



Communication submitted under Article 15 of the Rome Statute of the International Criminal Court

**Situation in Ukraine:
Hate Speech as the Crime Against Humanity of Persecution**

June 2024

Executive Summary

Words can't kill, but they can demean and humiliate members of a group, and create a climate where mass violence against them is normalized and encouraged. Russia's ongoing aggression against Ukraine, and the resulting mass atrocities against Ukrainian civilians, have been made possible by years of intense and escalating propaganda of hate designed to justify and facilitate Russia's territorial conquest of parts or all of Ukraine, and the subjugation or removal of civilians who oppose becoming part of the "Russian World". With this Article 15 Communication, FIDH and its partners draw attention to virulent hate speech that denigrates and calls for violence against Ukrainians based on their belonging to the Ukrainian nation and political views, arguing that it amounts to the crime against humanity of persecution under Article 7(1)(h) of the Rome Statute. The Filing Parties request that this crime be investigated and prosecuted by the ICC in order to punish those responsible, address the systemic causes of discriminatory violence, and to prevent its recurrence.

This Communication focuses on the responsibility of five prominent Russian public figures, as direct perpetrators of persecution, who have played a leading role in the dissemination of discriminatory hate speech targeting Ukrainians on the basis of their political views: **Vladimir Solovyov, Margarita Simonyan, Dmitry Kiselyov, Dmitry Medvedev, and Sergey Mardan**. The alleged perpetrators are only a representative group of a larger state-sponsored incubator of hatred; they were selected based on their positions of influence and the gravity, frequency, and reach of their statements.

In addition to the five individuals involved in the dissemination of hate speech, the submission also substantiates the responsibility of **Alexey Gromov**, First Deputy to the Chief of Staff of the Presidential Executive Office, who is either responsible for ordering the commission of speech acts under Article 25(3)(b) of the Rome Statute or, at the very least, for failing to prevent them as a superior within the meaning of Article 28(2).

The propaganda techniques employed by the alleged perpetrators are horrifyingly reminiscent of those used in historical atrocities against groups perceived as enemies, such as Jews during the Holocaust, Tutsis during the genocide in Rwanda, and Croats or Bosnian Muslims during the wars in the former Yugoslavia. The parallels are stark: like Julius Streicher, who "infected the German mind with the virus of anti-Semitism" in his newspaper "Der Stürmer", Ferdinand Nahimana and Jean-Bosco Barayagwiza, founders of Radio Télévision Libre des Mille Collines, who referred to Tutsis as "cockroaches", or influential politician Vojislav Šešelj, who declared ominously that "[t]here is no room for Croats in Hrtkovci", the alleged perpetrators have used today's infinitely more potent media tools to "poison" the minds of Russians with hate, distrust and fear of those civilian Ukrainians that support Ukraine's separate political path. They have provided the justification and impetus to the Russian soldiers to detain, torture, kill, or forcibly transfer those Ukrainians who display loyalty to the Ukrainian state or refuse to collaborate with the occupying power, depriving them of their right to security, human dignity and self-determination, and perpetuated the climate of approval of these atrocities among the general Russian population.

Key Findings

The alleged perpetrators, leveraging their high professional and social status as well-known TV or radio presenters, politicians and media managers, have continuously and repeatedly propagated rhetoric intentionally designed, as a matter of state policy, to incite discriminatory hatred and violence against Ukrainians who stand for the independence of Ukraine and its distinct political course from Russia. They have exploited various platforms, including State-controlled TV channels, radio, press, as well as leading social media, to instill hatred, distrust and fear of these Ukrainians in the minds of millions of their viewers and listeners, knowing full well that Russian forces have been waging a war of aggression and territorial

conquest in Ukraine and that their propaganda amounts to, in the words of Margarita Simonyan, “a weapon like any other”.¹

Using a context-adjusted methodology that draws on established international norms and jurisprudence, as spelled out in **Section III** of the Communication, the Filing Parties have analyzed over 2000 video segments and pre-selected over 300 statements made by the alleged perpetrators to identify the most vile speech acts that meet the criteria for hate speech as a discriminatory persecution. These criteria, elaborated in **Section V** of the Communication, require that the speech acts amount to a severe deprivation of human rights similar in gravity to other crimes against humanity. The gravity requirement could be inferred from the cumulative acts of persecution and the context in which the speech was made, the explicit and implicit calls for violence, the use of dehumanizing, abusive and offensive language, the extent of its dissemination, and its influence. A complete list of the 316 statements qualified as hate speech is provided in Annex C.

This analysis, beginning in **Section VI** of the Communication, shows that the perpetrators have committed the following types of speech acts, which amount to discrimination in fact:

- expressly **calling for violence** against Ukrainians, such as by advocating “real terror” against them, casually advising the audience that “the most correct thing would be to burn them alive”, or advocating for the “complete destruction of Ukraine”;
- **dehumanizing and denigrating Ukrainians** who regard themselves as belonging to the Ukrainian nation, distinct and separate from Russia, by labeling them with extremely derogatory terms such as “worms,” “zombies,” “scoundrel,” “filth,” “dirt”, “scum,” “blisters,” “Nazis”, and “satanists”;
- **spreading false and distorted narratives**, including by portraying Ukrainians as Nazis, suggesting that Russians and Ukrainians are one people, that there is no Ukraine or that Ukrainians, as such, do not exist, claiming that Ukrainians are brainwashed by “the West” into opting for greater separation from Russia, or asserting that the Ukrainian “state ideology is hatred for everything Russian”; and advancing conspiracy theories and accusations in a mirror, including that Ukrainians have repressed and even committed genocide against Russians and Russian-speakers in Eastern Ukraine;
- to disguise or intensify their language, depending on the purpose, the alleged perpetrators have systematically relied on manipulative **linguistic techniques** such as intense metaphors, neologisms (“de-Ukrainization”) or euphemisms (“denazification”, “liberation”).

In order to ascertain their gravity, the above acts were analyzed in light of the historical and socio-political context in Ukraine and Russia, particularly the policies that have shaped Russia’s narratives for the past ten years of the war in Ukraine and the accompanying violence. **Section IV** thus provides background information essential to understanding the significance of certain language used and the drivers of Russia’s war of “denazification”. For instance, Russia has extensively used “politics of memory” to distort historical narratives since the Maidan Revolution and the onset of the armed conflict in East Ukraine in 2014. These pivotal moments marked Ukraine’s definitive turn towards European integration and a condemnation of its Soviet past. In response, Russian authorities and state media began a concerted campaign to manipulate public perception of the events, branding the Revolution of Dignity a “Nazi coup” endangering Russian speakers in Crimea and Donbass. The armed conflict in Ukraine has been framed as a continuation of the Soviet Union’s fight against Nazi fascism during the Second World War, laying the groundwork for the subsequent so-called “denazification” and the reference to democratically-oriented Ukrainians as “Nazis”.

¹ Lenta.Ru, “*I Won’t Pretend that I am Objective: Interview with Margarita Simonyan*”, 7 March 2013, available at <https://lenta.ru/articles/2013/03/07/simonyan/>, accessed on 22 May 2024.

Through repackaging and repetition, the main narratives have been regurgitated so many times that arguably every household within reach of Russian media has been impacted, including in Russia and Russia-occupied territories of Ukraine. The alleged perpetrators have played a key role in these efforts under the direction of the Presidential Administration, through state-owned or state-controlled media. Much like Otto Dietrich, the Press Chief of the Nazi regime, **Alexey Gromov** has personally shaped core propaganda narratives and dictated specific content circulated through traditional media, including television, radio, and print. Specifically, he has been responsible for the conduct of weekly meetings with the heads of traditional media where he has dictated the main narratives to be disseminated, and has been instrumental in the issuance of so-called Talking Points – directives on how to report on main political events – several samples of which are included in the confidential Annexes E.1–E.5 to this Communication. Gromov’s involvement in orchestrating or permitting the spread of such harmful rhetoric highlights the systematic nature of the propaganda campaign and its alignment with State policy.

Following the directive to publicly justify Russia’s wanton aggression, deportation of children, annexation of territories and unlawful “filtration” practices aimed at weeding out and neutralizing any Ukrainian patriots, the alleged perpetrators have scaled up efforts to portray Russia as the victim and ordinary Ukrainians as subhuman, neo-Nazis or satanists committing genocide against Russians. These efforts have manifested themselves on the battlefield, showing the effectiveness and linkage between acts of propaganda and contemporaneous violence. This Communication refers to numerous of instances of Russian servicemen committing acts of arbitrary arrests and torture of Ukrainian activists, civic leaders, and ordinary civilians, accusing them of being or supporting “Nazis”. One victim of torture recalled seeing a truncheon decorated with stickers labelled “denazification” in the corner of the interrogation room. As a consequence of speech acts and the accompanying context of violence, ordinary Ukrainians have been facing the stark choice of either “accepting” they are Russian, including formally by taking up a Russian passport or collaborating with the Occupying Power, or being involuntarily “liberated” or “cleansed”, undermining their rights to security, self-determination and human dignity. For these reasons, the Filing Parties submit that the crimes discussed in the Communication fall within the territorial jurisdiction of the Court and meet the gravity, and “severity” of deprivation of human rights standards.

As detailed in **Section VI** of the Communication, each perpetrator has carried out their activities with intent and with full knowledge that their rhetoric coincided with the ongoing widespread and systematic attack against the civilian population of Ukraine. The speech acts contributed to this attack. Their high-ranking positions and expertise, close ties with the authorities and the content of the speech indicate their awareness and deliberate discriminatory targeting of Ukrainians, fulfilling the legal requirements for the crime of persecution under Article 7(2)(g) of the ICC Statute and as spelled out in **Section V** of this Communication. The Filing Parties respectfully submit that this information warrants further investigation by the Prosecutor’s Office under Article 15 of the Rome Statute.

Table of Abbreviations

ATO	Anti-Terrorist Operation
CCL	Center for Civil Liberties
DPR	Donetsk Peoples' Republic (<i>see Glossary for detailed description</i>)
ECtHR	European Court of Human Rights
EU	European Union
FIDH	International Federation for Human Rights
IAC	International Armed Conflict
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IRMCT	International Residual Mechanism for Criminal Tribunals
KHPG	Kharkiv Human Rights Protection Group
LPR	Luhansk Peoples' Republic (<i>see Glossary for detailed description</i>)
MIA	Ministry of Internal Affairs of Ukraine
NGO	Non-Governmental Organization
NIAC	Non-International Armed Conflict
NGU	National Guard of Ukraine
OCU	Orthodox Church of Ukraine (<i>see Glossary for detailed description</i>)
OUN	Organization of Ukrainian Nationalists
OUN-UPA	OUN Ukrainian Insurgent Army (<i>see Glossary for detailed description</i>)
POWs	Prisoners of war
RHS	Russian Historical Society
RMHS	Russian Military Historical Society
SBU	Ukrainian Security Service
SMO	Special Military Operation (<i>see Glossary for detailed description</i>)
UAF	Ukrainian Armed Forces
UOC-MP	Moscow Patriarchate Ukrainian Orthodox Church (<i>see Glossary for detailed description</i>)
VGTRK	Vserossiyskaya gosudarstvennaya televizionnaya i radioveshchatelnaya kompaniya (All-Russia State Television and Radio Broadcasting Company)

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I. Introduction

1. The International Federation for Human Rights (FIDH), The Kharkiv Human Rights Protection Group (KHPG), The Center for Civil Liberties (CCL) and a Non-Governmental Organization from Russia whose name cannot be revealed for security reasons (collectively, “the Filing Parties”), submit the following Communication under Article 15 of the Rome Statute to the International Criminal Court (ICC Statute).
2. **FIDH** is an international and independent human rights NGO established in 1922, today uniting 188 member organizations in 116 countries around the world. FIDH’s mandate is to take action for the protection of victims of human rights violations, for the prevention of these violations, and to bring perpetrators to justice. In order to do so, FIDH works with its member and partner organizations to document human rights violations, conduct advocacy work as well as strategic litigation in support of victims’ rights to truth, justice and reparation. One of FIDH’s priorities is to fight impunity and protect populations from the most serious crimes.
3. **KHPG** was founded in 1993. Prior to that it was operating as a human rights group of the Kharkiv “Memorial” society. KHPG work is aimed at 1) protecting human rights in specific instances where human rights violations have occurred, handling over 3,000 individual requests annually; 2) informing the Ukrainian state and society about the human rights situation in Ukraine; and 3) analyzing human rights compliance in Ukraine. KHPG strives to improve the human rights situation in Ukraine by ensuring respect for fundamental human rights, such as the right to life, freedom from torture or inhuman or degrading treatment, freedom from arbitrary arrest and detention, freedom of expression and information, as well as protecting the rights of the most vulnerable groups of the population, which include prisoners, persons with HIV/AIDS, persons suffering from substance abuse, internally displaced persons and others.
4. **CCL** was established in 2007 and has been actively working for the protection of human rights in Ukraine and the OSCE region for 15 years. CCL’s mission focuses on human rights, democracy, and solidarity in Ukraine and the OSCE region. It supports the development of civic activism, the formation of public policy, and the promotion of human rights in the region. The Center for Civil Liberties is a 2022 Nobel Peace Prize laureate.
5. This Communication focuses on the crime against humanity of persecution. It alleges that five nationals of the Russian Federation, media or political figures of high standing and influence, acting as direct perpetrators, have intentionally carried out an elaborate campaign of discriminatory hatred against Ukrainians who identify themselves as forming part of the Ukrainian nation, independent, distinct and separate from Russia following its own political course, through speech acts so grave that they amount to the intentional and severe deprivation of the fundamental rights to human dignity, security and self-determination, of these Ukrainians.
6. The Communication also contains evidence of crimes by an additional individual, a member of the Presidential Administration of the Russian Federation exercising control over the production of content and dissemination of messages inciting hatred and violence against Ukrainians over traditional media, who is alleged to have committed the crime of persecution as a crime against humanity by virtue of his effective authority and control over the direct perpetrators, for having ordered the commission of said speech acts, pursuant to Article 25(3)(b) and / or for having known about and allowed hate speech to emanate from the five direct perpetrators under his watch pursuant to Article 28(2) of the Rome Statute.
7. All speech acts described herein, including calls for violence, extreme dehumanization, degradation, the use of false narratives, and mirror accusations, among others, were committed as part of a widespread or

systematic attack against the civilian population of Ukraine that began on 24 February 2022 and continues to this day, including unlawful imprisonment, murder, torture, deportation and unlawful transfer of civilians, rape and other forms of sexual and gender-based violence, and were committed with the knowledge of such an attack within the meaning of Article 7 of the ICC Rome Statute, pursuant to a state policy.

8. The primary victims of the severe deprivation of human rights resulting from the alleged perpetrators' speech acts are millions of Ukrainians who have maintained or displayed loyalty to independent and sovereign Ukraine, or refused to collaborate with the Occupying Power, while living under Russia's occupation in Crimea, Luhansk, Donetsk, Zaporizhzhia, Kherson, Kharkiv and other fully or partially occupied, or previously occupied, territories of Ukraine. However, it is believed that all nationals of Ukraine or other individuals identifying as a part of the Ukrainian nation who support their government's stance on maintaining Ukrainian independence and sovereignty while upholding their distinct national identity and right to self-determination, including the right to pursue a democratic model of governance, and who are within reach of Russian propaganda, are victims of such speech acts.
9. The purpose of this Communication, which is based on a comprehensive analysis of hundreds of hours of media programming, interviews with insiders and an anonymous journalist from an independent Russian media, as well as confidential documents from sources from within the Presidential Administration, is to document and seek accountability for speech crimes that have been largely overlooked by the international legal community and yet that occupy a very important place in the facilitation of other international crimes committed by the Russian Federation in Ukraine, including the crime of aggression.
10. To this end, the Filing Parties respectfully request the Prosecutor of the International Criminal Court to consider the information set forth in this Communication, with a view to investigating and prosecuting those responsible for the alleged crimes.
11. FIDH wishes to sincerely thank its partners, the **Ukraine War Archive (UWA)** and the **University of Essex Digital Verification Unit (DVU)**, especially **Dr. Matthew Gillett**, Senior Lecturer at Essex Law School, international speech crimes expert with extensive experience before the international courts, including the ICC, and co-author of the Hartford Guidelines, who contributed to this report, **Dr. Elif Mendos Kuşkonmaz**, Lecturer at Essex Law School, as well as DVU members **Agathe Fidon**, **Loıza Gestin**, **Kate May**, and **Mark Neshta**, for their invaluable support and guidance. FIDH is also very grateful to **Dr. Wibke Kristin Timmermann**, expert in international hate speech law and author of "Incitement in International Law", for her extensive review of this Communication. FIDH also thanks **Professor Richard Ashby Wilson**, Board of Trustees Professor at the University of Connecticut School of Law and co-author of the Hartford Guidelines, and **Professor Predrag Dojčinović**, Adjunct Professor and Research Affiliate at the Gladstein Family Human Rights Institute at the University of Connecticut, and Senior Consultant and Research Advisor in International Criminal Justice, for their important guidance and expert input. FIDH also thanks all media experts for their collaboration and for sharing their input with us.
12. The investigation and the preparation of this Communication were made possible through a grant from the European Commission.

II. Methodology

A. Material and temporal scope

13. This Communication covers speech acts carried out between 24 February 2022 and 24 February 2024 (the "Relevant Time Period") by five Russian public figures, including State officials and representatives of State-owned or State-backed media, which potentially amount to the crime against humanity of

persecution under Article 7(1)(h) of the Rome Statute.² Exceptionally, speech acts made after 24 February 2024 were included where they appeared particularly grave.

14. For the purpose of this Communication, the term “speech act” encompasses oral and textual statements ranging in length from several words to several sentences. While the statements were made in Russian and were, accordingly, collected and analyzed by a Russian-speaking legal translator hired by FIDH, the statements quoted in this submission (Section VI) were translated into English for the sake of clarity and accessibility.

B. Personal scope: Selection of individuals

15. This Communication focuses on statements made by five Russian individuals,³ namely:
- **Vladimir Rudolfovich Solovyov**, a Russian television presenter and host of the talk show “Evening with Solovyov” broadcast on the State-owned television channel Russia-1, as well as of the television show “Full Contact” aired on the channel Solovyov Live, one of the most prominent propagandist channels that appeared in March 2022;
 - **Margarita Simonovna Simonyan**, editor-in-chief of the State-owned media outlets Rossiya Segodnya and Russia Today;
 - **Dmitry Konstantinovich Kiselyov**, a Russian television presenter, head of the State-owned media group Rossiya Segodnya, Deputy Director of the All-Russia State Television and Radio Broadcasting Company, and host of the popular talk show “News of the Week”, broadcast on the television channel Russia-1;
 - **Dmitry Anatolyevich Medvedev**, a Russian politician, current Deputy Chairman of the Security Council of the Russian Federation, and former Russian President (2008–2012) and Prime Minister (2012–2020); as well as
 - **Sergey Aleksandrovich Mardan**, a Russian radio/television presenter and host of several shows, including “Mardan Live” and “Saturday Mardan” broadcast on Solovyov Live, as well as the former radio show “Morning Mardan” aired on Komsomolskaya Pravda radio.⁴
16. Additionally, this Communication outlines the responsibility of First Deputy to the Chief of Staff of the Presidential Executive Office, **Alexey Alexeyevich Gromov**, for the issuance of written and oral directives that set the main propaganda narratives to be disseminated by major Russian media outlets, and the arrangement of weekly meetings with their representatives, demonstrating his control over the hate speech broadcast by Russian media.
17. Following a **preliminary screening** and in line with the **OTP’s prosecutorial strategy** to focus its efforts on the most responsible perpetrators of international crimes,⁵ this selection of individuals is based on:

² This submission deliberately focuses only on the international speech crime of hate speech as persecution, and does not cover the crime of direct and public incitement to commit genocide.

³ This submission focuses on the statements made by the five individuals listed. This list is only illustrative, the submission does not exclude the possibility that statements made by other individuals linked to the situation may also constitute international speech crimes.

⁴ This list intentionally covers statements made across television, radio and social media platforms, since the dissemination of hate speech via all types of media allows the speakers to reach a large audience and complementary target groups.

⁵ ICC, Policy Paper on Preliminary Examinations, November 2013, paras. 42, 66, 103; ICC, Policy Paper on Case Selection and Prioritisation, September 2016, para. 42.

- their **leadership positions** as Russian State officials or State media representatives, including their *de facto* power to shape the narratives disseminated in Russian media;
- their **prominent roles** as **recognizable television/radio hosts or presenters**, singling them out as **top propagandists**, at a time when independent media and journalists are being banned, silenced and persecuted in Russia;⁶
- the **wide dissemination** of their statements, potentially reaching millions of viewers, listeners and readers across Russia and beyond, including in the Russian-occupied territories of Ukraine, as well as
- the **gravity, amount, and frequent repetition** of statements denigrating Ukrainians by these individuals.

C. Methodology for the collection and analysis of relevant statements

18. After having identified the alleged perpetrators, a list of their most prominent shows and/or social media accounts used was compiled.
 - In the case of **Dmitry Medvedev**, the research predominantly focused on statements posted on the social media platforms Telegram and X (formerly Twitter). Additionally, speeches and interviews given by Dmitry Medvedev to Russian and other media were analyzed.
 - In the case of **Vladimir Solovyov**, FIDH analyzed the daily television talk show “Evening with Vladimir Solovyov” and its Sunday edition, “Sunday Evening with Vladimir Solovyov”, broadcast on Russia-1, as well as “Full Contact”, aired on the television channel Solovyov Live. FIDH also analyzed the content shared by Vladimir Solovyov on his Telegram channel.
 - Additionally, FIDH analyzed the television show “News of the Week”, hosted by **Dmitry Kiselyov** and aired on Russia-1 on a weekly basis.
 - Furthermore, FIDH analyzed **Margarita Simonyan**’s statements made on her own show “Q.E.D.” and during her appearances in other television shows, namely “Evening with Vladimir Solovyov”, “Right to Know”, and “Our Truth”, as well as the posts published on her Telegram channel.
 - Finally, FIDH also studied **Sergey Mardan**’s statements made on “Mardan Live” and “Saturday Mardan”, a radio and television show broadcast on the channel Solovyov Live, as well as the radio show “Morning Mardan”, broadcast, until its dismissal in November 2022, on the radio channel Komsomolskaya Pravda. In addition, FIDH also analyzed the statements published on his Telegram channel.
19. Combining digital and manual data collection techniques, a two-pronged approach was subsequently employed to identify criminally relevant statements.
20. FIDH established a cooperation with the **Ukraine War Archive**, a platform collecting digital evidence of international crimes committed in Ukraine since 2022. The Archive allows users to upload, securely store and search materials uploaded to the database, and provides automatic transcriptions of spoken text.
21. Despite the introduction of sanctions against several Russian media outlets by the European Union in 2022 leading to the suspension of all broadcasting activities of Russia-1, Russia Today (RT) and Sputnik in the European Union, recordings of television and radio shows remained mostly accessible via

⁶ Reporters without Borders, *RSF’s World Press Freedom Index – Russia* (2024), available at <https://rsf.org/en/country/russia>, accessed on 13 May 2024.

other Russian online platforms, such as smotrim.ru, rutube.ru, dzen.ru, and the social media platform VKontakte, and were added to the Archive upon FIDH's request.

22. While the amount of relevant data did not allow for a manual analysis of every episode, the search was narrowed down through targeted keyword searches of the transcripts generated by the Ukraine War Archive on the basis of the uploaded video and radio programs, as well as social media posts published on Telegram and X.
23. Recognizing the limitations of this approach, additional content analysis was manually conducted by a Russian-speaking consultant. Additionally, FIDH established a partnership with the **University of Essex Digital Verification Unit (DVU)**, with four student members supporting FIDH's research. Special attention was, for instance, given to episodes and posts published on the anniversaries of important war-related events, such as 24 February⁷, 9 May⁸ or 30 September⁹.
24. In total, more than 2,000 videos uploaded to the UWA were reviewed and analyzed, both manually and using keyword searches, and the results of the research were subsequently logged into a spreadsheet (Annex C).

D. Criteria used for the classification of statements as hate speech

25. In the absence of a universally accepted definition of hate speech under international criminal law and in light of the very limited guidance offered by existing international jurisprudence, FIDH decided to opt for a criteria-based approach to defining hate speech (see Section V). This standard reflects the current state of international jurisprudence and is based on the criteria commonly suggested by international speech crimes experts, including in the authoritative Hartford Guidelines.¹⁰
26. Accordingly, this Communication uses a list of **six indicative criteria, three of which** must be fulfilled for a statement to be qualified as hate speech and thus as persecution:
 - 1) **The intensity of the speech given its context**, including the position of the speaker, means and frequency of dissemination and the overall environment; **and at least two of the following content-related criteria**:
 - 2) **Explicit or implicit calls for violence** against members of the protected group;
 - 3) **Denigration** of persons on the basis of their membership in the protected group;
 - 4) **Dehumanization, verminization, pathologization, and demonization** of persons on the basis of their membership in the protected group;
 - 5) **Use of false and distorted narratives**, such as conspiracy theories, false victimizations, and accusations in a mirror;
 - 6) **Choice of language**, including the use of **vivid images, graphic metaphors, euphemisms and derogative neologisms**.

⁷ Anniversary of the full-scale military invasion of Ukraine by the Russian Federation, which started on 24 February 2022.

⁸ Anniversary of the victory of the Soviet Union over Nazi Germany in May 1945 (so-called Victory Day, widely celebrated in the Russian Federation).

⁹ Anniversary of the annexation of parts of Ukraine's Donetsk, Luhansk, Kherson and Zaporizhzhya Regions by the Russian Federation on 30 September 2022.

¹⁰ Richard A. Wilson and Matthew Gillett, "*The Hartford Guidelines On Speech Crimes In International Law*", Peace and Justice Initiative, 14 August 2018, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3230487, accessed on 15 May 2024.

E. Other methodology-related aspects

27. For general contextual research, the authors used publicly available secondary sources, including news, investigative and academic articles, textbooks, and reports published by international and non-governmental organizations. The authors note that access to certain Russian websites is increasingly restricted and sources used in this Communication may become inaccessible.
28. For the drafting of Section IV, the authors of this submission also conducted two in-person interviews with former employees of the Russian State-owned Channel One, as well as one interview with a journalist working at an independent Russian media, which has extensively analyzed Russian propaganda (Anonymous Journalist from Independent Russian Media), with sources inside the Presidential Administration of the Russian Federation. The Anonymous Journalist from Independent Russian Media has provided the authors with access to confidential materials – Talking Points (known in Russian as *temniki* or *metodichki*) – included in the confidential Annexes E.1–E.5 of this Communication.

III. Jurisdiction of the International Criminal Court

A. Jurisdiction *ratione materiae* (subject-matter jurisdiction), Article 5 of the Rome Statute

29. Under Articles 5(b), 7 of the Rome Statute, the ICC has jurisdiction over crimes against humanity. For the reasons described in Sections V and VI of this Communication, it is alleged that the acts in question, carried out with the intention to cause a severe deprivation of the fundamental rights of Ukrainians by reason of their identity as Ukrainian nationals of particular political views, amount to the crime against humanity of persecution as defined in Article 7(2)(g) of the Rome Statute, and thus fall within the jurisdiction of the Court.

B. Jurisdiction *ratione loci* (territorial jurisdiction) and *ratione temporis* (temporal jurisdiction), Articles 11, 12(3) of the Rome Statute

30. Although neither Russia nor Ukraine is a State Party to the Rome Statute, Ukraine has submitted two declarations to grant the ICC jurisdiction over crimes listed in Article 5 of the Rome Statute committed by nationals of any state on the territory of Ukraine from 21 November 2013 onwards pursuant to Article 12(3) of the ICC Statute.¹¹
31. Specifically, on 25 February 2014, the Parliament of Ukraine submitted a Declaration recognising the jurisdiction of the ICC for the purposes of identifying, prosecuting and judging the authors and accomplices of acts committed on the territory of Ukraine between 21 November 2013 and 22 February 2014.¹² The Declaration was lodged with the ICC Registrar on 17 April 2014.¹³ On 8 September 2015, the Foreign Minister of Ukraine submitted a further declaration to the ICC Registrar, accepting “the jurisdiction of the Court for the purpose of identifying, prosecuting and judging the perpetrators and accomplices of acts committed in the territory of Ukraine since 20 February 2014”.¹⁴ On 29 September

¹¹ ICC Press Release, “*ICC Prosecutor Extends Preliminary Examination of the Situation in Ukraine Following Second article 12(3) Declaration*”, 29 September 2015, available at <https://www.icc-cpi.int/news/icc-prosecutor-extends-preliminary-examination-situation-ukraine-following-second-article-123>, accessed on 13 May 2024.

¹² Verkhovna Rada of Ukraine, “*Declaration of the Verkhovna Rada of Ukraine to the ICC*”, 25 February 2014, available at <https://www.icc-cpi.int/sites/default/files/itemsDocuments/997/declarationVerkhovnaRadaEng.pdf>, accessed on 15 May 2024.

¹³ Embassy of Ukraine, Communication N. 61219/35-673-384, 9 April 2014; Note Verbale of the Acting Minister for Foreign Affairs of Ukraine, Mr. Andrii Deshchytsia, 17 April 2014.

¹⁴ Minister for Foreign Affairs of Ukraine, “*Declaration lodged by Ukraine under Article 12(3) of the ICC Statute*”, 8 September 2015, available at:

2015, the ICC Prosecutor announced the extension of the preliminary examination into the Situation in Ukraine to include alleged crimes occurring after 20 February 2014 in Crimea and Eastern Ukraine.¹⁵

32. Following Russia's full-scale invasion of Ukraine, on 28 February 2022, the ICC Prosecutor announced that he would seek authorization to open an investigation into the Situation in Ukraine, on the basis of its earlier conclusions arising from its preliminary examination, and encompassing any new alleged crimes falling within the Court's jurisdiction.¹⁶ On 2 March 2022, the ICC Prosecutor announced the receipt of 39 States Parties' referrals of the situation in Ukraine to the ICC, enabling him to open an investigation from 21 November 2013 onwards, encompassing within its scope any past and present allegations of war crimes, crimes against humanity or genocide committed on any part of the territory of Ukraine by any person.¹⁷
33. The Filing Parties submit that the alleged conduct took place "on the territory" of Ukraine beginning on or about 24 February 2022 and is ongoing, thus fulfilling the requirements of Article 12(3).¹⁸ Although the speech acts described in Section VI of the Communication emanate from the *de jure* territory of the Russian Federation, they target Ukrainian nationals in the territory of Ukraine, as part of a widespread and systematic attack targeting Ukrainian civilians, and have been transmitted widely in the Ukrainian territories under Russia's effective control, including in the wholly or partially occupied Crimea, Donetsk, Luhansk, Kherson, Zaporizhzhia and Kharkiv regions.¹⁹
34. In addition, the Filing Parties contend that the cross-border nature and impact of Russia's hate speech, committed or transmitted online and accessible by anyone anywhere, warrant an effects-based analysis of territorial jurisdiction.²⁰ That is, due to the propensity of modern day's propaganda to cause harm outside of the territory where speech was emitted, territorial jurisdiction should extend to States where the detrimental effects of such speech is felt by individual victims or victim groups. Hate speech is a cross-border phenomenon because hateful content is often developed and propagated by networks with members spanning several states, and ideologies behind hate speech messages are usually developed for

https://www.icc-cpi.int/sites/default/files/iccdocs/other/Ukraine_Art_12-3_declaration_08092015.pdf, accessed on 13 May 2024.

