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A Worldwide Hunger Games: Why Russia's De Facto Blockade of Ukrainian Grain Export Ports is a Crime Against Humanity

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INTRODUCTION

“Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, *including food*.”¹ The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the Food Aid Convention of 1999, along with numerous other international agreements have all historically enshrined the right to food as a universal human right.² Despite numerous international agreements, using food as a weapon in war is unfortunately common and deeply rooted in international conflict.³ War affects all stages of food production and consumption, ultimately causing severe human rights implications such as starvation, malnutrition, and death.⁴ Food weaponization is the intentional use of food as a means to inflict harm on individuals, communities, or States.⁵ Weaponizing food during war significantly affects vulnerable populations because they are not only entangled with war, but also bear the brunt of the wartime consequences.⁶

Russia’s invasion of Ukraine is not only an abhorrent international humanitarian crisis, but it also overturned Ukraine’s agricultural labor force, farms, and infrastructure, causing a worldwide food crisis. Import-export blockages, price surges, food shortages, malnutrition, and

¹ G.A. Res. 217 (III) Art. 25, Universal Declaration of Human Rights (Dec. 10, 1948).

² <https://www.ohchr.org/en/special-procedures/sr-food/international-standards>

³ See Tom Dannenbaum, *Criminalizing Starvation in an Age of Mass Deprivation in War: Intent, Method, Form, and Consequence*, 55 VAND. J. TRANSNAT’L L. 681 (2022).

⁴ JELENA PEJIC, THE RIGHT TO FOOD IN SITUATIONS OF ARMED CONFLICT: THE LEGAL FRAMEWORK, INTERNATIONAL COMMITTEE OF THE RED CROSS [ICRC] 1097, <https://www.icrc.org/en/doc/assets/files/other/irrc-844-pejic.pdf>.

⁵ Leanne Digney, *The Rome Statute and Hunger as a Weapon of War – The Journey Towards Ending Impunity for Starvation Tactics*, THE INSTITUTE OF INTERNATIONAL AND EUROPEAN AFFAIRS [IIEA] (Jul. 13, 2022), <https://www.iiea.com/blog/the-rome-statute-and-hunger-as-a-weapon-of-war-the-journey-towards-ending-impunity-for-starvation-tactics#:~:text=The%20use%20of%20starvation%20is,an%20unfortunate%20reality%20in%202022> [hereinafter *The Rome Statute and Hunger as a Weapon of War*].

⁶ *Id.*

acute hunger—outcomes of Russia’s wartime actions that are presently affecting not only Ukrainians, but also the rest of the world. Being one of the world’s largest grain suppliers, Ukraine is a key player in the world’s wheat, corn, barley, and sunflower oil markets.⁷ As a result of the Russia-Ukraine war, grain exports from Ukraine were suspended due to Russia’s initial de facto military blockade on Ukraine’s Black Sea ports.⁸ The blockade initiated a domino effect, primarily on developing States that previously relied on these grain exports from Ukraine, such as Yemen, Lebanon, Somalia, Kenya, Ethiopia, and even parts of Central America and the Caribbean.⁹ According to the U.S. Department of Agriculture, agricultural products are Ukraine’s most important exports as they amount to \$27.8 billion, accounting for 41 percent of the country’s exports.¹⁰

However, Ukraine’s exports significantly depleted after Russia’s invasion, ultimately cutting surrounding countries off from readily accessible grain imports.¹¹ The Executive Director of the World Food Programme warned the international community that Ukraine turned “from a breadbasket to a bread line.”¹² Specifically, there has been a reduction in food shipments from the

⁷ Ines Eisele, *Five Facts on grain and war in Ukraine*, DEUTSCHE WELLE, (Nov. 1, 2022), <https://www.dw.com/en/five-facts-on-grain-and-the-war-in-ukraine/a-62601467>.

⁸ *Id.*

⁹ *Id.*

¹⁰ U.S. DEPARTMENT OF AGRICULTURE (2022), <https://www.fas.usda.gov/regions/ukraine>.

¹¹ *Id.*; See Joe Joe Janzen & Carl Zulauf, *The Russia-Ukraine War and Changes in Ukraine Corn and Wheat Supply: Impacts on Global Agricultural Markets*, DEPARTMENT OF AGRICULTURAL AND CONSUMER ECONOMICS, UNIVERSITY OF ILLINOIS AT URBANA-CHAMPAIGN, <https://farmdocdaily.illinois.edu/2023/02/the-russia-ukraine-war-and-changes-in-ukraine-corn-and-wheat-supply-impacts-on-global-agricultural-markets.html> (noting that the Kyiv School of Economics suggests that not only has Ukraine directly lost \$6.6 billion in agriculture as a result of the war, but also that Ukraine has suffered an additional \$36.2 billion loss in indirect agricultural costs in terms of foregone production and increased costs to even continue agricultural exports).

¹² Press Release, Security Council, Lack of Grain Exports Driving Global Hunger to Famine Levels, as War in Ukraine Continues, Speakers Warn Security Council, U.N. Press Release SC/14894 (May 19, 2022) [hereinafter Security Council Press Release 2022].

Black Sea ports. This has had an immediate impact on import-dependent economies and food systems. Military operations have further hindered Ukraine's agricultural production for the 2022-2023 year, aiding in the food insecurity affecting multiple countries. These devastating effects cannot be attributed to trade relations or mere happenstance; the food insecurity affecting Ukraine and other countries is a direct result of Russia's intentional wartime decision making.

This comment centers on how Russia's invasion of Ukraine caused a global food crisis that likely constitutes a crime against humanity, specifically the crime of "extermination," based on depriving civilians of access to food, a fundamental humanitarian right indispensable to civilian survival, in Ukraine and other affected countries. Section I consists of a brief overview of Russia's role in causing the global food crisis through (1) blocking Ukrainian grain export ports, (2) attacking Ukrainian energy grids, and (2) engaging in a grain agreement. Section II delves into why the International Criminal Court ("ICC") should reframe the crime of extermination to include widespread food insecurity and subsequently how the ICC and go forth in prosecuting Russia for extermination, along with potential counterarguments. The last section of the comment provides a brief discussion on legal gaps in the Rome Statute that may preclude prosecution and overall post-judgment enforceability.

I. FOOD AS A WEAPON OF WAR

Weaponizing food as a tactic of war is prohibited by international law.¹³ Food weaponization is an ancient method of warfare that has been and continues to ensure globally.¹⁴ While military forces in South Sudan blocked humanitarian aid resulting in mass starvation,

¹³ Protocol Additional to The Geneva Conventions Relating to The Protection of Victims of International Armed Conflicts (Protocol I), art. 54(1)-(2), Jun. 8, 1977, [hereinafter Geneva Protocol 1977].

