
2024

Negotiating Environmental Justice in Ukraine

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Paul R. Williams and Sindija Beta, *Negotiating Environmental Justice in Ukraine*, 56 Case W. Res. J. Int'l L. 271 (2024)

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NEGOTIATING ENVIRONMENTAL JUSTICE IN UKRAINE

Dr. Paul R. Williams † & *Sindija Beta* ††

ABSTRACT

This Article examines the dynamics of negotiating environmental justice in Ukraine amid pressure from certain international actors for an Amnesty-Based Peace in Ukraine. While it is currently unclear how Russia’s war in Ukraine will end, it is likely that there will be significant discussion around forms of justice, including how to address the grave environmental damage Russia has caused in Ukraine. This Article looks at previous precedents of Amnesty-Based Peace in Angola, Haiti, and Uganda and decisions and commentaries by international actors to argue that appeasement has not fostered durable peace and is generally disfavored by judicial and non-judicial bodies. Additionally, the infrastructure Ukraine and the international community have built to hold those accountable for atrocity crimes, including environmental crimes, in Ukraine significantly hinders Russia’s hopes to persuade Ukraine to abolish its plans for accountability.

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I. INTRODUCTION

The Russian war of aggression against Ukraine manifests not only through conventional acts of war but extends to a wide spectrum of atrocity crimes,¹ including ecocide, which delineates the deliberate and systemic destruction of Ukraine's natural environment² - amplifying the humanitarian crisis and violating a series of international laws and norms.³

Ukraine has launched a comprehensive initiative to hold Russia accountable for the full range of atrocity crimes, including those with environmental ramifications.⁴ This initiative leverages domestic prosecutions,⁵ embraces the jurisdiction of the International Criminal

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1. See, e.g., Press Release, Antony J. Blinken, 71st Sec'y of State, Crimes Against Humanity in Ukraine (Feb. 18, 2023) <https://state.gov/crimes-against-humanity-in-ukraine/> [<https://perma.cc/X3WL-2WW8>].
 2. See Radina Gigova, *Russia is Accused of 'Ecocide' in Ukraine. But What Does That Mean?*, CNN (Jul. 3, 2023, 3:55 AM), <https://edition.cnn.com/2023/07/02/world/ukraine-ecocide-dam-collapse-crime-climate-intl-cmd/index.html> [<https://perma.cc/29HC-TL65>]; see also DAVID ZIERLIER, *THE INVENTION OF ECOCIDE: AGENT ORANGE, VIETNAM, AND THE SCIENTISTS WHO CHANGED THE WAY WE THINK ABOUT THE ENVIRONMENT* 19 (2011).
 3. See, e.g., Rome Statute of the International Criminal Court art. 8 bis (2)(b)(iv), July 12, 1999, U.N. Doc. A/CONF.183/9 [hereinafter Rome Statute]; see Clara Gutman-Argemí et al., *Ukrainians Are Accusing Russia of Ecocide. What Does That Mean?*, FOREIGN POL'Y (June 9, 2023, 3:59 PM), <https://foreignpolicy.com/2023/06/09/ecocide-ukraine-russia-dam-war-crimes/> [<https://perma.cc/7D5Y-NL48>].
 4. Press Release, U.N. Off. Of the High Comm'r of Human Rights, Independent International Commission of Inquiry on Ukraine to the Human Rights Council: War Crimes Have Been Committed in Ukraine (Sept. 23, 2022), <https://www.ohchr.org/en/press-releases/2022/09/independent-international-commission-inquiry-ukraine-human-rights-council> [<https://perma.cc/5RCZ-E5D2>]; *The First Meeting of the International Working Group on the Environmental Consequences of War Took Place in Kyiv*, PRES. OF UKR. (June 30, 2023, 9:06), <https://www.president.gov.ua/en/news/u-kiyevi-vidbulosya-pershe-zasidannya-mizhnarodnoyi-robochoy-83949> [<https://perma.cc/8BWA-KNSQ>].
 5. See Nathan Warters, *Q&A: Prosecuting War Crimes in Ukraine*, W&M NEWS (Feb. 20, 2023), <https://news.wm.edu/2023/02/20/qa-prosecuting-russian-war-crimes-in-ukraine/> [<https://perma.cc/BX2A-9H49>].

Court (ICC),⁶ and champions international efforts to form a tribunal specifically tasked with addressing the crime of aggression.⁷ Such a tribunal would inherently possess the jurisdiction to adjudicate over all facets of the armed conflict resulting from the act of aggression, thereby encapsulating environmental crimes within its purview.⁸

Inevitably, Ukraine and Russia will find themselves sitting across the negotiation table to bring an end to the armed conflict. A number of issues will be on the table relating to sovereignty, territory, NATO security guarantees, and human rights protections. Undoubtedly, Russia will seek to nullify Ukraine's efforts to hold Russia accountable for its atrocity crimes, and thus assert the need for amnesty. At this point, the parties will be "negotiating justice."⁹

Russia's future efforts to seek amnesty at the negotiation table are already being furthered by a peace proposal China put forward in early 2023,¹⁰ and rationalized by a peace proposal key African states tabled

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6. Verkhovna Rada, Resolution of the Verkhovna Rada of Ukraine: Declaration on the Recognition of the Jurisdiction of the International Criminal Court by Ukraine over Crimes Against Humanity and War Crimes Committed by Senior Officials of the Russian Federation and Leaders of Terrorist Organizations "DNR" and "LNR," Which Led to Extremely Grave Consequences and Mass Murder of Ukrainian Nationals *translated in* INT'L CRIM. CT. (Sep. 8, 2015); Press Release, Int'l Crim. Ct., ICC Prosecutor Extends Preliminary Exam. Of the Situation in Ukr. Following Second Article 12(3) Declaration (Sept. 29, 2015), <https://icc-cpi.int/news/icc-prosecutor-extends-preliminary-examination-situation-ukraine-following-second-article-123> [<https://perma.cc/7UQS-LLKP>].
 7. Jennifer Hansler, *Ukrainians Push for US to Support Special Tribunal to Prosecute Russian Leadership for Crime of Aggression*, CNN (Dec. 14, 2022, 9:56 PM), <https://cnm.com/2022/12/14/politics/ukraine-special-tribunal-russia-crime-of-aggression/index.html> [<https://perma.cc/X6RR-XJKX>].
 8. Rein Tammsaar, *An International Special Tribunal is the Only Viable Path to a Just and Lasting Peace in Ukraine*, JUST SEC. (May 9, 2023), <https://justsecurity.org/86516/an-international-special-tribunal-is-the-only-viable-path-to-a-just-and-lasting-peace-in-ukraine/> [<https://perma.cc/8ACT-NB4V>]; Currently, ecocide is not a crime the ICC has authority to prosecute. However, the prosecution for crimes of aggression encompasses "damage to the natural environment" which may act as a current substitute for ecocide. Rome Statute, *supra* note 3, art. 8(2)(b)(iv).
 9. See Nick Grono & Caroline Flintoft, *Negotiating Justice to Understand Accountability*, INT'L CRISIS GRP. (June 25, 2007), <https://www.crisisgroup.org/global/negotiating-justice-understand-accountability> [<https://perma.cc/NZX7-MCFA>].
 10. See *China's Position on the Political Settlement of the Ukraine Crisis*, MINISTRY OF FOREIGN AFFS. OF CHINA (Feb. 24, 2023, 9:00), https://www.fmprc.gov.cn/eng/zxxx_662805/202302/t20230224_11030713.html [<https://perma.cc/7AUM-4K98>].

during their meetings with Ukrainian and Russian officials in the summer of 2023 in an attempt to mediate the conflict.¹¹

Despite the prevailing public narrative of no peace without justice,¹² Ukraine may confront a precarious and somewhat lukewarm backing from its allies regarding its stance on accountability. This may be due to a deep-seated tradition of brokered amnesties,¹³ wherein justice is sacrificed in the pursuit of peace (further described as Amnesty-Based Peace).¹⁴ The predilection towards this approach may find further reinforcement through a realpolitik lens adopted by Ukraine's allies, driven by a pragmatic desire to relegate this war to history and obviate the potentially catastrophic repercussions of an escalated conflict involving Russia and NATO, wherein nuclear engagement is a perilous possibility.

History tells us however that Amnesty-Based Peace is seldom a durable peace. While in some instances—e.g. Chile,¹⁵ Northern Ireland,¹⁶ and South Africa¹⁷—amnesties have brought a form of durable peace,¹⁸ in many others, *de facto* and *de jure* amnesty have prolonged and

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11. Catherine Nzuki, *Africa's Peace Delegation: A New Chapter for Africa and the Ukraine War*, CTR. FOR STRATEGIC & INT'L STUD. (Jun. 16, 2023), <https://www.csis.org/analysis/africas-peace-delegation-new-chapter-africa-and-ukraine-war> [https://perma.cc/2T2A-DL7U].
 12. *See Accountability for Atrocity Crimes*, U.N. OFF. ON GENOCIDE PREVENTION & THE RESP. TO PROTECT, <https://www.un.org/en/genocide-prevention/accountability.shtml> [https://perma.cc/9NQF-VLWN] [hereinafter U.N., *Accountability*].
 13. Louise Mallinder, *Amnesties in the Pursuit of Reconciliation, Peacebuilding, and Restorative Justice*, in RESTORATIVE JUSTICE, RECONCILIATION, AND PEACEBUILDING 138, 139 (Jennifer J. Llewellyn & Daniel Philpott eds., 2014).
 14. Grono & Flintoft, *supra* note 9.
 15. *See Chile: Amnesty Laws Keeps Pinochet's Legacy Alive*, AMNESTY INT'L (Sept. 11, 2015), <https://amnesty.org/en/latest/news/2015/09/chile-amnesty-law-keeps-pinochet-s-legacy-alive/> [https://perma.cc/7XCR-5ZZ6].
 16. *See Jill Lawless, As It Turns 25, N Ireland's Good Friday Agreement Explained*, AP NEWS (Apr. 17, 2023, 5:10 AM), <https://apnews.com/article/northern-ireland-good-friday-agreement-explained-8165d2fb0d7537401047d5ff9ba1a39e> [https://perma.cc/ZDL9-U8R5].
 17. *See Phiroshaw Camay & Anne J. Gordon, The National Peace Accord and Its Structures*, O'MALLEY, <https://omalley.nelsonmandela.org/index.php/site/q/03lv02424/04lv03275/05lv03294/06lv03321.htm> [https://perma.cc/AKU9-E53P].
 18. Erik Melander, *Justice or Peace?: A Statistical Study of the Relationship Between Amnesties and Durable Peace* 13 (JAD-PbP Working Paper Series No. 4, 2009).

intensified the conflict—e.g. Angola,¹⁹ Democratic Republic of the Congo,²⁰ El Salvador,²¹ Haiti,²² Mozambique,²³ Sierra Leone,²⁴ and Uganda.²⁵ Notably, in a number of conflicts, the infusion of accountability has directly promoted the durability of the peace, like in Bosnia,²⁶ Colombia,²⁷ Croatia,²⁸ Kosovo,²⁹ Liberia,³⁰ Rwanda,³¹ and Timor-Leste.³²

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19. See C. Knudsen et al., *Peace Agreements: The Case of Angola*, RELIEF WEB (Oct. 23, 2000), <https://reliefweb.int/report/angola/peace-agreements-case-angola> [<https://perma.cc/YA45-D876>].
 20. See Ctr. for Preventative Action, *Conflict in the Democratic Republic of the Congo*, COUNCIL ON FOREIGN RELATIONS, <https://www.cfr.org/global-conflict-tracker/conflict/violence-democratic-republic-congo> [<https://perma.cc/PPG3-HDWB>] (Dec. 18, 2023).
 21. See Diana Villiers Negroponte, *Remembering El Salvador's Peace Accord: Why Was That Peace Elusive?*, BROOKINGS INST. (Jan. 19, 2012), <https://www.brookings.edu/articles/remembering-el-salvadors-peace-accord-why-was-that-peace-elusive/> [<https://perma.cc/P8V9-KAN8>].
 22. See Rachael Bunyan, *25 Years After 'Operation Uphold Democracy,' Experts Say the Oft-Forgotten U.S. Military Operation Still Shapes Life in Haiti*, TIME, <https://time.com/5682135/haiti-military-anniversary/> [<https://perma.cc/XM63-4F4Y>] (Sept. 24, 2019, 11:47 AM).
 23. See Cristina Krippahl, *Peace in Mozambique: Third Time Lucky?*, DEUTSCHE WELLE (Aug. 5, 2020), <https://www.dw.com/en/peace-in-mozambique-third-time-lucky/a-54444504> [<https://perma.cc/5MBV-4WU9>].
 24. See *Sierra Leone 2022*, AMNESTY INT'L, <https://www.amnesty.org/en/location/africa/west-and-central-africa/sierra-leone/report-sierra-leone/> [<https://perma.cc/PT86-GHWX>].
 25. See *Rebellion to Self-Preservation*, INVISIBLE CHILDREN, <https://invisiblechildren.com/challenge/history/> [<https://perma.cc/R3X6-8Y6D>].
 26. Jim Hooper, *Dayton's Mandate for Apprehending War Criminals*, PBS, <https://www.pbs.org/wgbh/pages/frontline/shows/karadzic/trial/hooper.html> [<https://perma.cc/V6RT-KVP4>].
 27. See Claudia Josi, *Accountability in the Colombian Peace Agreement: Are the Proposed Sanctions Contrary to Colombia's International Obligations*, 406 SW. L. REV. 401, 402 (2017).
 28. See Hooper, *supra* note 26.
 29. See Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, ¶ 12, U.N. Doc. S/1999/648 (June 7, 1999) [hereinafter Rambouillet Accords].
 30. See *Liberia: Accra Agreement's Unfinished Business*, HUM. RTS. WATCH (Aug. 16, 2023, 11:00 AM), <https://www.hrw.org/news/2023/08/16/liberia-accra-agreements-unfinished-business> [<https://perma.cc/XER9-MLSK>].
 31. See Gerald Gahima, *Accountability for Atrocity: Lessons from Rwanda*, 8 GEO. J. INT'L AFFS. 107, 108, 111 (2007).
 32. S.C. Res. 1272, at 2 (Oct. 25, 1999).