¹⁵ ICC Press Release, *supra* note 11.

¹⁶ ICC, "Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: 'I have decided to proceed with opening an investigation'", 28 February 2022, available at <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-i-have-decided-proceed-opening>, accessed on 13 May 2024.

¹⁷ ICC, "Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation", 2 March 2022, available at <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-receipt-referrals-39-states>, accessed on 15 May 2024; as of June 2024, 43 States have submitted a State referral of the situation to the ICC.

¹⁸ The Relevant Time Period sets the cutoff for the consideration of relevant speech acts at 24 February 2024 for the sake of efficiency and workability.

¹⁹ See, e.g., Reporters without Borders, "Occupied Territories of Ukraine: Russia's Propaganda Machine Continues to Absorb Local Media", 6 December 2023, available at <https://rsf.org/en/occupied-territories-ukraine-russia-propaganda-machine-continues-absorb-local-media>, accessed on 5 May 2024.

²⁰ United States Court of Appeals for the Ninth Circuit, *Yahoo!, Inc v. La Ligue Contre Le Racisme et L'Antisemitisme, et al*, 01-17424, 12 January 2006. This was a case heard by French courts involving allegations by two French student organizations that Yahoo! had violated Article R. 645-1 of the Penal Code, which outlaws the wearing or public display of insignia, emblem or uniform of an organization or individual responsible for crimes against humanity, as such behavior is deemed to be a serious crime "against the people, the state and public safety", by displaying Nazi memorabilia advertised from the United States, on its auction website. The French courts found jurisdiction even though the content originated in the United States, where such speech is protected by the First Amendment.

both domestic and international audiences.²¹ The impact of hate speech has been acutely felt by individual victims and victim groups regardless of their location or the source of hateful messaging due to the ease of online transmission via social media. Moreover, because of the proliferation of the internet, transmission of offline media, including traditional outlets like television and radio, has resulted in cross-border spillover effects.²²

35. States have increasingly recognized the need to criminalize hate speech because of its cross-border nature and impact. The propagation of hate speech online has prompted the Council of Europe to adopt a new treaty requiring member states to criminalize the dissemination of materials that advocate, promote or incite hatred against any individual or groups, based on race, descent or national or ethnic origin, among others.²³ More recently, the European Union has undertaken efforts to add hate speech to the list of particularly serious crimes with a cross-border dimension under Article 83 of the Treaty on the Functioning of the European Union.²⁴
36. The cross-border nature and impact of hate speech are especially evident in the current context. As described in Section IV of this Communication, one of the bases of Russia's foreign policy (paras. 70–87) is historical revisionism. The historical narratives negating Ukraine's statehood and the distinctness of Ukrainian identity are therefore substantially aimed at foreign, as much as domestic, audiences. Specific narratives falsely equating Ukrainians with Nazis and Satanists and accusing Ukrainians of genocide serve to justify the need for Russian soldiers to kill Ukrainians. They are also designed to resonate with primarily Russian-speaking communities where memories of the fight against Nazism are still strong, including in Ukraine and other former Soviet States or satellites, as well as with conservative audiences everywhere (para. 67 and further). Thus, Russia's propaganda of hate is diffused outside of Russia in order to humiliate and dehumanize Ukrainians in the eyes of the entire international community, but also to instill fear and sow divisiveness among Ukrainians themselves. Even though they stem primarily from traditional media, including Russia's main television networks, these falsehoods are widely disseminated through YouTube, Telegram and X (formerly Twitter), including on Ukrainian territory, and are otherwise easily accessible online via these traditional media public domains. The extraterritorial reach and impact of these transmissions is evident by the pervasive references to pejorative terms to denote Ukraine or Ukrainians employed by Russian soldiers on the battlefield in Ukraine, and even in the circles of far right politicians in Europe and as far away as the United States.²⁵

²¹ See, e.g., Communication from the Commission to the European Parliament and the Council, "*A More Inclusive and Protective Europe: Extending the List of EU Crimes to Hate Speech and Hate Crime*", 9 December 2021, COM(2021) 777 final, available at https://eur-lex.europa.eu/resource.html?uri=cellar:4d768741-58d3-11ec-91ac-01aa75ed71a1.0002.02/DOC_1&format=PDF, accessed on 5 May 2024, pp. 14–15.

²² In the study conducted by the European Commission, more than 80% of respondents to the targeted consultation considered that offline hate speech has a spillover effect in other countries. *Ibid.*, p. 14.

²³ Council of Europe, Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, European Treaty Series - No. 189, Strasbourg, 28 January 2003, available at <https://rm.coe.int/168008160f>, accessed on 15 May 2024. The Protocol has been ratified by 35 States as of the date of the drafting of this Communication.

²⁴ Piotr Bąkowski, "*Proposals to Extend the List of EU Crimes to all Forms of Hate Crime and Hate Speech*" in *A New Push for European Democracy, Legislative Train Schedule European Parliament*, 20 April 2024, available at <https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-hate-crimes-and-hate-speech>, accessed on 15 May 2024.

²⁵ See, e.g., Zachary B. Wolf, "*Some House Republicans Need this Reminder that Russia is not their Friend*", CNN, 17 April 2024, available at <https://edition.cnn.com/2024/04/17/politics/republicans-russia-ukraine-what-matters/index.html>, accessed on 16 May 2024.

IV. Factual Background

A. Context: Russia's aggression against Ukraine

1. Historical context and events between 2013/2014–2022

37. The ongoing armed conflict began in 2014. It followed a period of political unrest in Ukraine stemming from the November 2013 decision of the former President Viktor Yanukovich not to sign an Association Agreement with the European Union (“EU”), opting for a closer partnership with Russia.²⁶ Peaceful demonstrations began in the area of Independence Square (*Maidan Nezalezhnosti*) in Kyiv on 21 November 2013, which over the following weeks turned into a mass movement known as Euromaidan, Maidan or the Revolution of Dignity.²⁷
38. Between late November 2013 and end of February 2014, millions of Ukrainians representing a wide range of social, ethnic, linguistic, regional and political groups, including Russian-speakers and nationalists, came to Ukraine’s capital to express their political preference for an independent and European Ukraine based on democratic values.²⁸ The protests targeted not only Russian meddling, but also the corruption, arbitrary abuse of power and other forms of social injustices that have become synonymous with, and largely viewed as having been inherited from, the Union of Soviet Socialist Republics (USSR; hereinafter: the Soviet Union).²⁹ As a fledgling democracy that has struggled to build a national identity distinct from the Soviet Union or its successor, Russia, Ukraine has failed to unambiguously reckon with the Soviet past. The Euromaidan, which was accompanied by a mass toppling of Lenin statues around the country in a phenomenon known as “Lenin-fall”, and the subsequent adoption of “decommunization” laws, thus also signaled a conclusive condemnation of the Soviet past.³⁰
39. Ukraine’s decisive declaration of its political course away from Russia, and the negative appraisal of the Soviet experience, have caused Russia’s political elites to regard the protests in Kyiv with hostility.³¹ Russian mass media, especially TV, broadcast false or grossly exaggerated reports in which protesters were described as pro-Nazi, and hostile to Russia and to Russian speakers.³² Russia has regarded the

²⁶ ICC, Report on Preliminary Examination Activities 2020, 14 December 2020, available at <https://www.icc-cpi.int/sites/default/files/itemsDocuments/2020-PE/2020-pe-report-eng.pdf>, accessed on 16 May 2024, para. 272.

²⁷ See, e.g., Mikhail Minakov, “Ukraine from Revolution of Dignity to government of shame”, Kyiv Post, 11 April 2016, available at <https://archive.kyivpost.com/article/opinion/op-ed/mikhail-minakov-ukraine-from-revolution-of-dignity-to-government-of-shame-411807.html>, accessed on 20 May 2024.

²⁸ Oleg Chupryna, “Ukraine’s Euromaidan Revolution: A Final Breakaway from Russia”, Geopolitical Monitor, 25 November 2021, available at <https://www.geopoliticalmonitor.com/ukraines-euromaidan-revolution-a-final-breakaway-from-russia/>, accessed on 14 May 2024.

²⁹ International Renaissance Foundation, *The Price of Freedom: Public Report by Human Rights Organizations on Crimes against Humanity Committed During Euromaidan* (2015), available at https://www.europarl.europa.eu/cmsdata/267948/Matviichuk_Ukrainian%20NGO's.EuroMaidan.November%202013-February2014.Eng..pdf, accessed on 14 May 2024, pp. 7–9.

³⁰ Oleksandra Gaidai, “Leninfall in Ukraine: How Did the Lenin Statues Disappear?”, 38 Harvard Ukrainian Studies (2021) 45–70, available at <https://www.jstor.org/stable/48694960>, accessed on 14 May 2024, pp. 55–58.

³¹ For instance, in January 2014, the State TV channel Russia-1 broadcast a talk show anchored by Arkadi Mamontov giving an apocalyptic description of an extremist uprising in Kyiv: “Ukraine. The Chaos Democracy”, available at http://russia.tv/video/show/brand_id/3957/episode_id/962307/video_id/964808/.

³² See, e.g., Russia Today, “‘Right Sector’ Intimidates Civilians”, 28 February 2015, available at <http://russian.rt.com/article/23327>, accessed on 10 April 2024; Russia Today, “Nazi Symbols on Maidan: Protests Taken Over by Ultrationalists”, 25 January 2014, available at <http://russian.rt.com/article/21283>, accessed on 10 April 2024.

Maidan Revolution as both a threat and a betrayal, and subsequently branded it as an illegal, Western-backed coup that brought to power a radical “fascist junta.”³³

40. The protests escalated into violence following a violent crackdown by the authorities,³⁴ resulting in injuries both to protesters and members of the security forces, as well as deaths of over 100 individuals.³⁵ From 18–20 February 2014, violence escalated sharply and scores of people were killed and hundreds injured, primarily on the side of the protesters.³⁶ On 21 February 2014, under EU mediation, President Yanukovich and opposition representatives agreed on a new government and scheduled the presidential election for May 2014. On 22 February 2014, the Ukrainian Parliament voted to remove President Yanukovich, who fled the country on the same day and is believed to be currently in Russia.
41. From late February 2014 onwards, protests emerged against the new Ukrainian Government, primarily in the eastern regions of the country and in Simferopol, the capital of the Autonomous Republic of Crimea.³⁷ From the night of 26–27 February 2014, armed and mostly uniformed individuals, whom the Russian Federation later acknowledged to be its military personnel, together with locally-resident militia members, progressively took control of the Crimean peninsula. The *de facto* control of the peninsula by Russia’s armed forces was given a veneer of legitimacy by a referendum, held on 16 March 2014, which was recognized as a sham by the international community.³⁸ On 18 March 2014 the Russian Federation announced the formal incorporation of Crimea into Russian territory.³⁹ Russia has continued to occupy the territory since that time.
42. Commenting on the annexation of Crimea into the Russian Federation following the Maidan events, President Putin remarked that “those who stood behind the latest events in Ukraine... wanted to seize power and would stop short of nothing. They resorted to terror, murder and riots. **Nationalists, neo-Nazis, Russophobes and anti-Semites executed this coup. They continue to set the tone in Ukraine to this day**” (emphasis added).⁴⁰ Referring to the new authorities in Kyiv as “ideological heirs

³³ See, e.g., Russia Today, “*Why the Rise of Fascism is Again The Issue*”, available at <https://www.rt.com/op-ed/235807-fascism-mideast-ukraine-neo-nazi/>, accessed on 10 April 2024.

³⁴ FIDH Press Release, “*Ukraine: The forgotten victims*”, August 2014, available at: <https://www.fidh.org/en/region/europe-central-asia/ukraine/15914-ukraine-the-forgotten-victims>, accessed on 15 May 2024. A Communication was submitted in January 2015 to the Prosecutor of the ICC by a coalition of 13 Ukrainian organizations and initiatives for combating impunity, with the support of FIDH and the International Partnership for Human Rights (IPHR), see: <https://www.fidh.org/en/region/europe-central-asia/ukraine/16736-ukraine-human-rights-groups-calls-on-the-icc-to-open-an-investigation-on>, accessed on 22 May 2024.

³⁵ United Nations Human Rights Monitoring Mission in Ukraine (HRMMU), *Accountability for Killings and Violent Deaths During the Maidan Protests*, available at <https://ukraine.un.org/sites/default/files/2020-09/Maidan%20ENG%2020.02.20.pdf>, accessed on 25 March 2024.

³⁶ ICC, *supra* note 26, para. 273.

³⁷ *Ibid.*, para. 274.

³⁸ UN General Assembly, Resolution “*Territorial integrity of Ukraine*”, Res. 68/262, 27 March 2014, available at <https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F68%2F262&Language=E&DeviceType=Desktop&LangRequested=False>, accessed on 22 May 2024; Courtney Austrian, “*Seven Years of Illegal Occupation of the Autonomous Republic of Crimea and the City of Sevastopol by the Russian Federation*”, US Statement at the OSCE Permanent Council in Vienna, 4 March 2021, available at <https://ua.usembassy.gov/seven-years-of-illegal-occupation-of-the-autonomous-republic-of-crimea/>, accessed on 22 May 2024.

³⁹ “Treaty between the Russian Federation and the Republic of Crimea on Admitting to the Russian Federation the Republic of Crimea and Establishing within the Russian Federation New Constituent Entities”, 18 March 2014.

⁴⁰ Vladimir Putin, “*Address by President of the Russian Federation*”, The Kremlin, 18 March 2014, available at <http://en.kremlin.ru/events/president/news/20603>, accessed on 15 May 2024.

of Bandera, Hitler’s accomplice during Second World War”, Putin cited the need to protect Russian speakers from these extremists, stating that “[t]hose who opposed the coup were immediately threatened with repression. Naturally, the first in line here was Crimea, the Russian-speaking Crimea. In view of this, the residents of Crimea and Sevastopol turned to Russia for help in defending their rights and lives, in preventing the events that were unfolding and are still underway in Kiev, Donetsk, Kharkov and other Ukrainian cities.”⁴¹ Notably, Russia has proffered no convincing evidence of any acts or threats to the “rights and lives” of the residents of Crimea.⁴²

43. Putin and the Russian media amplified what they perceived and portrayed as a looming threat to ethnic Russians and Russian speakers by referring to the Ukrainian parliament’s decision to abolish the law on regional languages on 23 February 2014.⁴³ This law, adopted in 2012, gave the Russian language the status of an official language in regions with more than a 10% Russian minority.⁴⁴ The February decision to abolish Russian as an official language was never signed by the acting President.
44. Stepan Bandera was the leader of Organisation of Ukrainian Nationalists (OUN) and one of the leading figures in the fight for Ukrainian independence. During the Second World War, OUN and a related but separate entity, the Ukrainian Insurgent Army, UPA, had fought both alongside and against the Nazis and committed atrocities against Jews, Poles, as well as ethnic Russians and Ukrainians who had refused to cooperate with them.⁴⁵ Both organizations were essentially exterminated in the early 1950s.⁴⁶ Nevertheless, the name “Bandera” and its numerous derivatives, including *Banderovtsi* (“Banderites”), are today, as they were in the 1950s Soviet Union, largely synonymous with the words “nationalist” or “traitor”, one who refuses to acknowledge the unity with Russia in favor of Ukraine’s independence.⁴⁷ While the legacy of Bandera, OUN and UPA have inspired the appearance of nationalist parties in Ukraine’s post-independence political landscape, including the ultra nationalist “Right Sector” and Azov parties, these movements have remained extremely marginal.⁴⁸ However, their perceptible participation in the Maidan, occasional public marches⁴⁹ and confrontational stance vis-à-vis Russia, including through the formation of military wings, have fed into Russia’s media strategy to exaggerate their role and to portray Ukraine’s Maidan as a fascist-orchestrated betrayal of Russia.⁵⁰

⁴¹ Ibid.

⁴² ECtHR, *Ukraine v. Russia*, Grand Chamber Decision, 20958/14 and 38334/18, 16 December 2020, para. 324.

⁴³ See, e.g., The European Commission for Democracy Through Law (Venice Commission), “*On the Provisions of the Law on Education of 5 September 2017*”, Opinion No. 902 / 2017, 11 December 2017, para. 24.

⁴⁴ FIDH, *Eastern Ukraine: Civilians Caught in the Crossfire*, October 2015, available at https://www.fidh.org/IMG/pdf/eastern_ukraine-ld.pdf, accessed on 15 May 2024, p. 8.

⁴⁵ See, e.g., Serhii Plokhyy, “*The Gates of Europe: A History of Ukraine*”, (2nd Edition, New York: Basic Books, 2021), pp. 266–267, 281.

⁴⁶ Ibid.

⁴⁷ Jacques Rossi, “*The Gulag Handbook: A Historical Dictionary of Soviet Penitentiary Institutions and Terms Related to the Forced Labour Camps*”, Moscow: “Prosvet”, 1991, available at <https://library.khpg.org/files/docs/1430850735.pdf>, accessed on 14 May 2024, p. 13.

⁴⁸ Alla Hurska, “*Far-right Movements and Ideology in Contemporary Ukraine: Formidable Image vs. Weak Essence*”, Barcelona Center for International Affairs, February 2016, available at https://www.cidob.org/es/publicaciones/serie_de_publicacion/notes_internacionales/n1_141_far_right_movements_and_ideology_in_contemporary_ukraine_formidable_image_vs_weak_essence/far_right_movements_and_ideology_in_contemporary_ukraine_formidable_image_vs_weak_essence, accessed on 14 May 2024, p. 5.

⁴⁹ Christopher Miller, “*Ukrainian Nationalists Stage Torchlight March In Kyiv As New Far-Right Party Is Born*”, 16 October 2016, available at <https://www.rferl.org/a/ukraine-nationalists-torchlight-march-azov-party/28053936.html>, accessed on 10 April 2024.

⁵⁰ Mikola Riabchuk, “*Ukrainians as Russia’s Negative ‘Other’: History Comes Full Circle*”, 49 *Communist and Post-Communist Studies* (2016), pp. 75–85.

45. Putin’s March 18 speech amounted to one of the first recorded references to Ukrainians as “Nazis” from the head of the State, but far from the last. In response to then U.S. President Barack Obama’s accusations that Russia had sent troops to Ukraine in violation of international law, the Russian President responded by declaring that Ukrainian troops had been acting as “Nazis”, and insisting that Ukrainians and Russians “are practically one people.”⁵¹
46. As described in more detail below, this rhetoric has been repeatedly reflected in and amplified by the Russian media, at times bolstered by false or grossly exaggerated reporting. In early July 2014, Russia’s leading government sponsored television network, Channel 1, aired a segment from Slovyansk in Eastern Ukraine, claiming that Ukrainian troops nailed a 3-year-old boy to a post in a city square, slit his sides open and forced his mother to watch as he bled out.⁵² The segment was confirmed to have been completely fabricated.⁵³
47. In parallel to the events in Crimea, over the course of March and early April 2014, armed groups of local residents acting in concert with, or under the direction and control of Russia’s intelligence and former military, including Igor Girkin (Strelkov), took control of key government buildings in several eastern provinces.⁵⁴ The situation deteriorated rapidly into violence: on 15 April 2014, the Ukrainian Government announced the start of an “Anti-Terrorist Operation” in the east and by the end of April, the acting Ukrainian President announced that the Government was no longer in full control of the eastern provinces of Donetsk and Luhansk, declared that the country was on “full combat alert”, and reinstated conscription to the armed forces.
48. On 2 May 2014, 40 people were killed in Odesa when a fire started inside a building in which anti-government protesters had taken refuge from counter protesters. While the investigation into the Odesa events is ongoing and no individual perpetrator has been identified, Russia has repeatedly cast it as an intentional atrocity committed by “Ukrainian nationalists/Nazis” against pro-Russian activists. As detailed in Section VI, the fire is often referred to as the *casus belli* that caused Donbas residents to start fighting against the new government in Russian State media.
49. The armed conflict, involving the persistent use of heavy military weaponry by both sides, including in built-up areas, has since persisted in eastern Ukraine for more than six years, killing at least 3,000 civilians and wounding thousands more.⁵⁵ It opposed Ukraine’s armed forces and affiliated formations on one side, and armed formations of so-called Donetsk and Luhansk People’s Republics (DPR and LPR, respectively), with the support of the Armed Forces of the Russian Federation, on the other.

⁵¹ Shaun Walker, Leonid Ragozin and Matthew Weaver, “*Putin Likens Ukraine’s Forces to Nazis and Threatens Standoff in the Arctic*”, The Guardian, 29 August 2014, available at <https://www.theguardian.com/world/2014/aug/29/putin-ukraine-forces-nazis-arctic>, accessed on 4 March 2024.

⁵² Original Footage and transcript (in Russian) available at https://www.1tv.ru/news/2014-07-12/37175-bezhenka_iz_slavyanska_vspominaet_kak_pri_ney_kaznili_malenkogo_syna_i_zhenu_opolchentsa (Channel 1, “*A Refugee from Sloviansk Recalls How She Witnessed the Execution of a Militia Member’s Young Son and Wife*”, 12 July 2014); The Moscow Times, “*State-Run News Station Accused of Making Up Child Crucifixion*”, 14 July 2014, available at <https://www.themoscowtimes.com/2014/07/14/state-run-news-station-accused-of-making-up-child-crucifixion-a37289>, accessed on 4 March 2024.

⁵³ Olga Musafirova and Victoria Makarenko, “*The “Boy” Never Existed But He Lives. Who Came Up With the Most Bloody Fake in the War in Donbass*”, Novaya Gazeta, 15 July 2015, available at <https://novayagazeta.ru/articles/2015/07/15/64898-171-malchika-187-ne-bylo-no-on-zhivet>, accessed on 15 May 2024.

⁵⁴ FIDH Report, *supra* note 44, pp. 8–9.

⁵⁵ ICC Report, *supra* note 26, para. 276.

2. Events following Russia's re-invasion of Ukraine in 2022

50. On 21 February 2022, the Russian Federation, by decrees of its President, formally recognized the DPR and LPR as independent States. In an address delivered on the same day, President Putin stated, *inter alia*, that this decision was taken in light of continuing attacks against the Donbas communities and “[t]he killing of civilians, the blockade, the abuse of people, including children, women and the elderly” while “the so-called civilised world, which our Western colleagues proclaimed themselves the only representatives of, prefers not to see this, as if this horror and **genocide**, which almost 4 million people are facing, do not exist” (emphasis added).⁵⁶
51. Several days later, on the morning of 24 February 2022, President Putin announced that he had decided, “in accordance with Article 51 (Chapter VII) of the Charter of the United Nations . . . to conduct a special military operation with the approval of the Federation Council of Russia and pursuant to the treaties on friendship and mutual assistance with the Donetsk People’s Republic and the Lugansk People’s Republic”. He specified that the “purpose” of the special operation was “to protect people who have been subjected to abuse and **genocide** by the Kyiv regime for eight years”. To achieve these objectives, Russia would pursue the “demilitarization and **denazification** of Ukraine” (emphasis added).⁵⁷
52. On the same day, Russia’s armed forces and the affiliated LPR and DPR structures crossed various border points into Ukraine, including from Belarus, and launched attacks by land, air and sea.⁵⁸ Commenting on Putin’s announcement of the invasion in his weekly broadcast, Russian television presenter **Dmitry Kiselyov** stated that:
- “Thus, President Putin announced the beginning of a special military operation to demilitarize and denazify Ukraine as part of Europe, since Europe itself does not want to do this. We are not satisfied with the military machine aimed for Russia at our side, with the Nazi division of people into casts that has developed in Kyiv. Our historical experience shows that denazification can only be coerced, forceful, and it can only be carried out from the outside. Actually, this has now begun. Russia has taken on this task – once again – to eradicate Nazism from Europe.”⁵⁹
53. On 2 March, the UN General Assembly issued a Resolution titled “Aggression against Ukraine”, deploring “in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2 (4) of the Charter”, and demanding that Russia immediately cease its use of force against Ukraine and “immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders.”⁶⁰
54. On 16 March 2022, the International Court of Justice ordered the Russian Federation to suspend the military operations, noting in its Order on Ukraine’s ‘Request for the Indication of Provisional Measures’ that no evidence substantiating Russia’s allegation that genocide has been committed on

⁵⁶ Vladimir Putin, “*Address by the President of the Russian Federation*”, The Kremlin, Moscow, 21 February 2022, available at <http://en.kremlin.ru/events/president/news/67828>, accessed on 8 March 2024.

⁵⁷ Vladimir Putin, “*Address of the President of the Russian Federation*”, The Kremlin, Moscow, 24 February 2022, available at <http://kremlin.ru/events/president/news/67843>, accessed on 5 March 2024.

⁵⁸ Report of the Independent International Commission of Inquiry on Ukraine, A/77/533, 18 October 2022, para. 24.

⁵⁹ News of the Week, 27 February 2022, Russia-1 channel, available at <https://smotrim.ru/video/2387946>, accessed on 15 May 2024.

⁶⁰ UN General Assembly, Resolution “*Aggression Against Ukraine*”, A/RES/ES-11/1, 2 March 2022.

Ukrainian territory between the years 2014 and 2022 against ethnic Russians or Russian speakers has been proffered by the Russian Federation.⁶¹

55. In the two years since the 24 February full-scale invasion of Ukraine, The UN Human Rights Monitoring Mission in Ukraine (HRMMU) has verified that conflict-related violence in this two-year period killed more than 10,500 Ukrainian civilians, including over 500 children, and injured nearly 20,000, while noting that the actual numbers are likely significantly higher.⁶² At least 155 civilians were summarily executed by Russia's Armed Forces, most of them men.⁶³
56. As of 31 October 2022, the HRMMU had documented summary executions and attacks on individual civilians in 102 villages and towns of the Kyiv, Chernihiv and Sumy regions between 24 February and 6 April 2022. The acts in question were committed by Russian armed forces in control of these areas and led to the deaths of at least 440 civilians.⁶⁴ A significant number of the bodies bore signs indicating that the victims may have been intentionally killed. For example, the town of Bucha (Kyiv region), which was under control of Russian troops from 5 to 30 March 2022, suffered from particularly high numbers of killings. By 31 October 2022, OHCHR had documented the killings of 73 civilians in Bucha alone.⁶⁵ The mission has also documented numerous summary executions in places of detention and "on the spot" in the Chernihiv and Sumy regions.⁶⁶ The killings were at times preceded by inquiries about the whereabouts of "Nazis". In Bucha, Russian soldiers raided a house on Yablunska Street. They confiscated the residents' phones, searched the house, and asked: "Where are the Nazis?" before killing a 40 year old civilian.⁶⁷ In another Bucha incident, the soldiers accused a man of being a "Banderovets" before his subsequent execution.⁶⁸
57. On the same day, as bodies of dozens of murdered Ukrainians were uncovered in Bucha on 3 April 2022, an article entitled "What Russia Must Do with Ukraine", written by Russian columnist Timofei Sergeitsev, was published on one of the most read media outlets RIA Novosti.⁶⁹ The article reiterated that Ukrainian nationalism is a Nazi movement that needs to be eradicated, and that the Ukrainian State cannot continue to exist as a sovereign. It called for the "re-education" of the "large part of the popular mass [of ordinary Ukrainians], who are passive Nazis, accomplices of Nazism", through a program of

⁶¹ ICJ, *Ukraine v. Russian Federation*, Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide, Order, 16 March 2022, available at <https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-00-EN.pdf>, accessed on 6 March 2024.

⁶² OHCHR, "Two-Year Update – Protection of Civilians: Impact of Hostilities on Civilians since 24 February 2022", February 2024, available at <https://www.ohchr.org/sites/default/files/2024-02/two-year-update-protection-civilians-impact-hostilities-civilians-24.pdf>, accessed on 15 May 2024.

⁶³ Ibid.

⁶⁴ OHCHR, "Killings Of Civilians: Summary Executions and Attacks on Individual Civilians in Kyiv, Chernihiv, and Sumy Regions In The Context Of The Russian Federation's Armed Attack Against Ukraine", 7 December 2022, available at <https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2022/2022-12-07-OHCHR-Thematic-Report-Killings-EN.pdf>, accessed on 15 May 2024, para. 3.

⁶⁵ Ibid., para. 30. See also Yousur Al-Hlou, Masha Froliak, Dmitriy Khavin, Christoph Koettl, Haley Willis, Alexander Cardia, Natalie Reneau and Malachy Browne, "Caught on Camera, Traced by Phone: The Russian Military Unit That Killed Dozens in Bucha", *The New York Times*, 22 December 2022, available at <https://www.nytimes.com/video/world/europe/10000008299178/ukraine-bucha-russia-massacre-video.html>, accessed on 8 March 2024.

⁶⁶ Ibid., paras. 37–60.

⁶⁷ Ibid., para. 103 a.

⁶⁸ Ibid., para. 34.

⁶⁹ Timofei Sergeitsev, "What Should Russia Do with Ukraine?", *RIA Novosti*, 3 April 2022, available at <https://web.archive.org/web/20220403060102/https://ria.ru/20220403/ukraina-1781469605.html>, accessed on 11 April 2024.

“ideological repressions” and “tough censorship: not only in the political sphere, but necessarily also in the cultural and educational domains.” The author explained that “Denazification will invariably constitute de-Ukrainization – the reversal of what was initiated by the Soviet regime as the artificial inflation of the ethnic component of the self-identification of the population of territories of former historical Little Russia and New Russia (*Malorossiya* and *Novorossyia*)”. The article places the blame on Ukraine’s so-called “nazification” squarely on the United States and Europe. Specifically, it states that “the Collective West is the architect, source and sponsor of Ukrainian Nazism, while the west-Ukrainian Bandera-types and their “collective memory” – is but one instrument of nazification of Ukraine. Ukronazism contains a greater, not lesser, threat to the world and Russia than German Nazism of the Hitlerite brand.”