¹⁴ See *The Rome Statute and Hunger as a Weapon of War*, *supra* note 5, at 1.

Eritrean forces have raided hospitals, looted towns, and demolished refugee camps causing a food crisis among its citizens.¹⁵ The Geneva Protocol spearheaded the prohibition of starvation as a war tactic by adopting the Additional Protocols of 1977, which not only prohibit starving civilians as a method of warfare, but also prohibit destruction of objects indispensable to civilian survival, such as food.¹⁶ In addition, the Rome Statute, the series of statutes that govern international criminal conduct used by the ICC, recently added “starvation” to its series of war crimes under Article 5.¹⁷ Notwithstanding starvation as a war crime, starvation also plays a role in “extermination,” a crime against humanity. Unlike war crimes, which can only be prosecuted in the event of an armed conflict, crimes against humanity do not need to take place during war.¹⁸ Both “starvation” as a war crime and “extermination” as a crime against humanity have overlapping principles that the ICC can use in adjudicating food weaponization cases.

There are promising prospects for food weaponization at large. On May 25, 2018, the United Nations Security Council adopted Resolution 2417 (2018), a unanimous resolution strongly condemning starvation and food security as a warfare tactic.¹⁹ The Security Council called on parties engaging in armed conflict to comply with international humanitarian obligations related to food security and forced civilian displacement.²⁰ It also condemned States from unlawfully obstructing or denying access to humanitarian aid that constituted objects indispensable to civilian

¹⁵ Alex Dewaal, *Food as a Weapon of War and the Nobel Peace Prize for the World Food Program: Calling out the Culprits*, WORLD PEACE FOUNDATION (Dec. 9, 2020), <https://sites.tufts.edu/reinventingpeace/2020/12/09/food-as-a-weapon-of-war-and-the-nobel-peace-prize-for-the-world-food-program-calling-out-the-culprits/>.

¹⁶ Geneva Protocol 1977, *supra* note 15, at 3.

¹⁷ Rome Statute art. 5, July 17, 1998, 2187 U.N.T.S. 90.

¹⁸ *Id.* at art. 8.

¹⁹ Press Release, Security Council, Adopting Resolution 2417 (2018), Security Council Strongly Condemns Starving of Civilians, Unlawfully Denying Humanitarian Access as Warfare Tactics, U.N. Press Release SC/13354 (May 24, 2018) [hereinafter Security Council Press Release 2018].

²⁰ *Id.*

survival, such as food and water.²¹ If States failed to comply with international humanitarian responsibilities, the Security Council affirmed that it would consider enacting sanctions against individuals or entities responsible for impeding with humanitarian objects indispensable to survival.²² Although Resolution 2417 is not binding on international tribunals, it still bears sufficient persuasive weight and can open the door for Security Council referral to the ICC to ultimately prosecute Russia for its role in the unending global food crisis.

II. OVERVIEW OF RUSSIA’S ROLE IN THE GLOBAL FOOD CRISIS

“By attacking Ukraine, the breadbasket of the world, Putin is attacking the world’s poor, spiking global hunger when people are already on the brink of famine,” said the Administrator of the United States Agency for International Development.²³ Russia’s ongoing invasion of Ukraine is actively contributing to global food insecurity across the world. Food insecurity refers to when individuals or households lack consistent access to enough food to achieve a viable and healthy life.²⁴ “The United Nations World Food Programme estimates that more than 345 million people are currently suffering from or at risk of acute food insecurity, more than double the number from 2019.”²⁵ Both Russia and Ukraine both play key roles in the global food system; on one hand, Russia serves as a principal exporter of agricultural products and fertilizers, while Ukraine is just as significant of a wheat and corn exporter itself.²⁶

²¹ See Security Council Press Release 2018, *supra* note 21, at 4.

²² *Id.*

²³ Ana Swanson & Edward Wong, *How Russia’s War on Ukraine Is Worsening Global Starvation*, N.Y. TIMES (Jan. 5, 2023), <https://www.nytimes.com/2023/01/02/us/politics/russia-ukraine-food-crisis.html>.

²⁴ *Food insecure*, MERRIAN-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/food%20insecure> (last visited Apr. 28, 2023).

²⁵ Swanson & Wong, *supra* note 25, at 5.

²⁶ *Id.*

While the pandemic had already increased grain prices in 2021, grain prices have continued to rise after Russia invaded Ukraine.²⁷ Most significantly, the Russia-Ukraine conflict has resulted in Russia's intentional blockage of Ukraine's grain exports, direct attacks on Ukraine's energy grid, and a surge in food prices around the world.

A. Blockage of Ukraine's Grain Shipments

Russia's initial blockage of Ukraine's grain exports via its Black Sea ports directly contributes to the food insecurity affecting developing States that rely on grain imports from Ukraine. Specifically, Russia launched naval attacks and assaults on ports and small port cities, which suffered the thrust of the initial heavy fighting.²⁸ When the war first began, Russia effectively blocked over 200 freight ships from leaving the Black Sea—a blockage of the particular trade route of the Black Sea, also known as the “grain corridor.”²⁹ For instance, a ship carrying 40,000 tons of wheat to be exported to Ethiopia under a United Nations aid program was blocked from delivering humanitarian aid during Russia's attacks.³⁰ Further, Mariupol, a small port city along the Black Sea, suffered thousands of casualties as a result of a two-month-long battle before ultimate seizure by Russia.³¹ As of February 2023, the United Nations Human Rights Office estimated at least 8,000 Ukrainian civilian deaths and 13,000 injuries since the inception of the

²⁷ Swanson & Wong, *supra* note 25, at 5.

²⁸ Heather Mongilio, *Russia, Ukraine in Black Sea Stalemate a Year Into Russo-Ukraine Conflict*, USNI NEWS (Feb. 23, 2023), <https://news.usni.org/2023/02/23/russia-ukraine-in-black-sea-stalemate-a-year-into-russo-ukraine-conflict>.

²⁹ Sam Mednick, *Concerns rise as Russia resumes grain blockade of Ukraine*, ABC NEWS (Oct. 20, 2022, 5:47 PM), <https://abcnews.go.com/Business/wireStory/global-food-concerns-rise-russia-halts-ukraine-grain-92382961>.