There is cautious optimism that Ukraine's allies, informed by historical lessons, will navigate a way that both backs Ukraine's path to peace along the axis of accountability and curtails Russia's threat to nuclearize the conflict.³³

Further, there is a growing understanding that even in the face of realpolitik pressure to seek an Amnesty-Based Peace, there are limited options to grant full amnesty. The realpolitik inclination toward amnesty is constrained by the existence of the ICC and the fact that President Vladimir Putin has been indicted for war crimes.³⁴ The ICC operates as an independent mechanism, and neither its jurisdiction nor the status of indictments can be altered by a peace agreement.³⁵

Moreover, there is an emerging global narrative of the need for accountability in the face of aggression and atrocity crimes.³⁶ International judicial and non-judicial mechanisms have generally reached a consensus that peace agreements must not provide amnesties for grave crimes and must abide by the relevant state's obligations under international law.³⁷ Some scholars and practitioners have gone as far as to argue that amnesties should not be part of peace agreements at all.³⁸ Notably, this narrative is not yet universal,³⁹ and a number of

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33. See, e.g., Press Release, The White House, G7 Leaders' Statement on Ukraine (May 19, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/19/g7-leaders-statement-on-ukraine/> [<https://perma.cc/ZTS3-6SCQ>].
34. Press Release, Int'l Crim. Ct., Situation in Ukr.: ICC Judges Issue Arrest Warrants Against Vladimir Vladimirovich Putin & Maria Alekseyevna Lvova-Belova (Mar. 17, 2023), <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and> [<https://perma.cc/7DEC-QLH5>] [hereinafter Int'l Crim. Ct. Press Release].
35. See Michael P. Scharf, *The Amnesty Exception to the Jurisdiction of the International Criminal Court*, 32 CORNELL INT'L L. J. 507, 514–15 (1999).
36. U.N., *Accountability*, *supra* note 12.
37. See Bartłomiej Krzan, *International Criminal Court Facing the Peace vs. Justice Dilemma*, 2 INT'L COMPAR. JURIS. 81, 81–82 (2016); see, e.g., *Barrios Altos v. Peru*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 75, ¶ 41 (Mar. 14, 2001) (“This Court considers that all amnesty provisions . . . are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.”).
38. Scharf, *The Amnesty Exception to the Jurisdiction of the International Criminal Court*, *supra* note 35, at 512 (noting that amnesty should be used as a last resort); see M. Cherif Bassiouni, *Searching for Peace and Achieving Justice: The Need for Accountability*, 59 L. & CONTEMP. PROBS. 9, 13 (1996).
39. See PIERRE HAZAN, AMNESTY: A BLESSING IN DISGUISE? 3 (2020).

states and regional organizations continue to prefer the path of accommodation and Amnesty-Based Peace.⁴⁰

II. BACKGROUND

Russia's full-scale invasion of Ukraine in February 2022 shocked many across Europe and globally, even though the armed conflict had been ongoing since 2014,⁴¹ and Russia had been amassing troops along the Ukrainian border for months ahead of the full-scale invasion.⁴² The war in Ukraine has led to over 10,000 civilian deaths, nearly 20,000 injured,⁴³ and approximately 110,000 potential war crimes incidents registered by the Ukrainian Prosecutor General Andriy Kostin's office.⁴⁴

Starting from early 2014, the Russian invasion of Ukraine caused significant environmental damage and serious long-term environmental consequences.⁴⁵ As of February 2023, Ukraine provisionally documented over 2,300 cases of environmental damage, with an estimated cost of the possible clean-up reaching \$51.45 billion (USD).⁴⁶ According to the Organisation for Economic Co-operation and Development (OECD), as a result of this continuous bombing of industrial sites, "the country's air, water, and soil have been polluted with toxic substances," exposing local residents to toxic chemicals and contaminated water.⁴⁷ Further,

40. *Id.*

41. Ctr. For Preventative Action, *Conflict in Ukraine*, COUNCIL ON FOREIGN REL. <https://cfr.org/global-conflict-tracker/conflict/conflict-ukraine> [https://perma.cc/X7AU-EM6B] (Jan. 18, 2023) ("Nevertheless, just prior to the invasion, U.S. and Ukrainian leaders remained at odds regarding the nature and likelihood of an armed Russian threat . . .").

42. *Timeline: The Events Leading up to Russia's Invasion of Ukraine*, REUTERS (Mar. 1, 2022, 4:03 AM), <https://reuters.com/world/europe/events-leading-up-russias-invasion-ukraine-2022-02-28/> [https://perma.cc/L9ZN-G2L4].

43. *Number of Civilian Casualties in Ukraine During Russia's Invasion Verified by OHCHR From February 24, 2022 to February 15, 2024*, STATISTA (Feb. 23, 2024), <https://www.statista.com/statistics/1293492/ukraine-war-casualties/> [https://perma.cc/4E63-FNQ4].

44. CONG. RSCH. SERV. R47762, WAR CRIMES IN UKRAINE (2023).

45. Zuzanna Iwanejko et al., *Environmental Damage and Ecocide of Ukraine*, RAZOM (Mar. 10, 2023), <https://www.razomforukraine.org/environmental-damage-and-ecocide-of-ukraine/> [https://perma.cc/U5WZ-BDYJ].

46. Louise Guillot et al., *The Environmental Scars of Russia's War in Ukraine*, POLITICO (Feb. 21, 2023, 2:10 PM), <https://www.politico.eu/article/environment-scars-russia-war-ukraine-climate-crisis/> [https://perma.cc/94UM-JXUD].

47. *Environmental Impacts of the War in Ukraine and Prospects for a Green Reconstruction*, ORG. FOR ECON. COOP. & DEV. (Jul. 1, 2022), <https://www.oecd.org/ukraine-hub/policy-responses/environmental-impacts-of-the-war-in-ukraine-and-prospects-for-a-green-reconstruction-9e86d691/>.

use of landmines causes casualties, contaminates the environment, and disrupts food production in Ukraine.⁴⁸ The gravest and most blatant attack causing severe damage to the environment was the destruction of the Kakhovka Hydroelectric Power Plant on June 6, 2023, which President Volodymyr Zelenskyy labeled a clear case of ecocide and used to emphasize the need to hold Russia responsible.⁴⁹

Efforts to hold peace negotiations between Ukraine and Russia and end the harm and suffering that the war has brought, not just to Ukraine but globally as well, began almost immediately after the February 2022 invasion. Meetings were held in Belarus and along the Ukraine-Belarus border at the end of February and the beginning of March.⁵⁰ Subsequently, Turkey hosted a number of meetings between Ukrainian and Russian delegations in March 2022,⁵¹ followed by further initiatives undertaken by different international stakeholders throughout 2022 and 2023. In July 2022, Turkey, the U.N., Ukraine, and Russia reached an agreement on the Safe Transportation of Grain and Foodstuffs from Ukrainian Ports (also known as the Black Sea Grain Deal),⁵² which aimed to mitigate the aggravating food crisis in Africa caused by the Russian war.

In March 2023, the Office of the Prosecutor of the ICC, in an unprecedented move against a sitting Head of State of one of the permanent United Nations Security Council member states, issued an arrest warrant against Vladimir Putin for his alleged responsibility for

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48. *Background Briefing on Landmine Use in Ukraine*, HUM. RTS. WATCH (Jun. 15, 2022, 5:00 PM), <https://hrw.org/news/2022/06/15/background-briefing-landmine-use-ukraine> [<https://perma.cc/28ZK-LNR8>]; Cahal Milmo, *Ukraine Faces Decades of Landmine Tragedies from Unexploded Russian Munitions*, INEWS <https://inews.co.uk/news/ukraine-faces-deadly-legacy-of-landmines-and-unexploded-munitions-leading-uk-charity-warns-1532753> [<https://perma.cc/RRR7-UBPF>] (Mar. 23, 2022, 10:59 AM); Jean-Philippe Lefief, *Ukraine Wants Recognition and Reparations for Russian 'Ecocide'*, LE MONDE (Apr. 21, 2023, 12:01 PM), https://www.lemonde.fr/en/international/article/2023/04/21/ukraine-wants-recognition-and-reparations-for-russian-ecocide_6023737_4.html [<https://perma.cc/GCL9-Z9H5>].
 49. *President: Russia Must Bear Criminal Responsibility for the Consequences of Blasting Kakhovka HPP Structures*, PRESIDENT OF UKR. (Jun. 6, 2023, 6:37 PM), <https://www.president.gov.ua/en/news/rosiyamaye-ponesti-kriminalnu-vidpovidalnist-za-naslidki-pi-83433> [<https://perma.cc/VPF3-269K>].
 50. *See Ukraine, Russia Hold Third Round of Peace Talks*, DEUTSCHE WELLE (Mar. 7, 2023), <https://www.dw.com/en/ukraine-and-russia-hold-third-round-of-talks/a-61039008> [<https://perma.cc/K2N9-TAE7>].
 51. *See Massimo D'Angelo, Ukraine War: Turkey's Unique Role in Peace Negotiations*, THE CONVERSATION (Mar. 30, 2022, 12:29 PM), <https://theconversation.com/ukraine-war-turkeys-unique-role-in-peace-negotiations-180265> [<https://perma.cc/F5MY-6YUY>].
 52. Initiative on the Safe Transportation of Grain and Foodstuffs from Ukrainian Ports, July 22, 2022.

the war crimes of unlawful deportation of children and unlawful transfer of children from occupied areas of Ukraine to the Russian Federation.⁵³ Since the invasion, there have been several international and domestic initiatives for the prosecution of the Russian crime of aggression against Ukraine, including for the establishment of a crime of aggression tribunal.⁵⁴

In July 2023, Russia decided to terminate its participation in the Black Sea Grain Deal, and threatened to treat any vessel leaving a Ukrainian port as a military target.⁵⁵ In early August 2023, Russia went as far as ordering drone attacks on grain ports across the Danube River, causing global food prices to skyrocket.⁵⁶ The dramatic impact these export disruptions have caused on global food markets, especially affecting the most vulnerable populations across Africa that rely on these grain imports to feed their population,⁵⁷ and the devastating

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53. Press Release, Int'l Crim. Ct., *supra* note 34.
54. Claus Kress et al., *The Ukraine War and the Crime of Aggression: How to Fill the Gaps in the Legal System*, JUST SEC. (Jan. 23, 2023), <https://justsecurity.org/84783/the-ukraine-war-and-the-crime-of-aggression-how-to-fill-the-gaps-in-the-international-legal-system/> [<https://perma.cc/24K4-AV5W>]; Elizabeth Whatcott, *Compilation of Countries' Statements Calling Russian Actions in Ukraine "Genocide"*, JUST SEC., (May 20, 2022), <https://www.justsecurity.org/81564/compilation-of-countries-statements-calling-russian-actions-in-ukraine-genocide/> [<https://perma.cc/Q28A-U67V>]; Press Release, U.K. Att'y Gen.'s Off., UK Joins Core Grp. Dedicated to Achieving Accountability for Russ.'s Aggression Against Ukr. (Jan. 20, 2023), <https://gov.uk/government/news/ukraine-uk-joins-core-group-dedicated-to-achieving-accountability-for-russias-aggression-against-ukraine> [<https://perma.cc/2U34-Y55M>]; Annalena Baerbock, Fed. Foreign Minister, Ger., Speech at The Hague (Jan. 16, 2023), <https://www.auswaertiges-amt.de/en/newsroom/news/strengthening-international-law-in-times-of-crisis/2573492> [<https://perma.cc/QY7P-N5UU>].
55. Patrick Wintour, *What Was the Black Sea Grain Deal and Why Did It Collapse?*, THE GUARDIAN (July 20, 2023, 8:01), <https://www.theguardian.com/world/2023/jul/20/what-was-the-black-sea-grain-deal-and-why-did-it-collapse> [<https://perma.cc/LN6V-3X95>].
56. Pavel Polityuk, *Russia Strikes Ukraine's Danube Port, Driving Up Global Grain Prices*, REUTERS (Aug. 3, 2023, 6:57 PM), <https://www.reuters.com/world/europe/russia-hits-port-grain-silo-ukraines-odesa-region-official-2023-08-02/> [<https://perma.cc/NS7J-MULE>].
57. *European Council Infographic on How the Russian Invasion of Ukraine Has Further Aggravated the Global Food Crisis*, EUR. COUNCIL (Oct. 23, 2023), <https://consilium.europa.eu/en/infographics/how-the-russian-invasion-of-ukraine-has-further-aggravated-the-global-food-crisis/> [<https://perma.cc/7YmZ-9WTU>].

impact the war is leaving on the environment globally⁵⁸ have further amplified the calls for peace negotiations between Ukraine and Russia.⁵⁹

President Zelenskyy has put forward a ten-point peace formula, which among other provisions, calls for the “establishment of the Special Tribunal regarding the crime of Russia’s aggression against Ukraine and the creation of an international mechanism to compensate for all the damages caused by this war” and finding “common responses to all environmental threats created by the war.”⁶⁰

In the summer of 2023, Saudi Arabia hosted Jeddah peace talks where forty-two states and representatives of the U.N. (excluding Russia) came together to sketch the outlines of an eventual peace agreement based on Zelenskyy’s ten-point peace formula.⁶¹ While no declaration was adopted as a result of these talks, representatives of the participating countries spoke positively about their outcome and their potential to lead to further meetings.⁶²

Further conversations were held in Malta in October 2023 and at the sidelines of World Economic Forum Annual Meeting 2024 in Davos, Switzerland. These meetings, along with earlier talks in Jeddah and Copenhagen, formed part of President Zelenskyy’s Peace Formula efforts and aim to advance Ukraine’s ten-point position for peace, which include and unwavering commitment to accountability.⁶³