58. On 5 October 2022, President Putin signed into law four pieces of legislation on the incorporation of parts of Ukraine’s Luhansk, Donetsk, Kherson, and Zaporizhzhia regions into the Russian Federation, based on the September 2022 so-called referendums conducted in the occupied territories of Ukraine.⁷⁰ By a UN General Assembly resolution adopted on 12 October 2022 and titled “Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations”, 143 Member States of the UN condemned “the organization by the Russian Federation of illegal so-called referendums in regions within the internationally recognized borders of Ukraine and the attempted illegal annexation of the Donetsk, Kherson, Luhansk and Zaporizhzhia regions”, and declared that these actions have no validity under international law.⁷¹
59. In the territories of Ukraine occupied by the Russian and affiliated armed forces, including in Luhansk, Donetsk, Kherson, and Zaporizhzhia regions, the occupation authorities went door to door asking residents to identify “Nazis” and “Banderites”⁷² and set up “filtration” points in order to vet and sequester individuals suspected of sympathizing with Ukraine’s Armed forces or simply of displaying loyalty to the Ukrainian State with posts and likes on social networking websites.⁷³ The so-called “filtration” practices have led to thousands of arbitrary detentions, inhuman treatment, torture and subsequent deportation of Ukrainian civilians to other occupied territories of Ukraine or Russia

⁷⁰ State Duma, “*The President of the Russian Federation Signed Laws on the Entry into Russia of the DPR, LPR, Zaporozhye and Kherson Regions*”, 5 October 2022, available at <http://duma.gov.ru/news/55420/>, accessed on 11 April 2022.

⁷¹ UN General Assembly, Resolution “*Territorial Integrity of Ukraine: Defending the Principles of the Charter of the United Nations*”, A/RES/ES-11/ 4, 12 October 2022.

⁷² Isabelle Khurshudyan and Michael Robinson Chavez, “*Ukrainian Villagers Describe Cruel and Brutal Russian Occupation*”, The Washington Post, 4 April 2022, available at <https://www.washingtonpost.com/world/interactive/2022/russian-soldiers-beat-torture-ukrainian-villagers/>, accessed on 8 March 2024; see also Kharkiv Human Rights Protection Group, “*Horrific Conditions and Torture in Russian Filtration Camp “Ghetto” for Mariupol Residents*”, 11 May 2022, available at <https://khpg.org/en/1608810538>, accessed on 8 March 2024; Human Rights Watch, “*Ukraine: Russian Forces’ Trail of Death in Bucha Preserving Evidence Critical for War Crimes Prosecutions*”, 21 April 2022, available at <https://www.hrw.org/news/2022/04/21/ukraine-russian-forces-trail-death-bucha>, accessed on 8 March 2024.

⁷³ See, e.g., Yevhen Zakharov, “*Russia-Ukraine War: What Does “Filtration” Mean?*”, Kharkiv Human Rights Protection Group, 1 March 2024, available at <https://khpg.org/en/1608813448>, accessed on 31 May 2024; The American Bar Association Center for Human Rights, The Center for Civil Liberties and Free Russia Foundation, “*Russia’s War in Ukraine: Filtration and Forced Relocation of Civilians Constitute Gross Violations of International Law*”, September 2023, available at <https://thinktank.4freerussia.org/wp-content/uploads/2023/09/report-russias-war-in-ukraine.pdf>, accessed on 31 May 2024; Human Rights Watch, “*‘We Had No Choice’: “Filtration” and the Crime of Forcibly Transferring Ukrainian Civilians to Russia*”, 1 September 2022, available at <https://www.hrw.org/report/2022/09/01/we-had-no-choice/filtration-and-crime-forcibly-transferring-ukrainian-civilians>, accessed on 8 March 2024.

proper.⁷⁴ OHCHR has documented 864 cases of arbitrary detention by Russian armed forces between 24 February 2022 and 23 May 2023 in the regions of Kyiv, Chernihiv, Sumy, Kharkiv, Donetsk, Luhansk, Kherson, Mykolaiv, Zaporizhzhia and Odesa, on the Zmiinyi island, and in Crimea.⁷⁵ Among the persons detained were civic activists, humanitarian workers and local community leaders, as well as persons with “real or perceived pro-Ukrainian views or affiliation with Ukrainian political entities, including persons who peacefully protested against Russian occupation in public spaces or via social media, people found with patriotic literature or Ukrainian State symbols, and individuals with, for example, tattoos deemed “patriotic”.⁷⁶

60. The purpose of these abusive practices was often to impose the Russian system of governance and administration in place of Ukrainian ones in the occupied territories of Ukraine, with the view towards eradication of Ukrainian identity in the newly annexed territories.⁷⁷ In case local officials refused to cooperate, they were offered incentives, pressured, threatened with violence or, in some cases, arbitrarily detained, ill-treated or tortured.⁷⁸ In one case in the Kherson region, Russian authorities first detained a village head who refused to cooperate with the *de facto* authorities, and who was subsequently detained for four days, during which he was interrogated, beaten, subjected to electric shocks, threatened with execution, and accused of being a “Nazi” because of his refusal to cooperate.⁷⁹
61. In the occupied territories of Ukraine, the Russian Ministry of Education imposed a curriculum which did not represent Ukraine as an independent and unique country. One history textbook stated that “a junta came to power” in Ukraine in 2014, and that modern-day Ukraine is an “ultra-nationalist State”.⁸⁰ In some occupied areas, the occupying authorities announced that any “Neo-Nazi” symbol, including the blue-yellow flag of Ukraine, would be banned.⁸¹
62. Numerous individuals were subjected to sexual and gender-based violence (SGBV) as a form of punishment for their pro-Ukrainian views. One victim testified to the UN Commission of Inquiry on Ukraine that in September 2022, three Russian soldiers came to her home in a village in the Kherson region and directed her to follow them to a house which they used as their base. There, one soldier told her: “We will make sure to show you what happens to the Nazis and Ukrainian armed forces’ fans like you.” They beat her and administered electric shocks. Then two of the soldiers raped her in turns. According to the victim, this lasted for hours.⁸²

⁷⁴ This term refers to a process of security checks and personal data collection during which many civilians were arbitrarily detained by the Russian authorities for periods ranging from several days to several months. OHCHR, “*Human Rights Situation During the Russian Occupation of Territory of Ukraine and its Aftermath: 24 February 2022 – 31 December 2023*”, 20 March 2024, available at <https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2023/2024-03-20-OHCHR-Report-Occupation-Aftermath-en.pdf>, accessed on 15 May 2024, para. 44.

⁷⁵ OHCHR, “*Detention of Civilians in the Context of the Armed Attack of the Russian Federation against Ukraine 24 February 2022 – 23 May 2023*”, 27 June 2023, available at <https://www.ohchr.org/sites/default/files/2023-06/2023-06-27-Ukraine-thematic-report-detention-ENG.pdf>, accessed on 8 March 2024.

⁷⁶ *Ibid.*, para. 52.

⁷⁷ OHCHR Report, *supra* note 74, paras. 81–87.

⁷⁸ *Ibid.*, para. 85.

⁷⁹ *Ibid.*, para. 86.

⁸⁰ *Ibid.*, para. 131.

⁸¹ *Ibid.*, para. 138.

⁸² Report of the Independent International Commission of Inquiry on Ukraine, A/HRC/55/66, 15 March 2024, available at <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/hrcoiukraine/a-hrc-55-66-aev.pdf>, accessed on 18 March 2024, para. 91.

63. OHCHR has documented that over 100 civilians have died after having been taken into detention by Russian authorities since 24 February 2022, including from execution, injuries sustained during torture, inhumane detention conditions, or lack of medical assistance.⁸³ In places of detention, civilians were often accused of being, or asked about the whereabouts of, “Nazis”, “Fascists” or “Banderites”, while being subjected to prolonged detention, beatings, forced nudity, electric shocks, and other forms of humiliation, ill-treatment and torture during interrogations.⁸⁴ One survivor recalled seeing a bat/truncheon decorated with stickers labeled “denazification” in the corner of the interrogation room.⁸⁵ OHCHR has documented “patterns of widespread torture and ill-treatment in places of detention”.⁸⁶ In one report, it received victim or witness testimony regarding the treatment regarding 171 civilian detainees, finding that 90 percent of them were tortured or ill-treated. As noted by the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, “these grievous acts appear neither random nor incidental, but rather orchestrated as part of a policy by the Russian Federation to intimidate, instill fear, punish, or extract information and confessions.”⁸⁷
64. During her September 2023 visit to Ukraine, the UN Special Rapporteur on Torture interviewed Ukrainian civilians and prisoners of war (POWs) who had returned to Ukraine from places of detention by the Russian authorities.⁸⁸ They testified being subjected to beatings, electric charges being applied to ears and genitals, mock executions at gunpoint and simulated drowning.⁸⁹ She heard of individuals being required to hold stress positions, threatened with rape or death, or filmed while forced to confess to crimes or allegiance to Ukraine. Those interviewed also recounted dire and often abusive detention conditions, being poorly fed and kept in the cold.⁹⁰ The Special Rapporteur noted that the reported targeting of Ukrainian civilians and prisoners of war by members of the Russian army through repeated, similar conduct, across a range of temporarily occupied towns and regions, constituted a consistent pattern indicative of State policy.⁹¹
65. Since the beginning of Russia’s occupation of Ukrainian territories following the February 2022 re-invasion of Ukraine, Russia’s armed forces and affiliated structures have transferred thousands of

⁸³ OHCHR, Report on the Human Rights Situation in Ukraine, 1 August to 30 November 2023, 12 December 2023, available at <https://www.ohchr.org/sites/default/files/2023-12/23-12-12-OHCHR-37th-periodic-report-ukraine-en.pdf>, accessed on 11 March 2024, para. 51.

⁸⁴ OSCE ODIHR, Fourth Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine, 12 December 2023, para. 63; OHCHR Report, *supra* note 74, para. 142; Report of the Independent International Commission of Inquiry on Ukraine, A/78/540, 19 October 2023, available at <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A-78-540-AEV.pdf>, accessed on 11 March 2024, para. 67; DIGNITY, “*Nine Circles of Hell: Places of Detention in Ukraine Under the Russian Occupation March 2022 – December 2022 (2023)*”, available at <https://dignity.dk/wp-content/uploads/42-Nine-circles-of-hell.pdf>, accessed on 8 March 2024, p. 16; HRW Report “*We Had No Choice*”, *supra* note 73.

⁸⁵ OSCE ODIHR Fourth Interim Report, *supra* note 84, para. 71.

⁸⁶ OHCHR Report, *supra* note 74, para. 40.

⁸⁷ UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, “*Russia’s War in Ukraine Synonymous With Torture*”, 10 September 2023, available at <https://ukraine.un.org/en/245333-russia’s-war-ukraine-synonymous-torture-un-expert>, accessed on 15 May 2024.

⁸⁸ OHCHR, Visit to Ukraine - Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/55/52/Add.1, 15 February 2024, available at <https://www.ohchr.org/en/documents/country-reports/ahrc5552add1-visit-ukraine-report-special-rapporteur-torture-and-other>, accessed on 15 May 2024, paras. 35–36.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*, para. 41.

⁹¹ *Ibid.*, para. 46.

Ukrainian children to Russian or Russian-controlled territory.⁹² According to Russian official sources, over 738,000 children arrived on the territory of the Russian Federation between February 2022 and February 2023, while the Ukrainian authorities place these figures at between 150,000 and 300,000.⁹³ Russian authorities claim that these transfers were conducted for security reasons and often for a temporary stay in so-called recreation camps. However, the UN Commission of Inquiry on Ukraine has documented at least 30 cases of transfers to the territory of the Russian Federation from occupied territories of Ukraine without the written consent of parent or guardian, and with the apparent aim of retaining the children for prolonged periods or permanently, including by placing them in Russian foster families and/or granting them Russian citizenship.⁹⁴ On 17 March 2023, this Court's Pre-Trial Chamber II issued arrest warrants against President Putin and Russia's Commissioner for Children's Rights in the Office of the President of the Russian Federation, Maria Lvova-Belova, finding "reasonable grounds" to believe that each suspect bears responsibility for the war crime of unlawful deportation of population and that of unlawful transfer of children from occupied areas of Ukraine to the Russian Federation.⁹⁵

66. With respect to the conduct of hostilities, attacks launched by the Russian armed forces have severely damaged and destroyed critical Ukrainian infrastructure. For several months from 10 October 2022, Russian missiles and loitering munitions damaged and destroyed energy-related infrastructure across the country, imposing significant hardship on the civilian population due to disruption of electricity and heating service.⁹⁶ On 8 December 2022, Russia's President Vladimir Putin publicly admitted that Russia's strikes were deliberately directed against Ukraine's energy infrastructure, insinuating that Russia will not cease targeting power stations and other energy facilities across Ukraine.⁹⁷ On 5 March 2024, this Court issued arrest warrants for two high-ranking Russian military officials, Lieutenant General Sergei Kobylash of the Russian Armed Forces and Admiral Viktor Sokolov of the Russian Navy. They are charged with the war crimes of launching attacks on civilian targets and civilians, along with the crime against humanity of committing inhumane acts.⁹⁸

⁹² OSCE ODIHR Moscow Mechanism, Report on Violations and Abuses of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity, Related to the Forcible Transfer and/or Deportation of Ukrainian Children to the Russian Federation, 28 April 2023, available at https://www.osce.org/files/f/documents/7/7/542751_1.pdf, accessed on 11 March 2024, p. 12.

⁹³ Ibid.

⁹⁴ Report of the Independent International Commission of Inquiry on Ukraine, *supra* note 84, paras. 90–99.

⁹⁵ ICC Press Release, "Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova", 17 March 2023, available at <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>, accessed on 11 March 2024.

⁹⁶ FIDH, "Ukraine: Russia's Attacks Against Energy Infrastructure Violate International Humanitarian Law, 23 December 2022", available at <https://www.fidh.org/en/region/europe-central-asia/ukraine/russia-attacks-against-energy-infrastructure-ukraine>, accessed on 8 March 2024.

⁹⁷ Ibid.

⁹⁸ ICC Press Release, "Situation in Ukraine: ICC judges issue arrest warrants against Sergei Ivanovich Kobylash and Viktor Nikolayevich Sokolov", 5 March 2024, available at <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-sergei-ivanovich-kobylash-and>, accessed on 8 March 2024.

B. The Role of Rhetoric in the War in Ukraine

1. Setting the stage: creating a climate of discriminatory hate towards Ukraine/Ukrainians prior to the 2022 re-invasion through “historical framing” and manipulation of historical memory

67. During Vladimir Putin’s tenure as President and especially since the annexation of Crimea and the beginning of the armed conflict in East Ukraine in 2014, Russia has sought to create an ideological and rhetorical foundation for the territorial conquest of all or parts of Ukraine. This has been achieved primarily through the use of “politics of memory” of the Soviet past and “historical framing” of the war in Ukraine as the continuation or repeat of the Soviet Union’s liberation campaign from Nazi fascism during the Second World War, laying the ground for Ukraine’s so-called “denazification”.⁹⁹ This narrative has been massively diffused to both internal constituents and foreign audiences.
68. “Politics of memory” entails State-sponsored approaches to shaping the collective memory of past traumatic events by perpetuating tendentious historical narratives to justify current policies.¹⁰⁰ Deliberate manipulation of historical memory, and the formation and diffusion of historical narratives, can be achieved in part through “historical framing”, the media’s framing of a contemporary event within a historical precedent by conflating the present with the past.¹⁰¹ “Historical framing” is viewed here as being part and parcel of “politics of memory” in Russia, since almost all media is owned or otherwise controlled by the government.¹⁰²
69. By employing “politics of memory”, including the use of “historical framing”, the Russian authorities have sought to perpetuate an official narrative surrounding the war in Ukraine with the following broad elements:
- a powerful and resurrected Russia, that is the successor State of the victorious Soviet Union, is on the righteous path of continuing the struggle against fascism it began during the Second World War;
 - Ukraine is an artificial entity that is historically comprised in large part of territories that “belong” to Russia, and Ukrainians are really Russians, with a single history, mentality and culture;
 - Ukraine has been manipulated by the West to turn into an entity with NATO aspirations and deeply antagonistic to Russia;
 - Ukraine that aligns itself with Western values and seeks its own self-determination, as well as Ukrainians who aspire to a Ukrainian nation distinct and different from Russia, are “Banderites” or “Nazis”; and
 - there is a need to “liberate” Ukraine from Western-imposed Nazism and from the “Nazis”.

⁹⁹ Jade McGlynn, *Memory Makers: The Politics of the Past in Putin’s Russia*, Bloomsbury Academic, 2023, p. 51.

¹⁰⁰ Ilya Nuzov, “*The Dynamics of Collective Memory in the Ukraine Crisis: A Transitional Justice Perspective*”, 11 International Journal of Transitional Justice, 2017, pp. 132–153, p. 138.

¹⁰¹ Ibid.

¹⁰² OECD, “*Disinformation and Russia’s war of aggression against Ukraine: Threats and governance responses*”, 3 November 2022, available at <https://www.oecd.org/ukraine-hub/policy-responses/disinformation-and-russia-s-war-of-aggression-against-ukraine-37186bde/>, accessed on 21 March 2024.

a. The Use of Historical Memory Policy to Create an Image of the Enemy and Deny Ukrainian Statehood

70. During the first two terms of Putin's tenure as President, he has begun to move historical memory policy to the forefront of the broader domestic and foreign policy agenda. This strategy was a response to the retreat of several former Soviet States from Russia's self-proclaimed sphere of influence during the so-called "color revolutions" in Georgia (2003), Ukraine (2004) and Kyrgyzstan (2005), and the increased implementation of transitional justice measures to condemn and overcome the Soviet past by these and other former Soviet States and satellites, particularly by Ukraine.
71. Historical memory policy can have an important impact on international peace and security. This relationship hinges on the way that a nation's collective memory of past cataclysmic events is formed and expressed by historical narratives.¹⁰³ With respect to foreign policy, States with unstable identities in the aftermath of a regime change, like the dissolution of the Soviet Union, often look for ways to secure a new State identity by aligning their historical narratives with their interests and relationships in international relations.¹⁰⁴ Historical narratives are thus instrumental to a State's stability and continuity in the global order, and States might react strongly when they perceive that their vision of the past is threatened, misunderstood or assaulted by other States. In such cases, they might resort to so-called "mnemonic security" measures like memory laws and, in extreme circumstances, to physical force.¹⁰⁵
72. In Russia, State historical memory policy from the beginning of Putin's rule has centered on the collective memory of the Soviet Union's victory in the Second World War, the Great Patriotic War as it is known in Russia. President Putin and his closest cohorts, who sprung into post-Soviet politics from Soviet-era power structures, have seized on the mobilizing potential of Soviet victory to legitimize themselves and consolidate Russians around a heroic collective identity. This collective identity is rooted in the depiction of the USSR as a just and heroic State that has banished Nazism during the Great Patriotic War. The principal historical narrative propounded by the State portrays Russia as the successor State of the USSR, inheriting its dominant role in the post-Yalta world order and liberator mission, and whose own crimes were marginal or somehow justified.¹⁰⁶ As the Soviet Union's successor, according to the official narrative, Russia continues the eternal struggle against Nazism everywhere, including in Ukraine.¹⁰⁷ This narrative rejects any domestic or foreign efforts to portray the Soviet Union as a fundamentally repressive State, an aggressor or Occupying Power, responsible for international crimes like the intentional starvation of Ukrainians during the 1932–1933 artificial famine – the Holodomor, deportations of Lithuanians, Latvians, Poles, Chechens and Crimean Tatars to GULAGs, the execution of Polish prisoners of war in Katyn, the Great Terror, and other international crimes in the USSR and the territories it controlled.¹⁰⁸

¹⁰³ See, e.g., Brent J. Steele, *Ontological Security in International Relations: Self-Identity and the IR State*, Routledge, 2008.

¹⁰⁴ Maria Malksoo, "'Memory Must Be Defended': Beyond the Politics of Mnemonical Security", 46 *Security Dialogue* (2015) 221–237.

¹⁰⁵ Ibid.

¹⁰⁶ Nikolai Kopolov, "'The Only Possible Ideology': Nationalizing History in Putin's Russia", 24 *Journal of Genocide Research*, 2022, 205–215, p. 211.

¹⁰⁷ Ilya Nuzov, *"Legislating Propaganda: Russia's Memory Laws Justify Aggression Against Ukraine"*, 20 *Journal of International Criminal Justice*, 2022, 805–818, available at <https://doi.org/10.1093/jicj/mqac052>, accessed on 16 May 2024, p. 813.

¹⁰⁸ These have been thoroughly documented in, among others, Timothy Snyder, *Bloodlands: Europe Between Hitler and Stalin*, Basic Books, 2010.

73. Continuity with the Soviet Union, the sacredness of Soviet victory in the Second World War, and the State monopoly on history – these are among the foundations of Russia’s political system today.¹⁰⁹ Indeed, in 2020, the official historical narrative was enshrined in the Constitution of Russia. A series of constitutional amendments declare the Russian Federation to be the “successor” of the Soviet Union (Article 67.1 § 1); proclaim that the Russian Federation “honors the memory of defenders of the Homeland” and “protects historical truth” (Article 67.1 § 3); warn that “diminishing the significance of the people’s heroism in defending the Homeland is not permitted” (Article 67.1 § 3); and direct the Government to “inculcate patriotism” in children (Article 67.1 § 4).¹¹⁰
74. By contrast, Ukrainian post-Soviet nation-building has centered on portraying Ukraine as a victim of Soviet aggression. In 2006, during the Presidency of Victor Yushchenko, Ukraine’s Parliament adopted a declarative memory law recognizing Holodomor as a Soviet genocide against the Ukrainian people,¹¹¹ and in 2010, Yushchenko honored Stepan Bandera by posthumously bestowing on him the State honor “Hero of Ukraine”.¹¹² In 2014, Ukraine deposed the pro-Russia President Viktor Yanukovich, who had, among other things, reversed Yushchenko’s “Hero of Ukraine” Order, and the historical narrative of Ukraine’s victimhood and heroic struggle against Russian and Soviet imperialism has since prevailed.¹¹³
75. Ukraine’s mnemonic policy has been perceived by Russia as a deeply offensive attempt to distort history. In 2007, following Ukraine’s announcement that it plans to commemorate the 75-year anniversary of Holodomor, Russia’s Ministry of Foreign Affairs announced that since “certain foreign partners are trying to turn history into an instrument for politico-ideological confrontation,” Russia’s “task of defending historical truth and countering the politicization of historical themes in a consistent manner is turning into our foreign policy priority”.¹¹⁴ Since 2014, historical memory has become one of Russia’s main national security concerns. Russia’s 2014 Military Doctrine¹¹⁵ as well as its 2015 and 2021 National Security Strategy all refer to the need to counteract attempts at “falsification of history”, citing the need to defend historical memory as a strategic priority for the nation’s security.¹¹⁶
76. The Russian authorities have employed a range of policy measures, including legislation, to whitewash Soviet crimes and protect the unassailability of the Great Victory. These laws, and the historical narrative they help to amplify, have facilitated Russia’s aggression by perpetuating a false rhetorical equivalency between the war Russia now wages in Ukraine and the Soviet Union’s drive to liberate European territories occupied by Nazi Germany.¹¹⁷
77. Depending on how “memory laws” are defined, Russia has adopted up to five such legislative measures between 2014 and Russia’s full-scale invasion of Ukraine in February 2022. The central tenet of this

¹⁰⁹ FIDH, “*Russia: Crimes Against History*”, June 2021, available at https://www.fidh.org/IMG/pdf/russie-_pad-uk-web.pdf, accessed on 26 March 2024, para. 3.

¹¹⁰ The official Russian version of the Constitution of the Russian Federation is available at <http://publication.pravo.gov.ru/Document/View/0001202007040001>.

¹¹¹ Law No. 376-V of Ukraine on the 1932–1933 Holodomor in Ukraine, 28 November 2006.

¹¹² Radio Free Europe/Radio Liberty, “*Yushchenko Grants Hero Status To Controversial Ukrainian Nationalist*”, 22 January 2010, available at https://www.rferl.org/a/Yushchenko_Grants_Hero_Status_To_Controversial_Ukrainian_Nationalist/1937123.html, accessed on 26 March 2024.

¹¹³ Nuzov, *supra* note 107, p. 815.

¹¹⁴ RIA Novosti, “*The Russian Ministry of Foreign Affairs Intends to Counter Attempts to Falsify History*”, 26 March 2008, available at <https://ria.ru/20080326/102308078.html>, accessed on 16 May 2024.

¹¹⁵ Military Doctrine of the Russian Federation, 30 December 2014, available at <https://rg.ru/documents/2014/12/30/doktrina-dok.html>, accessed on 31 May 2024.

¹¹⁶ President of Russia, “*Decree of the President of the Russian Federation from 02.07.2021 № 400*”, Kremlin, 2 July 2021, available at <http://www.kremlin.ru/acts/bank/47046>, accessed on 16 May 2024.

¹¹⁷ Nuzov, *supra* note 107, p. 809.

rapidly developing legal framework is Article 354.1 of the Criminal Code (“Rehabilitation of Nazism”), which was adopted in May 2014, just after Russia’s annexation of Crimea. Among other things, this law criminalizes the dissemination of knowingly false information about the activities of the Soviet Union during the Second World War and “the insult of memory of the defenders of the Homeland or degrading the honor and dignity of the veterans of the Great Patriotic War”. Russian authorities have used Article 354.1 to prosecute those who publicly disclose facts about the Soviet Union’s crimes during the Second World War, such as the Soviet Union’s alliance with Nazi Germany to attack and annex Poland and the Baltic States,¹¹⁸ and those who today compare the actions of Russia’s armed forces with the atrocities of Nazi Germany.

78. Another law prohibits the “Propaganda or public display of Nazi paraphernalia or symbols”, including those of OUN and OPA.¹¹⁹ Since March 2022, courts in Crimea have convicted 84 people (54 men and 30 women) for “displaying Nazi symbols or showing disrespect for the Russian state”.¹²⁰ In 70 percent of the cases related to charges of “displaying Nazi symbols”, individuals were prosecuted for expressing pro-Ukrainian opinions or displaying Ukrainian symbols, such as posting on social media pictures with the Ukrainian State emblem or singing Ukrainian songs.¹²¹
79. In January 2021, President Putin formally urged the State Duma to adopt the law that would prohibit making public statements that equate the role of the USSR and fascist Germany during the Second World War, and a bill to that effect was introduced in May 2021.¹²² A co-author of the legislation, which became law in April 2022, an MP from the ruling United Russia party, Elena Yampolskaya, explained the measure as a response to the recent attempts by Ukraine, Poland and the Baltic States ‘to slander the history of the Second World War and the Great Patriotic War’ and, by extension, Russia’s Armed Forces, who are fighting for the denazification of Ukraine.¹²³ Thus, according to the Russian lawmakers, any attempt to challenge the sacrosanct victory or the positive image of the Soviet Union more generally amounts to lack of patriotism and discredits the SMO. The reverse is also true: discrediting the SMO amounts to slander of the Great Patriotic War. Equating the Soviet Union with Nazi Germany thus undermines the propaganda of the SMO as a kind of neo-Soviet liberation campaign, which has been crucial for Russia’s rhetorical justification of the SMO as “denazification”.¹²⁴
80. The official narrative has not only been shaped through legislation, State propaganda has also been advanced through the creation of State institutions, the inculcation of official history at schools and persistent attacks against historians, NGOs and journalists inside Russia working on the historical memory of the Soviet past, including Nobel Prize winning NGO Memorial and historian Yury Dmitriev.¹²⁵ In 2009, then-President Dmitry Medvedev created the Presidential Commission for Countering Attempts to Falsify History to the Detriment of Russia’s Interests. Although it was later

¹¹⁸ Gleb Bogush and Ilya Nuzov, “*Russia’s Supreme Court Rewrites History of the Second World War*”, EJIL: Talk! Blog of the European Journal of International Law, 28 October 2016, available at www.ejiltalk.org/russias-supreme-court-rewrites-history-of-the-second-world-war, accessed on 27 March 2024.

¹¹⁹ Code of Administrative Offenses of the Russian Federation, Article 20.3 1) and (3).

¹²⁰ OHCHR, Report on the Human Rights Situation in Ukraine: 1 December 2023 – 29 February 2024, 26 March 2024, available at <https://ukraine.un.org/sites/default/files/2024-03/2024-03-26%20OHCHR%2038th%20Periodic%20Report.pdf>, accessed on 27 March 2024, para. 86.

¹²¹ Ibid.

¹²² Bill No. 963440-7 on Amending the Criminal Code of the Russian Federation, available at <https://sozd.duma.gov.ru/bill/963440-7>, accessed on 2 November 2022.

¹²³ The State Duma, Press Release: “*Punishment is Introduced for Identifying the Actions of the USSR and Nazi Germany*”, 6 April 2022, available at <http://duma.gov.ru/news/53971/>, accessed on 16 May 2024.

¹²⁴ Nuzov, *supra* note 107, p. 816.

¹²⁵ For an exhaustive account of these acts of persecution, see FIDH Report, *supra* note 109.

debunked, in its place came the Russian Military Historical Society (RMHS), a State-funded institution whose objectives included to “counter attempts to distort” Russia’s military history and to “inculcate patriotism”. In November 2020, the RMHS held a conference to deny the Soviet Union’s responsibility for the Katyn massacre of Polish POWs. In 2012, major State universities and media companies, including the government-owned All-Russia State Television and Radio Broadcasting Company (*Vserossiyskaya gosudarstvennaya televizionnaya i radioveshchatelnaya kompaniya*, VGTRK), established the Russian Historical Society (RHS). From the outset, RHS has been chaired by the Chief of the Foreign Intelligence Service, Sergey Naryshkin, who tasked the institution with fostering the “enduring values of patriotism, civic consciousness, and high moral service to the State.”¹²⁶

b. Statements and official pronouncements of highest level officials

81. Historical memory policy has been accompanied by President Putin’s increasingly frequent statements, in the lead-up to the full-scale invasion, that he did not regard Ukraine as a unique country, nor Ukrainians as a unique people with a right to self-determination. Beginning in about 2008, Putin has remarked on several occasions that Ukraine was an entity artificially constructed during the Soviet period and comprised of territories gifted to it by Russia, Poland and other States with a longer history of independent statehood, suggesting that a large part of Ukraine is, in fact, Russia. On one occasion, he lamented that the Soviet Union gifted Crimea,¹²⁷ a “citadel of Russian spirituality”, to Ukraine, “like a sack of potatoes”.¹²⁸ In numerous other instances, including in his quasi-scientific publication tellingly titled “On the Historical Unity of the Russians and Ukrainians,” Putin expressed his view that “Russians and Ukrainians were one people – a single whole”, with a common history and “mentality”¹²⁹.
82. These remarks have been echoed by other influential members of Russia’s political elite. Former Presidential Adviser Vladislav Surkov, who has been at times referred to as the Kremlin’s main ideologue credited with coining the term “Sovereign Democracy” to describe Russia’s brand of authoritarianism, remarked in 2020 that: “There is no Ukraine. There is Ukrainianism. That is, a specific disorder of the mind. A surprisingly extreme fascination with ethnography. Such bloody local history. A muddle instead of a State. There’s borscht, Bandera, bandura. But there is no nation. There is a brochure “*Samostyina* (Independent) *Ukraina*”, but there is no Ukraine. The only question is, is Ukraine gone, or is it still gone?”.¹³⁰
83. In parallel, President Putin has become increasingly preoccupied with identifying and destroying modern-day Nazi “collaborationists” in Russia or elsewhere. In the National Interest article titled “The Real Lessons of the 75th Anniversary of World War II”, he presented the Soviet Union as the savior of “the entire world” and, referring to the official pronouncements by the EU and some former Soviet States condemning the crimes of the Soviet Union and Nazi Germany,¹³¹ lamented about ongoing attempts to “equate liberators with occupiers”, regarding them as a “betrayal of the ideals that united

¹²⁶ FIDH Report, *supra* note 109, paras. 94–99.