³⁰ *Id.*

³¹ Cara Anna ET AL., *Over 10,000 civilians killed in Mariupol siege, mayor says*, PBS NEWS HOUR, (Apr. 11, 2022, 3:51 PM), <https://www.pbs.org/newshour/world/over-10000-civilians-killed-in-mariupol-siege-mayor-says>.

war; Ukrainians are currently suffering from dire humanitarian violations as about eighteen million civilians need humanitarian assistance and fourteen million have been displaced from their homes.³²

The western States are especially concerned about both export-dependent States such as Africa and developing States that have already been ravaged by prior wars such as Afghanistan and Yemen.³³ Since most of Africa heavily depends on Ukrainian grain exports via Ukraine's Black Sea ports, the closure of these ports has already resulted in price surges while the consumption of wheat in Africa is simultaneously increasing to reach 76.5 million tons by 2025.³⁴ For instance, Somalia and Eritrea import 60 and 97 percent of their grain respectively from Ukrainian Black Sea ports.³⁵ In addition, not only does Russia's blockage of Ukrainian ports hinder African grain imports, but it also thwarts fertilizer exportation from Russia and thus contributes to persistent supply chain disruptions.³⁶ The blockage of Ukrainian grain exports further exacerbates the lack of grain imported into war-stricken countries that already face severe consequences of famine and hunger as a result of war.³⁷ As of October 2022, more than 17 million

³² U.N. News, UN rights chief deplors Ukraine death toll one year after Russian invasion (Feb. 21, 2023), <https://news.un.org/en/story/2023/02/1133737> [hereinafter U.N. rights chief deplors Ukraine death toll].

³³ Imogen Foukles, *Ukraine war could worsen crises in Yemen and Afghanistan*, BBC NEWS, (Apr. 12, 2022), <https://www.bbc.com/news/world-60995064>; Bintu Zahara Sakor & Vamo Soko, *The Ukraine Crisis and Its Impact on Africa's Geopolitics: What Do We Know So Far?*, THE PEACE RESEARCH INSTITUTE OSLO [PRIO] (Sep. 7, 2022), [³⁴ Sakor & Soko, *supra* note 35, at 7.](https://blogs.prio.org/2022/09/the-ukraine-crisis-and-its-impact-on-africas-geopolitics-what-do-we-know-so-far/#:~:text=As%20Africa%20heavily%20relies%20on,sunflower%20oil%20to%20crude%20oi;Anna ET AL., supra note 33, at 6.</p></div><div data-bbox=)

³⁵ Foukles, *supra* note 35, at 7.

³⁶ *Id.*

³⁷ *Id.*

Yemen civilians, which amounts to over half of Yemen's population, face famine-like conditions as the situation is one of the world's worst humanitarian crises.³⁸

Before the war, both Ukraine and Russia provided 25 percent of the world's grain exports.³⁹ However, once Russia effectively blocked Ukraine's grain shipment passages, Ukraine's shipments dropped from about fourteen million tons to about five million tons, a net decrease of nine million tons from the 2021-2022 year to 2022-2023.⁴⁰ Eerily reminiscent of Holodomor, the devastating man-made famine orchestrated by Stalin's government in which Russia enacted exponentially high grain quotas to steal roughly four million tons of grain causing hunger and famine to Ukrainian farmers and civilians, Russia seems to be resorting to old tactics, but this time, Putin is not hiding behind grain quotas.⁴¹ The Secretary General of the United Nations stated, "[t]here is enough food for everyone in the world . . . but the issue is about distribution."⁴²

Additionally, Ukrainian officials and the United Nations Food and Agriculture Organization allege that "Russian troops have [even] looted stocks of Ukrainian grain and destroyed grain storage facilities, compounding the widespread destruction and suffering inflicted in the war."⁴³ According to a CNN article published on May 5, 2022, Ukraine's Defense Ministry

³⁸ World Food Program USA, Fighting Famine in Yemen (2022), <https://www.wfpusa.org/countries/yemen/#:~:text=Fighting%20Famine%20in%20Yemen,scale%20of%20loss%20is%20unconscionable.&text=More%20than%2017%20million%20Yemenis,they'll%20eat%20another%20meal>.

³⁹ K Oanh Ha ET AL., *How Russian Ships Are Laundering Grain Stolen From Occupied Ukraine*, BLOOMBERG (Oct. 17, 2022, 1:00 AM), <https://www.bloomberg.com/graphics/2022-russian-stolen-grains/?leadSource=verify%20wall>.

⁴⁰ *Id.*

⁴¹ UNIVERSITY OF MINNESOTA, HOLODOMOR, COLLEGE OF LIBERAL ARTS (2018), <https://cla.umn.edu/chgs/holocaust-genocide-education/resource-guides/holodomor> [hereinafter UNIVERSITY OF MINNESOTA HOLODOMOR]

⁴² Security Council Press Release 2022, *supra* note 14, at 2.

⁴³ Nick Cumming-Bruce, *The U.N. Says There Is Evidence that Russian Troops Are Looting Ukrainian Grain Stocks*, N.Y. TIMES (May 6, 2022),

estimated over 400,000 tons of grain has been stolen from Russian-occupied areas.⁴⁴ For instance, in a video taken in Melitopol, a Russian-occupied region, civilians reported a video that showed trucks marked with Russian military symbols carrying grain toward Crimea, another export-heavy country along the Black Sea.⁴⁵ The scale of the looting was overwhelming as Melitopol’s mayor reported that the Russians “went around all the villages, every yard and looked for agricultural machinery, [for] grain, which they subsequently looted.”⁴⁶ The Kyiv School of Economics also estimates that Russia stole or destroyed at least four million tons of grain and oilseed, amounting to \$1.8 billion throughout the Ukrainian territories it acquired.⁴⁷

B. Russia’s Attacks on Ukraine’s Energy Grids

Russia’s attacks on Ukraine’s energy grids also disrupt the flow of food exports from Ukraine to the rest of the world. Targeting energy infrastructure has severe consequences for a country’s economy and its citizens’ livelihood. Most notably, Russia attacked Ukraine’s energy infrastructure in October and November 2022 via missile and drone strikes, depriving millions of citizens of access to water, heat, and electricity.⁴⁸ Russia strategically planned these attacks on Ukraine’s energy infrastructure immediately preceding the winter months, when the temperature in Ukraine typically drops below negative twenty degrees celsius.⁴⁹ As a result of attacks, there

<https://www.nytimes.com/live/2022/05/06/world/ukraine-russia-warnews/the-un-says-there-is-evidence-that-russian-troops-are-looting-ukrainian-grain-stocks>.