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58. Angelina Davydova, *How Russia’s War Is Impacting the Global Environment Agenda*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Nov. 1, 2023), <https://carnegieendowment.org/politika/88773> [<https://perma.cc/5NH9-LMUK>].
59. Mark Trevelyan & Kevin Liffey, *We Have a Right to Call for Peace*, REUTERS (Jul. 29, 2023, 7:08 PM), <https://www.reuters.com/world/putin-tells-african-leaders-moscow-is-studying-their-ukraine-proposal-2023-07-28/> [<https://perma.cc/BSN9-H6WM>]; *Chinese President Xi Calls for Ukraine Peace Talks*, THE ASSOCIATED PRESS (Apr. 6, 2023, 9:40 AM), <https://apnews.com/article/china-france-macron-xi-ukraine-85d93941b25f8c27d5ecc05f25028c36> [<https://perma.cc/KE5C-N55L>].
60. Volodymyr Zelenskyy, President of Ukraine, Address at the G20 Summit (Nov. 15, 2022, 7:31), <https://www.president.gov.ua/en/news/ukrayina-zavzhdi-bula-liderom-mirotvorchih-zusil-yaksho-rosi-79141> [<https://perma.cc/V9VY-KK7W>] [hereinafter Address at the G20 Summit].
61. Maha El Dahan, *Ukraine Seeks Progress Towards Peace at Saudi Arabia Talks*, REUTERS (Aug. 5, 2023, 3:11 PM), <https://www.reuters.com/world/ukraine-expects-difficult-successful-talks-saudi-arabia-2023-08-05/>; *Ukrainska Pravda, Zelenskyy on Meeting in Jeddah: 42 Countries Represented, Bilateral Talks Underway*, YAHOO NEWS (Aug. 5, 2023), <https://news.yahoo.com/zelenskyy-meeting-jeddah-42-countries-185643926.html> [<https://perma.cc/GG5W-S3NB>].
62. See, e.g., El Dahan, *supra* note 61.
63. *Davos 2024: Ukraine to Hold Forth Peace Formula Talks on Sunday*, REUTERS (Jan. 11, 2024, 7:34 PM), <https://www.reuters.com/world/europe/davos-2024-ukraine-hold-fourth-peace-formula-talks-sunday-2024-01-11/> [<https://perma.cc/RSC3-ZFAC>].

Nonetheless, the peace plans proposed for Ukraine in early 2023 by an *ad hoc* African Peace Mission⁶⁴ and by China reflect the approach of Amnesty-Based Peace.⁶⁵ While the African delegation proposal is somewhat opaque on amnesty, it does call for bringing the war to an end “as quickly as possible through negotiation and diplomatic means.”⁶⁶ China, on the other hand, has even criticized the ICC for issuing an arrest warrant against Putin, demanding that the ICC take “an objective and just position, respect the jurisdictional immunity of a head of state under international law, prudently exercise its mandate in accordance with the law, interpret and apply international law in good faith, and not engage in politicization or use double standards.”⁶⁷

Neither the African delegation⁶⁸ nor the Chinese peace proposals⁶⁹ address the need to investigate and prosecute those responsible for committing atrocity crimes and crimes against the environment.⁷⁰

Similarly, the G20 statement adopted following the New Delhi Leaders’ meeting in September 2023 underscored the need for all parties to abide by the U.N. Charter and Black Sea Grain Initiative without condemning Russia’s actions or recognizing the need to prosecute those that have caused the human, economic, and environmental disaster that has ensued.⁷¹ Given the declaration’s strong focus on sustainable

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64. See Nosmot Gbadamosi, *A Failed African Peace Mission to Ukraine and Russia*, FOREIGN POL’Y (Jun. 21, 2023, 1:00 AM), <https://foreignpolicy.com/2023/06/21/a-failed-african-peace-mission-to-ukraine-and-russia/> [https://perma.cc/NM7H-DSWR].
65. *China’s Position on the Political Settlement of the Ukraine Crisis*, *supra* note 10; see also Bruno Mações, *An Insider’s Perspective on China’s Strategy in Ukraine*, TIME (Mar. 20, 2023, 2:46 PM), <https://time.com/6264512/insiders-perspective-on-chinas-strategy-in-ukraine/> [https://perma.cc/NJP6-M92V].
66. France24, *REPLAY: Zelensky, African Leaders Delegation Give Press Conference in Kyiv • France 24 English*, YOUTUBE (Jun. 16, 2023), <https://www.youtube.com/watch?v=xjjDVqzvGQY&t=1082s> [https://perma.cc/4EPX-MNTP].
67. *Foreign Ministry Spokesperson Wang Wenbin’s Regular Press Conference on March 20, 2023*, MINISTRY OF FOREIGN AFFS. OF THE PEOPLE’S REPUBLIC OF CHINA (Mar. 20, 2023, 21:40), https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2511_665403/202303/t20230320_11045296.html [https://perma.cc/8LZN-6VJP].
68. Nzuki, *supra* note 11.
69. *China’s Position on the Political Settlement of the Ukraine Crisis*, *supra* note 10.
70. See generally *id.*; see also Jamey Keaten, *Zelensky Urges African Leaders to Press Putin on Release of Political Prisoners*, THE ASSOCIATED PRESS (Jun. 16, 2023, 10:24 AM), <https://apnews.com/article/russia-ukraine-war-peace-plan-africa-a424799e733280657a352b787b90c07e> [https://perma.cc/4PYK-PNMV].
71. See G20, G20 NEW DELHI LEADERS’ DECLARATION ¶ 7–11 (2023).

development and protecting the environment,⁷² such weak and placating language in response to the devastating impact Russia's war has had on global economics and the environment exemplifies the challenges that Ukraine will have to face when engaging in negotiations with Russia.

This Article now turns to an examination of how the process of "negotiating justice" might play out in any future Ukrainian negotiations. First, it explains what is meant by "negotiating justice," particularly in the context of any future Ukrainian negotiations. The Article then explains both the depth of the pull of realpolitik accommodation and the consequences often resulting from such an approach, exploring the cases of Angola, Haiti, and Uganda. The Article notes the degree to which prior negotiations associated with the conflict (the Minsk I⁷³ and Minsk II⁷⁴ agreements) reflected this realpolitik Amnesty-Based Peace approach, and the consequences. The Article finally concludes with an assessment of how the current era of accountability may impact and influence the negotiations in a positive but challenging way. In particular, the Article notes that once accountability processes have been launched, such as is the case in Ukraine with the ICC, domestic cases in Ukraine, and the development of a crime of aggression tribunal, these processes may operate independently of a peace negotiations process.

III. NEGOTIATING JUSTICE

"Negotiating justice" refers to the process where the parties to peace talks negotiate the extent to which those responsible for atrocity crimes will be held accountable (if at all) and what mechanisms will be utilized or created to accomplish that objective.

Specifically, the parties negotiate the question of whether the peace agreement will be based on amnesty or on accountability (in some form). The determination is not binary, and the parties may opt for some form of amnesty coupled with some level of accountability.⁷⁵ This

72. *See generally id.*

73. *See infra* Section VI; In 2014, Ukraine and Russian-backed separatists agreed to implement a ceasefire to end a war within the Donetsk and Luhansk regions. The 2014 agreement is commonly known as Minsk I. Protocol on the outcome of consultations of the Trilateral Contact Group on joint steps aimed at the implementation of the Peace Plan of the President of Ukraine, P. Poroshenko, and the initiatives of the President of the Russian Federation, V. Putin, Sept. 1, 2014, S/2014/135 [hereinafter Minsk I].

74. Package of measures for the implementation of the Minsk agreements, 1 (Feb. 12, 2015) <https://www.osce.org/ru/cio/140221> [hereinafter Minsk II].

75. *See, e.g.* Promotion of National Unity and Reconciliation Act No. 34 of 1995 § 20 (S. Afr.) [hereinafter Unity Act].

may entail an amnesty-based truth commission with accountability for those who do not engage in the truth telling process.⁷⁶ It may also include accountability for those most responsible for the most serious crimes coupled with *dejure*⁷⁷ or *defacto*⁷⁸ amnesty for lesser offenders. The parties may also agree to amnesty for domestic crimes but leave open the possibility of accountability for international crimes.⁷⁹ In some cases, but less so in the past two decades, the agreement may be silent as to the question of amnesty or accountability.⁸⁰

In the event that there is a degree of accountability, the parties negotiate the mechanism(s) that may be used to implement accountability. Do they create a truth commission with the power to grant amnesty?⁸¹ Do they grant or reaffirm jurisdiction of an international tribunal such as the ICC?⁸² Do they create a hybrid internationalized tribunal?⁸³ Do they create new domestic courts,⁸⁴ or empower specialized chambers of existing courts?⁸⁵ Notably there is an

76. *See id.* § 2–3.

77. U.N. High Comm’r for Human Rights, Rule-of-Law Tools for Post–Conflict States: Truth Commission, 1, HR/PUB/06/01 (2006) [hereinafter Truth Commission]; William T. Armaline et al., *De Jure vs. De Facto Rights: A Response to “Human Rights: What the United States Might Learn from the Rest of the World and, Yes, from American Sociology,”* 32 SOCIO. F. 220, 222 (2017).

78. Truth Commission, *supra* note 77, at 1; William T. Armaline et al., *supra* note 77, at 222–23.

79. *See* U. N. High Comm’r for Hum. Rts, Rule-of-Law Tools for Post–Conflict States: Amnesties, 1, 14, U.N. Doc. HR/PUB/09/1 (2009) [hereinafter Amnesty Rules].

80. *See* Stef Vandeginste & Chandra Lekha Sriram, *Power Sharing and Transitional Justice: A Clash of Paradigms?*, 17 GLOB. GOVERNANCE 489, 491, 494 (2011).

81. *See* Truth Commission, *supra* note 77, at 1.

82. *See* Alison Bisset, *Rethinking the Powers of Truth Commissions in Light of the ICC Statute*, 7 J. INT’L CRIM. L. 963, 964–965 (2009) (“The ICC has not yet assumed jurisdiction in a situation that has been or is being investigated by a truth commission”).

83. *See, e.g.* Rep. of the Secretary-General on the Establishment of a Special Ct. for Sierra Leone, ¶ 1, U.N. Doc. S/2000/915 (Oct. 4, 2000) [hereinafter Sierra Leone Rep.].

84. *See, e.g.*, Janet McKnight, *Accountability in Northern Uganda: Understanding the Conflict, the Parties and the False Dichotomies in International Criminal Law and Transitional Justice*, 59 J. AFR. L. 193, 205 (2015).

85. *See, e.g.* Memorandum from Amnesty International on Special Chambers in the Democratic Republic of the Congo 1, 3–4 (Feb. 2011), <https://www.amnesty.org/en/documents/afr62/003/2011/en/> [<https://perma.cc/426A-2GRV>]; *see also* Maria Stefania Cataleta, *The Kosovo Specialist Chambers, an International Tribunal Inside the National Judicial System*, 3 J. INT’L CRIM. L. 1, 2, 5 (2022).

increase in the utilization of universal jurisdiction,⁸⁶ whose applicability lies outside the scope of a negotiated agreement among the parties.⁸⁷

With respect to crimes to be covered, the matters to negotiate include the core crimes, such as crimes against humanity, war crimes, and genocide. Recently, the crime of aggression has become relevant, as has the crime of ecocide.⁸⁸ The parties also face increasing pressure to be specific about crimes against children, and sexual- and gender-based crimes.⁸⁹

Other issues to be negotiated include whether state actors as well as individuals will be held accountable,⁹⁰ the timeline for jurisdiction of any amnesty or accountability mechanism,⁹¹ and whether there will be retroactive liability.⁹²

One constant theme which runs through relating to amnesty/accountability is moral equivalence. In some conflicts, one party is clearly the perpetrator of atrocity crimes,⁹³ while in others both sides tend to be responsible for a high level of atrocity crimes.⁹⁴ In nearly all cases, however, there is a propensity for third parties to seek blame

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86. *Basic Facts on Universal Jurisdiction*, HUM. RTS. WATCH (Oct. 19, 2009, 8:45 AM), <https://www.hrw.org/news/2009/10/19/basic-facts-universal-jurisdiction> [<https://perma.cc/HK9W-GYU7>].
87. Yasmin Naqvi, *Amnesty for War Crimes: Defining the Limits of International Recognition*, 85 INT'L REV. RED CROSS 583, 587 n.15, 594–95.
88. See Josie Fischels, *How 165 Words Could Make Mass Environmental Destruction an International Crime*, NPR (Jun. 27, 2021, 8:00 AM), <https://npr.org/2021/06/27/1010402568/ecocide-environment-destruction-international-crime-criminal-court> [<https://perma.cc/K9AZ-2ZC2>]; Linda Pasquini & Tomasz Janowski, *Switzerland Joins Push for Special Tribunal on 'Aggression' Against Ukraine*, REUTERS (Nov. 16, 2023, 8:46 AM), <https://reuters.com/world/europe/switzerland-joins-push-special-tribunal-aggression-against-ukraine-2023-11-16/> [<https://perma.cc/UL5Q-YC8P>].
89. World Health Org. [WHO], *Global Status Report on Preventing Violence Against Children 2020*, at xiii–xiv (2020).
90. See Andrew Reiter, *Examining the Use of Amnesties and Pardons as a Response to Internal Armed Conflict*, 47 ISR. L. REV. 133, 141 (2014).
91. INT'L CTR. FOR TRANSITIONAL JUST. & AFGHANISTAN INDEP. HUM. RTS. COMM'N, DISCUSSION PAPER ON THE LEGALITY OF AMNESTIES 8 (2010).
92. *Id.* at 1.
93. See, e.g., S.C. Res. 827 (May 25, 1993).
94. See, e.g. Matthew Lee, *U.S. Finds Both Sides in Sudan Conflict Have Committed Atrocities in Darfur*, PBS (Dec. 6, 2023, 5:57 PM), <https://www.pbs.org/newshour/politics/u-s-finds-both-sides-in-sudan-conflict-have-committed-atrocities-in-darfur> [<https://perma.cc/GB6X-F3CP>].

on all sides, and establish a moral equivalence which, in their view, facilitates a negotiated peace.⁹⁵

One final dimension is that, in addition to whatever the parties may pursue with respect to amnesty or accountability, the international community or the mediator may have a preferential view for either amnesty or accountability, which may be determined by a variety of factors.⁹⁶

IV. THE ALLURE OF AMNESTY-BASED PEACE

Historically, the international community saw amnesty as a necessary tradeoff for peace.⁹⁷ For example, Turkish forces, who many consider to be responsible for the massacre of over one million Armenians during World War I, were given amnesty in the 1923 Treaty of Lausanne.⁹⁸ In the aftermath of World War II, there was a short-lived shift toward accountability with the establishment of the Nuremberg and Tokyo tribunals.⁹⁹ However, the Évian Agreement of 1962 again granted amnesty to the French and Algerians responsible for the massacre of thousands of civilians during the Algerian war.¹⁰⁰ Similar approaches were adopted in several agreements throughout the twentieth century, including in Argentina,¹⁰¹ Chile,¹⁰² El Salvador,¹⁰³

95. See, e.g., *id.*; see also Christine Bell, *Peace Agreements: Their Nature and Legal Status*, 100 AM. J. INT'L L. 373, 386 (2006).