¹²⁷ Meeting of the Valdai Discussion Club, 24 October 2014, available at <http://kremlin.ru/events/president/news/46860>, accessed on 27 March 2024.

¹²⁸ Meeting of the Valdai Discussion Club, 19 September 2013, available at <http://kremlin.ru/events/president/news/19243>, accessed on 25 March 2024.

¹²⁹ Vladimir Putin, “*On the Historical Unity of the Russians and Ukrainians*”, Kremlin, 12 July 2021, available at <http://en.kremlin.ru/events/president/news/66181>, accessed on 25 March 2024.

¹³⁰ Interview with Vladislav Surkov by Alexei Chesnakov, “*Surkov: I Find it Interesting to Act Against Reality*”, 26 February 2020, available at <https://actualcomment.ru/surkov-mne-interesno-deystvovat-protiv-realnosti-2002260855.html>, accessed on 11 April 2024.

¹³¹ See, e.g., European Parliament, “*Resolution on the importance of European remembrance for the future of Europe*”, 2019/2819(RSP), 19 September 2019.

peoples in the fight against Nazism.”¹³² On September 1, 2020 during the opening day speech to students resuming their classes, Putin again condemned “wartime collaborators” and charged those who distort history as modern-day equivalents of Nazi collaborators.¹³³

c. “Historical Framing” in the media

84. In the media, the repeated conflation of the past historical event, i.e. the victory in the Second World War, with the present, has constituted the main technique to “historical framing” of the war in Ukraine.¹³⁴ The Maidan protests, which were provoked by Yanukovich’s refusal to orient Ukraine towards the EU, but evolved into a wider popular protest against social injustices, were portrayed by the main government outlets like Channel 1, *Rossiiskaya gazeta*, *Argumenty I Fakty*, *Komsomolskaya Pravda*, among others, as having been organized and financed by the United States in order to destabilize the region by bringing to power a “fascist junta”.¹³⁵ One prominent study of key messages during the war period has identified four “conflations” during the entire war period: the new Ukrainian government as “Banderite”; the behavior of Western and Ukrainian governments, and the Ukrainian military, as “Nazis”; Russia’s military involvement as the new Great Patriotic War; and the return of Crimea as the Great Victory.¹³⁶
85. In early 2014, the narratives focused on Stepan Bandera and likened pro-Maidan Ukrainians’ protests to the way Nazi collaborators undermined Soviet power, facilitated Nazi control over occupied territories and terrorized Jews and other local minorities.¹³⁷ This comparison was not new, Soviet politicians used the same references to the alleged crimes of Ukrainian nationalists during and after the Second World War to undermine Ukrainian claims for independence.¹³⁸ During this time, the media intentionally demonized large swathes of Maidan protestors, regular Ukrainians with legitimate socio-political grievances, as being driven by fascist ideology.¹³⁹ However, the assertion that a majority of Maidan protesters supported Nazi collaborationism, using violence against ethnic minorities, or glorified Bandera, OUP or UPA, did not reflect reality.¹⁴⁰ In simple terms, during this time period, ordinary Ukrainians with aspirations for a democratic Ukraine became increasingly portrayed in the Russian media as “Banderites” or Nazis. Indeed, according to one study of all key terms associated with the war in Ukraine utilized in the blogs and social media, the term “bandera” or “banderovets” has been the most often cited one, with 26 percent uses or 13,5 million times from 1 January 2014 through 22 March 2015.¹⁴¹

¹³² Vladimir Putin, “*Vladimir Putin: The Real Lessons of the 75th Anniversary of World War II*”, The National Interest, 18 June 2020, available at <https://nationalinterest.org/feature/vladimir-putin-real-lessons-75th-anniversary-world-war-ii-162982>, accessed on 16 May 2024.

¹³³ The transcript of Vladimir Putin’s intervention during an open lesson “*To Remember means to know*”, 1 September 2020, available at <http://prezident.org/tekst/stenogramma-vystuplenija-putina-na-otkrytom-uroke-pomnit-znachit-znat-01-09-2020.html>, accessed on 16 May 2024.

¹³⁴ McGlynn, *supra* note 99, p. 53.

¹³⁵ Sam Sokol, “*Russian Disinformation Distorted Reality in Ukraine. Americans Should Take Note*”, Foreign Policy, 2 August 2019, available at <https://foreignpolicy.com/2019/08/02/russian-disinformation-distorted-reality-in-ukraine-americans-should-take-note-putin-mueller-elections-antisemitism/>, accessed on 16 May 2024.

¹³⁶ McGlynn, *supra* note 99, p. 60.

¹³⁷ *Ibid.*

¹³⁸ Julie Fedor, Markku Kangaspuro, Jussi Lassila and Tatiana Zhurzhenko, “*War and Memory in Russia, Ukraine and Belarus*”, Pgrave Macmillan Cham, 2017.

¹³⁹ McGlynn, *supra* note 99, p. 62.

¹⁴⁰ International Renaissance Foundation, *supra* note 29, pp. 18–21.

¹⁴¹ Daria Radchenko, Aleksandra Arhipova, “‘*Ukrop*’ and ‘*Vatnik*’, ‘*Hate Speech*’ of Russian-Ukrainian Conflict as *Attack and Defense*”, *Ab Imperio*, 2018, 191–220, p. 197.

86. As the annexation of Crimea was being orchestrated, the media coverage of the events unfolding in Ukraine increasingly painted Ukrainians as Nazis.¹⁴² Using vast exaggeration and outright fabrication, like the “crucified boy” feature, major news outlets set out to create an impression that the new authorities in Kyiv were imposing conditions on ethnic Russians or Russian speakers similar to those of 1930s Germany, often by referring to horrific violence characterizing the Third Reich, such as the Night of the Long Knives. In one article in the daily *Argumenty I Fakty*, the author encouraged his audience to “...look the truth in the face: a coup d’état, supported and largely directly organized by the West, has brought the most blatant Nazis to power in Kyiv”.¹⁴³ Along the same lines, Russian media compared the Ukrainian military’s actions to atrocities committed by the Nazi occupying forces during the so-called Great Patriotic War.¹⁴⁴
87. In the period between 2014–2021, the historical memory policy and media framing began to conflate the war in Ukraine with the Soviet Union’s war with Nazi Germany, to the point of Soviet symbolism entering the real battlefield in Ukraine as if the Second World War was still ongoing. The use of the Saint George Ribbon, an orange and black ribbon that became a symbol of the commemoration of the Soviet Union’s Victory in the Second World War around the time of its 75 year anniversary, and associated with Russia’s military glory, has been increasingly seen on the uniforms of combatants of so-called DPR and LPR.¹⁴⁵ In another example, on 24 August 2014, Russia’s armed forces and their DPR proxies paraded dozens of Ukrainian POWs through the streets of Donetsk in a stark spectacle designed to mirror the parade of Nazi POWs through the streets of Moscow in 1944.¹⁴⁶

2. Amplifying the hate: 2022 aggression and other international crimes fueled by discriminatory hate speech

a. Main tenets underlying the policy of hate towards Ukraine / Ukrainians

88. Following Russia’s full scale invasion of Ukraine, Russia’s propaganda machine, energized and amplified by the five prominent individuals identified in this Communication, and directed by their Presidential Administration superior, has coalesced into a powerful generator of hateful messages driving aggression and discriminatory violence against Ukraine as such, including its armed forces, and all civilian Ukrainians who oppose Ukraine having closer ties with Russia, Russian occupation, or in any way assert their Ukrainian identity or Ukraine’s right to self-determination.¹⁴⁷ Meanwhile, all independent political journalism has been effectively banned in Russia after years of persecution, limiting alternative sources of information about the war to the internet, which has been severely restricted.¹⁴⁸
89. The research presented in this submission has revealed the following main tenets underlying hateful rhetoric analyzed in Section VI (See Annex C), all built around the general lines of narratives developed between the years 2014–2021 and identified in paragraph 69, above. These include: (1) the denial of the Ukrainian nation or people as such, and of the distinctness and uniqueness of the Ukrainian language (Ukrainophobia); (2) the denial of Ukrainian statehood and Ukraine’s right to exist apart from Russia,

¹⁴² McGlynn, *supra* note 99, p. 66.

¹⁴³ Mikhail Delyagin, “*Ukrainskie Oligarkhi*”, *Argumenty i Fakty*. 26 March 2014, available at <https://aif.ru/money/opinion/1131218>, accessed on 14 March 2024.

¹⁴⁴ Vladislav Vorobyev, Yuri Snegirev, “*Crimean Residents to Decide Fate of Autonomy in Referendum*”, *Rossiiskaya Gazeta*, 27 February 2014, available at <https://rg.ru/2014/02/28/krym.html>, accessed on 14 March 2024.

¹⁴⁵ Explanatory Note to the legislative project to the Law of Ukraine “*On the Addition to the Penal Code of Ukraine on Administrative Violations Which Prohibits the Manufacturing and Propaganda of the St. George Ribbon*”, available at <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=55411&pf35401=345427>, accessed on 18 March 2024.

¹⁴⁶ McGlynn, *supra* note 99, p. 51.

¹⁴⁷ See, e.g., OHCHR Report, *supra* note 74, para. 127.

¹⁴⁸ Reporters Without Borders, *supra* note 6.

and the depiction of Ukraine as a proxy country, i.e. a Western-created “anti-Russia” aimed at destabilizing and destroying Russia; (3) the description of Ukraine as having been captured by “Banderites” and become a land of Nazism and Russophobia, with Ukrainians having been committing genocide of the Russian population in East Ukraine; (4) the likening of Ukraine to an apostate regime, where “Nazi satanists” are seeking to expel Orthodox Christianity; and (5) the depiction of the SMO as a war of liberation against Nazis, “Banderites” and Satanists, a sort of cleansing of Ukraine and Ukrainians from Nazism and satanism, aimed at protecting the Russian population and Orthodoxy and the return of “historical Russian lands”.

b. The technology of dissemination

90. A key feature of Russian propaganda is its repetitiveness of nearly identical content. The uniformity and repetitiveness of content is ensured through centralization of ownership of media outlets and direction and control over the messaging.

i. Ownership

91. In Russia, private and public media organizations are either owned or controlled by government-linked individuals and entities.¹⁴⁹ One of these entities is state media group Rossiya Segodnya, a media conglomerate that includes numerous other major media outlets. Among the most important are RIA Novosti, a previously semi-independent news agency absorbed into Rossiya Segodnya by a Putin decree in late 2013, at the height of the Maidan protests,¹⁵⁰ and the international agency and radio Sputnik, which broadcasts in many languages around the world. TV anchor and one of the five individuals identified in this Communication, **Dmitry Kiselyov**, was appointed Executive Director of the Rossiya Segodnya media group and the Chief Editor of RIA Novosti.¹⁵¹ The editor-in-chief of a separate but related to Rossiya Segodnya entity, television outlet RT (Russia Today), from its founding in 2005 has been **Margarita Simonyan**, another one of the five individuals who are the focus of this Communication. Simonyan is also the editor-in-chief of TV-Novosti, the organization that operates RT, as well as of Rossiya Segodnya.¹⁵²
92. Just after his appointment as the Chief Editor of RIA Novosti in 2013, Kiselyov stated to his staff: “We are supported by the presidential administration and by the government. You know, there is freedom of speech in our country. But the period of impartial journalism is over. Objectivity is a myth that we have been offered; it has been imposed on us. I myself used to abide by these principles, but I went through an internal evolution.”¹⁵³

¹⁴⁹ OECD Report, *supra* note 102, p. 8.

¹⁵⁰ Decree by the President of the Russian Federation “*On Some Measures to Improve the Efficiency of State Media*”, 12 July 2019, available at <https://web.archive.org/web/20190712003838/http://static.kremlin.ru/media/acts/files/0001201312090003.pdf>, accessed on 16 May 2024; Steven Lee Myers, “*Without Notice, Putin Dissolves a News Agency*”, The New York Times, 9 December 2013, available at <https://www.nytimes.com/2013/12/10/world/europe/putin-scraps-kremlin-news-agencies.html>, accessed on 28 March 2024.

¹⁵¹ Leonid Klimov and Katya Lakova, “*In Propaganda’s Web*”, Dekoder, Novaia Gazeta and Süddeutsche Zeitung, 2024, available at <https://propaganda.novayagazeta.eu/>, accessed on 16 May 2024.

¹⁵² US Department of State, GEC Special Report “*RT and Sputnik’s Role in Russia’s Disinformation and Propaganda Ecosystem*”, available at https://www.state.gov/wp-content/uploads/2022/01/Kremlin-Funded-Media_January_update-19.pdf, accessed on 28 March 2024, p. 4.

¹⁵³ Masha Gessen, “*Inside Putin’s Propaganda Machine*”, The New Yorker, 18 May 2022, available at <https://www.newyorker.com/news/annals-of-communications/inside-putins-propaganda-machine>, accessed on 16 May 2024.

ii. Direction and Control

93. Direction and control over the programming contents is delivered through meetings and written instructions that emanate from the Presidential Administration to heads and chief editors of major media outlets, government agencies, and subsequently down to rank and file staff of television, radio and newspaper outlets, as well as to centralized social media account owners or specialized bot farm agencies. Kremlin-owned and controlled Press Relations agencies and think tanks often refine these messages.
94. The Anonymous Journalist from Independent Russian Media interviewed by FIDH with sources currently working in the Presidential Administration and main media outlets, including Rossiya Segodnia and RT, told the authors of this Communication that the main messages regarding the country's political course with respect to Ukraine come primarily from the very top of Russia's political hierarchy, namely from within the Presidential Administration, including the President himself. Besides the President, the key messages are likely formulated in one or several of the four departments within the Executive Office of the Presidential Administration, with overlapping responsibilities for all communication aspects, which ostensibly fall within the jurisdiction of two key political figures with direct access to President Putin: the two First Deputies to the Chief of Staff of the Presidential Executive Office – **Alexey Gromov** and Sergey Kiryienko.
95. According to Kremlin insiders, Gromov is responsible for the Presidential Press and Information Office and the Presidential Directorate for Public Relations and Communications Office, while Kiryienko is in charge of the Presidential Directorate for Social Projects and the Presidential Domestic Policy Directorate.¹⁵⁴ Informally, Gromov oversees all traditional media, including television, radio and print media, while Kiryienko is responsible for internet and social media.¹⁵⁵ The main narratives get passed down from the Presidential Administration to heads or formal owners of traditional and non-traditional media for diffusion directly through oral instructions or via email. In rare instances, the intermediary channels of diffusion are bypassed in favor of less formal communications between the President, the two First Deputies of the Presidential Administration, and the Heads or Chief Editors of some key propagandists like **Kiselyov, Solovyov and Simonyan**.¹⁵⁶
96. In addition to the main theses that are formulated in the Presidential Administration, informed by Putin's own ideas and demands, the main tenets might then be reformulated into digestible propaganda narratives by public relations agencies or think-tanks, to refine and repackage main messages for the general public and for foreign audiences. These agencies and think-tanks, formally independent, commercial entities, are hired and controlled by the Presidential Administration and are colloquially referred to as the "network".¹⁵⁷ According to the Anonymous Journalist from Independent Russian Media interviewed by FIDH, "their primary function is to translate some of the strange ideas that are

¹⁵⁴ Natalia Galimova, Vladimir Dergachev, Ilya Rozhdestvensky and Anton Kavashkin, "*Kiryienko and Gromov Shared the Spheres of Media Supervision*", RBC, 22 November 2016, available at <https://www.rbc.ru/politics/22/11/2016/58341c319a79471ca4220674>, accessed on 16 May 2024.

¹⁵⁵ The Proekt team in collaboration with OCCRP, "*Master of Puppets The Man Behind the Kremlin's Control of the Russian Media*", 5 June 2019, available at <https://www.proekt.media/en/portrait-en/alexey-gromov-eng/>, accessed on 21 March 2024. In addition, Gromov's role was noted by the EU and other States in 2014, when he was included on the lists of persons subject to sanctions as a person "responsible for instructing Russian media outlets to take a line favorable with the separatists in Ukraine and the annexation of Crimea, therefore supporting the destabilization of Eastern Ukraine and the annexation of Crimea", see, for example, EU Council Implementing Regulation No. 826/2014, 30 July 2014, implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

¹⁵⁶ Interview with Anonymous Journalist from Independent Russian Media, Annex F.1.

¹⁵⁷ Ibid.

floating around in the presidential administration into complete proposals. And then transform these complete proposals into a message, i.e. into what Putin will say when he ... gives another program speech. In what will be said in the [Channel 1 television] program "Vremya" and so on. The Social Research Expert Institute (EISI) is primarily engaged in formulating this very message, which is then broadcast on all these channels."

97. The Social Research Expert Institute (EISI) is one of Kiriyenko's preferred think tanks, which, in 2022, developed a proposal for the post-war image of Russia for foreign audiences. According to this conception, Russia should become a "continent of freedom" for conservatives worldwide who are seeking an "old Europe" free from LGBT rights and pressures from fractious minorities.¹⁵⁸
98. The main mechanism of delivery of instructions on news contents is the weekly planning meetings (in Russian, "*letuchki*") organized by the Presidential Administration. During these sessions, top media executives are instructed on what news to address and how, ensuring the similarity of narrative across all State media.¹⁵⁹ During the Relevant Time Period, the weekly meetings have been hosted by **Alexey Gromov** at his offices in the Presidential Administration in Moscow.¹⁶⁰ His sessions bring together the heads – usually general directors¹⁶¹ – of all Russia's major public and private TV companies – Channel One, VGTRK, NTV, TVC, REN TV, and Channel Five – in addition to chief editors of periodicals like *Kommersant*, *Komsomolskaya Pravda*, plus representatives of key government agencies, including the Security Council, and the Parliament. A Kremlin official responsible for election campaigns might also participate, along with Foreign Ministry spokeswoman Maria Zakharova.¹⁶²
99. Kiselyov, Simonyan, Solovyov, and Medvedev are believed not to have regularly attended these meetings because they have direct communication lines with Gromov and/or Putin as a result of close personal and professional relationships.¹⁶³ For instance, it is alleged that in 2005, during his tenure as Putin's Press Secretary, Gromov and Mikhail Lesin, then an adviser to Putin, created Russia Today (today known as RT). At Gromov's insistence, the first (and current) editor-in-chief of Russia Today (RT) became his friend Margarita Simonyan. Gromov and Simonyan might also be linked financially.¹⁶⁴
100. Gromov, the former Press Secretary of President Putin from the years 2000–2008, is alleged to be one of the few people with direct and almost unlimited access to President Putin.¹⁶⁵ During the weekly meetings, Gromov outlines the president's schedule and provides the general guidelines as to the contents of the programming, including which events to emphasize, down to specific messages.¹⁶⁶ The

¹⁵⁸ Andrey Pertsev, "*Vice-King of Donbass. 'Medusa' Tells How Sergei Kiriyenko Got into the 'Inside Circle' of Vladimir Putin During the War, And Now He Is Preparing the Accession of Donbass and the 'Image of the Future Russia'*", Meduza, 8 June 2022, available at <https://meduza.io/feature/2022/06/08/vitse-korol-donbassa>, accessed on 11 April 2024.

¹⁵⁹ Joshua Yaffa, "*The Kremlin's Creative Director*", The New Yorker, 5 December 2019, available at <https://www.newyorker.com/magazine/2019/12/16/the-kremlins-creative-director>, accessed on 14 March 2024.

¹⁶⁰ Dmitry Sidorov, "*How to Make TV Propaganda: Four Testimonies*", Colta, 6 August 2015, available at <https://www.colta.ru/articles/society/8163-kak-delayut-tv-propagandu-chetyre-svidetelstva>, accessed on 22 March 2024.

¹⁶¹ See, e.g., The Insider, "*Modern History of Russian Politics, Told in SMS. Part III*", 6 April 2015, available at <https://theins.ru/politika/5851>, accessed on 16 May 2024.

¹⁶² "*Master of Puppets*", *supra* note 155.

¹⁶³ Interview with the Anonymous Journalist from the Independent Russian Media, Annex F.1.

¹⁶⁴ "*Master of Puppets*", *supra* note 155. See also Maxim Alyukov, Maria Kunilovskaya and Andrey Semenov, "*Firehose of (useless) propaganda*", Riddle, 7 October 2022, available at <https://ridl.io/firehose-of-useless-propaganda/>, accessed on 22 March 2024.

¹⁶⁵ *Ibid.*

¹⁶⁶ Gessen, *supra* note 153.

TV networks also report their plans; they can offer ideas for news coverage, but only Gromov can approve them.¹⁶⁷ His instructions also entail restrictions on coverage, including in so-called “control regions,” or territories warranting special attention due to the surrounding context, such as the occupied territories of Ukraine. These restrictions apply to state security agencies as well.¹⁶⁸

101. In addition to oral instructions, Gromov himself, individuals subordinate to Gromov within the Presidential Administration, or State-controlled PR agencies or think-tanks acting on the instructions of Gromov, have disseminated more detailed Talking Points (Talking Points), in Russian – “*temniki*”¹⁶⁹ or “*metodichki*”, which have become the basis of news coverage by loyal media. These documents have their origin in the late 1990s as internal guides at certain major media outlets meant to emphasize certain points during news coverage, but have evolved into tools of control by the Presidential Administration over the entire media sphere.¹⁷⁰ Some of these documents might be written by Gromov himself.¹⁷¹ An investigation into leaked documents that revealed secret communications between Gromov and Deputy Head of the Domestic Policy Directorate Timur Prokopenko, determined that Gromov sent an email on 1 March 2014 with a “*temnik*” to Prokopenko just prior to the news being reported by Russia’s main news agency and by the Deputy Speaker of the Council of Federation, who quoted Gromov’s letter verbatim.¹⁷² The letter contained a proposed response by President Putin to the U.S. administration’s decision to recall the U.S. Ambassador to Russia. It stated, in part:

“Obama shouldn’t have said that Russia will pay the price for its actions in Crimea. We would like to remind others that the armed battalions of Maidan, as it is well known, were trained on the territories of Lithuania and Poland with the Participation of the United States, and the radicals that have come to power in Kyiv under Banderite flags are attempting to expand their reach to the Southeast of Ukraine and Crimea. This, for us – is a red line.”¹⁷³

102. Five Talking Points have been provided to and examined by the Filing Parties, and submitted along with this Communication as Annexes E.1–E.5. The Talking Points usually contain between four and six sections and might be up to seven pages long. Four out of the five examined are titled “Main Accents and Events of the Day”, and the remaining one is thematic – it is dedicated to the July 28 commemoration of the Day of the Baptism of Russia.¹⁷⁴ Almost all Talking Points contain a section called “SMO”, which appears designed to supplement the Ministry of Defense’s war coverage.¹⁷⁵ They are almost entirely devoid of facts, contain accusations, conspiracy theories and falsehoods aimed to reinforce in the Russian audience positive feelings about the war – most Talking Points include suggestions for “Emotional Basis”, such as “pride, confidence, victory, hope, unity”, – but they are also

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Gessen, *supra* note 153; The Insider, “*New Letters from Gabrelyanov: the Ruin of Life and ‘Temniks’ from Gromov*”, 21 July 2016, available at <https://theins.ru/politika/26644>, accessed on 13 April 2024.

¹⁷⁰ Marat Gelman, “*The Very Profession of a Political Strategist Corrodes You. Marat Gelman About Dungeons, Putin, Kirienko and ‘Repentance’*”, The Insider, 16 May 2023, available at <https://theins.ru/opinions/gelman/261622>, accessed on 14 May 2024.

¹⁷¹ The Insider, “*Prohibited article: Hacked Letters from the Presidential Administration*”, 22 January 2015, available at <https://theins.ru/politika/2560>, accessed on 13 April 2024.

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ One Methodological Guide submitted herewith is titled “*The Christening of Russia – SMO, Historical Parallels*” [Крещение Руси – СВО. Исторические параллели].

¹⁷⁵ Gessen, *supra* note 153.

clearly intended to inspire hatred towards Ukraine and the West by incorporating one or several of the narratives identified in paragraph 69, above.

103. Throughout the Talking Points, Ukraine and Ukraine's Armed Forces are referred to as "Kyivan Nazis" or "Kyivan neo-Nazi regime" acting "under the direction of Washington", and Ukraine's acts of resistance are portrayed as "terrorist acts". For instance, the Methodological Guidance of 28 September 2022 treats in the "Current news item" section the so-called referendums in the occupied territories of Ukraine and contains an emotional guidance "victory, hope and unity". It begins by proclaiming that the four regions of "Novorossiya" are "awaiting official incorporation into Russia." It then declares that the people's hope in that region will become reality: "Novorossiya will come back home – to Russia." The first paragraph then concludes that Russia's Special Operation has gained "the character of liberation of its own territories, *occupied by Nazis and attacked by NATO*" (emphasis added). Notably, Ukraine's territory has not been occupied by any force other than Russia since the Second World War and no NATO troops have ever entered Ukrainian territory to participate in an armed conflict.

104. In the Talking Points timed to coincide with the July 28 commemoration of Russia's Baptism, and titled "Russia's Baptism – SMO. Historical parallels", the authors attempt to justify the SMO from the standpoint of the Russian Orthodox faith. The section titled "Battle against apostates" draws parallels between the processes of conversion of non-believers to the Orthodox faith in Russia and the battle against the Ukrainian "Neonazis". Drawing on habitual fabrications, like "Ukraine's killing of 14,000 civilians during the eight years of armed conflict between 2014 and 2022",¹⁷⁶ the Talking Points demonize and dehumanize Ukrainians by ascribing them to pure evil. They state, *inter alia*:

"For Ukronazis there are no morals, they don't operate in such categories and are real apostates. They don't fear divine retribution for their sins. Many of the Ukronazis are openly satanist and followers of hateful cults. They make sacrifices and commit ritualistic murders. The ideology of Ukronazism – is the ideology that rejects morals and love for mankind, the ideology of satanist fanatics."

105. The Talking Points include important ideological sections titled "Unity", "Strengthening of Russia" or "the New World Order", which are thematically focused on topics that range from shedding light on the waning support for Ukraine, the exaggerated divisions within Western societies, the rise of "Russophobia", to providing additional evidence of successes of the SMO, reiterating the justifications for the SMO to liberate Russians from Ukraine-imposed Nazism as a continuation of Russia's anti-fascist mission. For example, the "Unity" Section of the Talking Points dated 15.08.2022 begins with the affirmation that "Russia defends historical truth", and refers to the President's participation in the International military-technical forum "Army – 2022". During the forum, the President again highlighted Russia's sacrosanct duty to guard historical memory, and warns about what happens to countries that rewrite and falsify history like Ukraine:

"radical and hateful ideology became official. Such a country creates not only a danger for its neighbors, it is a menace to the entire world. This is why the protection of historical memory – it is Russia's mission. In circumstances characterized by the rewriting and falsification of history including facts about themselves and others by

¹⁷⁶ The UN has reported that approximately 14,000 civilians and combatants have been killed during the armed conflict in Ukraine during this time period, but there is no way to determine what part of these victims have been killed as a consequence of acts by either the Ukrainian or the pro-Russian sides. See, e.g., OHCHR, "Conflict-Related Civilian Casualties in Ukraine", 27 January 2022, available at https://ukraine.un.org/sites/default/files/2022-02/Conflict-related%20civilian%20casualties%20as%20of%2031%20December%202021%20%28rev%2027%20January%202022%29%20corr%20EN_0.pdf, accessed on 16 May 2024.

Western states and former Soviet Republics, Russia is forced to defend historical truth everywhere in the world.”

106. Putin refers to the organization of the International Antifascist Congress and remarks that “The lessons of the terrible tragedy, which resulted from the rise of Nazis in the 20th century, must not be forgotten. Our duty of memory for the millions of victims of the Second World War – to react harshly to attempts to falsify history, counteract the diffusion of any form of neonazism, russophobia and racism.” Notably, the segment on Putin’s participation in the “Army – 2022” forum ran on 15 August 2022 on the major media outlets,¹⁷⁷ and the Antifascist congress took place a week later.¹⁷⁸
107. Instructions from the Presidential Administration are passed on to the top managers of respective media outlets either privately by phone, or during the weekly meetings – “*letuchki*” – also orally. These instructions might be supplemented by emails with the Talking Points. For instance, the Chief Executive Officer of Channel 1, Konstantin Ernst, and the Director of Directorate for the News Programming of Channel 1 – Kirill Kleimenov, have attended the weekly meetings with Gromov.¹⁷⁹ There, they have received oral instructions on what news to cover and how, possibly along with written guidance, which also might be diffused by email. Ernst and Kleimenov would then distribute this guidance to their subordinates. According to insider interviews conducted by FIDH, this could occur during the three daily meetings – “*letuchki*” – conducted by the Chief Editors or other media bosses with their top managers. These managers, in turn, would pass on the guidance to the lower rank-and-file staff, during three or four daily meetings that coincide with the typical daily news cycles.¹⁸⁰ The Talking Points would never be shown to the lower level staff, but the taboo subjects and main narratives were reinforced so much that they became “general knowledge” through constant repetition, scripting and editing of text for anchors,¹⁸¹ and a system of bonuses which were conditioned on adherence to the guidance.¹⁸² From a certain time period, particularly after 2014 and especially after 2022, both of our interviewees understood that the word Ukrainians should never be used, “Nazis”, “Banderites” or a variation thereof should be preferred, and that no positive news or opinions about the West or Ukraine should be solicited or disseminated whatsoever.
108. Efforts to control the information space can also be inferred from spending increases for State media in the run up to the full-scale invasion. Government spending on “mass media” for the first quarter of 2022 was 322% higher than for the same period in 2021, reaching 17.4 billion rubles (roughly 215 million euros).¹⁸³ Almost 70% of Russia’s spending on mass media in Q1 2022 was spent in March, immediately after the full-scale invasion¹⁸⁴. The outlets that receive these funds, including RT and Rossiya Segodnya, are State-linked and State-owned outlets that “serve primarily as conduits for the Kremlin’s talking points”.¹⁸⁵

¹⁷⁷ See, e.g., RIA Novosti, “*The “Army-2022” Forum Opens in the “Patriot Park”*”, 15 August 2022, available at <https://ria.ru/20220815/armiya-1809576462.html>, accessed on 22 May 2024.