⁴⁴ Sanyo c, *Russians steal vast amounts of Ukrainian grain and equipment, threatening this year’s harvest*, CNN (May 5, 2022, 12:54 PM), <https://www.cnn.com/2022/05/05/europe/russia-ukraine-grain-theft-cmd-intl/index.html>.

⁴⁵ Виктор Артеменко [Viktor Artemenko], TELEGRAM, <https://t.me/nikopoldpua/1847> (last visited May 11, 2023).

⁴⁶ *Id.*

⁴⁷ Oanh Ha ET AL., *supra* note 41, at 8.

⁴⁸ Human Rights Watch, *Ukraine: Russian Attacks on Energy Grid Threaten Civilians*, (Dec. 6, 2022, 12:01 AM), <https://www.hrw.org/news/2022/12/06/ukraine-russian-attacks-energy-grid-threaten-civilians> [hereinafter *Ukraine: Russian Attacks on Energy Grid Threaten Civilians*].

⁴⁹ *Id.*

have been at least seventy-seven accounted for casualties.⁵⁰ According to the United Nations Office for the Coordination of Humanitarian Affairs, these attacks deprived over three million in Kyiv, Ukraine’s capital city, of electricity and water.⁵¹ The purpose of these attacks was likely to “spread terror among the civilian population.”⁵²

C. The Grain Initiative

Notwithstanding Russia’s series of attacks on Ukraine’s grain exports, on July 22, 2022, Russia and Ukraine enacted a rare wartime agreement to resume grain exports and other agricultural products from select Ukrainian Black Sea ports after months of depleted exports and price hikes.⁵³ Because of the drastic downturn effect, grain export efforts were redirected to alternative routes such as via rail and barge to either Romanian or Polish ports.⁵⁴ However, these efforts only resulted in inconvenience, further damage to grain while in transport, and additional costs.⁵⁵ The agreement will primarily benefit Ukrainian farmers—many of whom are bankrupt due to a lack of agricultural materials such as fuel and fertilizers to effectively cultivate their crops.⁵⁶ The agreement will also benefit States that rely on Ukraine’s grain exports, especially those States identified as “hunger hotspots” according to the World Food Programme.⁵⁷

The purpose of the agreement is to resume Ukrainian trade, ease market prices back to pre-pandemic levels, and mitigate the consequences of the war on developing States that rely on

⁵⁰ Ukraine: Russian Attacks on Energy Grid Threaten Civilians, *supra* note 50, at 9.

⁵¹ *Id.*

⁵² *Id.* (stating that power was disrupted in 10,700,000 households throughout Ukraine, which constitutes half of the country’s population).

⁵³ Joseph Glauber & David Laborde, *The Russia-Ukraine grain agreement: What is at stake?*, INTERNATIONAL FOOD POLICY RESEARCH INSTITUTE [IFPRI], (Jul. 27, 2022), <https://www.ifpri.org/blog/russia-ukraine-grain-agreement-what-stake>.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

exports from Ukraine.⁵⁸ The deal is imperative because Ukraine's Black Sea ports have been effectively blocked since February 2022 by first the Russian military and then by mines inlaid by Ukraine to block Russian sea attacks after the initial invasion.⁵⁹ The agreement involves two separate internal agreements: (1) between Ukraine and Turkey encompassing grain exports from Ukraine and (2) between Russia and Turkey encompassing fertilizer and food exports from Russia.⁶⁰ Under the first part, both States agree to allow exports via ships from the ports of Odesa, Chornomorsk, and Pivdennyi; however, the agreement does not encompass the port of Mykolaiv, a port that comprises one-fifth of annual Black Sea exports, because it is so close to war zones within Ukraine.⁶¹ Under the second part, Russia is assured that its exports remain unaffected by sanctions as Russia is also a key exporter of agricultural products and fertilizers.⁶² Turkey is a relevant player in the grain industry because it serves as a primary processing center for Black Sea grain.⁶³ After going back and forth numerous times, Russia has recently agreed to extend its grain deal with Ukraine for sixty days beyond the original expiration date.⁶⁴ However, it should be noted that Russia continues to block seven of Ukraine's thirteen ports, despite the agreement.⁶⁵ Primarily, Russia's blockage of Ukrainian Black Sea export ports along with targeted attacks on Ukraine's energy infrastructure can likely be prosecuted as extermination, under the ICC's Rome Statute.

⁵⁸ Glauber & Laborde, *supra* note 55, at 10.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Peter Kenyon & Kaitlyn Radde, *Russia agrees to extend the Ukraine grain deal again*, NPR (Mar. 18, 2023, 1:05 PM), <https://www.npr.org/2023/03/18/1164538947/russia-ukraine-grain-deal-extended>.

⁶⁵ Swanson & Wong, *supra* note 25, at 5.

III. RUSSIA'S BLOCKAGE OF UKRAINIAN GRAIN EXPORTS IS A CRIME AGAINST HUMANITY

Russia's blockage of Ukraine's Black Sea ports constitutes extermination, a crime against humanity because (1) Russia committed this act as part of a widespread attack against Ukraine's civilian population and (2) Russia had knowledge of the attack. Throughout the Russia-Ukraine war, many looked to international criminal law as an avenue to hold Russia accountable for its actions. The ICC is the missing link in the international legal system in enforcing individual responsibility by achieving justice, ending impunity, helping end conflicts, remedying the deficiencies of ad hoc tribunals, taking over when domestic criminal justice institutions are unwilling or unable to act, and deterring future war criminals.⁶⁶

While prosecuting Russia comes with jurisdiction limitations, the ICC nevertheless has valid jurisdiction to prosecute for genocide, crimes against humanity, and war crimes committed by citizens of a non-state party if those crimes were committed within the territory of a state party *or* within a state that has accepted ICC jurisdiction.⁶⁷ While this comment will not delve into the merits of the jurisdictional inquiry, note that the ICC cannot prosecute States at large, but only individuals within States that have committed crimes under ICC jurisdiction. Also, as of February 2014, Ukraine has accepted ICC jurisdiction over alleged crimes committed pursuant to Rome Statute 12(3).⁶⁸

⁶⁶ U.N., Rome Statute of the International Criminal Court, (1998-1999), <https://legal.un.org/icc/general/overview.htm>.