96. See, e.g., Bell, *supra* note 95, at 387–89.

97. Keith Doubt, *We Had to Jump over the Moral Bridge: Bosnia and the Pathetic Hegemony of Face-Work*, in THE CONCEIT OF INNOCENCE: LOSING THE CONSCIENCE OF THE WEST IN THE WAR AGAINST BOSNIA 120, 121 (Stjepan G. Meštrović ed., 1997).

98. *The Armenian Genocide (1915–16): Overview*, HOLOCAUST ENCYC., <https://encyclopedia.ushmm.org/content/en/article/the-armenian-genocide-1915-16-overview> [<https://perma.cc/7NSR-MVVC>]; Treaty of Peace with Turkey arts. 138–140, 28 L.N.T.S. 139 (July 24, 1923).

99. See *Nuremberg Trials*, HISTORY, <https://www.history.com/topics/world-war-ii/nuremberg-trials> [<https://perma.cc/7A8Q-EHK8>] (Jun. 7, 2019); see also Zhang Wanhong, *From Nuremberg to Tokyo: Some Reflections on the Tokyo Trial (On the Sixtieth Anniversary of the Nuremberg Trials)*, 27 Cardozo L. Rev. 1673, 1673–74 (2006).

100. See Évian Accords art. II(k–l), Mar. 19, 1962, 507 U.N.T.S. 28, 33.

101. See generally Amnesty Int'l, *Argentina; Legal Memorandum: Full Stop and Due Obedience Laws*, AI Index: AMR 13/018/2003 (Dec. 2003).

102. Law No. 2191, 18 Abril, 1978, Diario Oficial [D.O.] (Chile).

103. THE COMM'N ON THE TRUTH FOR EL SALVADOR, FROM MADNESS TO HOPE: THE 12-YEAR WAR IN EL SALVADOR: REPORT OF THE COMMISSION ON THE TRUTH FOR EL SALVADOR § III (Jul. 1, 1992).

Guatemala,¹⁰⁴ Uruguay,¹⁰⁵ Angola,¹⁰⁶ Democratic Republic of the Congo,¹⁰⁷ Haiti,¹⁰⁸ Mozambique,¹⁰⁹ Sierra Leone,¹¹⁰ and Uganda.¹¹¹

The blanket amnesties incorporated in these agreements may have contributed to an initial peace, in that they helped to end conflict,¹¹² but in many instances, it was not a durable peace as it often resulted in perpetrators returning to positions of power and recommitting atrocities.¹¹³ Or, it led to lingering societal resentments that then led to a lack of social cohesion and a renewal of conflict.¹¹⁴ Nonetheless, mediators representing the international community, and often the parties themselves, remained committed to the notion that amnesty was an essential ingredient for peace.¹¹⁵

This Section will dive into three comparative examples of contexts where parties to peace negotiations prioritized peace over justice: Angola, Haiti, and Uganda. Angola was chosen here due to how the repeated amnesties may have contributed to a culture of impunity and fostered decades of brutal conflict. Haiti, however, has undergone cycles of violence and numerous attempts at securing durable peace.¹¹⁶ The example of Haiti was chosen to examine how Amnesty-Based Peace could have fostered these cycles of violence. Uganda is an instance

104. Ley de reconciliacion nacional [National Reconciliation Law] (1996) (Guat.).

105. Law No. 15848 (Uru.) (1986).

106. Memorandum of Understanding, Security Council, Identical letters Dated 25 April 2002 from the Permanent Representative of Angola to the United Nations Addressed to the Secretary-General and the President of the Security Council, § 2, U.N. Doc. S/002/483 (Apr. 26, 2002).

107. Political Negotiations on the Peace Process and on Transition in the DRC, § 3, ¶ 4, Dec. 16, 2002.

108. Accord de Governors Island [Governors Island Agreement], ¶ 6–7, Jul. 3, 1993 (Haiti).

109. *Amnesty: General Peace Agreement for Mozambique*, UNIV. OF NOTRE DAME: KROC INST. FOR INT'L PEACE STUD., <https://peaceaccords.nd.edu/provision/amnesty-general-peace-agreement-for-mozambique> [<https://perma.cc/EKJ9-JVFK>].

110. Sierra Leone Rep., *supra* note 83, ¶ 24.

111. The Amnesty Act, 2000, ch. 294 (Uganda).

112. Reiter, *supra* note 90, at 144–145.

113. Amnesty Rules, *supra* note 79, at 3.

114. *See, e.g.*, STEPHEN JOHN STEDMAN, IMPLEMENTING PEACE AGREEMENTS IN CIVIL WARS: LESSONS AND RECOMMENDATIONS FOR POLICYMAKERS 7 (2001).

115. *See* HAZAN, *supra* note 39, at 6.

116. *See* Georges Fauriol et al., *How to Break the Stalemate in Haiti*, U.S. INST. OF PEACE (Jun. 9, 2009), <https://www.usip.org/publications/2022/06/how-break-stalemate-haiti> [<https://perma.cc/NZM5-56DL>].

where the government initially decided to provide an Amnesty-Based Peace but later referred the situation of Northern Uganda to the ICC and created a domestic International Crimes Division tasked with criminal prosecutions.¹¹⁷ This will be explored as a situation where the circumstances in the country were such that the government realized that peace would not be achieved absent accountability. The Section will analyze the relevant context, provisions enshrined in the agreements, and their contribution to durable peace.

A. Angola

Immediately after gaining independence from Portugal in 1974, Angola fell into a brutal civil war, which lasted for three decades and resulted in the commission of numerous atrocities, including half a million deaths, torture, sexual abuse, summary executions, and the use of indiscriminate violence.¹¹⁸ From 1981 to the late 1990s, Angola issued six successive amnesties for crimes committed throughout the civil war.¹¹⁹ Many commentators note that these amnesties fostered a culture of impunity and increased rather than abated the commission of atrocity crimes.¹²⁰

In 1994, the *União Nacional para a Independência Total de Angola* (UNITA) and *Movimento Popular de Libertação de Angola* (MPLA) (representing Angola's government) were able to reach an agreement on the peace process and signed The Lusaka Protocol.¹²¹ The Protocol was explicit in providing amnesty to all those that had been committing atrocity crimes in Angola for the preceding two decades.¹²² The Protocol declared that "all Angolans should forgive and forget the offenses resulting from the Angolan conflict . . . Furthermore, the competent institutions will grant amnesty . . . for illegal acts committed by any one prior to the signing of the Lusaka Protocol, in the context of the current conflict."¹²³ During the negotiations, both sides were completely

117. McKnight, *supra* note 84, at 200–203.

118. WORLD PEACE FOUND., *Angola: Civil War*, MASS ATROCITY ENDINGS (Aug. 7, 2015), <https://sites.tufts.edu/atrocityendings/2015/08/07/angola-civil-war/> [https://perma.cc/9T5V-K7AL].

119. Ricardo Sousa, *The Nature of the Parties in the Perspectives of Power Sharing in the Angola Peace Process*, in POVERTY AND PEACE IN THE PORTUGUESE SPEAKING AFRICAN COUNTRIES 29 (2009); Lusaka Protocol, Nov. 15, 1994, U.N. Doc. S/1994/1441.

120. Sousa, *supra* note 119.

121. Lusaka Protocol, *supra* note 119; *see also* HUM. RTS. WATCH, ANGOLA UNRAVELS: THE RISE AND FALL OF THE LUSAKA PEACE PROCESS 13–18 (1999).

122. *See* Joris van Wijk, *Amnesty for War Crimes in Angola: Principled for a Day?*, 12 INT'L CRIM. LAW REV. 743, 749 (2012).

123. Lusaka Protocol, *supra* note 119, ¶ 5.

united on the issue of accountability—there should be total amnesty for all involved.¹²⁴

Despite the signing of a peace agreement, the peace was relatively short-lived. By 1998, UNITA had resumed attacks on the government.¹²⁵ The successive amnesty laws issued during the war and the inclusion of a general amnesty in the peace agreement had led to an even greater number of atrocities and suffering caused by both sides.¹²⁶ The war continued on for another four years until the leader of UNITA was killed in 2002, allowing the fighting to end.¹²⁷

In light of the history of Amnesty-Based Peace and its frequent failure to secure durable peace, Angola has since voiced its support for the investigation and prosecution of international crimes.¹²⁸ Although never ratifying it, Angola was one of the first states to sign the Rome Statute.¹²⁹

B. *Haiti*

The case of Haiti is a highly complex situation with a multiplicity of factors contributing to an environment of instability and violence. Amnesty-Based Peace and a culture of impunity is one of those factors. Haiti's history demonstrates how the lack of accountability may have empowered different actors to utilize violence to achieve political objectives in the already democratically struggling country.¹³⁰

In the 1970s and 1980s, Jean-Claude Duvalier, often referred to as “Baby Doc,” assumed power following the death of his father (“Papa Doc”).¹³¹ Baby Doc's repressive reign saw thousands killed, hundreds of thousands forced to flee to escape the country's corruption and oppressive rule, and over half of the population living in abject poverty.¹³² “[W]hen Haitians revolted against Baby Doc's rule in 1985,

124. Wijk, *supra* note 122, at 744.

125. David Simon, *The Bitter Harvest of War: Continuing Social and Humanitarian Dislocation in Angola*, 28 REV. OF AFR. POL. ECON. 503, 504 (2001).

126. Sousa, *supra* note 119, at 23–24.

127. Michael Tiernay, *Killing Kony: Leadership Change and Civil War Termination* 59 J. OF CONFLICT RESOL. 175, 177 (2015).

128. Wijk, *supra* note 122, at 752.

129. *Id.* at 751–52.

130. See Timothy Donais & Amy C. Knorr, *Peacebuilding from Below vs. The Liberal Peace: The Case of Haiti*, 34 CAN J. OF DEV. STUD. 54, 57–58 (2013).

131. R. Anthony Lewis, *Language, Culture, and Power: Haiti Under the Duvaliers*, 50.4 CARRIBEAN Q. 42, 42, 47 (2004).

132. Nathalie Baptiste, *Terror, Repression and Diaspora: The Baby Doc Legacy in Haiti*, THE NATION (Oct. 23, 2014), <https://www.thenation.com/article/archive/terror-repression-and-diaspora-baby-doc-legacy-haiti/> [<https://perma.cc/STV3-ZAD4>]; Reed Brody, ‘Baby Doc’ Duvalier: His

the U.S. helped him flee to France, which turned a blind eye to his stay and provided him with a de facto amnesty.”¹³³

After the fleeing of Baby Doc, in 1990, Haiti voted Jean-Bertrand Aristide as the first democratically elected president.¹³⁴ Nevertheless, shortly after, his government was overthrown in a military coup—unleashing a period of massive human rights violations committed by military juntas.¹³⁵ After heavy pressure from the international community, including the U.N. and the Organization of American States, the Haitian military finally agreed to hold negotiations with Aristide at Governors Island in New York Harbor in 1993.¹³⁶ Despite initial hesitancy, Aristide agreed to an Amnesty-Based Peace in the Governor Island Agreement.¹³⁷ Nonetheless, the junta violated the agreement and continued wreaking havoc in the country until the threat of the use of force by multinational forces¹³⁸ forced the junta to agree to another Amnesty-Based Peace in the peace agreement of 1994.¹³⁹

After the signature of the second peace agreement, the junta ceased hostilities.¹⁴⁰ Aristide, however, used the culture of impunity developed in the country and, by 2000, was widely accused of election fraud, violence, and corruption.¹⁴¹ The Haitian people themselves have been disappointed with the lack of justice and even begun resorting to vigilante justice.¹⁴²

Victims Won't Forget, HUM. RTS. WATCH (Jan. 27, 2011, 12:47 PM), <https://www.hrw.org/news/2011/01/27/baby-doc-duvalier-his-victims-wont-forget> [<https://perma.cc/7NVE-5LSS>].