¹⁷⁸ Tass, “*Delegations From 33 Countries Participated in the Anti-Fascist Congress at Army 2022*”, 21 August 2022, available at <https://tass.ru/armiya-i-opk/15524869>, accessed on 16 May 2024.

¹⁷⁹ Interview with the Anonymous Journalist who worked for Channel 1 until 17 March 2022, Annex F.2.

¹⁸⁰ Annexes F.2, F.3.

¹⁸¹ See, e.g., Interview with former VGTRK anchor Farida Kurbangaleeva [И Грянул Грэм], 8 May 2022, available at https://www.youtube.com/watch?v=mg1F4MUA_PI, accessed on 16 May 2024.

¹⁸² Ibid.; Annex F.2, pp. 5, 8–9, and Annex F.3, p. 12.

¹⁸³ OECD Report, *supra* note 102, p. 8.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid., citing the US Department of State Report.

iii. The Impact

109. The constant regurgitation and repackaging of the same content in Russia's major media and social media accounts, facilitated and amplified by the six individuals who are the subject of this Communication or similar, has resulted in a nearly uninterrupted stream of virulent exaggerations, insults and falsities that have poisoned the minds of Russians with hatred for Ukrainians for the past decade. In one study of over 3,5 million texts disseminated by RIA Novosti between the years 2001 and 2023, *Novaya Gazeta* has identified seven identical sentences that appear in the context section of 56,384 news articles disseminated between 2014 and 2023, creating the image of Ukraine as the enemy by reiterating the same formulations, namely that: 1) At the end of 2013, a political crisis erupted in Ukraine. Mass protests called "Euromaidan" took place across the country, resulting in clashes between armed radicals and law enforcement agencies. The protesters repeatedly used firearms and Molotov cocktails, which resulted in dozens of human casualties; 2) On February 22, 2014, a violent seizure of power took place in the country. Crimea did not recognize the legitimacy of the new government. Crimea held a referendum on joining Russia in full compliance with international law; 3) In late February, mass actions against the coup d'état began in the southeastern regions of Ukraine. In April 2014, the Ukrainian authorities launched a military operation against the residents of southeastern Ukraine who were dissatisfied with the coup d'état. More than 9,000 people became victims of the conflict; 4) Moscow is not a party to the conflict and is interested in overcoming the internal Ukrainian crisis peacefully. Peace talks are being held with the mediation of Russia. But Ukraine does not fulfill the agreements reached; 5) The West and NATO in their turn create fakes about Russia's aggression and use them as a pretext for placing military equipment near the Russian borders; 6) Kyiv daily shells Donbass, including with weapons supplied by NATO, and prepares for a forceful solution to the conflict; and 7) Russia is launching a military operation in Ukraine. Its goal is to protect people from genocide and demilitarize Ukraine.¹⁸⁶
110. The repetition of unfounded allegations about Nazism constitutes the core of the messaging since the beginning of the full-scale invasion. A data set of nearly eight million articles about Ukraine collected from more than 8,000 Russian websites since 2014 shows that references to "Nazism" were relatively flat for eight years and then spiked to unprecedented levels on the day Russia invaded Ukraine.¹⁸⁷ Since the invasion, 10–20% of articles about Ukraine have mentioned Nazism.¹⁸⁸
111. Russia's propaganda machine has ensured that each member of Russia's Armed Forces and affiliated structures is infused with hatred for Ukraine and Ukrainians. According to the testimony of a defector from Russia's Armed Forces, Pavel Filatyev, many of his fellow soldiers were "full of hatred for Ukraine" during their deployment because the Russian army employs special officers, usually a deputy commander of a company, responsible for the "ideological education of the troops."¹⁸⁹ Once a week for at least one hour, soldiers gather in a large room to instruct the troops based on reports allegedly "passed down from above". One of these documents, a 48-page report dated 26 February 2022, two days after the start of the SMO, and titled "The whole truth surrounding Ukraine's crimes in Ukraine", provides a

¹⁸⁶ "In Propaganda's Web", *supra* note 151.

¹⁸⁷ Charlie Smart, "How the Russian Media Spread False Claims About Ukrainian Nazis", *The New York Times*, 2 July 2022, available at <https://www.nytimes.com/interactive/2022/07/02/world/europe/ukraine-nazis-russia-media.html>, accessed on 8 March 2024.

¹⁸⁸ *Ibid.*

¹⁸⁹ "Russie : un peuple qui marche au pas". France TV Documentary, testimony beginning at 54:16 (the video is unavailable on the Internet and stored in a secure location, see Annex D. Link to the Ukrainian War Archive's Google Drive).

justification for Russia's full-scale invasion of Ukraine.¹⁹⁰ The first reason for Russia's actions is "[Ukrainian] state Nazism, persecution and killing of Russian speakers."¹⁹¹

112. The powerful propaganda of hate against Ukraine and Ukrainians, augmented and protected by a robust legislative framework domestically that prohibits any factual statements putting into doubt any distortions or fabrications by political figures or the media,¹⁹² has filtered through to the battlefield, turning it into a dehumanizing and destructive amalgam of Soviet and "Russian worlds": Russian tanks with white "Z" and "V" symbols associated with the present campaign roll into Ukrainian villages adorned with both Russian and Soviet flags, which are then hoisted on captured rubble of administrative buildings and reported as "liberated". Soldiers of Russia's Armed Forces "filter" and detain thousands of Ukrainians looking for so-called "Nazis", warning locals of "Ukraine's descent into Nazi rule" if they withdraw.¹⁹³

V. Legal Assessment: Hate Speech as the Crime Against Humanity of Persecution under Article 7(1)(h) of the Rome Statute

113. This section explores the legal framework of the crime of persecution as defined in Articles 7(1)(h) and 7(2)(g) of the Rome Statute in the context of prohibited hate speech and examines in detail each of the constituent elements of the crime. Given the absence of ICC case law on speech acts as persecution, this submission strives to offer clarity and guidance in defining the legal contours of hate speech as a crime against humanity, particularly with regard to the ongoing Russian invasion in Ukraine.

114. The analysis of the contextual elements demonstrates the existence of a widespread and systematic attack conducted by Russian forces against the civilian population and infrastructure in Ukraine. It shows that these attacks are carried out as part of a state policy administered by the Russian authorities, rather than sporadic and isolated incidents. It is evident from this assessment that the propaganda activities, described in more detail in Section VI, are integral to this policy.

115. The following parts, which cover the material and mental elements, outline in detail the legal framework of hate speech as a form of persecution. They provide a brief overview of applicable jurisprudence of international tribunals and relevant norms of international and domestic law. The section also sets forth the legal principles applicable in cases of hate speech amounting to persecution and formulates a comprehensive list of criteria to be applied in assessing whether a crime of hate speech as persecution under the Rome Statute has been committed.

A. Contextual elements: widespread or systematic attack directed against any civilian population conducted pursuant to or in furtherance of a State or organizational policy

116. According to Articles 7(1) and 7(2)(a) of the Statute, for criminal conduct to constitute a crime against humanity, it must be committed as part of a widespread or systematic attack against the civilian population (or identifiable group of civilians) (1.) pursuant to a State or organizational policy to commit such an attack (2.).

¹⁹⁰ Ibid., at 54:50.

¹⁹¹ Ibid., at 55:11.

¹⁹² Notably, following the beginning of the SMO, Russia adopted several laws severely restricting freedom of expression in Russia regarding the war, prohibiting in particular any statements that might "discredit" the Armed Forces of the Russian Federation or contradict the official narrative. Articles 20.3.3 and 20.3.4 of the Code of Administrative Offences, and Articles 280.3, 284.2 and 207.3 of the Criminal Code of the Russian Federation.

¹⁹³ Mari Saito, Maria Tsvetkova and Anton Zverev, *"Abandoned Russian Base Holds Secrets of Retreat in Ukraine"*, Reuters, 26 October 2022, available at www.reuters.com/investigates/special-report/ukraine-crisis-russia-base, accessed on 2 November 2022.

1. Widespread or systematic attack directed against any civilian population

117. Under Article 7(2)(a) of the Rome Statute, an “attack directed against any civilian population” is defined as “a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack”. An “attack”, for the purposes of the Rome Statute, is a “sustained campaign or operation carried out against the civilian population”¹⁹⁴ that may be made up of “episodes reaching varying levels of intensity at different location[s] and at different times.”¹⁹⁵ An attack may therefore be defined as the sum of all of its underlying crimes.¹⁹⁶
118. The attack must be widespread¹⁹⁷ or systematic.¹⁹⁸ The term “widespread” is a quantitative measure referring to the scale of the attack in terms of its geographic reach, the frequency of underlying crimes, the prevalence of perpetrators and the number of civilians targeted.¹⁹⁹ The term “systematic” refers to the organized nature of the underlying crimes and the improbability of their random occurrence.²⁰⁰
119. The term “civilian population” refers to civilians who are not members of regular armed forces, dissident armed forces or other organized armed groups.²⁰¹ For the attack to be directed against a civilian population, it must be the “primary object of the attack in question and cannot merely be an incidental victim.”²⁰² However, the attack need not target the entire civilian population, as long as its victims constitute an identifiable group rather than randomly selected individuals.²⁰³
120. As described in Section IV above (paras. 55–66), Russia’s full-scale military invasion of Ukraine on 24 February 2022 has been characterized by massive violations of international humanitarian and human rights law committed against Ukrainian civilians. Documentation by international organizations and civil society reveals clear patterns in these violations.
121. Since the beginning of the re-invasion, the Russian Armed Forces have launched countless attacks targeting civilians or civilian infrastructure, as well as indiscriminate attacks with explosive weapons in densely populated areas across all regions of Ukraine.²⁰⁴ According to the Ukrainian authorities, 97 percent of drones, missiles and guided bombs launched by the Russian armed forces since 24 February

¹⁹⁴ ICC Elements of Crimes, Introduction to Article 7 of the Statute, para. 3.

¹⁹⁵ ICC, *Situation in the Republic of Cote d'Ivoire*, Pre-Trial Chamber (Decision on the Prosecutor’s Provision of Further Information Regarding Potentially Relevant Crimes Committed Between 2002 and 2010), ICC-02/11-36, 22 February 2012, para. 36.

¹⁹⁶ “Commission of the acts referred to in Article 7(1) of the Statute constitute the attack itself and, beside the commission of the acts, no additional requirements for the existence of an attack should be proven.” ICC, *Situation in the Central African Republic, Prosecutor v. Bemba*, Pre-Trial Chamber (Decision Pursuant to Article 61(7)(a) and (b) of the ICC Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo), ICC-01/05-01/08-424, 15 June 2009, para. 75.

¹⁹⁷ “This contextual element applies disjunctively, such that the alleged acts must be either widespread or systematic.” ICC, *Situation in the Republic of Kenya*, Pre-Trial Chamber (Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya), ICC-01/09-19-Corr, 31 March 2010, para. 94.

¹⁹⁸ “Only the attack, and not the alleged individual acts are required to be “widespread” or “systematic”. Ibid., para. 94.

¹⁹⁹ *Prosecutor v. Bemba*, *supra* note 196, para. 83.

²⁰⁰ ICC, *Situation in the Democratic Republic of the Congo, Prosecutor v. Katanga and Ngudjolo Chui*, Pre-Trial Chamber (Decision on the Confirmation of Charges), ICC-01/04-01/07-717, 14 October 2008, para. 394.

²⁰¹ See Additional Protocol II to the 1949 Geneva Conventions, Articles 1 and 50.

²⁰² *Prosecutor v. Bemba*, *supra* note 196, para. 77.

²⁰³ Ibid., paras. 76–77.

²⁰⁴ See, e.g., Report of the Independent International Commission of Inquiry on Ukraine, *supra* note 84, para. 31.

2022 hit civilian infrastructure.²⁰⁵ Especially since autumn 2022, the Russian Armed Forces have systematically²⁰⁶ destroyed Ukraine's energy infrastructure, leaving millions without electricity and water supplies for weeks, including in the freezing winter months, and spreading terror among the civilian population.²⁰⁷ In the areas under Russian occupation, widespread patterns of summary executions (paras. 55 and 56), unlawful confinement (para. 59), torture and inhuman treatment (paras. 59, 60, 63 and 64), rape and other forms of sexual and gender-based violence against civilians have been documented (para. 62).²⁰⁸ The Russian authorities also initiated persecution campaigns against those opposing or perceived as opposing the Russian occupation, creating an atmosphere of fear,²⁰⁹ and deported thousands of Ukrainian children to Russia, where many were subjected to re-education, or placed in foster families (para. 65).²¹⁰ Overall, as documented by the UN Human Rights Monitoring Mission in Ukraine, over 10,800 civilians have been killed and over 20,500 injured since 24 February 2022, with the actual figures most likely being significantly higher. Almost 6,5 million Ukrainians were forced to seek refuge in other countries, over 3,6 million persons have been internally displaced throughout Ukraine.

122. The number of described campaigns targeting civilians and civilian victims of violations resulting from armed violence, coupled with the similarity of patterns of perpetration prevailing throughout the different regions in Ukraine demonstrate that these violations amount to a widespread and systematic attack directed against the civilian population of Ukraine. Indeed, the issuance of the March 2024 arrest warrants by this Court against two high ranking military commanders of the Russian Federation for alleged violations falling within Article 7 of the Rome Statute shows that there are reasonable grounds to believe that a widespread or systematic attack against Ukrainian civilians has been committed.

2. The attack was conducted pursuant to or in furtherance of a State or organizational policy

123. Pursuant to Article 7(2) of the Rome Statute, the requirement of an organized policy in the context of a widespread attack entails that the attack is planned, directed or organized, as opposed to a series of spontaneous or isolated acts of violence.²¹¹ A State policy does neither need to “be conceived at the highest level of the State machinery”²¹² nor is it necessary for the existence of a State policy to be stated clearly or explicitly. A policy to commit the attack may be inferred from evidence of repeated perpetration of the same acts, the mobilization of armed forces, and the methods employed to implement the attack,²¹³ as well as from public statements or media propaganda.²¹⁴ It may also be

²⁰⁵ UN, “No Region of Ukraine Spared’ by Moscow’s War on Ukraine, Senior Official Tells Security Council, Reporting of Widespread Destruction, Civilian Deaths”, SC/15657, 11 April 2024, available at <https://press.un.org/en/2024/sc15657.doc.htm>, accessed on 22 April 2024.

²⁰⁶ Report of the Independent International Commission of Inquiry on Ukraine, A/HRC/52/62, 15 March 2023, paras. 40–43.

²⁰⁷ *Ibid.*, paras. 27, 53, 40–43 and 60.

²⁰⁸ See, for instance, Conference Room Paper of the Independent International Commission of Inquiry on Ukraine, A/HRC/52/CRP.4, 29 August 2023, paras. 293, 298, 482, 521 and 534.

²⁰⁹ OHCHR Report, *supra* note 74.

²¹⁰ Report of the Independent International Commission of Inquiry on Ukraine, *supra* note 84, paras. 90–102.

²¹¹ *Prosecutor v. Katanga and Ngudjolo Chui*, *supra* note 200, para. 396.

²¹² ICTY, *Prosecutor v. Blaskić*, Trial Chamber (Judgment), IT-95-14-A, 3 March 2000, para. 205.

²¹³ ICC, *Situation in The Democratic Republic of Congo, Prosecutor v. Katanga*, Trial Chamber (Judgment), ICC-01/04-01/07, 7 March 2014, para. 1109; *Situation in the Republic of Kenya*, *supra* note 197, para. 121.

²¹⁴ Gerhard Werle and Florian Jeßberger, “*Principles of International Criminal Law*”, 4th edition, Oxford University Press, 2020, para. 1008.

inferred from evidence of deliberate failure by those in effective control to take action to prevent the underlying crimes.²¹⁵

124. As described above (paras. 121–122), the sheer number, frequency, geographical scope and the manifest patterns of violations demonstrate that they form part of a wider policy to inflict harm upon Ukraine’s civilian population. Indeed, whether in occupied Donetsk, Kherson, Zaporizhzhia or Kharkiv regions, at least 864 but likely thousands more (para. 59) Ukrainian civilians were arbitrarily detained, and hundreds were summarily executed or tortured often using similar execution or torture methods, merely on suspicion of having collaborated with the SBU, displayed loyalty to the Ukrainian state, or refused to cooperate with the Occupying Power.

125. Additionally, any public statement in support of Ukraine or even the display of Ukrainian state symbols, such as its flag and emblem, is criminally punishable under Russian legislation as “displaying Nazi symbols” (para. 78). The principal propaganda narratives, that depict Ukrainians as Nazis, clearly align with this legislation, thereby promoting the persecutory measures in question and State policy in general.

126. This policy is also illustrated by admissions of highest level officials and the systematic use of denigrating speech by Russian State officials and public figures on State media, which incites and justifies violence against Ukrainians. For instance, Russia’s President Vladimir Putin, who ordered the invasion of Ukraine as the Supreme Commander-in-Chief, has openly admitted to both attacks targeting Ukraine’s critical civilian infrastructure²¹⁶ and the deportation of Ukrainian children to the Russian Federation.²¹⁷ Moreover, he consistently refers to the war in Ukraine as a “denazification” campaign.²¹⁸ The testimonies cited in Section IV, above, show that this terminology is systematically spread among Russia’s military units by personnel specifically responsible for the “ideological education of the troops”,²¹⁹ and has been widely used by regular combatants as a justification to commit crimes against civilians.²²⁰

127. Additionally, the Russian authorities have not only systematically failed to condemn, investigate or prosecute atrocities committed against the Ukrainian population. On the contrary, State officials and State media either categorically deny or support and justify such attacks, including by honoring alleged perpetrators. Thus, for instance, members of the 64th Motor Rifle Brigade, allegedly responsible for the mass execution of civilians in Bucha, were awarded honorary titles by the Russian President on 18 April 2022, shortly after the liberation of Bucha by the Ukrainian armed forces.²²¹ The climate of impunity

²¹⁵ ICC Elements of Crimes, Introduction to Article 7 of the Statute, fn. 6; *Prosecutor v. Katanga*, *supra* note 213, para. 1108.

²¹⁶ France 24, “*Russian Strikes on Ukraine Energy Grid Aim to “Demilitarize” Country, Putin Says*”, 11 April 2024, available at <https://www.france24.com/en/europe/20240411-russia-pounds-ukraine-infrastructure-in-major-missile-and-drone-strike-war-volodymyr-zelensky>, accessed on 25 April 2024.

²¹⁷ Antoinette Radford, “*Ukraine War Must End, South African President Ramaphosa Tells Putin*”, BBC, 17 June 2023, available at <https://www.bbc.com/news/world-europe-65940655>, accessed on 25 April 2024.

²¹⁸ Anton Troianovski, “*Why Vladimir Putin Invokes Nazis to Justify His Invasion of Ukraine*”, The New York Times, 17 March 2022, available at <https://www.nytimes.com/2022/03/17/world/europe/ukraine-putin-nazis.html>, accessed on 25 April 2024.

²¹⁹ France TV Documentary, *supra* note 189, at 32:00.

²²⁰ See, e.g., Erika Kinetz, “*Never Saw Such Hell: Russian Soldiers in Ukraine Call Home*”, AP, 24 February 2023, available at <https://apnews.com/article/russia-ukraine-war-intercepts-2b14732d88b3f58d4a9d0b2b562bdb28>, accessed on 23 April 2024.

²²¹ Bryan Pietsch, “*Putin Honors Brigade Accused of War Crimes in Bucha*”, Washington Post, 19 April 2022, available at <https://www.washingtonpost.com/world/2022/04/19/ukraine-russia-war-bucha-brigade-award/>, accessed on 21 April 2024.

for perpetrators of international crimes shows that Russian State officials do not only tolerate, but endorse, glorify and encourage the commission of further international crimes against Ukrainian civilians.

128. Accordingly, the invasion and its underlying attacks were coordinated and organized at the highest level of State, which is reflective of a state policy rather than isolated or spontaneous actions. This concerted and openly admitted effort, coupled with the mobilization of armed forces and the repeated perpetration of similar assaults on the civilian population, demonstrates the existence of a deliberate and organized State policy to commit the attacks.

B. Hate speech as “persecution” pursuant to Article 7(2)(g) of the Rome Statute

1. Introduction: Hate speech as persecution in international criminal jurisprudence

129. Several different international tribunals have found that virulent hate speech of sufficient gravity can, *per se*, amount to an international crime. While international jurisprudence has so far focused more on the crime of direct and public incitement to commit genocide,²²² it has also confirmed that discriminatory and denigrating speech that creates a climate of hatred and violence can constitute a distinct international crime – the crime against humanity of persecution. The recognition of hate speech as persecution dates back to the jurisprudence of the Nuremberg trials²²³ and has been confirmed in two leading cases,²²⁴ namely the Nahimana et al. case at the ICTR, and the Šešelj case at the ICTY/MICT. This section provides a brief overview of the most important case law. The subsequent sections will then summarize the main findings from these cases with respect to the elements of hate speech as persecution.

Nuremberg Trials

130. The first judgment on persecutory speech as a crime against humanity was rendered by the International Military Tribunal (IMT) in the case of **Julius Streicher**, the founder and publisher of the antisemitic newspaper “Der Stürmer”. The IMT found that the accused had “infected the German mind with the virus of anti-Semitism”, and that “the poison Streicher injected into the minds of thousands of Germans (...) caused them to follow the National Socialists policy of Jewish persecution and extermination”. In his articles, Streicher compared the Jews to “a pest”, “a parasite, an enemy, an evil-doer, a disseminator of diseases” and “a swarm of locusts”, calling for their extermination “in root and branch”. The Court therefore concluded that Streicher’s statements amounted to “persecution on political and racial grounds”, and thus a crime against humanity.²²⁵
131. Subsequently, although the IMT first acquitted radio broadcaster and senior official at the Reich Ministry of Propaganda **Hans Fritzsche**, only one year later, the German *Spruchkammer* in Nuremberg established that “[e]ven if he did not directly call for the persecution or extermination of the Jews, he nevertheless played an outstanding role in creating a mood among the German people that was favorable to the persecution and extermination of Judaism”²²⁶. This decision underlines Fritzsche’s

²²² Gregory S. Gordon, “*Hate Speech and Persecution: A Contextual Approach*”, *Vanderbilt Journal of Transnational Law*, Volume 46, Issue 2, 2013, p. 303.

²²³ *Ibid.*, pp. 318 ff.

²²⁴ Wilson and Gillett, *supra* note 10, pp. 49 ff.

²²⁵ Judgment of the Nuremberg International Military Tribunal 1946 (1947) 41 AJIL 172.

²²⁶ Original quote (German): “Wenn er auch nicht direkt zur Verfolgung oder Ausrottung der Juden aufgefordert hat, so half er doch in hervorragendem Masse mit, im deutschen Volke eine Stimmung zu schaffen, welche der Verfolgung und Ausrottung des Judentums günstig war.” Hans Fritzsche Appeals Judgment, Ber.-Reg.-Nr. BKI/695, Berufungskammer I, Nürnberg-Fürth, 30 September 1947, Staatsarchiv München, SpKa Karton 475, p. 10, quoted after Wibke K. Timmermann, “*Incitement in International Criminal Law*”, IRRC 2006, p. 830.

criminal responsibility for “anti-Semitic propaganda per se, without additional calls for acts of violence, but the overall effect of which was the creation of a violent atmosphere or state of mind among the future perpetrators and bystanders.”²²⁷

132. Additionally, **Otto Dietrich**, Reich Press Chief of the NSDAP, was found guilty of persecution as a crime against humanity in the Ministries Trial held by the U.S. authorities as part of the twelve subsequent Nuremberg trials. In particular, the Court relied on Dietrich’s power over the press, including by defining daily instructions to the press and periodical directives.²²⁸ The Court emphasized that Dietrich was responsible for the “well-thought out, often repeated, persistent campaign to arouse the hatred of the German people against Jews”,²²⁹ which did not consist of “mere political polemics (...) designed only to unite the German people in the war effort”; instead, “[t]heir clear and expressed purpose was to enrage Germans against the Jews, to justify the measures taken and to be taken against them, and to subdue any doubts which might arise as to the justice of measures of racial persecution to which Jews were to be subjected.”²³⁰

Nahimana et al.

133. In the **Nahimana et al.** case at the ICTR, also known as the **Media Case**, the Court found the three defendants – Ferdinand Nahimana and Jean-Bosco Barayagwiza, founders of Radio Télévision Libre des Mille Collines (RTL), and Hassan Ngeze, founder and editor-in-chief of the journal Kangura – guilty of persecution. Evoking the precedent of the *Streicher* case, the Trial Chamber found that similar to Streicher’s anti-semitic articles, like “poison”, the “virulent writings of Kangura and the incendiary broadcasts of RTL” created a “climate of harm” and conditioned the population for further violence.²³¹ Inter alia, the Trial Chamber explicitly recognized as persecution “The Ten Commandments”, an article advocating for the segregation of Hutus from Tutsis, “A Cockroach Cannot Give Birth to a Butterfly”, an article brimming with dehumanizing language, and a radio interview broadcast by RTL in June 1994, describing the “cunning” and “trickery” of the Tutsi.²³² The Trial Chamber thereby established that hate speech, as a “discriminatory form of aggression that destroys the dignity of those” targeted, “is not a provocation to cause harm”, but is “itself the harm”.²³³ The convictions were subsequently upheld by the Appeals Chamber.

134. With these two judgments, the ICTR confirmed its earlier findings in the case of **Georges Ruggiu**. Ruggiu, a Belgian radio presenter at RTL during the Rwandan genocide, had pleaded guilty to having committed the crime of persecution through radio broadcasts “aimed at singling out and attacking the Tutsi ethnic group and Belgians on discriminatory grounds, by depriving them of the fundamental rights to life, liberty and basic humanity enjoyed by members of wider society”²³⁴.

135. In the case of **Simon Bikindi**, a Rwandan singer had been charged with persecution in relation to songs which were intended to encourage ethnic hatred against Tutsi. However, the ICTR found the accused not guilty of persecution, as there was no evidence that he had composed, recorded or performed the songs in question in 1994.²³⁵ Whilst some songs had been played at a meeting in Kigali,

²²⁷ Ibid., p. 830.

²²⁸ Military Tribunal IV, Judgment of the Tribunal, Trial 11 - Ministries Case, Dietrich Judgement, 1949, pp. 400, 410.

²²⁹ Ibid., p. 409.

²³⁰ Ibid., p. 410.

²³¹ ICTR, *Prosecutor v. Nahimana et al.*, Trial Chamber (Judgment and Sentence), ICTR-99-52-T, 3 December 2003, para. 1073.

²³² Ibid., para. 1078.

²³³ Ibid., para. 1073.

²³⁴ ICTR, *Prosecutor v. Ruggiu*, Trial Chamber (Judgment and Sentence), ICTR-97-32-I, 1 June 2000, para. 22.

²³⁵ ICTR, *Prosecutor v. Bikindi*, Trial Chamber (Judgment), ICTR-01-72-T, 2 December 2008, paras. 437–440.

there was no evidence that Bikindi had performed or played the songs or that he had any influence over the broadcasting of his songs. The ICTR did however reiterate that in certain circumstances, hate speech could amount to persecution and it did “not exclude” the possibility that songs could amount to persecution.²³⁶

136. Hate speech was also recognized as the crime against humanity of persecution in the 2005 landmark **Mugasera** decision of the Supreme Court of Canada. It held that Léon Mugasera, a Rwandan national, could be deported to Rwanda, as he was precluded from obtaining asylum in Canada due to the commission of crimes against humanity in the form of hate speech. The Supreme Court confirmed that hate speech “always denies fundamental rights”, including speech that does not incite violence, and stated that it is “irrelevant” whether the act of persecution actually resulted in the commission of acts of violence.²³⁷

Vojislav Šešelj

137. While **Vojislav Šešelj**, a Serbian politician and founder of the Serbian Radical Party, was first acquitted by the ICTY in a controversial and widely criticized judgment,²³⁸ the MICT Appeals Chamber held that Šešelj’s speech made in the village of Hrtkovci in May 1992 amounted to the crime against humanity of persecution. In his speech, Šešelj called for the expulsion of Croats from Hrtkovci, stating that “[t]here is no room for Croats in Hrtkovci”²³⁹, and that those expelled had “nowhere to turn to”²⁴⁰. The Court found that Šešelj’s speech violated the rights to security and human dignity of the Croatians of Hrtkovci, and rose “to a level of gravity amounting to the actus reus of persecution as a crime against humanity”²⁴¹. The Court thereby confirmed the finding of the ICTR in *Nabimana*, concluding that the “context in which the underlying act of persecution takes place is particularly important for the purpose of assessing its gravity”²⁴².

138. Overall, the jurisprudence of international tribunals firmly establishes that hate speech can amount to the crime against humanity of persecution, if it reaches a sufficient level of gravity and fulfills other necessary requirements examined in detail below.

2. Actus reus

139. Article 7(1)(h) of the Elements of Crimes enumerates the following material elements of the crime of persecution:

- a) The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.
- b) The perpetrator targeted such a person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.
- c) Such targeting was based on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law.

²³⁶ Ibid., paras. 390–395.

²³⁷ Supreme Court of Canada, *Mugasera v. Canada* (Minister of Citizenship and Immigration), 2005, 2 S.C.R. 100, 2005 SCC 40, mn. 147.

²³⁸ Wibke K. Timmermann, “*International Speech Crimes Following the Šešelj Appeal Judgment*”, in: Predrag Dojčinović (ed.), “*Propaganda and International Criminal Law. From Cognition to Criminality*”, 2020, pp. 105–123, p. 106.

²³⁹ MICT, *Prosecutor v. Šešelj*, Appeals Chamber (Judgment), MICT-16-99-A, 11 April 2018, para. 161.

²⁴⁰ Ibid., para. 162.

²⁴¹ Ibid., para. 163.