⁶⁷ See also Jennifer Trahan, *Revisiting the History of the Crime of Aggression in Light of Russia's Invasion of Ukraine*, AMERICAN SOCIETY OF INTERNATIONAL LAW, (Apr. 19, 2022), <https://www.asil.org/insights/volume/26/issue/2>.

⁶⁸ See ICC Press Release, Ukraine accepts ICC jurisdiction over alleged crimes committed since 20 February 2014, (Sep. 8, 2015), <https://www.icc-cpi.int/Pages/item.aspx?>; Rome Statute art. 12(3), 2187 U.N.T.S. 90 ("If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State

Notably, ICC Prosecutor Karim Khan opened an investigation into the situation in Ukraine and noted he “has a reasonable basis to believe crimes within the jurisdiction of the Court [ICC] had been committed”⁶⁹ Following the investigation, the ICC issued an arrest warrant on March 17, 2023, against both Vladimir Putin, President of the Russian Federation, and Maria Lvova-Belova, Commissioner for Children’s Rights in the Office of the President of the Russian Federation, for the war crime of unlawful transfer and deportation of children from areas occupied by Ukraine to Russia.⁷⁰ While the ICC has not yet rendered an arrest for starvation or extermination, it seems that the ICC is finally headed in the direction of holding Russia accountable for its actions.

Codified in the Rome Statute, “crimes against humanity” are acts committed as a means of “widespread or systematic attacks directed against any civilian population, without knowledge of the attack.”⁷¹ The Prosecution bears the burden to prove the elements of the respective crime beyond a reasonable doubt. Unlike war crimes, which can only be prosecuted in the event of an armed conflict, crimes against humanity do not need to take place during war.⁷²

The Rome Statute enumerates the following acts as crimes against humanity:

“murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual

shall cooperate with the Court without any delay or exception in accordance with Part 9”); Rome Statute art. 5, 2187 U.N.T.S. 90 (limiting the ICC’s jurisdiction to the following crimes: genocide, crimes against humanity, war crimes, crime of aggression).

⁶⁹ See Statement of ICC Prosecutor, Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation, (Mar. 2, 2022), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-receipt-referrals-39-states>.

⁷⁰ *Id.*

⁷¹ Rome Statute art. 7, 2187 U.N.T.S. 90.

⁷² Rome Statute art. 8, 2187 U.N.T.S. 90.

violence of comparable gravity; persecution under any identifiable group or collectively on political, racial, national, ethnic, cultural, religious, gender . . . ; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character⁷³

Enumerated under Rome Statute Art. 7, extermination is defined as: “the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population.”⁷⁴ The elements of extermination are: “(1) [T]he perpetrator killed one or more persons; (2) the conduct was committed as part of a widespread or systemic attack directed against a civilian population; [and] (3) the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systemic attack against a civilian population.”⁷⁵ Prior to the formation of the ICC, the International Criminal Tribunal of Rwanda (“ICTR”) first considered the crime of extermination in *Prosecutor v. Akayesu*. There, the defendant, the mayor of Taba, Rwanda, was charged with twelve counts of crimes including genocide and crimes against humanity including rape and extermination.⁷⁶ The ICTR distinguished extermination and murder in that the nature of the crime is that is directed against a group of individuals and requires an element of mass destruction, unlike murder.⁷⁷ Compared to genocide, the *prima facie* elements of extermination are more far-reaching because the attack itself does not need to hinge on discriminatory grounds, like genocide does.⁷⁸ Thus, the ICC can likely prosecute Russia for blocking Ukraine's Black Sea ports through the route of

⁷³ Rome Statute art. 8, 2187 U.N.T.S. 90.

⁷⁴ *Id.* at art. 7(1)(b); 7(2)(b).

⁷⁵ International Criminal Court, Elements of Crimes, (2011), https://asp.icc-cpi.int/sites/asp/files/asp_docs/Publications/Compendium/ElementsOfCrime-ENG.pdf.

⁷⁶ *Prosecutor v. Akayesu*, Case No. ICTR-96-04, Judgment, ¶¶ 3-4 (Jun. 1, 2001), <https://www.un.org/en/preventgenocide/rwanda/pdf/AKAYESU%20-%20APPEAL%20JUDGEMENT.pdf>.

⁷⁷ *Id.* at ¶ 592.

⁷⁸ *Id.* at ¶ 457.

extermination, a crime against humanity, because Russia intentionally committed this act as part of a widespread and systemic attack against Ukraine’s civilian population.

A. Russia Caused Civilian Deaths via Its Blockage of Ukraine’s Grain Export Ports

Russia’s actions satisfy the first element of extermination because its attack on Ukrainian grain exports caused civilian deaths. The first element is the “actus reus” common to most criminal statutes. Actus reus refers to the commission of an act. The ICC’s *Elements of Crimes* publication notes that the term “killed” is interchangeable with “caused death.”⁷⁹ This comment will utilize “caused death” to refer to the first element hereinafter. As defined by the ICTR in *Prosecutor v. Akayesu*, an “attack” is an unlawful act of the kind enumerated in Article 3(a)-(i) such as murder or extermination and must be directed against a civilian population on discriminatory grounds such as on the basis of nationality, political views, ethnicity, race, or religious views, in order to constitute as a crime against humanity.⁸⁰

Extermination is the killing of a collective group of civilians based on discriminatory grounds.⁸¹ In *Rutaganda v. Prosecutor*, the defendant, a member of the Mouvement Républicain National pour le Développement et la Démocratie (“MRND”) and the Second Vice President of the Interahamwe, a Hutu military group, was convicted of genocide and extermination and sentenced to life imprisonment.⁸²

⁷⁹ International Criminal Court, *Elements of Crimes*, (2011), https://asp.icc-cpi.int/sites/asp/files/asp_docs/Publications/Compendium/ElementsOfCrime-ENG.pdf.

⁸⁰ *Rutaganda v. Prosecutor*, Case No. ICTR 96-3-T, Judgment and Sentence ¶ 70, 72, 83 (Dec. 6, 1999), <https://www.refworld.org/cases,ICTR,48abd5880.html> (quoting *Akayesu*, Case No. ICTR-96-04).

⁸¹ *Id.* at ¶ 423.

⁸² *Id.* at ¶ 30.