133. Paul R. Williams, *Lawyering Peace: Infusing Accountability into the Peace Negotiations Process*, 52 CASE W. RES. J. INT'L L. 491, 497 (2020).
134. Barbara L. Bernier, *Economic Development in Ravaged Haiti: Is Democracy Really the Answer?* 11 PENN STATE INT'L L. REV., 49, 49 (1992).
135. See HUM. RIGHTS WATCH, TERROR PREVAILS IN HAITI: HUMAN RIGHTS VIOLATIONS AND FAILED DIPLOMACY 38–39 (April 1994).
136. Michael P. Scharf, *Swapping Amnesty for Peace: Was There a Duty to Prosecute International Crimes in Haiti?*, 31 TEX INT'L L.J. 1, 6 (1996).
137. Scharf, *The Amnesty Exception to the Jurisdiction of the International Criminal Court*, *supra* note 35, at 509; see generally U.N. Secretary General, *The Situation of Democracy and Human Rights in Haiti*, U.N. Doc A/47/975 (Jul. 12, 1993).
138. Scharf, *Swapping Amnesty for Peace: Was There a Duty to Prosecute International Crimes in Haiti?*, *supra* note 136, at 7.
139. *Id.*
140. See *id.* at 7–8.
141. Leila Nadya Sadat, *Exile, Amnesty and International Law*, 81 NOTRE DAME L. REV. 955, 993 (2005).
142. *Vigilantes in Haiti Strike Back at Gangsters with Brutal Street Justice*, AP NEWS (June 4, 2023, 11:07 AM), <https://apnews.com/article/haiti->

C. Uganda

Uganda has a long history of armed conflicts and violence. One of the most recent periods began in 1986 between the Ugandan government and the Lord's Resistance Army (LRA), led by Joseph Kony. The LRA was well known because of its kidnapping of thousands of children who were turned into child soldiers and/or sex slaves.¹⁴³

After a decade of being unable to effectively fight the LRA, the Ugandan Parliament passed the Amnesty Act, 2000, offering blanket amnesty to any individual of Ugandan nationality who “engaged or is engaging in war or armed rebellion against the government of the Republic of Uganda” since January 26, 1986.¹⁴⁴ The goal of the Amnesty Act was to encourage defection from the LRA by promising that the former militants would not be prosecuted—hence weakening the LRA's ability to continue fighting.¹⁴⁵ As a result, between 2000 and 2016, 26,000 combatants defected the LRA.¹⁴⁶

Even though the Amnesty Act made some progress, it was not able to end the conflict entirely. In 2003, the President of Uganda decided to refer the situation in Northern Uganda to the ICC, becoming the first self-referral member state of the Rome Statute.¹⁴⁷ Subsequently, the ICC issued arrest warrants against five high-ranking LRA militants: Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen, and Raska Lukwiya.¹⁴⁸ Dominic Ongwen has since been captured and found guilty by the ICC for crimes against humanity and war crimes.¹⁴⁹

gangs-vigilantes-street-justice-crime-murder-7c3fcdfeec012c80d1fc9e58c61ed7cc [https://perma.cc/6JYJ-RRHK].

143. Susan Tiefenbrun, *Child Soldiers, Slavery and the Trafficking of Children*, 31 *FORDHAM INT'L L.J.* 415, 424–25 (2007).
144. The Amnesty Act, 2000 § 2/3(1) (Uganda); Louise Mallinder, *Uganda at a Crossroads: Narrowing the Amnesty* 22 (Queens Univ. Belfast, Working Paper, Paper No. 1, 2009).
145. *Undermining the LRA: Role of Uganda's Amnesty Act*, CONCILIATION RES. (Aug. 2012), <https://c-r.org/news-and-views/comment/undermining-lra-role-ugandas-amnesty-act> [https://perma.cc/8DKC-RKXU].
146. Stephen Oola, *The Amnesty Act (2000): Pragmatism or Forgiveness?*, PEACE INSIGHT (Jan. 27, 2016), <https://www.peaceinsight.org/en/articles/amnesty-act-2000-pragmatism-forgiveness/?location=uganda&theme=ddr> [https://perma.cc/7LMH-6NDJ].
147. Payam Akhavan, *The Lord's Resistance Army Case: Uganda's Submission of the First State Referral to the International Criminal Court*, 99 *CAMBRIDGE UNI. PRESS*, 403, 403 (2005).
148. Press Release, ICC, Warrant of Arrest Unsealed Against Five LRA Commanders (Oct. 14, 2005), <https://icc-cpi.int/news/warrant-arrest-unsealed-against-five-lra-commanders> [https://perma.cc/FV6M-TNTZ].
149. Prosecutor v. Dominic Ongwen, Case No. ICC-02/04-01/15, Trial Judgment, ¶ 3116 (Feb. 4, 2016).

The Amnesty Act has been amended on multiple occasions to allow for the prosecution of some higher ranking LRA soldiers.¹⁵⁰ However, it still continues to pose an obstacle for comprehensive prosecution of those responsible for grave human rights abuses.¹⁵¹ In 2008, Uganda also set up the International Crimes Division under the High Court of Uganda to try war crimes, crimes against humanity, genocide, terrorism, human-trafficking, piracy, and other international crimes.¹⁵² While the International Crimes Division was meant to try all those against whom the ICC has issued arrest warrants, in 2011, the Uganda Constitutional Court created doubt about Uganda's ability to address the crimes that the LRA had committed in Northern Uganda when it upheld LRA commander Thomas Kwoyelo's right to amnesty.¹⁵³

V. THE PIVOT TOWARDS ACCOUNTABILITY

Recently, the international community has increasingly recognized that securing justice helps create stable, peaceful societies after conflict by: (1) establishing individual responsibility and denying collective guilt, (2) delegitimizing institutions and war criminals responsible for the commission of atrocities, (3) establishing an accurate historical record, (4) providing victim catharsis, and (5) promoting deterrence.¹⁵⁴

Already at the end of the twentieth century, there were indications that justice was becoming the preferred approach. On May 25, 1993, in response to the documentation of grave violations of international humanitarian law and human rights abuses in the former Yugoslavia, the U.N. Security Council adopted Resolution 827 establishing the International Criminal Tribunal for the former Yugoslavia.¹⁵⁵ The purpose of the Yugoslavia Tribunal was to restore peace in the war-

150. See Stella Yarbrough, *Amnesty or Accountability: The Fate of High-Ranking Child Soldiers in Uganda's Lord's Resistance Army*, 47 VAND. L.J. 531, 541-43 (2014).

151. See *Is Uganda's Judicial System Ready to Prosecute Serious Crimes?*, INT'L C. FOR TRANSNAT'L JUST. (Jan. 22, 2015), <https://www.ictj.org/news/uganda-kwoyelo-case> [<https://perma.cc/CRU7-389L>].

152. NATIONAL ACCOUNTABILITY FOR INTERNATIONAL CRIMES IN AFRICA 8 (Emma Lubaale & Ntombizuko Dyani-Mhango eds., 2022).

153. See *Uganda*, COAL FOR THE INT'L CRIM. CT., <https://www.coalitionfortheicc.org/country/uganda> [<https://perma.cc/66LA-G7WB>].

154. Michael P. Scharf & Paul R. Williams, *The Functions of Justice and Anti-Justice in the Peace-Building Process*, 35 CASE W. RES. J. INT'L L. 161, 170-176 (2003).

155. *The Tribunal-Establishment*, U.N. INT'L CRIM. TRIBUNAL FOR THE FORMER YUGOSLAVIA, <https://icty.org/en/about/tribunal/establishment> [<https://perma.cc/6SJT-Z6AA>]; S.C. Res. 827 (May 25, 1993).

torn region,¹⁵⁶ which was an exceptional move after decades of Amnesty-Based Peace agreements. In fact, in 1995, Justice Richard Goldstone, the appointed Chief Prosecutor for the Yugoslavia Tribunal, urged Richard Holbrooke, who was mediating the Dayton Accords, to include accountability provisions in the final language of the peace agreement.¹⁵⁷ While the Dayton Accords reflected only a fraction of the language on war crimes sought by the Bosnian delegation, the Accords did not include any form of *dejure* amnesty for atrocity crimes.¹⁵⁸ While there were some provisions that required the parties to provide a minimal level of cooperation with the Yugoslavia Tribunal,¹⁵⁹ there was fairly widespread speculation that President of the Federal Republic of Yugoslavia Slobodan Milošević had been granted some level of informal *defacto* amnesty in exchange for his signature on the Accords.¹⁶⁰

At the time of the signing of the Dayton Accords, Bosnian Serb political and military leaders Radovan Karadžić and Ratko Mladić had already been indicted by the Yugoslavia Tribunal,¹⁶¹ and hence were excluded from the negotiations of the Dayton Accords.¹⁶² On the other hand, Momčilo Krajišnik¹⁶³ and Slobodan Milošević,¹⁶⁴ both of whom were the signatories of the Dayton Accords, were later indicted by the Yugoslavia Tribunal for crimes committed during the war.¹⁶⁵

In the same vein, the Rambouillet Accords did not provide an amnesty for the grave human rights abuses and international crimes

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156. Franca Baroni, *The International Criminal Tribunal for the Former Yugoslavia and Its Mission to Restore Peace*, 12 PACE INT'L L. REV. 233, 233–34 (2000).
157. Michael P. Scharf, *The Tools for Enforcing International Criminal Justice in the New Millennium: Lessons from the Yugoslavia Tribunal*, 49 DEPAUL L. REV. 925, 953, 955 (2000).
158. *See generally* Bosnia and Herzegovina-Croatia-Yugoslavia: General Framework Agreement for Peace in Bosnia and Herzegovina with Annexes, Nov. 21, 1995, A/50/79C [hereinafter Dayton Accords].
159. *Id.* art. X.
160. Jackson Nyamuya Maogoto, *International Justice in the Shadow of Realpolitik: Re-Visiting the Establishment of the Ad Hoc International Criminal Tribunals*, 5 FLINDERS J. LEGAL REFORM, no. 2, 2001, at 29.
161. Press Release, Radovan Karadzic and Ratko Mladic Accused of Genocide Following the Take-Over of Srebrenica, U.N. ICTY (Nov. 16, 1995), <https://www.icty.org/sid/7221> [<https://perma.cc/P6JA-MY6J>].
162. Leon Hartwell, *Conflict Resolution: Lessons from the Dayton Peace Process*, 35 NEGOT. J. 443, 459–60 (2019).
163. ICCTY, CASE INFORMATION SHEET: MOMČILO KRAJIŠNIK, https://www.icty.org/x/cases/krajisnik/cis/en/cis_krajisnik_en.pdf.
164. Prosecutor v. Milošević, Caw No. IT-99-37, Indictment (Int'l Crim. Tib. For the Former Yugoslavia 1999).
165. *Id.*; CASE INFORMATION SHEET: MOMČILO KRAJIŠNIK, *supra* note 163; Dayton Accords, *supra* note 158.

committed in Kosovo during late 1990s.¹⁶⁶ Indeed, President of Serbia Milan Milutinović and Deputy Prime Minister of the Federal Republic of Yugoslavia, both of whom headed the Serbian delegation during the Rambouillet talks, were indicted by the Yugoslavia Tribunal along with Slobodan Milošević in 1999.¹⁶⁷

Following a similar approach, the 1990s genocide against the Tutsis in Rwanda concluded with the establishment of the International Criminal Tribunal for Rwanda recognizing the stark need for justice.¹⁶⁸

Sierra Leone initially adopted an Amnesty-Based Peace, however, upon the resumption of hostilities after signing the Lomé Agreement, the Sierra Leone President opted to request the assistance of the U.N. with the establishment of a Special Court for Sierra Leone.¹⁶⁹ Similarly, the Peace Agreement for Cambodia originally provided a *de facto* amnesty for the Khmer Rouge leaders, under whose watch nearly two million people died.¹⁷⁰ After more years of political turmoil, Cambodia too was forced to request the help of the U.N. with setting up a hybrid tribunal to prosecute those responsible for the crimes committed during the Khmer Rouge leadership.¹⁷¹

Indeed, Amnesty-Based Peace approaches led the U.N. High Commissioner for Human Rights to conclude in its report on amnesties that:

[t]he amnesties that exempt from criminal sanction those responsible for atrocious crimes in the hope of securing peace have often failed to achieve their aim and have instead emboldened their beneficiaries to commit further crimes. Conversely, peace agreements have been reached without amnesty provisions in some situations where amnesty had been said to be a necessary condition of peace and where many had feared that indictments would prolong the conflict.¹⁷²

166. Rambouillet Accords, *supra* note 29.

167. Prosecutor v. Milošević, *supra* note 164.

168. S.C. Res. 955 ¶ 1 (Nov. 8, 1994).

169. U.N. Secretary-General, Letter dated 9 August 2000 from the Permanent Representative of Sierra Leone to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2000/786 (Aug. 10, 2000).

170. See Ben Kiernan, *The Demography of Genocide in Southeast Asia: The Death Tolls in Cambodia, 1975–79, and East Timor, 1975–80*, 4 CRITICAL ASIAN STUD. 585, 587 (2003); see also Letter dated 30 October 1991 from the Permanent Representatives of France and Indonesia to the United Nations addressed to the Secretary-General, U.N. Doc. A/46/608-S/23177, art. 21–22 (Oct. 30, 1991).

171. U.N. President of the S.C., Letter dated June 23, 1997 from Secretary General to the President of the General Assembly and to the President of the Security Council, U.N. Doc. A/51/93 (June 24, 1997).

172. Amnesty Rules, *supra* note 79.

International criminal courts and human rights bodies have essentially reached consensus that amnesties may not be provided for certain crimes. Although such courts and human rights bodies have diverged as to the rationale that underlies the amnesty prohibition, the specific crimes for which this principle applies, and whether the prohibition is absolute or permits exceptions in special cases, they all generally agree that providing amnesties for very serious crimes is inconsistent with international law.¹⁷³ For instance, the Extraordinary Chambers in the Courts of Cambodia have overruled challenges to its jurisdiction based on a broad amnesty provision, stating that “an emerging consensus prohibits amnesties in relation to serious international crimes, based on a duty to investigate and prosecute these crimes and to punish their perpetrators.”¹⁷⁴

While the European Court of Human Rights (ECtHR) has rejected the view that rights protected by the European Convention of Human Rights entitle the victims of the violations to seek criminal punishment of persons responsible, the ECtHR has criticized amnesty laws on account of the interest of the society as a whole in deterring criminals, preventing the recurrence of abuses, and defending the rule of law.¹⁷⁵ In a number of cases against Turkey involving the discontinuation of criminal proceedings against state officials, the ECtHR emphasized that measures providing immunity to state agents, including amnesties, were unacceptable because they undermined the deterrent effect of criminal sanctions.¹⁷⁶ Moreover, the ECtHR declared that amnesties, pardons, or statutes of limitations should not apply to criminal cases involving torture and ill-treatment since prosecution of such crimes was essential in maintaining public confidence in justice systems and in preventing any appearance of collusion or tolerance of unlawful acts.¹⁷⁷

Further, in a particularly elaborate judgment by the Inter-American Court of Human Rights (IACtHR) in the *Gelman v. Uruguay*

173. Josepha Close, *Crafting an International Norm Prohibiting the Grant of Amnesty for Serious Crimes: Convergences and Divergences in the Case-Law of International Courts*, 7 QUEEN MARY L.J. 109, 112 (2016).