²⁴² Ibid., para. 159.

- d) The conduct was committed in connection with any act referred to in Article 7(1) of the Statute or any crime within the jurisdiction of the Court.

Each of these elements will be individually examined below in the context of hate speech.

a. Hate speech as a severe deprivation of a fundamental right

140. The Statute, Elements of Crimes or other relevant sources do not provide an exhaustive list of acts constituting persecution or “deprivation of fundamental rights”. Rather, persecution encompasses a wide spectrum of acts, which infringe upon an individual’s right to equal enjoyment of their basic rights;²⁴³ however, it is not necessary that these underlying acts, in and of themselves, amount to crimes under international law.²⁴⁴ The term “fundamental rights” refers to a range of important rights enshrined in various international instruments, such as the Universal Declaration of Human Rights, the ICCPR, the ICESCR as well as other sources on human rights or international humanitarian law.²⁴⁵

i. The prohibition of hate speech as a fundamental human right

International Human Rights Law

141. The prohibition of hate speech has been firmly established under International Human Rights Law. Article 19 of the ICCPR, while safeguarding the right to freedom of expression, holds that the exercise of this right “carries with it special duties and responsibilities” and may therefore be subject to certain necessary restrictions: “for respect of the rights or reputations of others”, and “for the protection of national security or of public order (ordre public), or of public health or morals”. Such permissible restrictions “may relate either to the interests of other persons or to those of the community as a whole”²⁴⁶. Moreover, Article 20 § 2 of the ICCPR directly mandates states to enact laws prohibiting hatred advocacy and incitement to discrimination. These principles are extensively confirmed by the Human Rights Committee, which upheld as necessary restrictions, for example, on statements promoting racial and religious hatred.²⁴⁷ Moreover, in its General Comment No. 24, the Human Rights Committee emphasized that the duty to prohibit advocacy of racial, religious and national hatred forms part of customary international law and cannot be the subject of reservations.²⁴⁸

142. Similarly, Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination unequivocally denounces all forms of propaganda and ideologies rooted in racial hatred and discrimination. It provides for the criminalization of the dissemination of ideas and propaganda promoting hatred and racial discrimination in any form.

143. In addition, Article 10 of the European Convention on Human Rights provides that the right to freedom of expression can be restricted “in the interests of national security” and “for the protection of

²⁴³ ICTY, *Prosecutor v. Tadić*, Appeals Chamber (Judgment), IT-94-1-A, 15 July 1999, para. 710; and ICTY, *Prosecutor v. Vasiljević*, Trial Chamber (Judgment), IT-98-32-T, 29 November 2002, para. 246. See also *Prosecutor v. Ntaganda*, Pre-Trial Chamber (Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda), ICC-01/04-02/06-309, 9 June 2014, para. 58; and *Prosecutor v. Ongwen*, Pre-Trial Chamber (Decision on the Confirmation of Charges Against Dominic Ongwen), ICC-02/04-01/15-422-Red, 23 March 2016, paras. 25, 39, 52 and 65.

²⁴⁴ ICTR, *Prosecutor v. Nabimana et al.*, Appeals Chamber (Judgment), ICTR-99-52-A, 28 November 2007, para. 987; ICTY, *Prosecutor v. Brđanin*, Appeals Chamber (Judgment), IT-99-36-A, 3 April 2007, para. 296.

²⁴⁵ ICTY, *Prosecutor v. Kupreškić et al.*, Trial Chamber (Judgment), T-95-16-T, 14 January 2000, para. 621.

²⁴⁶ HRC, CCPR General Comment No. 10: Article 19 (Freedom of Opinion), para. 4.

²⁴⁷ HRC, *J.R.T. and the W.G. Party v. Canada*, Inadmissibility Decision, Case no. 104/1981, 6 April 1983.

²⁴⁸ Issues Relating to Reservations made upon Ratification of Accession to the Covenant or the Optional Protocols thereto, or in relation to Declarations under Article 41 of the Covenant, CCPR General Comment 24, Commissioner on Human Rights, Human Rights Committee, 52nd Session, UN Doc. CCPR/C/21/Add.6 (1994), para. 8.

the reputation or rights of others”. In this context, the range of permissible restrictions also covers hate speech. For example, the European Court of Human Rights established that it is necessary to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance.²⁴⁹ The prohibited speech includes statements of racial²⁵⁰ or ethnic²⁵¹ hatred or incitement to²⁵² or condoning²⁵³ violence.

144. Consequently, arguably the prohibition of hate speech *in itself* constitutes a fundamental human right. This conclusion is supported by the fact that the UN Human Rights Committee considers Article 20 to be non-derogable.²⁵⁴

Prohibition of hate speech in national jurisdictions

145. Additionally, hate speech has been extensively prohibited in national jurisdictions. In 2007, the ICTR observed that “a great number of countries around the world, including Rwanda, have domestic laws that ban advocacy of discriminatory hate”, such as Germany, Ukraine or China.²⁵⁵ Since then, the condemnation of hate speech has gathered even more widespread international consensus, with many more countries adopting legislation prohibiting the dissemination of discriminatory and hateful ideas. For example, in addition to those cited by the ICTR, numerous other states have adopted hate speech legislation in different forms, such as Albania,²⁵⁶ Belarus,²⁵⁷ Cambodia,²⁵⁸ Denmark,²⁵⁹ India,²⁶⁰ Mexico,²⁶¹ Oman,²⁶² Poland,²⁶³ South Africa,²⁶⁴ Timor-Leste,²⁶⁵ Zimbabwe,²⁶⁶ and many others, making no less than 108 states worldwide with laws prohibiting hate speech²⁶⁷.

146. Notably, the Russian Constitution explicitly prohibits propaganda “which arouses social, racial, national or religious hatred”, as well as the propaganda of “social, racial, national, religious or linguistic supremacy”²⁶⁸. Accordingly, the Russian Code of Administrative Offences and the Russian Criminal Code prohibit actions “aimed at the incitement of hatred or enmity, as well as abasement of dignity of a person or a group of persons on the basis of sex, race, nationality, language, origin, attitude to religion, as well as affiliation to any social group” committed in public or with the use of mass media (Article 282 of the Russian Criminal Code). In one prominent case, Russian courts have convicted the founder of a regional newspaper, Pavel Ivanov, of public incitement to ethnic, racial and religious hatred for having

²⁴⁹ ECtHR, *Erbakan v. Turkey*, 59405/00, 6 July 2006, para. 56.

²⁵⁰ European Commission of Human Rights, *Glimmerveen and Haagenbeek v. the Netherlands*, 8348/78 and 8406/78, 11 October 1979.

²⁵¹ ECtHR, *Pavel Ivanov v. Russia*, 35222/04, 20 February 2007.

²⁵² ECtHR, *Roj TV A/S v. Denmark*, 24683/14, 7 April 2018.

²⁵³ ECtHR, *Lehideux and Isorni v. France*, 24662/94, 23 September 1998.

²⁵⁴ UN Human Rights Committee, General Comment No. 29, UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 13(e).

²⁵⁵ *Prosecutor v. Nahimana et al.*, Trial Chamber, *supra* note 231, para. 1075.

²⁵⁶ Law on Protection from Discrimination no. 10 221, 4 February 2010.

²⁵⁷ Criminal Code of Belarus, Article 130.

²⁵⁸ Criminal Code of Cambodia, Article 496.

²⁵⁹ Criminal Code of Denmark, Article 266(b).

²⁶⁰ Criminal Code of India, Section 153A.

²⁶¹ The Federal Law for the Prevention and Elimination of Discrimination, 11 June 2003.

²⁶² Criminal Code of Oman, Article 108.

²⁶³ Criminal Code of Poland, Article 256.

²⁶⁴ Constitution of South Africa, Article 16.

²⁶⁵ Criminal Code of Timor-Leste, Article 135.

²⁶⁶ Criminal Code of Zimbabwe, Article 42.

²⁶⁷ The Future of Free Speech, “*The Global Handbook on Hate Speech Laws*”, 2020.

²⁶⁸ Constitution of the Russian Federation, Article 29(2).

authored and published a series of articles portraying the Jews as the source of evil in Russia; he accused Jews of plotting a conspiracy against the Russian people and ascribed Fascist ideology to the Jewish leadership. Both in his publications and in his oral submissions at the trial, he consistently denied the Jews the right to national identity, claiming that they did not form a nation. After Ivanov unsuccessfully appealed his conviction at the domestic level, he brought the case to the European Court of Human Rights. The Court rejected his complaint due to the “markedly anti-Semitic tenor of the applicant’s views” and agreed with the assessment made by Russian courts that he sought through his publications to incite hatred towards the Jewish people.²⁶⁹

147. Thus, while the regional and national approaches to particular modes of such restrictions may vary, they still demonstrate the general prohibition of hatred advocacy as a rule of customary international law²⁷⁰ and a general principle of international law. This trend towards rendering hate speech punishable is steadily advancing. For instance, in 2008 the EU Council adopted a framework decision “On combating certain forms and expressions of racism and xenophobia by means of criminal law”, requiring the criminalization of public incitement to hatred based on race, color, religion, descent or national or ethnic origin.²⁷¹ This effort has been consistently reinforced. In 2021, the EU Commission commenced efforts to expand the list of EU crimes laid down in Article 83 TFEU to hate speech, considering it as “a particularly serious crime because of its harmful impact on fundamental rights.”²⁷²

148. Therefore, the current state of both international law and domestic legislations, as well as their common development, also suggest that the prohibition of hate speech has the status of a fundamental human right.²⁷³

ii. Other “fundamental rights” violated by hate speech: respect for dignity, security, and self-determination

149. As noted above, in the jurisprudence of the international tribunals, hate speech has been recognized as a form of fundamental rights deprivation. Notably, although “a speech cannot, in itself, directly kill members of a group, imprison or physically injure them”,²⁷⁴ the Appeals Chambers of the ad hoc tribunals in both *Nahimana et al.* and *Šešelj* found that “hate speech violates the right to respect for the dignity of the members of the targeted group as human beings”,²⁷⁵ while incitement to violence amounts to a “violation of the right to security”.²⁷⁶

150. In addition, it is submitted that hate speech can amount to a violation of the right to self-determination, a fundamental right forming part of customary international law. As spelled out in Article 1 of both the ICCPR and the ICESCR, the right to self-determination includes the right of

²⁶⁹ *Pavel Ivanov v. Russia*, *supra* note 251.

²⁷⁰ HRC, CCPR General Comment No. 24 Issues Relating to Reservations made upon ratification of accession to the Covenant or the Optional Protocols thereto, or in relation to Declarations under Article 41 of the Covenant, 11 November 1994, para. 8.

²⁷¹ EU Council, Framework Decision “*On Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law*”, 2008/913/JHA, 28 November 2008.

²⁷² EU Commission, *supra* note 21.

²⁷³ See also Jeroen Temperman, “*Religious Hatred and International Law: The Prohibition of Incitement to Violence and Discrimination*”, Cambridge University Press 2016, pp. 120–121: “Through [the Human Rights Committee’s case law] we can see a ‘right to be protected against incitement’ gradually being developed. However, for the time being this ‘right’ does not quite serve as an autonomous ‘invocable’ right. Its main function lies in its capacity as a limiting factor, that is as a ‘right of others’.”

²⁷⁴ *Prosecutor v. Nahimana et al.*, Appeals Chamber, *supra* note 244, para. 986.

²⁷⁵ *Prosecutor v. Nahimana et al.*, Appeals Chamber, *supra* note 244, para. 986; *Prosecutor v. Šešelj*, Appeals Chamber, *supra* note 239, para. 163.

²⁷⁶ *Prosecutor v. Bikindi*, *supra* note 235, para. 392; *Prosecutor v. Šešelj*, Appeals Chamber, *supra* note 239, para. 163.

peoples to “freely determine their political status and freely pursue their economic, social and cultural development”. This right became “one of the essential principles of contemporary international law”²⁷⁷ of *erga omnes* nature.²⁷⁸ As clarified in the Declaration of Friendly Relations, the enjoyment of this right includes freedom of association with a particular state. This implies the obligation to refrain from any forcible action which deprives peoples of the enjoyment of such a freedom.²⁷⁹ For example, questioning and denial of the national identity and history of the targeted group can constitute a violation of the right to self-determination.²⁸⁰

b. Severe character of the deprivation (“same level of gravity” test)

151. Not every discriminatory act, but only gross or blatant denials of fundamental human rights can constitute the crime against humanity of persecution.²⁸¹ This implies that acts of persecution must carry a gravity comparable to other crimes against humanity.²⁸² The gravity assessment is conducted on a case-by-case basis with a reference to a range of different criteria described below.

i. Context and cumulative impact

152. The gravity evaluation necessitates considering the cumulative impact of the acts in question. While individual acts may not be deemed sufficiently severe, their collective weight may meet this requirement.²⁸³ Similarly, the broader context in which the underlying acts of persecution occur is particularly important.²⁸⁴ Such context can include ongoing armed conflicts, acts of violence, such as killings, torture and ill-treatment, rape as well as of destruction of property.²⁸⁵ In this regard, even less severe acts can qualify as persecution if they are connected with another serious manifestation of persecution.²⁸⁶

ii. Use of abusive and offensive language

153. In the particular context of hate speech, the content of that speech is the starting point of its gravity assessment.²⁸⁷ The use of abusive or defamatory language is indicative of its intrusive nature. For

²⁷⁷ ICJ, *Case Concerning East Timor (Portugal v Australia)*, Judgment, 30 June 1995, para. 29.

²⁷⁸ ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, para. 88.

²⁷⁹ UN General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, A/RES/2625(XXV), 24 October 1970.

²⁸⁰ OHCHR, “*Ukraine/Russia: Violations of Cultural Rights Will Impede Post-War Healing – UN expert*”, 25 May 2022, available at <https://www.ohchr.org/en/press-releases/2022/05/ukrainerrussia-violations-cultural-rights-will-impede-post-war-healing-un>, accessed on 21 April 2024.

²⁸¹ *Prosecutor v. Kupreškić et al.*, *supra* note 245, para. 620.

²⁸² ICTY, *Prosecutor v. Blaškić*, Appeals Chamber (Judgment), IT-95-14-A, 29 July 2004, para. 138. See also Robert Cryer et al., “*An Introduction to International Criminal Law and Procedure*”, Cambridge University Press 2014 (3rd ed.), p. 257: “Tribunal jurisprudence indicates that persecution requires a gravity comparable to other crimes against humanity; in the ICC definition this requirement may be subsumed in the requirements of ‘severe’ deprivation; Guénaël Mettraux, “*International Crimes: Law and Practice, vol. II: Crimes Against Humanity*”, Oxford University Press 2020, p. 667: “How serious an interference with the rights of an individual might qualify as persecution is measured against the requirement of ‘severity’, which reflects customary law’s ‘equal gravity’ standard and which must therefore be measured primarily against the effect of violation (or deprivation) of rights upon the victim”.

²⁸³ *Prosecutor v. Kupreškić et al.*, *supra* note 245, para. 622.

²⁸⁴ *Prosecutor v. Nabimana et al.*, Appeals Chamber (Judgment), *supra* note 244, , paras. 987 and 988; *Prosecutor v. Šešelj*, Appeals Chamber, *supra* note 239, para. 156. See also Mettraux, *supra* note 282, pp. 620–624.

²⁸⁵ *Prosecutor v. Nabimana et al.*, Appeals Chamber (Judgment), *supra* note 244, para. 988.

²⁸⁶ ICTY, *Prosecutor v. Krajišnik*, Trial Chamber (Judgment), IT-00-39-T, 27 September 2006, para. 772.

²⁸⁷ *Prosecutor v. Šešelj*, Appeals Chamber, *supra* note 239, para. 150.

example, it could encompass incendiary statements and specific propaganda techniques, which foster a climate of hatred and discrimination towards the targeted group.²⁸⁸

154. One of the most typical techniques is dehumanization which refers to depicting a targeted group as subhuman, inferior or intrinsically evil, creating and perpetuating negative stereotypes about. For example, the IMT found that dehumanizing designations used by Julius Streicher towards Jews, such as “a pest”, “a parasite, an enemy, an evil-doer, a disseminator of diseases” and “a swarm of locusts” amounted to persecution as a crime against humanity. Referring to Tutsi individuals as “Inyenzi” (cockroaches), “snakes” or “vermin” that needed to be exterminated similarly qualified as persecution in the Rwandan context.²⁸⁹ Similarly, labeling all Croats as “Ustashas”, that is Nazi collaborators, depicted them as inherently wicked, a tactic frequently employed for their persecution.²⁹⁰
155. The use of false and distorted narratives, such as conspiracy theories, false victimizations and accusations in a mirror, is another manipulative method indicative of prohibited hatred advocacy. It is used to create a sense of fear and mistrust towards the targeted group, making it easier to justify violence against them. It may include, for instance, false accusations of the targeted group planning to commit acts of violence or being traitors. In the *Dietrich* case, the Court cited such statements as “Judaism constitutes a world danger”, and “nations must protect themselves against the Jewish destructive forces”. Similarly, the article “The Ten Commandments” argued that “Tutsi extremists” had attacked Rwanda with support of foreign forces (Ugandan army) and “infiltrators within the country” with “the hope ‘to conquer the country’”²⁹¹. It then called to “take all necessary measures to deter the enemy from launching a fresh attack”.
156. Another rhetoric widely employed in hate speech amounting to persecution is the use of euphemistic language that sanitizes acts of violence and makes it harder for people to recognize their true severity. For example, RTL M broadcasts in Rwanda called their listeners to be “vigilant” or to “go to work”, which became coded calls for aggression against Tutsis’ and Hutus’ political opponents.²⁹²

iii. Calls for violence

157. Explicit calls for violence within the speech are highly indicative of its particular severity. It may also refer not only to calls for violence as such but encourage, glorify or justify it. For example, in the abovementioned *Dietrich* case, the Court referred to the following statement: “The annihilation of Jewry is no loss to humanity, but as useful to the peoples of the earth as capital punishment or security custody for criminal offenders”. In the *Ruggiu* case, the ICTR noted the accused’s statement that the perpetrators “were having a ‘good time’ killing the Inyenzi and the population was determined to fight and chase the Inyenzi-Inkotanyi out of the country”. The Tribunal also emphasized that the accused “congratulated the valiant combatants who were engaged in a battle against the “Inyenzi” at Nyamirambo” and promised that “there would be a reward offered by the government for any one who killed or captured a white man fighting on the side of the RPF”. As mentioned above, Vojislav Šešelj’s calls for the expulsion of Croats, such as “[t]here is no room for Croats in Hrtkovci” also were considered instigating violence.²⁹³
158. Thus, explicit calls for violence against a group can serve as a clear marker of the sufficient seriousness of the speech. However, it is crucial to note that international tribunals have indicated hate

²⁸⁸ *Prosecutor v. Nabimana et al.*, Trial Chamber, *supra* note 231, paras. 1073 and 1079.

²⁸⁹ *Ibid.*, para. 1078.

²⁹⁰ ICTY, *Prosecutor v. Šešelj*, Trial Chamber (Judgment), IT-03-67-T, 31 March 2016, para. 332.

²⁹¹ *Prosecutor v. Nabimana et al.*, Trial Chamber, *supra* note 231, para. 138.

²⁹² *Ibid.*, para. 1028; *Prosecutor v. Ruggiu*, *supra* note 234, para. 44.

²⁹³ *Prosecutor v. Šešelj*, Appeals Chamber, *supra* note 239, paras. 161–163.

speech's capacity to achieve the requisite gravity level even without such calls.²⁹⁴ The ICTR, in the *Nahimana* case, found that hate speech targeting specific groups based on ethnicity or other discriminatory factors as such meets the gravity requirement.²⁹⁵ It clarified that such speech in itself constitutes a discriminatory form of aggression that undermines the dignity of targeted groups, diminishing their status in the eyes of both themselves and others, with its harm potentially being irreversible.²⁹⁶

159. This position was further elaborated in the Appeal Judgment in that case. The Appeals Chamber did not overturn the findings of the Trial Chamber in this regard²⁹⁷ and concluded that not every individual act underlying the crime of persecution needs to match the severity of other crimes against humanity. Instead, the cumulative effect of all the underlying acts of persecution can suffice to reach the required level of gravity.²⁹⁸

160. Thus, discriminatory hate speech alone can meet the required level of gravity, particularly in the context of ongoing atrocities against the targeted group. While explicit calls for violence are often considered a significant indicator of severity, they are not necessarily required for hate speech to reach the threshold.

iv. Influence of the speech

161. Another significant factor is the potential influence of the speech. This includes assessment of the perpetrator's social and political standing, along with their authority over the audience, including the extent of their public reach.²⁹⁹ For instance, when state officials or influential figures address a crowd of a few hundred people, the speech can be deemed impactful.³⁰⁰ Moreover, the use of mass media to disseminate information, particularly in the age of extreme proliferation of social media, can significantly amplify the audience and potency.³⁰¹

v. Frequency of dissemination

162. The gravity level can also be assessed by considering the extent to which the speech in question has been repeatedly and persistently circulated and disseminated to the audience over a period of time. Factors such as the regularity of publication or delivery and the duration of the dissemination are taken into account. For instance, the IMT in the *Streicher* case emphasized that the accused “week after week, month after month... infected the German mind with the virus of anti-Semitism... Each issue of “Der Stürmer”, which reached a circulation of 600,000 in 1935, was filled with such articles...”.³⁰² Similarly, in the case of *Nahimana et al.*, the ICTR referred to a witness's statement that virulent radio broadcasts “spread petrol throughout the country little by little, so that one day it would be able to set fire to the whole country”³⁰³.

²⁹⁴ This position also finds support in doctrinal writings. See, for example, Timmermann, *supra* note 238, pp. 115–116 and 118; Wilson and Gillett, *supra* note 10, p. 144.

²⁹⁵ *Prosecutor v. Nahimana et al.*, Trial Chamber, *supra* note 231, para. 1072; see also *Prosecutor v. Ruggiu*, *supra* note 234, para. 22.

²⁹⁶ *Prosecutor v. Nahimana et al.*, Trial Chamber, *supra* note 231, para. 1072.

²⁹⁷ It stated that it was “not necessary to decide here whether, in themselves, mere hate speeches not inciting violence against members of a group are of a level of gravity equivalent to that for other crimes against humanity”.

²⁹⁸ *Prosecutor v. Nahimana et al.*, Appeals Chamber, *supra* note 244, para. 987.

²⁹⁹ See, *mutatis mutandis*, *Prosecutor v. Bikindi*, *supra* note 235, para. 425.

³⁰⁰ *Prosecutor v. Šešelj*, Appeals Chamber, *supra* note 239, paras. 147 and 154.

³⁰¹ *Prosecutor v. Nahimana et al.*, Trial Chamber, *supra* note 231, paras. 945 and 1075.

³⁰² Judgment of the Nuremberg International Military Tribunal, *supra* note 225.

³⁰³ *Prosecutor v. Nahimana et al.*, Trial Chamber, *supra* note 231, para. 1078.

c. Targeting an identifiable group based on grounds that are universally recognized as impermissible under international law

163. Another essential aspect concerning the *actus reus* of the crime of persecution is that the act must be of discriminatory nature.³⁰⁴ It is directed towards either a specific group or individual based on their membership or association with that group, and it must target the group on political, racial, national, ethnic, cultural, religious, gender grounds, or any other grounds universally recognized as impermissible under international law.

164. The term "identifiable" implies that the group or collectivity, along with its individual members, must be targeted either based on objective criteria or the subjective perceptions of the accused.³⁰⁵ This group encompasses not only individuals who overtly belong to it but also those perceived by the perpetrator as affiliated or sympathetic to the group. Hence, it is not necessary for the target to actually belong to that group, only in the eyes of the perpetrator.³⁰⁶

165. Discrimination stemming from a person's political ideology fulfills the criterion of "political" grounds for persecution.³⁰⁷ This category may encompass, at a minimum, disagreements regarding political matters as a motive for the committed acts.³⁰⁸ In this context, Article 7(1)(h) of the Statute does not necessitate the existence of a defined political group but only that individuals be targeted on political grounds.³⁰⁹ The concept of "national" extends beyond citizenship and encompasses characteristics of a group that regards itself as a nation.³¹⁰

166. The victim group may be identified by a combination of characteristics. For instance, in *Nahimana et al.*, the ICTR determined that the targeted group, that is the Tutsi ethnic group and the so-called "moderate" Hutu political opponents who supported the Tutsi, was defined by both its political and ethnic components.³¹¹

d. Commission of the crime in connection with another crime listed in Article 7(1) or under the jurisdiction of the Statute

167. Persecution must be linked to another criminal act enumerated in Article 7(1) or another prohibited act under the Statute. However, at this point it is unclear what type of connection is required. In the confirmation of charges decision in the *Ongwen* and *Ali Kushayb* cases, the Pre-Trial Chamber found in both instances that the persecutory conduct of the accused was committed in connection with various crimes, such as attacks against the civilian population, murder, other inhumane acts, destruction of property, pillaging and others.³¹² However, the Pre-Trial Chamber did not elucidate what exactly this connection consisted of and it appears that on the jurisprudence so far, the connection

³⁰⁴ ICTY, *Prosecutor v. Krnojelac*, Trial Chamber (Judgment), IT-97-25-T, 15 March 2002, para. 431.

³⁰⁵ Machteld Boot and Christopher K. Hall, "Article 7: Crimes Against Humanity", in Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court* (3rd edn., Verlag C. H. Beck oHG, 2016) pp. 144–294, p. 220; *Prosecutor v. Ongwen*, *supra* note 243, paras. 25, 32, 39, 52 and 65.

³⁰⁶ ICTY, *Prosecutor v. Naletilić and Martinović*, Trial Chamber (Judgment), IT-98-34-T, 31 March 2003, para. 636.

³⁰⁷ ICTR, *Prosecutor v. Akayesu*, Trial Chamber (Judgment), ICTR-96-4-T, 2 September 1998, para. 583.

³⁰⁸ Report of the Expert Group Meeting on Gender-Based Persecution, EGM.GBP/1997/Report, 9-12 November 1997, para. 44.

³⁰⁹ Boot and Hall, *supra* note 305, p. 220, Werle and Jeßberger, *supra* note 214, para. 902.

³¹⁰ Boot and Hall, *supra* note 305, p. 224.

³¹¹ *Prosecutor v. Nahimana et al.*, Trial Chamber, *supra* note 231, para. 1071.

³¹² *Prosecutor v. Ongwen*, *supra* note 243, paras. 25, 39, 52 and 65; ICC, *Situation in Darfur, Sudan, Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, Pre-Trial Chamber (Decision on the Confirmation of Charges Against Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")), ICC-02/05-01/20-433, 9 July 2021, paras. 52, 81 and 117.

requirement essentially seeks to ensure that isolated offenses are not to be regarded as crimes against humanity.³¹³ Consequently, no causal link between the underlying act, such as hate speech, and the commission of a subsequent or contemporaneous act of violence or crime is required.³¹⁴ Although the “in connection with” requirement was not one of the elements for the crime of persecution in the ICTR statute, in the Nahimana case, explicitly recognized the nature of persecutory hate speech as an inchoate crime,³¹⁵ emphasizing that “persecution (...) is not a provocation to cause harm. It is itself the harm.”³¹⁶ Accordingly, while hate speech may often be accompanied or followed by international crimes, establishing the impact of a speech or even a causal link between a speech act and an act of violence is not required under the Statute.

e. Mens rea

168. Article 7(2)(g) of the Rome Statute specifies that persecution must be “intentional” and that it must be committed “by reason of” the identity of the targeted group or collectivity. The Elements of Crimes also specify that the targeting must be by reason of the identity of the group or collectivity, and adds that the targeting was “based on grounds that are universally recognized as impermissible under international law”, as well as the perpetrator’s knowledge that the conduct was part of, or intended to be part of, a widespread or systematic attack directed against a civilian population.³¹⁷
169. In *Prosecutor v. Ongwen*, the Trial Chamber noted that persecution requires showing the “requisite intent, i.e. an intent to discriminate against the targeted persons on any of the grounds enumerated in Article 7(1)(h) of the Statute”.³¹⁸ This means that the “perpetrator harms the victim because the perpetrator perceives the victim as belonging to a particular group or collectivity.”³¹⁹ The ad hoc tribunals have specified that the *mens rea* of persecution requires this additional discriminatory intent,³²⁰ noting “what is necessary is some form of discrimination that is intended to be and results in an infringement of an individual’s fundamental rights”.³²¹ It is the specific intent to cause injury to a human being because they belong to a particular community or group.³²²
170. The Ongwen Trial Chamber added that “[t]he targeted group can be defined both in a positive or a negative manner, meaning that it may be the case that the perpetrator targeted only members of a certain group or collectivity or that the perpetrator targeted individuals for not belonging to a certain group or collectivity”.³²³ Regarding the severity element, the “perpetrator need not have completed a value judgment as to the severity of the deprivation inflicted.”³²⁴
171. The discriminatory intent can be inferred from the content of the speech, such as from the use of inflammatory and severe language which incites hatred against a particular group,³²⁵ its tone as well as dissemination of false information.³²⁶ It can also be determined from the general discriminatory nature

³¹³ Mettraux, *supra* note 282, p. 675.

³¹⁴ *Ibid.*, para. 1073.

³¹⁵ Richard Wilson, “*Incitement on Trial. Prosecuting International Speech Crimes*”, Cambridge University Press, 2017, p. 21; Wilson and Gillett, *supra* note 10, p. 56.

³¹⁶ *Prosecutor v. Nahimana et al.*, Trial Chamber, *supra* note 231, para. 1073.

³¹⁷ ICC, *Prosecutor v. Ongwen*, Trial Chamber IX (Judgement), ICC-02/04-01/15, paras. 2734–2740.

³¹⁸ *Ibid.*, para. 2739.

³¹⁹ *Ibid.*, para. 2739.

³²⁰ *Prosecutor v. Vasiljević*, *supra* note 243, para. 245.

³²¹ ICTY, *Prosecutor v. Tadić*, Trial Chamber (Judgment), IT-94-1-T, 7 May 1997, para. 697.

³²² *Prosecutor v. Blaškić*, Appeals Chamber, *supra* note 282, para. 165.

³²³ *Prosecutor v. Ongwen*, *supra* note 317, para. 2735.

³²⁴ *Ibid.*, para. 2735.

³²⁵ *Prosecutor v. Šešelj*, Appeals Chamber, *supra* note 239, para. 154.