The ICTR explained that the actus reus is an act or omission, or that is discriminatory in nature, directed against members of the civilian population, and includes, but it is not limited to the direct act of killing.⁸³ The ICTR also stated that the acts or omissions can be analyzed cumulatively.⁸⁴ The ICTR found the defendant guilty of extermination because he singled out a group of Tutsi civilians and ordered the detention and ultimately the attack of the civilians.⁸⁵ The defendant was present and participated in the attack.⁸⁶ The ICTR also emphasized that a number of Tutsis, their family members, and others identified by witnesses were also killed in the attack.⁸⁷

As a threshold matter, the actus reus, or act committed by Russia, is the deliberate blockage of numerous key Black Sea grain export ports via naval attacks.⁸⁸ Because there is ample evidence that not only were at least thousands of civilians killed solely in the Mariupol attack, but also at least 8,000 were killed collectively, the first element is likely satisfied.⁸⁹ As a general matter, when a State invokes a naval attack, casualties are to be expected, whether intentional or not. Just as the defendant in *Rutaganda*, singled out a group of Tutsi civilians and attacked them, Putin ordered the blockage of the grain ports resulting in at least 8,000 Ukrainian civilian deaths.⁹⁰ Further, although there is not enough accumulation of casualty evidence *yet* as to the implications

⁸³ *Rutaganda*, Case No. ICTR 96-3-T at ¶ 84.

⁸⁴ *Id.*

⁸⁵ *Id.* at ¶ 406-07.

⁸⁶ *Id.*

⁸⁷ *Id.* at ¶ 407; *see also* Prosecutor v. Ntakirutimana & Ntakirutimana, Case No. ICTR-96-10 & ICTR-96-17-T, Judgment and Sentence ¶ 813 (Feb. 21, 2003), <https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-96-17/MS12461R0000545560.PDF>; *see also* Prosecutor v. Seromba, Case No. ICTR-2001-66-I, Judgment ¶ 189 (Mar. 12, 2008), https://www.refworld.org/publisher,ict_r,,48abd58ed,0.html (interpreting extermination as "any act . . . which contributes directly or indirectly to the killing of a large number of individuals").

⁸⁸ Mongilio, *supra* note 30, at 6.

⁸⁹ Anna ET AL., *supra* note 33, at 6.

⁹⁰ *Rutaganda*, Case No. ICTR 96-3-T at ¶ 406-07; U.N. rights chief deplors Ukraine death toll, *supra* note 34, at 7.

of the grain shortage as it affects Ukrainian civilians, it is likely that just as Ukraine faced in its history, the lack of grain will drive the country into famine insofar as Russia fails to agree to further extensions of the Grain Agreement.⁹¹ However this time, Putin is not hiding behind increased grain quotas, but simply on a power trip of his own accord.⁹²

Because the war is still ensuing, there will likely be additional long-term casualties to not only additional Ukrainian civilians, but also to those developing States that depend on Ukraine's grain exports such as Africa, Afghanistan, and Yemen.⁹³ The long-term casualties as a result of lack of grain will lead to famine levels in States still recovering from their wartime effects such as Afghanistan and Yemen.⁹⁴ The reality is that Russia's blockade is not only blocking Ukrainians and export-dependent countries from food, but also collectively blocking the world from sufficient access to food. Even if Russia argues the effects of the grain blockages are not as direct as the defendant in *Rutaganda*, who was physically present and participated in the attack, the ICTR has interpreted the actus reus to be satisfied even if the act indirectly contributes to the mass killing of civilians.⁹⁵ Thus, the ICC Prosecutor can still argue actus reus satisfaction even based on indirect contribution to the mass killings.

Alternatively, even if the ICC does not find that the act of blocking the Black Sea ports satisfies the first element of the crime of extermination, the ICC can look to Russia's attacks on Ukraine's energy grids.

⁹¹ Kenyon & Radde, *supra* note 66, at 11.

⁹² UNIVERSITY OF MINNESOTA HOLODOMOR, *supra* note 43, at 8.

⁹³ Mednick, *supra* note 31, at 6.

⁹⁴ *Id.*

⁹⁵ *Seromba*, Case No. ICTR-2001-66-I at ¶ 189.

Because Russia affirmatively attacked Ukraine’s energy infrastructure in October and November 2022 through missile and drone strikes, millions of Ukrainians lost access to water, heat, and electricity.⁹⁶ As a result of these targeted attacks, there have been at least seventy-seven accounted-for casualties.⁹⁷ While Russia may argue that proving causation based on its wartime actions may be too remote or that it may be too soon to tell, the ICTR has found that an attack can be indirect and can still satisfy the first element.⁹⁸ The ICC can also view Russia’s blockage of grain export ports and attack on Ukraine’s energy grids collectively, just like the ICTR stated in *Rutaganda*.⁹⁹ Thus, the ICC can also use Russia’s attacks on Ukraine’s energy grids to satisfy the first element of the crime of extermination in addition to, in conjunction with, or in lieu of the blockage of Ukrainian Black Sea grain export ports.

B. Russia Knowingly and Intentionally Attacked Ukraine’s Grain Supply via Black Sea Port Blockages as Part of a Widespread and Systematic Attack Against Ukrainian Civilians.

Russia knowingly and intentionally committed grain blockages as part of a widespread attack against Ukrainian civilians. The thrust of the second and third elements is on the mental state insofar as the act must have been committed with knowledge or intent that it would be part of the aforementioned widespread or systematic attack.¹⁰⁰ “An attack is widespread if it occurs on a large scale, directed at many victims.”¹⁰¹ International tribunals have stated that there is no

⁹⁶ Ukraine: Russian Attacks on Energy Grid Threaten Civilians, *supra* note 50, at 9.

⁹⁷ *Id.*

⁹⁸ See *Seromba*, Case No. ICTR-2001-66-A, Judgment, P 189 (Mar. 12, 2008).

⁹⁹ *Rutaganda*, Case No. ICTR 96-3-T at ¶ 84 (quoting *Akayesu*, Case No. ICTR-96-04).

¹⁰⁰ *Id.*; see also Prosecutor v. Al-Bashir, ICC-02/05-157-AnxA, Situation in Darfur, The Sudan, ¶ 168 (Dec. 9, 2008), <https://www.legal-tools.org/doc/b25e05/pdf> (finding that the prosecution provided sufficient and corroborative evidence that Al Bashir’s forces and agents inflicted conditions of life that lead to the deaths of at least 100,000 civilians, amounting to mass killing).