174. Prosecutor v. Nuon, Case No. 002/19-09-2007/ECCCffC, Decision on Ieng Sary’s Rule 89 Preliminary Objections, ¶ 53 (2011).

175. Close, *supra* note 173, at 114.

176. See, e.g., Okkali v. Turkey, App. No. 52067/99, ¶ 76–78 (2003), <https://hudoc.echr.coe.int/eng?i=001-77522>; see also Ali and Ayse Duran v. Turkey, App. No. 42942/02, ¶ 69–72 (2008), <https://hudoc.echr.coe.int/eng?i=001-120841>; see also Terzi and Erkmen v. Turkey, App. No. 31300/05, ¶ 33–36 (2009), <https://hudoc.echr.coe.int/eng?i=001-93823>; see also Baran and Hun v. Turkey, App. No. 30685/05, ¶ 58–62 (2010), <https://hudoc.echr.coe.int/eng?i=001-98664>; see also Yerli v. Turkey, App. no. 59177/10, ¶ 60–63 (2014), <https://hudoc.echr.coe.int/eng?i=001-153058>.

177. See, e.g., Okkali v. Turkey, *supra* note 176, ¶ 65–66; see also Ali and Ayse Duran v. Turkey, *supra* note 176, ¶ 63–64.

case,¹⁷⁸ the Court examined amnesty laws, international and domestic decisions, and *opinio juris* on the topic of amnesties in-depth. It concluded that amnesty laws that prevent the investigation, prosecution, and punishment of serious human rights violations are inconsistent with a state's obligations to uphold human rights under international law.¹⁷⁹ Notably, the case concerned an amnesty law that was adopted through a democratic process and was even challenged during a national referendum, in which only 47.7% of the votes supported its nullification.¹⁸⁰ This notwithstanding, the IACtHR underscored that a democratic process and a democratic regime does not mean that a state can relieve itself from the obligation to prosecute human rights violations.¹⁸¹

VI. AMNESTY-BASED PEACE IN MINSK I AND MINSK II

The allure of Amnesty-Based Peace can also be witnessed in the peace process that took place in Ukraine in 2014. The agreements negotiated after the beginning of the Russian aggression in Ukraine in 2014 contained clauses effectively providing amnesties to all those responsible for committing crimes in Ukraine.¹⁸²

The armed conflict in Ukraine began in 2013, when then-Ukrainian President Viktor Yanukovich aligned himself with the Kremlin and rejected a deal for greater economic integration with the European Union, spurring protests in Kyiv.¹⁸³ State security forces responded with violence towards the protesters, triggering a renewed surge of heightened protest across the country and ultimately resulting in President Yanukovich's ousting.¹⁸⁴ This movement became known as the Revolution of Dignity.¹⁸⁵ Amidst the chaos, Russian forces deployed to Crimea and oversaw a disputed and illegitimate local referendum in 2014 in a claimed effort to "protect Russians and Russian speakers in

178. *Gelman v Uruguay*, Merits, Reparations, and Judgment, Inter-Am. Ct. H.R. (ser. C) No. 221 (Feb. 24, 2011).

179. *Id.* §§ D–E.

180. *Id.* ¶ 149.

181. *See generally id.*

182. Minsk I, *supra* note 73, ¶ 6; Minsk II, *supra* note 74, ¶ 5.

183. Ian Traynor & Oksana Grytsenko, *Ukraine Aligns with Moscow as EU Summit Fails*, THE GUARDIAN (Nov. 28, 2013, 23:36), <https://theguardian.com/world/2013/nov/29/ukraine-yanukovich-moscow-eu-summit> [<https://perma.cc/Y24V-XF7T>].

184. *Profile: Ukraine's Ousted President Viktor Yanukovich*, BBC (Feb. 28, 2014), <https://bbc.com/news/world-europe-25182830> [<https://perma.cc/M4LU-D4BQ>].

185. *Understanding Ukraine's Euromaidan Protests*, OPEN SOC'Y FOUND., <https://opensocietyfoundations.org/explainers/understanding-ukraines-euromaidan-protests> [<https://perma.cc/6226-GKDV>] (May 2019).

Southeast Ukraine,” resulting in the illegal attempted annexation of Crimea.¹⁸⁶ In the aftermath of the 2014 referendum, Russia stoked tensions in Eastern Ukraine by arming and leading pro-Russian separatists who together with Russian forces occupied certain territories of Donetsk and Luhansk oblasts.¹⁸⁷ Escalated tensions led to a violent war between Russia, Russian-backed separatist forces, and the Ukrainian military.¹⁸⁸

In an effort to establish a ceasefire in Eastern Ukraine, a meeting was held in Minsk, Belarus, between newly elected President of Ukraine Petro Poroshenko, President of Russia Vladimir Putin, Russia’s Foreign Minister Sergei Lavrov, and representatives of the self-proclaimed People’s Republic of Donetsk (DPR) and the People’s Republic of Luhansk (LPR) (known as the Trilateral Contact Group).¹⁸⁹ The Trilateral Contact Group produced a draft of the Minsk Protocol.¹⁹⁰

On September 5, 2014, representatives of the OSCE (Ambassador Heidi Tagliavini), Ukraine (former President Leonid Kuchma), Russia (former Ambassador Mikhail Zurabov), the DPR (leader Alexander Zakharchenko) and the LPR (leader Igor Plotnitsky) signed the Minsk Protocol.¹⁹¹ However, less than two weeks after its signing, violations of the ceasefire occurred.¹⁹² To reinforce the ceasefire commitments and

186. CENTRE FOR PREVENTATIVE ACTION, *War in Ukraine*, GLOBAL CONFLICT TRACKER, <https://www.cfr.org/global-conflict-tracker/conflict/conflict-ukraine> [<https://perma.cc/Z84W-UL2P>] (Jan. 18, 2024).

187. Roman Goncharenko, *Donetsk and Luhansk: A Tale of Creeping Occupation*, DEUTSCHE WELLE (Feb. 23, 2022), <https://www.dw.com/en/donetsk-and-luhansk-in-ukraine-a-creeping-process-of-occupation/a-60878068> [<https://perma.cc/LCE4-9FDQ>].

188. *Id.*

189. Shaun Walker, *Ukraine President Petro Poroshenko: Putin Summit to Decide Fate of Europe*, THE GUARDIAN (Aug. 26, 2014, 14:42), <https://theguardian.com/world/2014/aug/26/ukraine-vladimir-putin-petro-poroshenko-summit-solve-conflict> [<https://perma.cc/4KNM-DXVQ>]; *Press Statement by the Trilateral Contact Group*, OSCE (Sep. 2, 2014), <https://www.osce.org/home/123124> [<https://perma.cc/8LG2-TDYV>].

190. Minsk I, *supra* note 73.

191. *Id.*; *Protocol on the Outcome of Consultations of the Trilateral Contact Group on Joint Steps Aimed at the Implementation of the Peace Plan of the President of Ukraine, P. Poroshenko, and the Initiatives of the President of the Russian Federation, V. Putin*, PEACE AGREEMENTS DATABASE, <https://www.peaceagreements.org/view/1363> [<https://perma.cc/C37X-4K8E>].

192. *Ukraine Deal with Pro-Russian Rebels at Minsk Talks*, BBC NEWS (Sep. 20, 2014), <https://www.bbc.com/news/world-europe-29290246> [<https://perma.cc/A9WV-R26U>]; *Ukrainian Peace Talks Lead to Buffer Zone Deal*, CBC (Sep. 19, 2014, 9:06 PM EDT), <https://www.cbc.ca/news/world/ukrainian-peace-talks-lead-to-bufferzone-deal-1.2772573> [<https://perma.cc/27NU-39HX>].

establish further conditions for peace, a follow up memorandum was signed (Minsk I Memorandum) on September 19, 2014.¹⁹³

The Minsk I Protocol provided for Amnesty-Based Peace. Specifically, paragraph 6 of the Minsk Protocol called for the enactment of “a law prohibiting the prosecution and punishment of persons in connection with the events that took place in certain areas of the Donetsk and Luhansk regions of Ukraine.”¹⁹⁴ However, this Minsk I effort proved to be unsuccessful, and the fighting intensified until the Minsk Protocol failed entirely by January 2015.¹⁹⁵

On February 12, 2015, representatives from the OSCE, Russia, Ukraine, the DPR, and the LPR signed the second Minsk document—the package of measures for the implementation of the Minsk agreements (the Minsk II Agreement).¹⁹⁶ Just like Minsk I, Minsk II maintained the Amnesty-Based Peace approach. In a footnote, Minsk II calls for the “exemption from punishment, prosecution and discrimination for persons involved in the events that have taken place in certain areas of the Donetsk and Lugansk regions.”¹⁹⁷ Likewise, paragraph 5 of Minsk II contains similar language to that of Minsk I stating that parties shall “ensure pardon and amnesty by enacting the law prohibiting the prosecution and punishment of persons in connection with the events that took place in certain areas of the Donatsk and Lugansk regions of Ukraine.”¹⁹⁸ The Minsk II Agreement provided the framework for subsequent attempts to end the armed conflict, and the U.N. Security Council immediately endorsed the Minsk II Agreement through its Resolution 2202 (2015).¹⁹⁹ Despite this second attempt for peace, neither of the Minsk agreements were observed or implemented,²⁰⁰ instead paving the way for the Russian full-scale invasion in 2022.

193. See DUNCAN ALLAN, *THE MINSK CONUNDRUM: WESTERN POLICY AND RUSSIA’S WAR IN EASTERN UKRAINE* 10 (May 22, 2020), <https://chathamhouse.org/2020/05/minsk-conundrum-western-policy-and-russias-war-eastern-ukraine-0/background-minsk> [<https://perma.cc/QXZ5-Y46K>].

194. Minsk I, *supra* note 73, ¶ 6.

195. See Lidia Powirksa, *Through the Ashes of the Minsk Agreements*, HARVARD UNIV.: EPICENTER (May 18, 2022), <https://epicenter.wcfia.harvard.edu/blog/through-ashes-minsk-agreements> [<https://perma.cc/UJ2C-NAKE>].

196. Minsk II, *supra* note 74.

197. *Id.*

198. Minsk II, *supra* note 74, ¶ 5.

199. Press Release, Security Council, Unanimously Adopting Resolution 2202 (2015), Security Council Calls on Parties to Implement Accords Aimed at Peaceful Settlement in Eastern Ukraine, U.N. Press Release SC/11785 (Feb. 17, 2015), <https://press.un.org/en/2015/sc11785.doc.htm> [<https://perma.cc/9S3R-98KD>]; S.C. Res. 2202 (2105).

200. See Powirska, *supra* note 195.

VII. UKRAINE: PEACE WITH JUSTICE OR PEACE VERSUS JUSTICE?

Along with the broader international pivot to accountability, Ukraine is also finding itself in a completely transformed environment where there is less room for accommodation and appeasement.²⁰¹ This Section examines how the pressure from certain parties asking Ukraine to accept another Amnesty-Based Peace will clash with the strong momentum for environmental justice and accountability. While the outcome of the negotiations cannot be predicted at this time, the processes that have already been launched for Ukraine will make it difficult for the negotiating parties to abandon accountability in the eventual peace agreement.

Despite the failures of Minsk I and II, China and seven African countries²⁰² are again asserting the need for amnesty as a cornerstone of a peace agreement for Ukraine. They have presented plans that fail to incorporate justice for the crimes committed during the war.²⁰³ Given the eagerness of both China and the African countries to achieve a quick peace so as to restore positive economic conditions and functioning supply chains,²⁰⁴ it can be expected that the peace efforts stemming from these actors would prioritize postponing discussions on anything as complex as developing accountability mechanisms for Ukraine. Indeed, Chinese spokespersons have repeatedly reiterated their calls for negotiations and dialogue opposing the efforts from the ICC and others at bringing the perpetrators of international crimes in Ukraine to justice.²⁰⁵ Moreover, the African continent's primary objective is to

201. See generally Dennis Soltys, *Appeasement is the Worst Possible Policy for Both Ukraine and Russia*, ATLANTIC COUNCIL (May 21, 2022), <https://atlanticcouncil.org/blogs/ukrainealert/appeasement-is-the-worst-possible-policy-for-both-ukraine-and-russia/> [https://perma.cc/BJ9R-T37S].

202. South Africa, Senegal, Zambia, Congo, Uganda, Egypt, and the Comoros developed a 10-point peace plan in the summer of 2023, that they presented to President Zelenskyy and President Putin during their trip to Ukraine and Russia in June 2023. Martin Fornusek, *South African President Presents 10-step Peace Plan in Kyiv*, THE KYIV INDEP. (June 16, 2023, 10:13 PM), <https://kyivindependent.com/south-african-president-presents-10-step-peace-plan-in-kyiv/> [https://perma.cc/K22K-9AA9].

203. See Miłosz Bartosiewicz & Krzysztof Nieczypor, *Grain Comes First: The African Peace Initiative for Ukraine*, CTR. FOR EASTERN STUD. (June 21, 2023) <https://www.osw.waw.pl/en/publikacje/analyses/2023-06-21/grain-comes-first-african-peace-initiative-ukraine> [https://perma.cc/A4N6-RSS9]; *China's Position on the Political Settlement of the Ukraine Crisis*, *supra* note 10.

204. See Bartosiewicz & Nieczypor, *supra* note 203; see also *China's Position on the Political Settlement of the Ukraine Crisis*, *supra* note 10.

