-tribunal-like-no-other-prosecuting-russias-crime-of-aggression-in-ukraine/>.