¹⁰¹ The Center for Justice & Accountability, *Crimes Against Humanity*, (2023), <https://cja.org/human-rights-issues/crimes-against-humanity/#:~:text=An%20attack%20is%20widespread%20if,directed%20against%20any%20civilian%20population.>

numerical minimum to constitute an attack as large scale.¹⁰² “An attack is systematic it is sufficiently organized and not random, such as in a pattern of similar crimes.”¹⁰³

International tribunals have found the mens rea component satisfied when the defendant has personally participated in and has held a leadership role in the attack.¹⁰⁴ In *Prosecutor v. Munyakazi*, the defendant was a landowner and farmer in Bugarama community, Rwanda, where he was found responsible for the death of over 5,000 civilians during attacks against Shangi and Mibilizi parishes.¹⁰⁵ The Trial Chamber determined that the defendant possessed a leadership role in the attack because it was confirmed by witnesses and participants in the attack.¹⁰⁶ Specifically, witnesses clarified that the defendant oversaw and ordered the destruction of the parishes’ property and directly fired shots to begin the killing of civilians inside the parishes.¹⁰⁷ The court explained that “[t]he inquiry is not whether the specific intent was formed prior to the commission of the acts, but whether at the moment of commission the perpetrators possessed the necessary intent.”¹⁰⁸ Thus, the Appeals Chamber of the ICTR found that the collective evidence of the defendant’s

¹⁰² See *Prosecutor v. Stakic*, Case No. IT-97-24-A, Judgment, ¶ 516 (Mar. 22, 2006) <https://cld.irmct.org/assets/filings/Judgement-Stakic.pdf> (para 516).

Prosecutor v. Al-Bashir, ICC-02/05-157-AnxA, Situation in Darfur, The Sudan, ¶ 168 (Dec. 9, 2008), <https://www.legal-tools.org/doc/b25e05/pdf>

¹⁰³ *Id.*; see also *Prosecutor v. Kayishema and Ruzindana*, Case No. ICTR-95-1-T, Judgment, (May 21, 1999), <https://www.refworld.org/cases,ICTR,48abd5760.html> (finding the defendants guilty of extermination because the attacks in Rwanda were generally carried out in a systemic manner insofar as they were conducted “pursuant to a pre-arranged policy or plan”).

¹⁰⁴ See *Prosecutor v. Munyakazi*, Case No. ICTR-97-36A-A, Judgment, ¶ 142 (Sep. 28, 2011), <https://cld.irmct.org/assets/filings/ICTR-97-36A-0161-1-MUNYAKAZI-APPEALS-JUDGEMENT.pdf>.

¹⁰⁵ *Id.* at ¶ 2.

¹⁰⁶ *Id.* at ¶ 54.

¹⁰⁷ *Id.* at ¶. 64

¹⁰⁸ *Id.* at ¶ 142.

active participation in the killing of thousands of civilians satisfies intent for extermination and genocide.¹⁰⁹

Russia both *knowingly* and *intentionally* blocked Ukrainian grain shipments within the scope of the third element of extermination. The second and third elements are intertwined because of the systematic prong.¹¹⁰ Because organization inherently connotes elements of knowledge and intent, the Prosecution can utilize the same evidence concerning the grain blockages as applied to both elements. Even if Russia argues that it did not attack the Black Sea ports knowing it would disrupt the flow of grains in not only Ukraine, but also around the world, Russia's targeted attacks on Ukraine's energy infrastructure serve as an additional pathway to satisfy the knowledge and intent prongs. For instance, credible organizations, such as Human Rights Watch, noted that Russia *strategically* attacked Ukraine's energy infrastructure as a means to deprive millions of electricity, water, heat, and food, and ultimately as a means to impart terror throughout the population.¹¹¹ At a minimum, Russia executed these attacks knowing there would be large-scale casualties primarily within the Ukrainian population. Further evidence of mens rea is because Putin has likely personally participated in and has held a leadership role in the blockades, similar to the defendant in *Munyakazi*.¹¹² While the defendant in *Munyakazi*, personally fired shots at the targeted civilians inside the parishes, Putin did not personally withhold tons of grain from

¹⁰⁹ *Munyakazi*, Case No. ICTR-97-36A-A, at ¶ 142; *see also* Rome Statute art. 30, 2187 U.N.T.S. 90. (emphasis added) ("For the purposes of this article, a person has intent where: (a) In relation to conduct, that person means to engage in the conduct; (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.")

¹¹⁰ International Criminal Court, Elements of Crimes, (2011), https://asp.icc-cpi.int/sites/asp/files/asp_docs/Publications/Compendium/ElementsOfCrime-ENG.pdf.

¹¹¹ Ukraine: Russian Attacks on Energy Grid Threaten Civilians, *supra* note 50, at 9.

¹¹² *Munyakazi*, Case No. ICTR-97-36A-A, at ¶ 142.

civilians.¹¹³ However, Putin did order the grain export blockages, just as the defendant in *Munyakazi* ordered the destruction of the parishes.¹¹⁴ Therefore, there is sufficient evidence to indicate that Russia knowingly and intentionally attacked Ukraine's Black Sea ports to deprive Ukrainians and other populations of grain on a widespread and systemic scale and thus, can and should be prosecuted for the crime against humanity of extermination.

Moreover, Russia's blockage of Ukraine's Black Sea grain ports constitutes both widespread and systemic within the meaning of article 7 because of the large-scale and organized nature of the attacks. The blockage of Ukrainian grain ports was part of a widespread attack directed at the entirety of the Ukrainian population because targeting grain ports thereby affects the grain supply of not only the entirety of the Ukrainian population, but also populations of other States that heavily depend on Ukrainian grain exports such as Africa, Afghanistan, and Yemen.¹¹⁵ Specifically, one singular port city suffered *thousands* of casualties as a result of Russia's seizure of the city's grain port.¹¹⁶ Not only did thousands of civilians die in one city, but as of February 2023, the United Nations Human Rights Office estimated that at least 8,000 Ukrainians died as a collective result of the war.¹¹⁷ While the estimated death toll of Ukrainian citizens is not as high as the 100,000 civilians in the *Al Bashir* case, the death toll will continue to rise as the war is still ongoing and thus, amounts to a widespread attack when looking solely at Ukrainian casualties.¹¹⁸ In fact, because there is no requisite numerical minimum to constitute an attack as large scale, the ICC will likely find 8,000 casualties sufficient.¹¹⁹ On the other hand, when summing both direct

¹¹³ *Munyakazi*, Case No. ICTR-97-36A-A, at ¶ 142.

¹¹⁴ *Id.*

¹¹⁵ Mednick, *supra* note 31, at 6.

¹¹⁶ Anna ET AL., *supra* note 33, at 6.

¹¹⁷ U.N. rights chief deplors Ukraine death toll, *supra* note 34, at 7.