205. *Foreign Ministry Spokesperson Wang Wenbin's Regular Press Conference on March 20, 2023*, *supra* note 67 ("Our position has always been that dialogue and negotiation provides the fundamental way out for the

restore the supply of grain from Ukraine to Africa to avoid an escalating food crisis—after Russian military vessels blocked Ukrainian ports in the Black Sea for grain exports from Ukraine, the fifth-largest grain exporter in the world—and it perceives any push for justice as a barrier to this objective.²⁰⁶

Nonetheless, considering, let alone agreeing to, an Amnesty-Based Peace would be exceptionally difficult for Ukraine, especially in light of widespread environmental crimes and possible ecocide.

A. *A Momentum for Justice*

The war in Ukraine has spurred a proliferation of civil society documentation²⁰⁷ among Ukrainian civil society actors and led to the opening of hundreds of investigation cases and the issuing of indictments against Russian military and political officials by the Ukrainian Office of the Prosecutor.²⁰⁸ Additionally and importantly, point seven of the Ukrainian ten-point peace plan unambiguously sets out Ukraine's demand for "Justice."²⁰⁹ Specifically, Ukraine has called for the establishment of a Special Tribunal regarding the crime of Russia's aggression against Ukraine and the creation of an international mechanism to compensate for all the damages, including environmental damages, caused by this war.²¹⁰

First steps towards this have already been made. Ukraine has concluded war crimes trials in 23 cities against 172 military personnel

Ukraine crisis, and that the international community needs to play a constructive role in peacefully resolving the Ukraine crisis, and do more in ways that are conducive to talks for peace, deescalation and mediation efforts. The ICC needs to take an objective and just position, respect the jurisdictional immunity of a head of state under international law, prudently exercise its mandate in accordance with the law, interpret and apply international law in good faith, and not engage in politicization or use double standards."); *see also Ministry of Foreign Aff. of China, Foreign Ministry Spokesperson Wang Wenbin's Regular Press Conference on March 21, 2023*, MINISTRY OF FOREIGN AFFS. OF THE PEOPLE'S REPUBLIC OF CHINA (March 21, 2023, 21:40), https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2511_665403/202303/t20230321_11045969.html [<https://perma.cc/ML85-C9TR>].

206. Bartosiewicz & Nieczypor, *supra* note 203.

207. *See* Justin Hendrix, *Ukraine May Mark a Turning Point in Documenting War Crimes*, JUST SECURITY (Mar. 28. 2022), <https://www.justsecurity.org/80871/ukraine-may-mark-a-turning-point-in-documenting-war-crimes/> [<https://perma.cc/E2T9-UC39>].

208. Oleksii Kovalenko, *Q&A: Ukraine's Prosecutor General Discussed Accountability for Putin's War Crimes*, VOA NEWS (April 27, 2023, 2:28 PM), <https://www.voanews.com/a/ukraine-prosecutor-general-discusses-accountability-for-putin-war-crimes/7069088.html> [<https://perma.cc/S2XD-YZ9F>].

209. Address at the G20 Summit, *supra* note 60.

210. *Id.*

and registered nearly 100,000 instances of war crimes and crimes of aggression.²¹¹ Out of the 100,000 war crimes instances, 252 have resulted in environmental damage according to Ukraine's Prosecutor General Andriy Kostin.²¹² Since the destruction of the Kakhovka HPP dam,²¹³ Ukraine has put in notable effort to prosecute ecocide committed during the war. It has developed a Ukraine War Environmental Consequences Work Group, co-chaired by Head of the Office of the President of Ukraine Andriy Yermak and former Deputy Prime Minister, former Minister of Foreign Affairs of Sweden Margot Wallström, which is currently investigating fourteen cases of ecocide.²¹⁴ In fact, Ukraine is the first country to attempt to prosecute environment-related war crimes and the crime of ecocide.²¹⁵ Ukraine has also established a Register of Damages caused by the aggression of the Russian Federation against Ukraine to allow Ukraine to properly record and verify the war-related damage, including damage to its environment, as a first step towards creation of an international compensation mechanism.²¹⁶

Hence, while some international actors may be eyeing quick solutions and an end to the war without addressing all its root causes, Ukraine's and Ukrainian society's positions have remained firm—justice needs to be part of any negotiated solution.

Beyond Ukraine, the push for accountability among the international community plays strongly against Amnesty-Based Peace. Ever since the outbreak of the full-scale invasion, many among the

211. *Map of War Crimes Trials in Ukraine*, JUSTICEINFO.NET (Dec. 6, 2022), <https://www.justiceinfo.net/en/109654-map-of-war-crimes-trials-in-ukraine.html> [<https://perma.cc/8GQQ-J8VE>] (Nov. 14, 2023).

212. *Andriy Yermak, Margot Wallström Held the Second Meeting of the Ukraine War Environmental Consequences Work Group*, PRESIDENT OF UKR. VOLODYMYR ZELENSKYI OFF. WEBSITE (Sept. 16, 2023, 10:15), <https://president.gov.ua/en/news/andrij-yermak-i-margot-valstrem-proveli-drugye-zasidannya-miz-85661> [<https://perma.cc/LYT9-SPVG>].

213. *See generally* Andrian Prokip, *The Kakhovka Dam Disaster: Responsibility and Consequences*, WILSON CTR. (June 14, 2023), <https://www.wilsoncenter.org/blog-post/kakhovka-dam-disaster-responsibility-and-consequences> [<https://perma.cc/5M9K-G67T>].

214. *Andriy Yermak, Margot Wallström Held the Second Meeting of the Ukraine War Environmental Consequences Work Group*, *supra* note 212.

215. Elsa Court, *Ukraine Aims to Set Global Standard of Investigating Ecocide as War Crime*, KYIV INDEP. (Oct. 20, 2023, 6:24 PM), <https://kyiv-independent.com/ukraine-aims-to-be-first-to-set-global-standard-of-investigating-ecocide-as-war-crime/> [<https://perma.cc/ST4Z-WPUV>].

216. *See Council of Europe Summit Creates Register of Damage for Ukraine as First Step Towards an International Compensation Mechanism for Victims of Russian Aggression*, COUNCIL OF EUR. (May 17, 2023), <https://coe.int/en/web/portal/-/council-of-europe-summit-creates-register-of-damage-for-ukraine-as-first-step-towards-an-international-compensation-mechanism-for-victims-of-russian-aggression> [<https://perma.cc/5PU2-86RE>].

international community, including Ukraine as mentioned above, have been calling for a special tribunal for the crime of aggression.²¹⁷ Many proposals have been put forth for what it could look like and how it could be established. In February 2023, the European Union made the first step toward the prosecution of the crime of aggression by establishing an International Centre for the Prosecution of the Crime of Aggression in Ukraine in The Hague, which can help collect evidence for use in future prosecutions.²¹⁸

Additionally, the indictment against President Putin issued by the Office of the Prosecutor of the ICC in March 2023 was an expected, yet unprecedented, move by the ICC Prosecutor against a permanent member state of the U.N. Security Council.²¹⁹ The ICC Office of the Prosecutor had issued an indictment against a sitting head of state before in the situation in Darfur.²²⁰ However, it had thus far shied away from issuing arrest warrants against the permanent Security Council members.²²¹ The change of approach in this situation can in part be explained by the undeniably strong case that the Prosecutor has likely gathered against Putin for the war crime of deportation of children, and the overwhelming international support that the ICC has received for

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217. Address at the G20 Summit, *supra* note 60; Irina Paliashvili, *Calls Mount for Russia to Face Tribunal for Aggression Against Ukraine*, ATLANTIC COUNCIL (Feb. 28, 2023), <https://www.atlanticcouncil.org/blogs/ukraine-alert/calls-mount-for-russia-to-face-tribunal-for-aggression-against-ukraine/> [https://perma.cc/KB24-R5HZ].
218. Charlotte van Campenhout & Stephanie van den Berg, *EU: Centre for Prosecution of 'Aggression' Crimes in Ukraine to Be Set Up in The Hague*, REUTERS (Feb. 2, 2023, 9:46 AM EST), <https://www.reuters.com/world/europe/eu-centre-prosecution-aggression-crimes-ukraine-be-set-up-hague-2023-02-02/> [https://perma.cc/5Q3M-7BE5].
219. Press Release, Int'l Crim. Ct., *supra* note 34.
220. *See* The Prosecutor v. Omar Hassan Ahmad Al Bashir, Case No. ICC-02/05-01/09, Warrant of Arrest, (March 5, 2009).
221. During the term of the Former Prosecutor of the ICC Fatou Bensouda, the Office was also looking into the crimes that may have been committed by the United States of America in the Afghanistan situation, which the current Prosecutor Karim Khan eventually abandoned. *ICC Prosecutor Defends Dropping US From Afghan War Crime Probe*, AL JAZEERA (Dec. 6, 2021), <https://aljazeera.com/news/2021/12/6/icc-prosecutor-defends-dropping-us-from-afghan-investigation> [https://perma.cc/M9BN-RK7X]; In December 2020, the Prosecutor of the ICC decided to conclude the preliminary examination into Iraq/UK and not to request the opening an investigation. *Iraq/UK*, INT'L CRIM. CT., <https://www.icc-cpi.int/iraq> [https://perma.cc/7E3M-45KS]; Russia has also been implicated in crimes allegedly committed in Georgia, as well as Ukraine prior to 2022. *ICC Issues Warrants for 2008 Russia-Georgia War Crimes Suspects*, THE GUARDIAN (Jun. 30, 2022, 12:32), <https://www.theguardian.com/law/2022/jun/30/icc-issues-warrants-for-2008-russia-georgia-war-crimes-suspects> [https://perma.cc/X556-XLHM].

the advancing of the Ukraine situation.²²² There continues to be speculation that the ICC Prosecutor may amend the indictment to include environmental crimes.²²³

The ICC indictment against Putin was positively received by many in the West and especially those in Ukraine, despite criticism by states such as China and, of course, Russia.²²⁴ For Ukraine, the move was seen as the first tangible step forward in achieving justice for the crimes Russia has been committing in Ukraine since 2014 and has restored the faith of many in Ukraine in the international community's ability to deliver justice.²²⁵

Other states, some of which have historically been passive and hesitant to pursue accountability efforts in other states,²²⁶ have also begun investigations into the Russian crimes in Ukraine. For instance, the United States has developed a war crimes accountability team to investigate cases that may have a U.S. nexus, allowing cases to proceed in U.S. courts under new legal authorities from U.S. Congress.²²⁷ Estonia, France, Germany, Lithuania, Sweden, Spain, Poland, Slovakia, Latvia, Norway, and Switzerland have all already launched

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222. The Ukraine situation was referred to the ICC by 43 States Parties of the ICC following the outbreak of the full-scale invasion. *Ukraine*, INT'L CRIM. CT., <https://www.icc-cpi.int/situations/ukraine> [<https://perma.cc/675R-TKPA>].
223. Thomas Obel Hansen, *Could the Nova Kakhovka Dam Destruction Become the ICC's First Environmental Crimes Case?*, JUST SEC. (June 9, 2023), <https://www.justsecurity.org/86862/could-the-nova-kakhovka-dam-destruction-become-the-iccs-first-environmental-crimes-case/> [<https://perma.cc/5Z8V-WBB3>].
224. *Reactions to ICC's Arrest Warrant for Putin Citing Ukraine War Crimes*, REUTERS (Mar. 17, 2023, 3:57 PM), <https://www.reuters.com/world/europe/reactions-iccs-arrest-warrant-putin-over-ukraine-war-crimes-2023-03-17/> [<https://perma.cc/PG4H-H6GM>]; John Feng, *China Says Putin has 'Immunity' From War Crimes Prosecution*, NEWSWEEK, <https://www.newsweek.com/china-russia-vladimir-putin-icc-war-crimes-ukraine-1788911> [<https://perma.cc/EMW3-9XY2>] (Mar. 20, 2023, 10:19 PM).
225. *See, e.g.*, PILPG, *Expert Roundtable—Prosecuting Putin: Next Steps*, YOUTUBE, 23:08 (March 24, 2023), <https://www.youtube.com/watch?v=B4SP6dejQM0> [<https://perma.cc/TT8Q-LA95>].
226. *See, e.g.*, Sara Sirota, *U.S. Demands Russian War Crime Prosecution While Neglecting Its Own Accountability*, THE INTERCEPT (May 11, 2022, 1:12 PM), <https://theintercept.com/2022/05/11/russian-war-crime-prosecution-accountability/> [<https://perma.cc/TS22-DEN9>].
227. Special Briefing, Online Press Briefing with Ambassador-at-Large for Global Criminal Justice Beth Van Schaack, U.S. Dep't of State (June 27, 2023), <https://www.state.gov/online-press-briefing-with-ambassador-at-large-for-global-criminal-justice-beth-van-schaack/> [<https://perma.cc/H9UB-ZAVS>].

investigations of international crimes committed by Russia in Ukraine under the universal jurisdiction principle.²²⁸

What is more, forty-seven states, including Colombia, Guatemala, the Marshall Islands, Japan, Republic of Korea, the United States, the United Kingdom, and many others from around the world,²²⁹ and a delegation from the European Union, have joined the Group of Friends of Accountability following the Aggression against Ukraine to share information and engage all of the international community in an effort to pursue justice for Ukraine.²³⁰

The devastating toll Russia's war has taken on the environment in Ukraine, as well as globally, has also re-energized the momentum for environmental justice and the crime of ecocide. In January 2023, the Parliamentary Assembly of the Council of Europe adopted a resolution on environmental impacts of armed conflicts, which called on updating the legal infrastructure to punish environmental damage and prosecute ecocide.²³¹ Brazil, Bolivia, and Mexico are also among the countries that have recently issued legislative proposals for criminalizing ecocide, and the drive for including ecocide as the fifth core international crime has been on the International Criminal Court's agenda since 2021, when a proposal for a definition of ecocide was developed.²³²

These are all sentiments and steps that have profound implications on the possible forms for the resolution of the armed conflict and that cannot be backtracked irrespective of different actor's ambitions for a quick peace. Ukraine and the international community have gone too far in its pursuit of justice and the fight against climate change to entertain the possibility of Amnesty-Based Peace after such grievous destruction of the environment. While the indictment against Putin has not thus far achieved substantial progress toward the resolution of the

228. Yvonne M. Dutton, *Prosecuting Atrocities Committed in Ukraine: A New Era for Universal Jurisdiction?*, 55 CASE W. RES. J. INT'L L. 391, 392-93 (2023).