³²⁶ *Mutatis mutandis*, *Prosecutor v. Nahimana et al.*, Trial Chamber, *supra* note 231, para. 1021.

of an attack as long as the circumstances surrounding the commission of the alleged acts substantiate the existence of such intent.³²⁷ For example, when a perpetrator attacks victims belonging to one protected group different from his or hers.³²⁸ It can also be inferred from the speaker's stance towards the speech, whether they express support rather than distancing themselves from the ideas expressed.³²⁹

172. In addition to those specifications regarding discriminatory intent, Article 30(1) of the Statute requires that the material elements of the crime were committed with intent and knowledge. In the context of speech, the element of “intent” relates to the volition to perform the speech act and to target the group or collectivity due to its identity and based on universally impermissible grounds. “Knowledge” pertains to the perpetrator’s awareness that that speech forms part of a widespread and systematic attack on civilian population³³⁰ and pursuant to a particular organized policy. This implies that the verbal conduct must be linked to the relevant context.

3. Legal approach

173. In assessing whether a speech act reaches a sufficient level of gravity to constitute the crime against humanity of persecution, this Communication utilizes a set of six indicative criteria that were distilled from the above legal standards and the relevant soft law instruments,³³¹ including the Hartford Guidelines³³². To qualify as persecution, a speech must fulfill the so-called intensity criterion, as well as at least two other criteria out of six described below. It is indispensable that on each occasion a detailed case-by-case analysis be carried out. An example of such analysis is provided in Section VI of this submission.

- **The intensity of the speech given its context**

This necessary criterion evaluates the severity of hate speech by considering such factors as the broader context in which the speech occurs, the position and influence of the speaker, including their affiliation with the State, as well as the reach of the speeches and the methods, channels and frequency of dissemination.

- **Explicit or implicit calls for violence** against members of the protected group;

While not a mandatory requirement, the presence of direct or implicit advocacy for violence within hate speech is a convincing indicator of its significant severity. It encompasses explicit calls to action, including killing, harming or expelling civilians, or destroying civilian objects, as well as endorsement, glorification or justification of previous violent acts.

- **Denigration** of persons on the basis of their membership in the protected group;

This criterion refers to language that undermines the dignity and value of the targeted group. It includes targeted mockery, the use of ethnic or political slurs, negative stereotyping, and labeling. Denigration also can call for discriminatory treatment, such as advocacy for arbitrary restrictions of the protected group’s rights and freedoms or deprivation of certain benefits.

³²⁷ ICTY, *Prosecutor v. Kvočka et al.*, Appeals Chamber (Judgment), IT-98-30/1-A, 28 February 2005, para. 366; see also ICTY, *Prosecutor v. Krnojelac*, Appeals Chamber (Judgment), IT-97-25-A, 17 September 2003, para. 184.

³²⁸ *Ibid.*, paras. 184–186.

³²⁹ *Mutatis Mutandis, Prosecutor v. Nabimana et al.*, Trial Chamber, *supra* note 231, paras. 1001 and 1024.

³³⁰ *Prosecutor v. Šešelj*, Appeals Chamber, *supra* note 239, para. 164.

³³¹ See, for example, *Report of the United Nations High Commissioner for Human Rights on the Expert Workshops on the Prohibition of Incitement to National, Racial or Religious Hatred* (Rabat Plan of Action), A/HRC/22/17/Add.4, 11 January 2013; Gregory S. Gordon, “Hate Speech and Persecution: A Contextual Approach”, 46 *Vanderbilt Law Review* 303, 2021; Audrey Fino, “Defining Hate Speech: A Seemingly Elusive Task”, 18 *Journal of International Criminal Justice*, 2020, pp. 31–57.

³³² Wilson and Gillett, *supra* note 10.

- **Dehumanisation, verminisation, pathologization and demonisation of the targeted group;**

Hate speech often employs dehumanizing language and techniques intended to strip the targeted group of their image as human beings. It includes their portrayal as subhuman or inherently evil, marginalizing them in the public perception and facilitating violence against them.

- **Use of false or distorted narratives,** including conspiracy theories, false victimizations, and accusations in a mirror;

This criterion includes false or distorted historical, political and cultural narratives and accusations of conspiracy, hatred or atrocities against a group. Often, this includes statements in which the speaker creates a binary antagonism between the in-group and the out-group, victimizing the in-group and portraying the out-group as an immediate threat, including as a justification for (further) violence against the targeted group.

- **Choice of language,** including the use of **vivid images, graphic metaphors, derogative neologisms and euphemisms.**

The speaker resorts to intense language, such as graphic images, derogative neologisms or euphemisms, to instill strong feelings like fear, hatred, or disgust towards the out-group. The use of euphemistic language sanitizes violent acts and facilitates their continuation. Often, intense language is reinforced by the demeanor of the speaker, including their tone of voice, volume, facial expressions, and gestures.

VI. Individual Criminal Responsibility of Alleged Perpetrators

174. This section examines the individual criminal responsibility of six Russian nationals under Article 7(1)(h) of the Rome Statute for persecution as a crime against humanity. Among them is Dmitry Medvedev, a prominent Russian politician, alongside four top propagandists and influential media representatives: Vladimir Solovyov, Margarita Simonyan, Dmitry Kiselyov and Sergey Mardan. These individuals are highly influential and actively engaged in shaping public opinion regarding the war in Ukraine through their propaganda efforts and extensive reach in the informational sphere. As demonstrated below, the narratives they promote strongly resonate with the official position of the Russian authorities, including President Putin's public statements, and fall under the hateful rhetoric tenets identified above (para. 69). In respect of each of the five, there are reasonable grounds to believe that their propaganda activities amount to the crime of persecution, which will be examined individually in detail below. This section also substantiates the responsibility of Alexey Gromov, First Deputy to the Chief of Staff of the Presidential Executive Office, for ordering hate speech under Article 25(3)(b) of the Rome Statute, or for failing to prevent it as a superior under Article 28(2).

175. This section focuses on the material and mental aspects of the crime, given that the contextual element has been previously outlined (paras. 116–128) and applies uniformly to all five individuals. To this end, this analysis scrutinizes a substantial volume of public statements by these individuals across mass and social media platforms. Presented below is a non-exhaustive list of examples of such statements pertaining to each individual. They were selected for satisfying, either individually or collectively with other statements, the intensity requirement, as well as at least two other criteria out of those listed above. A more extensive list of relevant statements is enclosed in Annex C.

A. Vladimir Solovyov

1. Background

176. Vladimir Solovyov (*Владимир Рудольфович Соловьёв*), born in 1963, is one of Russia's most

renowned journalists. In 1997, he started his career as a radio host at the Silver Rain radio station. Since then, he hosted his own TV shows which gained considerable success in Russia. They were broadcast on the leading Russian state and private channels, such as Channel One, TNT, NTV and Russia-1.

177. Currently, Solovyov hosts two widely watched talk shows broadcast in their current format since 2012³³³ on state television: “Evening with Vladimir Solovyov”, which airs from Monday to Friday for approximately 2-3 hours, and “Sunday evening with Vladimir Solovyov”, which airs every Sunday for 3 hours. The shows feature live discussions with guests, predominantly focusing on news topics related to the war in Ukraine and Russia’s broader foreign policy agenda. Both programs hold slots in prime time on the state channel “Russia-1”, the leading channel in terms of audience viewership.³³⁴

178. He also hosts another show called “Full Contact” every Tuesday, Wednesday and Thursday for around 4 hours. It initially aired on the state radio “News FM” and in April 2022 was transferred to the state TV channel “Solovyov Live”. This show consists of a monologue held by Solovyov in live broadcast with news updates, questions from the viewers, and interviews with state and public figures, including military correspondents. Almost the entire broadcast is dedicated to the “special military operation” and relations with “the West”.

179. Furthermore, he manages his popular channel called “SOLOVYOV” on the messaging platform Telegram, where he reaches over 1.3 million subscribers.³³⁵

2. Solovyov’s propaganda narratives and criminal acts

180. In his propaganda efforts, Solovyov advances four primary propaganda narratives, through which he committed the alleged crimes:

- 1) Asserting the unity of Russians and Ukrainians as one nation;
- 2) Dividing Ukrainians into two groups: “our people,” who support Russia, and “others,” portrayed as brainwashed and zombified supporters of Ukraine;
- 3) Portraying Ukraine as a “Satanic” state due to the alleged persecution of the Russian Orthodox Church and the paganization of Ukraine’s military;
- 4) Framing the Russian invasion as a mission against Ukrainian Nazis, the Kyiv regime, and their supporters. The narrative emphasizes the liberation of Russian historical territories and the protection of the Russian population from oppression, including restrictions on language, culture, and education.
- 5) In addition, Solovyov routinely calls for violence against Ukrainians or endorses violent practices carried out in Ukraine.

Each of the above narratives along with the respective statements is examined below.

1) “Russians and Ukrainians are one nation”³³⁶

181. Solovyov persistently promotes the idea that Russians and Ukrainians are one single people or fundamentally interconnected. According to him, Ukrainians can exist and enjoy their identity only as part of the “Russian nation”.

³³³ Between 2005 and 2009, the two shows were aired on the State-linked NTV channel, before the show was resumed on the Russia-1 channel in 2012.

³³⁴ Annexes G.1, G.2.

³³⁵ ‘SOLOVYOV’ Telegram channel, available at <https://t.me/SolovievLive>, accessed on 13 May 2024.

³³⁶ The headings chosen by the authors do not constitute direct quotes of the individuals, but aim to summarize their main narratives in a comprehensive way.

- “Ukrainians – that’s us, one nation, and we don’t exterminate people, we’re engaged in denazification.”³³⁷
- “I think they [the US and EU] are so happy right now. They managed to divide one people.”³³⁸
- “...[the Russian opposition defends interests of Ukrainian Nazi] and not the Ukrainian people whom we are liberating from Nazism, [interests of] Ukrainian Nazi who mistreat the beloved fraternal people who are just like us.”³³⁹
- “But of course, we said it all right: we are one people.”³⁴⁰
- “Of course, there’s a stupefied fraternal people there, just like us.”³⁴¹

2) *“Ukrainians are brainwashed”*

182. Solovyov asserts that ordinary Ukrainians are subjected to extensive indoctrination and manipulation by the Ukrainian authorities, who are in turn controlled by “the collective West”, resulting in a divided population categorized as “our people” and “other people.” The expression “our people” typically refers to those in Ukraine who align with Russian interests, advocate for the use of the Russian language, and identify with the broader “Russian nation”. However, even within the group he claims are Russian, he asserts that there are individuals who may require “reeducation” if they have internalized “Ukrainian propaganda” promoting anti-Russian sentiment. Conversely, the “other people” are depicted as active supporters of the Ukrainian government and military. He often labels them as Nazi accomplices and considers them to be indoctrinated to hate everything Russian. He extends this characterization to encompass even those who only voted for Volodymyr Zelenskiy during the presidential elections in 2019 (see below within the analysis of calls for violence).

- “Because our people are there [in Ukraine]. Yes, many people that have been brainwashed by Nazi propaganda. Many people sincerely believe that Russia is their enemy.”³⁴²
- “So we are dealing with people that have extremely actively been brainwashed, that have been raised for many years in the spirit of deepest hatred.”³⁴³
- “We are trying to preserve the lives of stupefied Ukrainian people to the maximum extent possible.”³⁴⁴
- “But, of course, we said it right: we are one people. Yes, some of them may be berserk with their minds lost, part of them, but we still feel sorry for them.”³⁴⁵

³³⁷ Evening with Vladimir Solovyov, 27 February 2022, available at <https://smotrim.ru/video/2387951>, accessed on 30 April 2024, at 00:06:10–00:06:25.

³³⁸ Evening with Vladimir Solovyov, 28 February 2022, available at <https://smotrim.ru/video/2388251>, accessed on 30 April 2024, at 00:43:50–00:44:00.

³³⁹ Evening with Vladimir Solovyov, 6 April 2022, available at <https://smotrim.ru/video/2398731>, accessed on 30 April 2024, at 01:41:12–01:41:24.

³⁴⁰ Evening with Vladimir Solovyov, 14 April 2022, available at <https://smotrim.ru/video/2401122>, accessed on 30 April 2024, at 01:39:05–01:39:15.

³⁴¹ Full Contact, 22 June 2022, available at <https://smotrim.ru/video/2430548>, accessed on 30 April 2024, at 00:36:18–00:36:27.

³⁴² Full Contact, 1 March 2022, available at <https://smotrim.ru/video/2388348>, accessed on 30 April 2024, at 00:08:56–00:09:11.

³⁴³ Full Contact, 2 March 2022, available at <https://smotrim.ru/video/2388674>, accessed on 30 April 2024, at 00:01:32–00:01:45.

³⁴⁴ Evening with Vladimir Solovyov, 13 March 2022, available at <https://smotrim.ru/video/2391718>, accessed on 30 April 2024, at 01:23:15–01:23:22.

³⁴⁵ Evening with Vladimir Solovyov, 14 April 2022, available at <https://smotrim.ru/video/2401122>, accessed on 30

- “...we see a furious confrontation when Ukraine has been brought up on the sole principle of hatred for our common history, hatred for all that is Russia-related, and they formulate their task as to kill all that is Russia-related.”³⁴⁶
- “They have been brainwashing their people. When you read their textbooks, you see that we have no basic military training, but for the most part, over the last two years of school, they train boys to be sergeants according to NATO standards, and girls to be nurses. Overwhelming Russophobia, hatred for all that is Russia-related, hatred. Only in this way can one hate one’s own brother. Like Cain hated Abel. Biblical hatred - that’s what was cultivated in the brotherly Ukrainian nation.”³⁴⁷
- “We faced a society in Ukraine that has been brainwashed, with minds pumped full of hatred towards Russia, with twisted history.”³⁴⁸

3) “Ukraine is a Satanic pagan state”

183. Solovyov further focuses on portraying Ukraine as a Satanic entity due to its perceived persecution of the Russian Orthodox Church and priests. The narrative suggests that Ukraine has defiled sacred religious sites, such as the Kyiv Pechersk Lavra, by removing Russian Orthodox clergy and designating nationalist battalions as pagans who engage in occult practices. Those who oppose the Russian Orthodox Church, which supports Russia’s aggression in Ukraine, are branded as demons, Satanists, or apostates, further demonizing Ukraine as a whole. These statements appear designed to provoke feelings among Russians of outrage and fear against Ukrainians.

- “Here is the city of Smela, Cherkasy region. They seized and tormented an Orthodox priest. Now in the Rada [Ukrainian Parliament], they are discussing the issue of banning the Russian Orthodox Church. There you go, that’s the answer. That’s the answer to why we are in Ukraine, and why we are doing all this. And we have no other option. We must eradicate absolute evil. This satanism. Do you understand what they did to Russian people? How they corrupted their soul? They turned them into zombies. They turned them into *Upyri*, *Wurdalaki* [ghouls, vampires].”³⁴⁹
- “Well, wait a minute, we believed. Whom [did we believe]? Satan? No, we thought we were dealing with the brotherly people. But what if we had realized right away that we were dealing with Satan?”³⁵⁰
- “The great Ukrainian people. All the greatness of Ukraine was only as part of the Russian Empire. All the terrible pages of humiliation and shame when you served Satan. Return to the path of truth!”³⁵¹

April 2024, at 01:39:09–01:39:25.

³⁴⁶ Evening with Vladimir Solovyov, 5 May 2022, available at <https://smotrim.ru/video/2408041>, accessed on 30 April 2024, at 00:03:34–00:03:55.

³⁴⁷ Address at Federal Educational Marathon “Knowledge”, including with the participation of members of Young Army Cadets National Movement, on 4 November 2022, available at https://dzen.ru/video/watch/6364f9e5bb76a1164423bb40?share_to=link, accessed on 30 April 2024, at 00:09:35–00:10:30.

³⁴⁸ Full Contact, 25 August 2022, available at <https://smotrim.ru/video/2466352>, accessed on 30 April 2024, at 00:36:30–00:36:49.

³⁴⁹ Full Contact, 29 March 2022, available at <https://smotrim.ru/video/2396258>, accessed on 30 April 2024, at 00:37:58–00:38:56.

³⁵⁰ Full Contact, 9 November 2022, available at <https://smotrim.ru/video/2509973>, accessed on 30 April 2024, at 00:36:50–00:37:04.

³⁵¹ Evening with Vladimir Solovyov, 30 October 2022, available at <https://smotrim.ru/video/2504533>, accessed on 30

- “This is the difference between life and death. Where there is Russia, there is life, love, care and respect. Where there is Satanic Ukraine, there is death.”³⁵²
- “You betrayed your history, you betrayed the people, you brought the people to a terrible state, you began to reformat them, you turned the great Orthodox people into some kind of pagan Nazis. [...] The mother of Russian cities [Kyiv], and you trample her. You break her heart by having a lavra there, and you have gay parades. Have you gone mad? You hold a prayer service for Bandera in the churches, [service] for the Uniate in Orthodox churches. Have you completely lost your mind? You put figures and a nativity scene for Catholic Biden at Christmas. What are you even... what are you talking about? Well, of course, after this, we need to return the “old lady” [Kyiv] home. “A son cannot look calmly at the sorrow of his native mother,” as the Russian classic wrote. We cannot watch how you treat Kyiv.”³⁵³

4) *“Russia liberates Ukraine from Nazism”*

184. Solovyov misrepresents the objectives behind Russia’s military actions in Ukraine. He propagates false narratives, asserting that Ukrainians require liberation from Nazism and Satanism, while advocating for discriminatory and violent measures, such as “re-education”, “cleansing”, and “curing”. He frames the conflict as a battle against the “Kyiv regime” and associates it with Nazism and Satanism.

- “(...) we are not fighting with the Ukrainian people, we are conducting the denazification of Ukraine, we are liberating the Ukrainian people...”³⁵⁴
- “I hope this is the final stage of the eight-year war, which should bring peace and liberate Ukraine from Nazism. We are not starting wars, we are finishing them. This is now, if you like, the final operation to liberate Ukraine from the eight-year war against Nazism.”³⁵⁵
- “They will be re-educated. Our television works, radio. Their heads will be put in place.”³⁵⁶
- “The people [Ukrainian] are lost. We still have to live with them, we still have to treat their minds.”³⁵⁷
- “And we are just doing our job and curing the severely ill Ukrainian people. We will cure them.”³⁵⁸
- “When a doctor deworms a cat, for the doctor it is a special operation, for the worms it is a war,

April 2024, at 02:57:10–02:57:25.

³⁵² Full Contact, 19 December 2023, available at <https://smotrim.ru/video/2732434>, accessed on 30 April 2024, at 00:15:06–00:15:24.

³⁵³ Evening with Vladimir Solovyov, 30 January 2023, available at <https://smotrim.ru/video/2555472>, accessed on 30 April 2024, at 02:01:30–02:02:55.

³⁵⁴ Full Contact, 24 February 2022, available at <https://smotrim.ru/video/2387092>, accessed on 30 April 2024, at 00:19:30–00:19:45.

³⁵⁵ Full Contact, 24 March 2022, available at <https://smotrim.ru/video/2394864>, accessed on 30 April 2024, at 01:02:40–01:03:09.

³⁵⁶ Evening with Vladimir Solovyov, 14 April 2022, available at <https://smotrim.ru/video/2401122>, accessed on 30 April 2024, at 01:40:28–01:40:36.

³⁵⁷ Evening with Vladimir Solovyov, 25 August 2022, available at <https://smotrim.ru/video/2466710>, accessed on 30 April 2024, at 02:19:17–02:19:24.

³⁵⁸ Address at Federal Educational Marathon “Knowledge”, including with the participation of members of Young Army Cadets National Movement, on 4 November 2022, available at https://dzen.ru/video/watch/6364f9e5bb76a1164423bb40?share_to=link, accessed on 30 April 2024, at 00:42:10–00:42:50.

and for the cat it is a purge.”³⁵⁹

- “The West is happy. They stuck the poisonous needle of Ukrainian Nazism into the body of the Russian people to watch how at first the Ukrainian nation has decomposed, at least the political part of it. And now we can see those who were bitten, you know, these werewolves, they are, really, look, they are so brainwashed, they don’t want to see the truth, they don’t want to know it. Look at how they’re shaking. And of course, we have to carry out denazification.”³⁶⁰
- “This is the fundamental difference between us and them. Nazi-infected Ukraine does not treat us as people. (...) But we still feel sorry for them. We still consider them ours, yet lost. With a screwed-up head. We hate the sin, but not the sinner. That’s why we will win.”³⁶¹
- “When people realize who Zelensky is, they will of course be horrified. Horrified by what this man has done and how his empty ambitions, easily controlled by Western handlers, have brought the Ukrainian people to the point where they are absolutely afflicted by the cancer of Nazism. And we now have to deal with it, we have to treat them. Although this treatment is, of course, extremely painful. At the same time, we must also understand how deeply ill Ukrainian society is. These are people who have been brainwashed for 30 years. For the last 8 years it has reached its peak. But the level of brainwashing is, of course, fantastic.”³⁶²

5) Explicit and implicit calls for violence against Ukrainians

185. Solovyov’s speeches often directly or implicitly call for violence against Ukrainians. For example, in a recent episode of “Evening with Vladimir Solovyov”, Solovyov said:

- “And there should be no illusions, 48 hours, everyone [should] leave **Kharkiv and [we should] demolish it block by block to hell. That’s enough talking.** Any of our acts of understanding, like brothers, sisters, are perceived by them as weakness. All of our people are already here. Everyone who is our brother is already here. They found a way to cross the border, they left. And if a person shoots at us, and when he runs out of bullets, [he then says] “I’m with you, I’m sorry, please, no”. Yes, I understand that I am saying things that are hard to accept, but when you are in Belgorod, it’s easy to understand them. I’ll ask again: **why is Bankova [street in Kyiv where government authorities are located] still there? Explain to me, why does Kyiv still exist at all? Why does this Nazi city still exist?** The mother of Russian cities has long been captured by the enemies, they are Nazis, they have captured the Lavra, they have defiled all the holy places. And the people of Kyiv easily accepted this and first betrayed the memory of the Great Patriotic War, then Orthodoxy. What else should they betray?”³⁶³

186. In another episode of “Evening with Vladimir Solovyov”, a dialogue took place between

³⁵⁹ Evening with Vladimir Solovyov, 18 July 2022, available at <https://smotrim.ru/video/2445834>, accessed on 30 April 2024, at 00:27:44–00:27:59.

³⁶⁰ Full Contact, 15 March 2022, available at <https://smotrim.ru/video/2392183>, accessed on 30 April 2024, at 00:42:29–00:43:09.

³⁶¹ Evening with Vladimir Solovyov, 1 September 2022, available at <https://smotrim.ru/video/2470633>, accessed on 30 April 2024, at 01:47:30–01:48:02.

³⁶² Full Contact, 19 April 2022, available at <https://smotrim.ru/video/2402274>, accessed on 30 April 2024, at 00:35:27–00:36:30.

³⁶³ Evening with Vladimir Solovyov, 25 March 2024, available at <https://smotrim.ru/video/2780910>, accessed on 30 April 2024, at 01:42:00–01:43:45. Although this statement was made outside the period between 24 February 2022 and 24 February 2024 as referred to in Section II., it was included in this Communication by way of exception due to its significance.

Solovyov and former Ukrainian public and political figure Vasiliy Vakarov:

Solovyov: “You [Ukrainians] are idiots!”

Vakarov: “How much longer will we [Russians and Ukrainians] kill each other?”

Solovyov: “**As long as it takes to finish you!** Because you are idiots who have sold Slavic brotherhood, who lie! [...] Let me tell you this. Democracy is the rule of the majority. Your majority approved the killing of children in Donbas. **Your majority will pay for this.** [...] And you have become Nazis, you have betrayed Slavic brotherhood, you took and put on your banners [Stepan] Bandera, a citizen of Poland, who called for killings, including Russians. You have sold your brotherhood. Not all of you, so you are given a chance. **Cleanse yourselves of Nazism – you will live.** If you don’t cleanse yourselves, you will devour yourselves. It’s no coincidence you are fleeing to Europe, and now in Germany you are drawing Azov [Regiment] symbols, and the Germans ask: whom did we let in, they are Nazis. And Europe suddenly begins to see your bestial Nazi snout. They will devour you. Your Nazis will devour you, Vasily. And you are used to acting purely Ukrainian, well, what am I, well, I’ll step aside, well, I’ll pretend not to notice, my house is far away.”³⁶⁴

187. A similar dialogue took place in another episode of “Evening with Vladimir Solovyov”:

Solovyov: “A gathering of terrorists, scoundrels, and Nazis. Therefore, there will be a tribunal. And at this tribunal, all these bastards will answer. Everyone will answer. All scoundrels. From Gordon and Arestovich to Budanov to Zelensky. No one will be forgotten. How many years will it take? I’ll tell you what, Vasily Dmitrievich, no matter how much time it will take, even if we temporarily retreat somewhere, if there are temporary defeats. Vasily Dmitrievich, **we won’t stop until we strangle the scoundrel to the end.**”

Vakarov: “How many people will you put down?”

Solovyov: “How many people will we put down? **As many as it takes to defeat the Nazi scoundrel, that’s how many we’ll put down.** You cursed yourselves! You are servants of Satan! You cast the people of Ukraine into this debauchery! You raised them in a state of hatred for Donbas, hatred for all that is Russia-related! You are guilty of the deaths of children, whom you did not notice and did not want to see! For you, the lives of Donetsk and Luhansk meant nothing. What are you doing now? You are still destroying civilian properties. Did you take HIMARS to shoot precisely at residential quarters in Donbas? And your American masters handle you like puppies, a pack of dogs. And you accept it.”³⁶⁵

188. Solovyov also made an encouraging speech in the conflict zone before the Russian soldiers:

“For as many centuries as Russia has existed, it has fought against evil. There is no death, only a transition to immortality; **there is no pain, only regret that we did not take more enemies with us.** We continue to exist through our children. But what about them? What children do they have if men sleep with men? [...] 50 countries are against us united by one thing - Satanism. Whatever they may say,

³⁶⁴ Evening with Vladimir Solovyov, 31 March 2022, available at <https://smotrim.ru/video/2397136>, accessed on 30 April 2024, at 02:05:35–02:08:20.

³⁶⁵ Evening with Vladimir Solovyov, 30 October 2022, available at <https://smotrim.ru/video/2504533>, accessed on 30 April 2024, at 02:55:40–02:57:10.

whatever beautiful words they may try to find, there is rottenness inside this candy. [...] **If we do not win, it will not be Russia disappearing, but the world.** Why do we need a world if Russia is not in it, our supreme commander-in-chief [Putin] said. [...] **We are fighting against Satanists. This is a sacred war.**³⁶⁶

189. During another episode of “Evening with Vladimir Solovyov”, Solovyov had the following dialogue:

Solovyov: “Those who are on our side will be with us. And those who are our enemies, let them read in books what happens to Russia’s enemies.”

Vakarov: “What about the ones who are waiting for [the Ukrainian army to liberate the occupied territories]?”

Solovyov: “Let them go away. The waiting one is an enemy. [...]”

Vakarov: “Millions of people, tens of millions of people will stay there.”

Solovyov: “Vasily Dmitrievich, they will leave. [...] That’s their problem. I am not interested in the problem of Nazis and their accomplices. [...] **These are the Nazis who applauded the death of Donbas for 8 years. They voted for this scoundrel [Volodymyr Zelenskiy] [...] For their meanness, Vasily Dmitrievich, everyone will answer.** We love the Ukrainian people, but not Nazi accomplices.”³⁶⁷

3. Assessment

a. Intensity of the speech

190. Solovyov's statements exhibit a particularly high level of intensity, largely due to his exceptionally high professional and social standing in Russia, and his fiery delivery style. Solovyov has been one of the most well-known journalists in the country for more than twenty years. Official public opinion polls in 2020-2022 consistently rank Solovyov as the most popular journalist in Russia.³⁶⁸ Another poll revealed that in 2019, Solovyov was named as the most respected journalist in the country.³⁶⁹

191. For over ten years, following the Maidan revolution and the war unleashed by Russia in Eastern Ukraine in 2014, Solovyov has spread disinformation and hatred towards Ukrainians on his shows, which are aired on the leading State television channel Russia-1. Since Russia’s re-invasion of Ukraine, his shows, which are broadcast daily, have reached a duration of up to three hours, and are uploaded on several streaming platforms, such as YouTube, Rutube and V Kontakte, reaching an extensive audience numbering in the tens of millions.³⁷⁰ This intensity is further underscored by the consistent repetition of his statements since the onset of the invasion in February 2022, persisting almost daily for several hours. Their context is directly linked to the ongoing war in Ukraine and the perpetration of acts of violence, amplifying their impact and contributing to a hostile environment. Additionally, over 1,3

³⁶⁶ Full Contact, 18 January 2023, available at <https://smotrim.ru/video/2548210>, accessed on 30 April 2024, at 00:16:20–00:20:40.

³⁶⁷ Evening with Vladimir Solovyov, 22 November 2023, available at <https://smotrim.ru/video/2718478>, accessed on 30 April 2024, at 02:25:50–02:27:20.

³⁶⁸ Russian Public Opinion Research Center (Всероссийский центр изучения общественного мнения – ВЦИОМ/VCИОМ), Media Outcomes 2022, 16 January 2024, available at <https://wciom.ru/analytical-reviews/analiticheskii-obzor/media-itogi-2022-goda>, accessed on 29 April 2024.

³⁶⁹ RIA Novosti, “*VЦИОМ Identified Most Popular Russian Journalists*”, 26 December 2019, available at: <https://ria.ru/20191226/1562858371.html>, accessed on 30 April 2024.

³⁷⁰ Annexes G.1, G.2.

million subscribers follow Solovyov's channel on the social media platform Telegram, where he regularly comments on the invasion. He thereby ranks third among the most subscribed Russian political Telegram channels.³⁷¹ This has made Solovyov a recognizable and omnipresent face of Russia's State propaganda. Furthermore, he frequently visits combat zones and has been known to deliver encouraging speeches personally to Russian soldiers, directly influencing them with his ideas.

192. For his "extremely hostile attitude towards Ukraine and praise of the Russian government", making him "responsible for supporting actions or policies which undermine the territorial integrity, sovereignty and independence of Ukraine", the European Union introduced personal sanctions against Solovyov.³⁷² Likewise, he was subjected to personal sanctions by several States, including Switzerland, Canada, and New Zealand.

193. The above underscores Solovyov's exceptional influence and public reach, emphasizing the immense impact his statements have on public opinion and discourse within Russian society, including the military.

b. Explicit or implicit calls for violence

194. Solovyov's speeches regularly contain direct or implicit calls for violence against the Ukrainian civilian population, particularly those who support the Ukrainian state and oppose the Russian invasion. For example, in the abovementioned statements Solovyov expressed the need for Russians and Ukrainians to continue "killing each other" "as long as it takes to finish you [Ukrainians]" (para. 186). The context and content of the statement show that he used the term "you" to explicitly refer to the majority of the Ukrainian population who he considers deserving punishment for the purported "betrayal of the brotherhood" with Russia and adoption of the Nazi ideas. In the same vein, Solovyov implies that bad things will happen to Ukrainians in the occupied territories who are waiting for the arrival of Ukrainian army because "[t]hese are the Nazis who ... voted for this scoundrel [Zelensky]." This statement also underscores Solovyov's reference to Nazis as encompassing the majority of Ukrainians.