¹¹⁸ *Al-Bashir*, ICC-02/05-157-AnxA at ¶ 168.

¹¹⁹ *See Stakic*, Case No. IT-97-24-A, ¶ 516.

Ukrainian casualties as well as civilians in other dependent countries such as Africa, Afghanistan, and Yemen, Russia's attacks likely constitute as widespread under article 7(1).

Additionally, Russia's blockage of grain exports was systematic because it was orchestrated in a calculated and organized manner, rather than arbitrarily. It was no coincidence that Russia happened to seize multiple Ukrainian grain ports along the "grain corridor" of the world.¹²⁰ Russia was meticulous and calculated in the ports it decided to attack as its goal was to hinder Ukraine's grain exports, economy, and civilian livelihood. It is frankly impossible for Russia to argue that it was mere happenstance that Ukraine's grain shipments fell from fourteen million pre-war to five million post-war because if the ports continued to function under Ukraine as they were pre-war, Ukraine's grain exports would have remained level.¹²¹ Even so, there is ample evidence portraying Russian soldiers resorting to looting grain so as to deprive Ukrainians of it and thus, connotes organization and calculation.¹²²

Despite the Prosecution's ability to meet the elements of extermination theoretically, Russia may defend its aggressive actions using a variety of legal arguments. Russia's most direct and predictable legal argument for its actions is self-defence.¹²³ Self-defence is a fundamental right codified in Article 51 of the UN Charter.¹²⁴ The International Court of Justice has found that the principle of self-defence derives from customary international law in that it requires necessity and

¹²⁰ Mednick, *supra* note 31, at 6.

¹²¹ Oanh Ha ET AL., *supra* note 41, at 8.

¹²² Fylyppov & Lister, *supra* note 46, at 9; Артеменко, *supra* note 47, at 9.

¹²³ RENÉ VÄRK, RUSSIA'S LEGAL ARGUMENTS TO JUSTIFY ITS AGGRESSION AGAINST UKRAINE, INTERNATIONAL CENTER FOR DEFENCE AND SECURITY [ICDS], (Nov. 7, 2022), https://icds.ee/wp-content/uploads/dlm_uploads/2022/11/ICDS_Analysis_Russias_Legal_Arguments_to_Justify_its_Aggression_Against_Ukraine_Rene_Vark_November_2022.pdf.

¹²⁴ U.N. Charter art. 51.

proportionality.¹²⁵ While Russia may have satisfied its procedural obligations in informing the Security Council via formal letters of assistance, it will likely fail to satisfy the necessary and proportionality requirements.¹²⁶ For example, Russia has failed to provide a legitimate reason why blockading Ukraine's grain exports and attacking Ukraine's energy infrastructure was necessary. In fact, during the war, the international adjudicative bodies were all looking to de-escalate and find a peaceful resolution. Therefore, it will be difficult for Russia to argue the grain blockades and attacks were out of necessity, especially because Russia was the first attacker. Second, instead of using self-defence for what its inherent function, to repel or avert an armed attack, Russia used its aggression to dominate and conquer Ukraine, which is far from meeting the proportionality requirement.¹²⁷

IV. LEGAL GAPS AND POST-JUDGMENT ENFORCEABILITY

Even supposing all elements of extermination are satisfied, enforcing international law jurisprudence remains to be an uphill battle due to (1) vague Rome Statute provisions and (2) lack of State cooperation

A. Rome Statute Legal Gaps

First off, holding Russia and other similarly situated State actors accountable for invoking extermination and inherently global food insecurity crises, the Rome Statute must be drafted with greater particularity. Specifically, drafters should update the crimes against humanity to include a more precise definition of "deprivation of food." Currently, Article 7 of the Rome Statute does not define "deprivation of food," but rather includes it under the umbrella of extermination.¹²⁸

¹²⁵ VÄRK, *supra* note 144, at 22 (citing Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. Rep. 14, ¶ 199 (June 27)).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Rome Statute art. 7(1), 2187 U.N.T.S. 90.

Instead, drafters should add “deprivation of food” as a distinct enumerated crime against humanity rather than within the confines of extermination. For example, drafters can both provide the prescribed actus reus and mens rea that accompany such crimes against humanity along with a description of what constitutes famine. In doing so, drafters can promote accountability by providing a more specific description of the crime.

It is also noteworthy to mention that although the Rome Statute recently added “starvation” to its series of war crimes under Article 5, it is located under war crimes rather than crimes against humanity.¹²⁹ Circumscribing a similar “deprivation of food” crime within the scope of the crimes against humanity allows for prosecution at a larger scale in that State actors can be prosecuted not only for acts committed during wartime, but also for acts committed during any other time as well. In addition, even though the right to food is technically only codified within international human rights law, enumerating it further within the Rome Statute would only serve to codify it as a legitimate and serious crime with legitimate and serious consequences, just like those of any other crime against humanity.

B. Post-Judgment Enforceability

Further, State cooperation serves as an unfortunate roadblock for international criminal law at large. Because the ICC is largely dependent on the compliance of State parties, when States refuse to adhere to ICC decisions, the ICC ultimately loses its credibility. Because the purpose of the ICC is to serve as a court of last resort, States fail to enforce compliance with it as it competes with values of sovereignty. States likely also fail to comply with the ICC because each country adjudicates and punishes differently; in turn, States would prefer to punish and seek justice in their own way. State cooperation is likely also weak because the ICC is not self-executing in that it is

¹²⁹ Rome Statute art. 5, 2187 U.N.T.S. 90.

only as reputable and legitimate as member States decide it to be. Thus, the enforceability may pose a barrier to successful prosecution if States fail to submit to jurisdiction.

CONCLUSION

The ICC faces an invaluable opportunity to promote justice and accountability by ensuring the prosecution of Russia for the crime against humanity of extermination. There is evidence sufficient to prosecute Russia for the crime of extermination because Russia's blockage of key Ukrainian grain ports (1) directly caused civilian deaths and ultimately will likely cause more civilian deaths; (2) was both widespread and systemic within the meaning of article 7 due to being organized and large in scale; and (3) both *knowingly* and *intentionally* blocked Ukrainian grain exports because its attacks were on their face, targeted. While Russia's actions may satisfy all the elements, with any international criminal prosecutions comes the issue of enforceability, especially since the ICC has not adjudicated an extermination prosecution of this caliber to date. It is up to the ICC to make effective and efficient changes to the plain language of the Rome Statute and provide incentivization for State compliance. Even with the newly agreed upon grain initiative, the international community must not sweep the lost grain under the rug.