229. Paul Bekkers, Ambassador, Kingdom of the Netherlands, Joint Statement of the Group of Friends of Accountability Following the Aggression Against Ukraine: Interactive Dialogue on Ukraine with the UN High Commissioner for Human Rights (July 12, 2023), <https://geneva.usmission.gov/2023/07/12/joint-statement-of-the-group-of-friends-of-accountability-following-the-aggression-against-ukraine-hrc53/> [https://perma.cc/Z397-PRWL].

230. *High-Level Launch Meeting of the Group of Friends of Accountability Following the Aggression Against Ukraine*, INT'L PEACE INST. (Mar. 25, 2022), <https://ipinst.org/2022/03/high-level-launch-meeting-of-group-of-friends-of-accountability-for-ukraine> [https://perma.cc/PR2Z-V8PH].

231. EUR. PARL. RES. 2477, ¶ 10 (2023).

232. Darryl Robinson, *The Ecocide Wave is Already Here: National Momentum and the Value of a Model Law*, JUST SEC. (Feb. 23, 2023), <https://www.justsecurity.org/85244/the-ecocide-wave-is-already-here-national-momentum-and-the-value-of-a-model-law/> [https://perma.cc/38ZQ-4MCJ].

war in Ukraine, it has certainly impacted Putin's ability to conduct international affairs and fully execute his duties as the head of state²³³ thus putting significant pressure on Russia to negotiate the end to its war and stop the degradation of the environment.

B. Negotiating Justice in Ukraine

The accountability infrastructure built and the broad support that Ukraine has been able to garner for accountability provides a strong foundation for it to resist the intense pressure to accept an Amnesty-Based Peace. Additionally, Ukraine has strong legal and political arguments to put forward for rejecting the demands for providing amnesty.

First, notwithstanding the Minsk Protocols, Ukraine is bound by its international legal obligations as they relate to accountability, and therefore has a solid basis for refusing to grant amnesty to those accused of international crimes. Ukraine is a party to the 1949 Geneva Conventions and Protocol I, the International Covenant to Civil and Political Rights, and the European Convention of Human Rights.²³⁴ Under the principle of *pacta sunt servanda*, Ukraine may not act in breach of its obligation under these treaties.²³⁵ The First Geneva Convention provides that its parties are under an obligation to search for, prosecute, and punish perpetrators of war crimes committed during international armed conflicts,²³⁶ an obligation which applies to both Russia and Ukraine.

Moreover, the International Covenant to Civil and Political Rights, in Article two, paragraph three, provides that each State Party to the

233. Due to the ICC indictment, Putin was not able to travel to South Africa for a BRICS Summit that was scheduled for August 2023. The Kremlin had indicated that it wants Putin to travel, however, South Africa actively lobbied to persuade Putin not to attend the Summit to avoid having to abide by the ICC arrest warrant. See Gerald Imray, *Why Putin Is Dialing in to the BRICS Summit Rather Than Attending in Person*, TIME (Aug. 21, 2023, 11:00 PM), <https://time.com/6307033/vladimir-putin-brics-summit-icc-warrant/> [<https://perma.cc/K4DV-JLQ9>].

234. *Ratification Status for CCPR*, U.N. TREATY BODY DATABASE, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en [<https://perma.cc/3TLM-V7FB>]; *The Parliament of Ukraine Passed in its First Reading the Bill Implementing International Criminal and Humanitarian Law*, PARLIAMENTARIANS FOR GLOB. ACTION (Sep. 18, 2020), <https://www.pgaction.org/news/ukraine-passes-first-reading-bill-international-criminal-humanitarian-law.html> [<https://perma.cc/JR8J-DDL6>].

235. Andrew Solomon, *Pacta Sunt Servanda*, INT'L JUD. MONITOR (Sep. 2008), http://www.judicialmonitor.org/archive_0908/generalprinciples.html [<https://perma.cc/GN2D-X76L>].

236. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed forces in the Field, art. 49, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S.

Convention shall “ensure that any person whose rights or freedoms [recognized in the Convention] shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity” and that State Parties will set up and enforce the justice mechanisms necessary to achieve an effective resolution.²³⁷ The European Convention of Human Rights, in Article thirteen, contains a similar provision.²³⁸ Based on these provisions, Ukraine not only has the right to refuse any amnesty provision in the peace agreement to be negotiated with Russia but, in fact, has an obligation to refuse such provisions. It thus has a further duty to judge and punish the perpetrators who violate the human rights circumscribed therein.

Second, realpolitik arguments about justice ambitions hampering the prospects for a peace agreement between Ukraine and Russia fail to acknowledge that Russia has shown little regard for equitable negotiations and does not see reconciliation with Ukraine as the possible end goal to the war. Yet, the Ukrainians have quickly been able to detect and act upon this dereliction by launching their justice efforts while the war still rages.²³⁹ Even the African concern over the impact of prolonging peace negotiations on food stability fails to acknowledge that Russia has been weaponizing peace to foster global instability. Specifically, Russia has leveraged the pressure from Africa to force Ukraine to agree to Russia’s terms to peace whereby the peace agreement does not demand Russia to withdraw its troops from the occupied Ukrainian territories and does not establish a pathway for accountability.²⁴⁰ Ukraine’s president, Volodymyr Zelenskyy, already declared that a ceasefire right now would allow Russia to maintain control over the occupied territories and regroup for another full scale strike.²⁴¹ This assessment aligns with experience in Angola where the

237. International Covenant on Civil and Political Rights, art. 2, ¶ 3, Dec. 16, 1966, 999 U.N.T.S 171.

238. European Convention on Human Rights, art. 13, Nov. 4, 1950, 213 U.N.T.S. 222 (“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”).

239. *Russia Has Shown No Interest in Negotiations to End War Despite Putin’s Words, U.S. Officials Say*, RADIOFREEEUROPE (Dec. 23, 2022), <https://www.rferl.org/a/russia-putin-war-negotiations/32190264.html> [<https://perma.cc/P3GA-LURA>].

240. According to some sources, the African peace proposal in fact suggested lifting of the ICC arrest warrant against Putin. See *Putin Says African Proposal Could Be Basis for Peace in Ukraine*, AL JAZEERA (July 30, 2023), <https://www.aljazeera.com/news/2023/7/30/putin-says-african-proposal-could-be-basis-for-peace-in-ukraine> [<https://perma.cc/7V8A-SUGW>].

241. *Id.*

first peace agreement with amnesty indeed paved the way for another strike from one of the warring factions, as well as Ukraine's experience between 2014 and 2022.²⁴² Not punishing those most responsible for waging war and causing grave violations of human rights and humanitarian law always risks the resumption of hostilities due to the culture of impunity created through this approach.

Deriving from these circumstances and responding to the need for establishing a durable peace in Ukraine, the negotiations should specifically lay out how the perpetrators will be held accountable. Without unambiguous commitments from both sides regarding the parameters of achieving justice, the provisions may become empty words with no realistic outcome. This is particularly true given that the multilayered nature and scale of the crimes committed in Ukraine are such that no existing mechanism is able to comprehensively address them all.²⁴³ Prosecuting the crime of aggression has particularly caused heated debates as considerations regarding immunity, jurisdiction, Ukrainian constitutional constraints, and the political will among the international community all have posed severe obstacles for addressing this crime; all of which could be avoided if Russia agreed to cooperate on this matter during peace negotiations.²⁴⁴

Additionally, the potential cost of reconstructing Ukraine, including remediation for environmental crimes, is estimated to exceed six hundred billion dollars (USD).²⁴⁵ Analysis of the international law landscape indicates that the current legal framework is not entirely conducive to any unilateral or multilateral actions against Russia to force it to cover the costs of this reconstruction.²⁴⁶ As such, achieving accountability and restoration of Ukraine and its environment will require cooperation and clear commitments from the Russian side enshrined in any negotiated peace agreement.

It must be noted that the current circumstances may not appear feasible for Russia to not only agree to include accountability in a peace agreement with Ukraine, but even to cooperate with designing how the processes would in fact take place. The negotiations that may take place

242. Ian S. Spears, *Angola's Elusive Peace: The Collapse of the Lusaka Accord*, 54 INT'L J. 562, 562 (1999); ANDREAS UMLAND & HUGO VON ESSEN, *RUSSIA'S DICTATED NON-PEACE FOR UKRAINE IN 2014–2022*, 2 (2022).

243. PILPG AND SHEARMAN & STERLING, *ACCOUNTABILITY MECHANISMS FOR WAR CRIMES COMMITTED IN UKRAINE* 40, 43–45 (2022).

244. *See generally* PILPG, *ANALYSIS OF THE LEGAL OPTIONS FOR ESTABLISHING A TRIBUNAL FOR THE CRIME OF AGGRESSION UNDER THE AUSPICES OF THE COUNCIL OF EUROPE AND THE EUROPEAN UNION* 88 (2023).

245. Press Release, World Bank, *Updated Ukraine Recovery and Reconstruction Needs Assessment* (Marc. 23, 2023), <https://www.worldbank.org/en/news/press-release/2023/03/23/updated-ukraine-recovery-and-reconstruction-needs-assessment> [<https://perma.cc/V9JT-XVEZ>].

246. PILP, *REPURPOSING FROZEN RUSSIAN ASSETS: ANALYSIS UNDER INTERNATIONAL LAW* 8–9, 23, 47 (2003).

between Ukraine and Russia are likely to be highly complicated and full of heated argumentation. Nevertheless, one can only hope that the processes that have already been launched to hold the perpetrators of international crimes in Ukraine accountable will prevent appeasement and Amnesty-Based Peace.

VIII. CONCLUSION

At the moment, it is unclear what the end to Russia's war in Ukraine will look like. It is possible to argue, however, that it will include discussions about forms of justice for Ukraine, given the stage that many of these processes have already reached. We can anticipate that actors such as Russia, China, and likely certain African countries will call for quick resolutions and peace without justice in Ukraine. On the other hand, Ukraine can be expected to resist such an outcome and rather continue to push for the establishment of a crime of aggression tribunal, a compensation mechanism for damages to Ukraine's infrastructure and environment, and the prosecution of those most responsible for international crimes and ecocide before the ICC.

The international law framework and historic precedents support Ukraine's position in this debate. Angola has now reached a situation of relative peace.²⁴⁷ However, this was achieved only after the collapse of the first peace agreement that included blanket amnesty for all parties and the death of the leader of the rebel group.²⁴⁸ Haiti, on the other hand, continues to face violence perpetrated by different actors and has seen its society resorting to vigilante justice to compensate for the lack of formal accountability mechanisms.²⁴⁹ Lastly, Uganda, while initially adopting Amnesty-Based Peace, has since referred the situation to the ICC and begun prosecuting LRA fighters in its domestic courts.²⁵⁰

Moreover, decisions and commentaries by international mechanisms, such as the ECtHR, IACtHR, U.N. High Commissioner for Human Rights, and other courts and tribunals indicate that there is general disapproval of amnesty for international crimes and state's

247. *After Decades of War, Angola is an Exporter of Peace*, AFRICAN DEFENSE F. (Dec. 5, 2023), <https://adf-magazine.com/2023/12/after-decades-of-war-angola-is-an-exporter-of-peace/> [https://perma.cc/B32N-2RTL].

248. Aaron Griffiths, *The End of the War, in* FROM MILITARY PEACE TO SOCIETAL JUSTICE? THE ANGOLAN PEACE PROCESS 24–25 (Guus Meijer, 15th ed. 2004).

249. *Haiti's Deadly Vigilante Movement Sees Decline in Gang Violence, Report Says*, REUTERS (May 28, 2023, 5:44 PM), <https://www.reuters.com/world/americas/haitis-deadly-vigilante-movement-sees-decline-gang-violence-report-2023-05-28/> [https://perma.cc/9CQH-RK7U].

250. William W. Burke-White & Scott Kaplan, *Shaping the Contours of Domestic Justice: The International Criminal Court and an Admissibility Challenge in the Uganda Situation*, 206 ALL FACULTY SCHOLARSHIP (2009).

obligations under international and regional human rights treaties.²⁵¹ As Ukraine is bound by many of these international obligations, it should not only reject Russia's demands for blanket amnesty due to the inability of such peace processes to reach durable peace, but is in fact obliged to prosecute those responsible for committing international crimes, crimes against the environment, violations of international humanitarian law, and other grave human rights abuses.

Any Ukrainian and Russian peace negotiations would be taking place in an environment where justice processes have already been launched. As much as Russia may wish to try to persuade Ukraine to abolish its plans for accountability, it is unlikely that it will be able to halt these processes. The ICC has already obtained the necessary jurisdiction from Ukraine to move forward with the case against Putin,²⁵² and the international community has made notable steps toward establishing the mechanisms for prosecuting the crime of aggression and seeking compensation for the damage wrought in Ukraine, which do not depend upon Ukraine and Russia's agreement in a peace negotiation process. As such, both sides will be able to negotiate anything. However, they will no longer be able to negotiate themselves out of accountability already underway.

251. See, e.g., Finonnuala Ní Aoláin, *European Court of Human Rights Rules on Amnesty and Double Jeopardy*, JUST SEC. (June 10, 2014), <https://www.justsecurity.org/11112/ecthr-double-jeopardy/> [<https://perma.cc/G8CA-HFXB>]; see also Juan-Pablo Pérez-León-Acevedo, *The European Court of Human Rights (ECtHR) Vis-à-vis Amnesties and Pardons: Factors Concerning or Affecting the Degree of ECtHR's Deference to States*, 26 INT'L J. HUM. RTS. 1108–1110 (2022); Press Release, U.N. High Comm'r for Human Rights [UNHCR], Pillay: No Amnesty for Gross Human Rights Violations in Yemen (Jan. 6, 2012).

252. *Ukraine*, *supra* note 222.