195. In a similar way, Solovyov declared that "we [Russians] won't stop until we strangle the scoundrel to the end". He uses the term "scoundrel" to refer to representatives of the Ukrainian government (for example, Ukrainian President Volodymyr Zelenskyy and the former Presidential Strategic Communications Advisor Oleskii Arestovych) and public figures (such as Ukrainian journalist Dmytro Gordon). On the way of achieving this goal, he suggested killing "as many [people] as it takes" (para. 187).

196. In line with the above, Solovyov also directly calls for the destruction of civilian infrastructure, such as residential buildings and areas. The statement provided above unequivocally called for destruction of the whole city of Kharkiv: "demolish [Kharkiv] block by block to hell. That's enough talking" and Kyiv: "why is Bankova [street in Kyiv] still there? Explain to me, why is Kiev still standing at all? Why is this Nazi city still standing?".

c. Denigration and dehumanization

197. Solovyov's rhetoric routinely includes inherently dehumanizing and denigrating language, likening Ukrainians to vermin and animals. For example, Solovyov affirmed that like "worms" that need to be extracted from a cat to "purge" its body, the Russian "Special Military Operation" must "liberate"

³⁷¹ Statista Research Department, "Leading Political Telegram Channels in Russia as of 1 February 2024, by Number of Subscribers", available at <https://www.statista.com/statistics/1342604/most-followed-political-telegram-channels-russia/>, accessed on 4 May 2024.

³⁷² European Union, Council Decision (CFSP) 2022/265, Official Journal L 42I, 23.2.2022, p. 98–108.

Ukraine from those believing in an independent, sovereign Ukrainian State. Similarly, in line with the above, he called Ukrainians *Upyri* and *Wurdalaki*. These two words, today often understood as synonyms for the word “vampire”, designate an undead, monstrous creature from Slavic folklore that drinks human blood. Solovyov also called Ukrainians “werewolves” bitten by “the West”, and “zombies”, depicting Ukrainians as manipulated and inhumane. He also referred to Ukrainians as “bestial” and a “pack of dogs”.

198. By comparing Ukrainians to a parasite, animals or other inhuman creatures that must be eliminated or purged, Solovyov employs notorious tactics used by, for example, Julius Streicher and Rwandan propagandists, who portrayed Jews and Tutsis as “vermin” or “cockroaches”, respectively. His words convey that Ukrainians are subhuman or unworthy of empathy, thus facilitating commission of violence towards them.

199. Furthermore, one of the main narratives in this context is the portrayal of Ukrainian citizens opposing the Russian invasion and its actions in general as mentally and intellectually deficient or damaged. To this end, Solovyov uses such characteristics as “brainwashed”, “deranged”, “zombified”, “screwed up”, “crazy”, “drugged” or “lost”. Solovyov equates the support for an independent and sovereign Ukrainian State to the “cancer of Nazism”³⁷³, or, more generally, a disease that needs to be “treated” and “cured”. He suggests that Ukrainians need to be “cleansed” from this ideology or undergo “re-education” through pro-Russian media to heal from it so “their heads would be put back in place”. He thereby denies the self-identity and dignity of Ukrainians based on their Ukrainian nationality and political views. Portraying Ukrainians as “russophobes”, a derogatory term alleging blank and irrational aversion towards Russians and everything Russian, with “minds full of hatred”, Solovyov depicts them as an enemy and a threat to the Russian people.

200. Another narrative of Solovyov is referring to Ukrainians as “Nazis” or “fascists”, which, as described in Section IV (para. 67 and further) above, is one of the essential components of the “historical framing” policy implemented by Russian propaganda. In this context, the social, cultural and linguistic connotations of the speech are crucial³⁷⁴. In both Russian and Ukrainian societies, labeling someone as Nazi carries profound historical resonance in the context of the Second World War, when millions of Ukrainian, Russian, Belarusian and other Soviet soldiers and civilians died fighting against Nazi Germany. Additionally, the Soviet propaganda (upheld in Russia through a biased culture of remembrance to this day) reinforced the antagonism between the evil “Nazis” and the glorious Soviet “defenders of the fatherland” and “liberators”. As a result, the terms “Nazi” and “fascist”, used interchangeably as culturally and historically determined semantic references, stand for an inherently cruel, sadistic, merciless and inhumane enemy who needs to be destroyed. They carry not only deeply offensive, but also largely dehumanizing nature. This same tactic was used by Serbian officials and propagandists, including Vojislav Šešelj and Ratko Mladić, who called Croats “Ustashas”, that is Nazi collaborators, tapping into the regional collective memory of atrocities the latter had committed during the Second World War³⁷⁵. In line with that, by labeling Ukrainians as “Nazis”, “fascists” or “Ukronazi”, Solovyov not only seeks to vilify them but also exploits this sensitive historical legacy to incite animosity and fear, justifying any kind of violence against them. This manipulation capitalizes on the cultural memories and emotions, transforming the armed conflict in the public perception into a crusade against absolute evil devoid of humanity.

³⁷³ Full Contact, 19 April 2022, available at <https://smotrim.ru/video/2402274>, accessed on 30 April 2024, at 00:35:37–00:35:56.

³⁷⁴ *Mutatis mutandis*, *Prosecutor v. Akayesu*, *supra* note 307, para. 557.

³⁷⁵ Predrag Dojčinović, “*Introduction to Propaganda and International Criminal Law: From Cognition to Criminality*”, November 4, 2019, Chapter 8.

201. Finally, Solovyov refers to Ukraine as “Satanic”, stating that Ukrainians “serve Satan” and the concept of a free and independent Ukraine constitutes “satanism”. For example, he describes alleged repressions against Russian-affiliated priests by the Ukrainian authorities or symbols worn by particular troops of the Ukrainian military as manifestations of Satanism, highlighting what he perceives as the demonic nature of Ukraine as a state. This way, he exploits the sensitivities of the prevalent Orthodox Christian culture in Russia to cast Ukrainians as diabolical and therefore deserving of violence and punishment, and blurs the distinction between the Ukrainian government/military and the civilian population. This rhetoric, repeated extensively, fosters a perception among Solovyov’s audience, which includes Russian military personnel and civilians, that Ukraine is an inherently evil and inhuman enemy aligned with Satanism.

d. Use of false and distorted narratives

202. Solovyov extensively employs “politics of memory” and systematically refers to false and distorted narratives in his discourse, including accusations in a mirror, manipulation of history, and twisting of facts.

203. Most commonly, Solovyov persistently promotes the idea that Russians and Ukrainians are inherently interconnected as a single people or, at least, as fraternal nations under the Russian umbrella. While acknowledging Ukrainian identity to some extent, Solovyov contends that Ukrainians have the right to exist and express their culture as long as they align with Russian interests and identify themselves as part of the Russian nation, or the “Russian World” as it is often presented by Russian propaganda. This perspective blurs the distinction between Russian and Ukrainian identities, and implies a hierarchy where Ukrainian identity is subsumed within a broader Russian framework. By asserting that Russians and Ukrainians are one people, Solovyov undermines the distinct national identity of Ukrainians, similarly, for example, to President Putin (para. 81)

204. Additionally, Solovyov manipulates historical events to fit this narrative, particularly regarding the relationship between Russia and Ukraine. He portrays Ukrainians as “betraying their Slavic heritage” and aligns them with historical figures or movements associated with fascism, such as Bandera, another narrative used by the Russian authorities for a decade (para. 44). Moreover, he distorts facts and presents them in a manner that supports his agenda. For example, he portrays Russia’s military intervention in Ukraine as a liberation of its people from Nazism, despite extensive evidence of human rights abuses by Russian forces.

205. Solovyov also actively creates an antagonism between the Russians as the in-group and Ukrainians who support Ukraine’s sovereignty and independence as the out-group. By referring to the war unleashed by Russia in Eastern Ukraine in 2014 as an ongoing “genocide” and accusing Ukrainians of grave atrocities committed by the Ukrainians against the population of the Donbas, he uses an accusation in a mirror to justify violence against Ukrainians. Likewise, by portraying Ukrainians as “Nazis” and “russophobes” manipulated to hate Russians and having the “task to kill everything Russian”, he portrays Ukrainians as an “existential threat”³⁷⁶ to all Russians, justifying the Russian aggression as a “just” military operation “to end the eight-year war”.

206. Overall, Solovyov’s use of false narratives aims to justify Russia’s actions in Ukraine, including attacks on civilian population and facilities, and vilify Ukrainians.

e. Choice of language

207. Generally, Solovyov uses intense language replete with neologisms, euphemisms and graphic

³⁷⁶ Evening with Vladimir Solovyov, 2 March 2022, available at <https://smotrim.ru/video/2388885>, accessed on 30 April 2024, at 02:02:15–02:02:19.

metaphors, especially medical vocabulary related to the cure of diseases, implying that anyone who objects to Russia's actions in Ukraine must be lacking in their mental faculties.

208. The above statements also actively exploit euphemistic expressions such as “denazification” and “liberation of Ukrainian people”, “we are not starting wars but finishing them”. These euphemisms hide the genuinely aggressive nature of the Russian invasion in Ukraine and the ongoing atrocities.

209. Similarly, Solovyov also frequently uses expressions such as “to cure [the Ukrainians]”, “to treat their minds” or “to put their heads in place”, which are to soften the language describing essentially violent actions. Moreover, given the rhetoric of Ukrainians being brainwashed and mentally oppressed, this language is designed to make violence against them appear even necessary and beneficial.

210. Solovyov also frequently uses derogative neologisms, such as “*Banderovzi*”, the followers of Ukrainian nationalist Stepan Bandera (para. 44), and “Ukronazis”, a compound word consisting of the words “Ukrainian” and “Nazi”, which suggests an inseparable link between Ukrainians and Nazi ideology.

B. Margarita Simonyan

1. Background

211. Margarita Simonyan (*Маргарита Симоновна Симоньян*), born in 1980, is the editor-in-chief of the State-owned media outlets *Rossiya Segodnya* and *Russia Today* (RT), heading RT since its establishment in 2005. Simonyan has close ties with the Russian authorities and a personal relationship with the highest state officials. For example, she revealed having a direct secure line to the Kremlin and is reported to be a protégée of Alexey Gromov (para. 99),³⁷⁷ one of the founders of *Russia Today*.

212. Simonyan regularly appears and speaks about the war in Ukraine and Russian military actions in various TV shows run by state-owned media, such as “Evening with Vladimir Solovyov”, “Our Truth”, a TV show on national channel “NTV”, and “Right to Know”, a TV show on national channel “TV Center”. She is also a regular guest on “Solovyov Live” (para. 178). Her channel on Rutube boasts over 200 videos featuring her participation in those and other shows, including after the beginning of the full-scale invasion.³⁷⁸

213. She also hosts her own internet show “Q.E.D.,” featuring a 15 to 20-minute monologue published on the Russian streaming platform Dzen, focusing on political topics. There are over 60 episodes available.³⁷⁹ Furthermore, she manages and shares posts almost every day in her Telegram channel “Margarita Simonyan”, where she has over 0.5 million subscribers.³⁸⁰

2. Simonyan's propaganda narratives and criminal acts

214. Simonyan disseminates three primary narratives:

- 1) Asserting the unity of Russians and Ukrainians as one nation, to the detriment of a distinct and separate Ukrainian identity;
- 2) Accusing “Ukrainian Nazis” of atrocities committed in the Donbass region of Ukraine between 2014 and 2022;

³⁷⁷ US Department of State, GEC Special Report “*Kremlin-Funded Media: RT and Sputnik's Role in Russia's Disinformation and Propaganda Ecosystem*”, January 2022, available at https://www.state.gov/wp-content/uploads/2022/01/Kremlin-Funded-Media_January_update-19.pdf, accessed on 15 May 2024.

³⁷⁸ Simonyan's Rutube channel, available at <https://rutube.ru/plst/35858/>, accessed on 15 May 2024.

³⁷⁹ Q.E.D., playlist published on Rutube, available at <https://rutube.ru/plst/213583/>, accessed on 15 May 2024.

³⁸⁰ Simonyan's Telegram channel, available at <https://t.me/margaritasimonyan>, accessed on 15 May 2024.

- 3) Claiming that the war is being waged against the Nazi “Kyiv regime” and its supporters, rather than ordinary Ukrainians, who are really Russians.
- 4) In addition, Simonyan routinely calls for violence against Ukrainians or endorses violent practices carried out in Ukraine.

Each of these narratives along with the respective statements is examined below.

1) Asserting the unity of Russians and Ukrainians as one nation, to the detriment of a distinct and separate Ukrainian identity

215. Similarly to Solovyov, one of Simonyan’s central narratives promotes the idea that Ukrainians and Russians are one people. She argues that over the 30 years of Ukrainian independence, the country has been unable to provide adequate living conditions for its citizens. For this reason, Ukrainians living on territories historically linked to Russia are unhappy under Ukrainian rule with no right to cessation. She highlights that a significant part of Ukrainians, referred to as “our people”, despite being subjected to anti-Russian propaganda, still support Russia and aspire to maintain their Russian identity.

- “... because the people who live there do not want to live in Ukraine and do not want to be Ukrainians. And for 30 years, Ukraine has not convinced them to even coexist, on the contrary, every year it pressed them more and more, strangled them, and thus made them not want to live in Ukraine. This gang rape cannot last forever. It must be stopped and will be stopped.”³⁸¹
- “But of course, I believe that people who, living on historically Russian lands, are unhappy where they live, should have the opportunity to live in their Motherland. I’ve been saying this for many years.”³⁸²
- “And I don’t want us to be overwhelmed, firstly, by the same hatred [...] towards the Ukrainian people specifically. Especially since I don’t really understand what kind of people they are and how they differ from Russians.”³⁸³
- “Because Putin still undoubtedly considers Russians and Ukrainians one people, and Putin therefore considers Kyiv his Russian city, which it indeed is, [it is] the mother of Russian cities.”³⁸⁴
- “Ukraine is set to have a wonderful, brilliant, bright, hopeful, and completely normal future as part of the Russian Federation. And every day I pray that it will indeed be so.”³⁸⁵
- “I’m already on an international wanted list for saying “Mother Russia, take Donbas home.” Now I want to say, “Mother Russia, take home both Kherson and Zaporizhzhia,” and let them issue an intercontinental wanted notice against me.”³⁸⁶
- “So, is all Ukraine like this? Of course not. [...] Maybe a huge number of people are in a zombified state, who have really been zombified for years, decades, and the situation that is happening now

³⁸¹ Our Truth, 2 September 2022, available at <https://www.ntv.ru/video/2136982>, accessed on 30 April 2024, at 00:48:30–00:49:10.

³⁸² Our Truth, 2 September 2022, available at <https://www.ntv.ru/video/2136982>, accessed on 30 April 2024, at 01:18:40–01:19:10.

³⁸³ Right to Know, 20 January 2024, available at <https://rutube.ru/video/f084bf6825b9ccd47d3e88497a53813c/>, accessed on 30 April 2024, at 00:45:00–00:45:30].

³⁸⁴ Q.E.D., 19 June 2023, available at https://dzen.ru/video/watch/649028b5970b3c133674b9c4?share_to=link, accessed on 30 April 2024, at 00:09:20–00:09:40.

³⁸⁵ Life and Fate, 8 February 2023, available at <https://smotrim.ru/video/2561078>, accessed on 30 April 2024, at 00:16:50–00:17:10.

³⁸⁶ Evening with Vladimir Solovyov, 21 April 2022, available at <https://smotrim.ru/video/2403317>, accessed on 30 April 2024, at 00:40:20–00:40:45.

has become a killing shot in their heads.”³⁸⁷

2) *Accusing “Ukrainian Nazis” of atrocities committed in the Donbass region of Ukraine*

216. Simonyan continuously accuses “Ukrainian Nazis” of atrocities purportedly committed in Donbas and other parts of Ukraine from 2014 to 2022. In this context, she regularly cites three particular incidents: the Odesa Trade Unions House fire (para. 48), the shelling of Zugres beach (for an explanation of the term, see the corresponding Glossary entry in Annex A), and the killing of Gorlovka (Horlivka) Madonna³⁸⁸ (see the Glossary, Annex A). These cases are repeatedly referenced, suggesting that the targeted group committed or supported such acts of violence.

- “And that’s why I want to repeat: “Mother Russia, bring Donbass home, Mother Russia, protect your children, Mother Russia, punish all those who tore apart Gorlovka Madonna with her ten-month-old daughter, who bombed the children’s beach in Zugres with cluster bombs, who are bombing Donetsk, Melitopol, Mariupol right now, who mocked and made fun of the burning people in Odesa. For our lads who are fighting this filth right now, for the preservation of the lives of innocent people, for our Russia.”³⁸⁹
- “...where were you all this time? They started bombing people using planes, you know? They bombed The Madonna of Gorlovka, they bombed the children’s beach in Zugres.”³⁹⁰
- “And our people were burning there in the Trade Unions House. And no one apologized for it. [...] I’m not even talking about 2014 when they started bombing us there using planes, our children on the beach in Zugres, our Madonna of Gorlovka with her little girl in her arms, both killed by their bombs.”³⁹¹

3) *Claiming that the war is being waged against the Nazi “Kyiv regime” and its supporters, rather than ordinary Ukrainians, who are really Russians*

217. Simonyan asserts that Russia is not waging war against Ukraine and its people, but rather against what she labels as “Ukrainian Nazis” and NATO. According to her, the conflict aims to liberate Ukrainians from the control of the oppressive “Kyiv regime” and Nazis, whom she identifies as those opposing the Russian army and affected by hatred to everything Russian.

- “This is not Russia’s war against Ukraine, it is not a military operation. It is a civil war in Ukraine, in which the part of Ukrainians who are russophobes and anti-Russian in the same sense that fascists were anti-Semites, they are destroying another part of their own people. And Russia simply takes the side of one of these fighting parties. Why on this side? Because they are Russian, and the others are anti-Russian. [...] sooner or later the truth will prevail, and everyone will see that in the civil war in Ukraine Russia is defending the side that, without provoking anything, drew fire upon itself and which has been destroyed for many years.”³⁹²

³⁸⁷ Right to Know, 10 June 2023, available at <https://rutube.ru/video/8ccd9e3fe938a8ed788112cfea9fa0f3/>, accessed on 19 April 2024, at 00:37:50–00:38:20.

³⁸⁸ For a brief description of these incidents, see the Glossary.

³⁸⁹ Speech at the “Crimea Reunification Day” (Luzhniki Stadion), 18 March 2022, available at https://vk.com/video-40316705_456332641, accessed on 30 April 2024, at 00:00:50–00:01:45.

³⁹⁰ Q.E.D., 6 March 2023, available at https://dzen.ru/video/watch/6405e9058d71710ef95105a7?share_to=link, accessed on 30 April 2024, at 00:02:40–00:03:00.

³⁹¹ Evening with Vladimir Solovyov, 14 December 2023, available at <https://smotrim.ru/video/2730388>, accessed on 30 April 2024, at 01:05:50–01:07:30.

³⁹² Evening with Vladimir Solovyov, 19 June 2022, available at <https://smotrim.ru/video/2428727>, accessed on 30 April 2024, at 00:23:20–00:25:00.

- “They will leave our people alone and let us, along with our people, with Russian people who have been held hostage by Ukraine for decades... Together with them, they will let us build our new Russia and leave them alone.”³⁹³
- “We must understand that we are not fighting with Ukraine. Not even from a moral or ethical perspective, that we are not fighting with Ukraine and Ukrainians, but from a purely technical and military point of view. We are fighting with NATO.”³⁹⁴
- “You know, Nazism is called Nazism for a reason. We don’t just randomly call this operation a special operation for denazification and call them Nazis for no reason. Not only because they wear swastikas on their chests and shoulders, because the swastika is just a symbol. What makes you a Nazi is not just a symbol; what makes you a Nazi is your bestial nature, your bestial hatred, your bestial readiness to gouge children’s eyes out on ethnic grounds. [...] Unfortunately, to our horror and dismay, and to our collective silent amazement, a significant part of Ukraine, the Ukrainian people, not all, and I hope not even the majority, but a significant part, have been obsessed with this madness of Nazism. [...] This is the work for psychiatrists. Collective madness affects a significant number of people, and then they wake up and can’t understand how they could [be like that].”³⁹⁵

4) *Explicit or implicit calls for violence*

218. Simonyan regularly calls for violent actions against Ukrainians, including civilians, often using references to religious or mythical images. For example, in an episode of her show “Q.E.D.,” Simonyan stated:

“These are demons, real demons, indeed. And what happens to people who, being possessed by demons, hold such Katya hostage? This Katya is now a symbol for me of all our people there, who have become hostages of Ukrainian demons. **We know from history, we know from religion, what happens to those godless, idolatrous, possessed people** who do not let go and hold a whole nation hostage? Ten plagues of Egypt are inflicted on them. [...] This is what is happening right now. Let’s remember these 10 plagues. [...] **The first plague was blood. There, rivers turned into rivers of blood.** Then there was another punishment - Egyptian darkness, when the Egyptians remained in darkness, in gloom for three days. Does it remind you of anything? **When we destroy their infrastructure with strikes of retribution, and they get into darkness.** [Shows metro and streets in Kyiv without light]. [...] Now all this is happening in Ukraine. Do I pity these people? Of course, I do, because unlike them, I am a Christian, and they are lost sheep. **But there’s no other way to deal with them.** And everything that is happening around the Kyiv-Pechersk Lavra once again supports our belief that we are right. Because the wolfhound is right, and the cannibal is not. [...] Look again at these raging ones, **they are cannibals indeed**”.³⁹⁶

³⁹³ Q.E.D., 5 December 2022, available at <https://dzen.ru/video/watch/638de1f3f2c3f010091acaca>, accessed on 30 April 2024, at 00:12:40–00:13:00.

³⁹⁴ Evening with Vladimir Solovyov, 14 April 2022, available at <https://smotrim.ru/video/2401122>, accessed on 30 April 2024, at 00:21:00–00:21:30.

³⁹⁵ Our Truth, 25 March 2022, available at <https://www.ntv.ru/video/2102522>, accessed on 30 April 2024, at 00:04:35–00:06:10.

³⁹⁶ Q.E.D., 10 April 2023, available at https://dzen.ru/video/watch/64341eb9b283de5f9d044c61?share_to=link, accessed on 30 April 2024, at 00:09:10–00:12:40. A very similar statement was made in an episode of Evening with

219. In an episode of the “Evening with Vladimir Solovyov”, Simonyan said:
- “...we simply [...] must do it for humanity. Otherwise, those who remain there as hostages will continue to be destroyed until the end. [...] **We are obliged to deal with all this filth** that has grown there, it has grown a long time ago. Now they say: for 8 years they’ve been messing with their heads. They’ve been there since the Great Patriotic War. They were slaughtered in the forests, but it remained in their heads. My mother says that, when she was a tourist trader in the early 90s, the scariest thing was in Lviv, you couldn’t speak a word in Russian, or they would beat you, kill you, take away all your belongings. **This must finally be finished off, eradicated, like a blister, like flux, like a boil, squeezed out, because if something remains in the boil, it will rot later, gangrene can start.**”³⁹⁷
220. In another episode of Q.E.D., Simonyan stated:³⁹⁸
- “And you’ll see, what’s happening now will one day be our common grief, because people have died, and our common pride, because we protected our people, because **we’ll wipe out the Nazi nonsense** from those who could be cleansed of it, **destroy those who can’t**, and with God’s help, **send those who remain unscathed behind bars** to cleanse their minds of the nonsense that’s been pounded into them for decades by people who have neither heart, nor conscience, nor homeland, and who certainly don’t care about Ukraine [...]. **Those who can’t rid themselves of this nonsense will go and watch that beautiful Ukrainian blue sky from behind bars.** And we’ll be looking at that blue sky, celebrated by the great Russian writer Gogol, who was born on Ukrainian soil and considered himself a “Little Russian”.³⁹⁹
221. In another recent episode of Evening with Vladimir Solovyov, Simonyan stated:
- “We need to save our people, those who are still there with their brains washed, their souls cluttered with the dirt that Kyiv has been throwing at them for decades. **We’ll wash and cleanse those souls.** And those who don’t want to go wash themselves are the dirty ones. **And for those who refuse to clean up, an unenviable fate awaits. But we need to separate them, the dirty ones from those willing to cleanse themselves.**”⁴⁰⁰

3. Assessment

a. Intensity of the speech

222. Simonyan’s statements carry a high level of intensity particularly given her significant influence and extensive reach within the Russian media, akin to that of Solovyov and Kiselyov. As the editor-in-chief of two major state-owned media outlets for almost twenty years, Simonyan holds a prominent position in

Vladimir Solovyov: Evening with Vladimir Solovyov, 2 April 2023, available at <https://smotrim.ru/video/2590830>, accessed on 30 April 2024, at 00:39:30–00:40:30.

³⁹⁷ Evening with Vladimir Solovyov, 24 April 2022, available at <https://smotrim.ru/video/2404083>, accessed on 30 April 2024, at 00:21:30–00:23:00.

³⁹⁸ Q.E.D., 7 November 2022, available at https://dzen.ru/video/watch/63690541ddd0aa7b37994682?share_to=link, accessed on 30 April 2024, at 00:13:20–00:14:30.

³⁹⁹ The term *Little Russia* (Rus’ Minor) is used to refer to Ukraine and the modern Ukrainian nation, its language, culture, etc. It is typically perceived as conveying an imperialist view that the Ukrainian territory and people (“Little Russians”) belong to “one, indivisible Russia”.

⁴⁰⁰ Evening with Vladimir Solovyov, 28 January 2024, available at <https://smotrim.ru/video/2751408>, accessed on 30 April 2024, at 00:25:30–00:26:30.

shaping public opinion. In 2022 and 2023, she ranked third and fifth in the ranking of the most cited journalists in Russia, respectively.⁴⁰¹

223. She regularly appears on various TV shows aired by state-owned channels and has established a consistent and widely viewed presence across other media platforms through her popular channel in Telegram and own Internet show. This allows her to disseminate her views highly repetitively, potentially reaching millions of listeners, amplifying their impact. Simonyan's narratives consistently focus on the ongoing war in Ukraine, including Russian military attacks on civilians, which she addresses directly.

224. Similarly to Solovyov, the European Union, the United States and several other countries introduced sanctions against Simonyan, naming her "a central figure of the Government propaganda" and finding that "she supported actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine"⁴⁰².

b. Calls for violence

225. Simonyan's speeches routinely contain direct or implicit calls to violence against the civilian population of Ukraine based on their divisive categorization of "ours" and "the others", those supportive of the Russian invasion versus those loyal to the Ukrainian state.

226. In this context, she frequently disguises violent calls with biblical allusions, aiming to legitimize them in the eyes of the public and portray them as sanctioned by divine intent, which consequently justifies violence and retribution against them. For example, she consistently draws parallels between Russian military actions and the Plagues of Egypt, a biblical story depicting disasters inflicted on ancient Egypt for its enslavement of the Israelites. By this analogy, she compares the "our" part of Ukrainians with Israelites, while "the others" are deemed to be deserving of the biblical retribution, such as "rivers of blood" (civilian casualties), and "darkness" (attacks at the civilian energy infrastructure). Therefore, these attacks are portrayed as sanctioned by God and inevitable since "there's no other way to deal with" Ukrainians supporting the Ukrainian state, since they became godless and turned into "devils".

227. Another central narrative in Simonyan's advocacy for violence is labeling "the other" Ukrainians as Nazis, echoing the general Russian propaganda rhetoric. In doing so, she directly calls to "destroy", "wipe out", "eradicate", "finish off" or, at least, "send behind the bars" this group of Ukrainians. This way, she portrays them as incorrigible adherents of Nazi ideology who must be brought to the Russian side by force or be killed or incarcerated.

c. Denigration and dehumanization

228. Simonyan extensively uses denigrating and dehumanizing expressions of various kinds. First, she uses offensive language linked to the historical context such as "Nazis", "fascists", "russophobes" or, "Ukronazis", which is, as explained above, typical for the broader Russian propaganda rhetoric, and which is similar to the language described in the Seselj case, such as the word "Ustasha". Moreover, she routinely compares the targeted group to animals and other inhumane beings, such as "zombies" or "cannibals", or accuses them of being of "bestial nature" capable of committing heinous acts like "gouging children's eyes out". In a similar way, she further refers to "the others" as "filth", "dirt", "blister", "flix" or "boil", further dehumanizing them.

229. As Simonyan's speech frequently incorporates religious and mythical themes, she employs similarly extreme derogatory slurs and dehumanizing designations, depicting her victims as "devils," "demons," or "idolatrous and godless". This rhetoric serves to not only demonize, but also delegitimize

⁴⁰¹ Medialogia, Rating of Journalists (2023 and 2022), available at <https://www.mlg.ru/ratings/media/journalists/>, accessed on 26 May 2024.

⁴⁰² European Union, Council Decision (CFSP) 2022/265, Official Journal L 42I, 23 February 2022, p. 98–108.

and degrade the humanity of the targeted group, contributing to an atmosphere of hostility and division.

b. Use of false and distorted narratives

230. Simonyan relies on a range of false narratives, many of which align with the broader propaganda agenda. For instance, like Solovyov, Kiselyov and other propagandists, she portrays the Russian invasion of Ukraine as akin to the liberation campaign against Nazi Germany during the Second World War. Similarly, she promotes the general rhetoric of Russians and Ukrainians being one single nation while distinguishing between those supporting an independent Ukraine and those allegedly endorsing the Russian occupation (paras. 81 and 182).

231. Simonyan places significant emphasis on accusing the Ukrainian government and its sympathizers of committing specific atrocities in the Donbas region of Ukraine since 2014. She consistently and repeatedly cites three incidents (para. 216) in an effort to assign responsibility to Ukraine for alleged atrocities. This is an “accusation in the mirror” narrative which serves to justify the full-scale invasion and eventual allegedly retributational violence against the civilian population who support the Ukrainian authorities. Similar “accusation in the mirror” techniques were employed during the Holocaust and the Rwandan Genocide.⁴⁰³ Simonyan depicts these supporters as individuals who “mocked and made fun” of the victims and characterizes them as “filth” against whom “our lads are fighting.”

c. Choice of language

232. Simonyan largely employs standard propaganda techniques, such as the use of euphemisms and neologisms like “denazification” or “liberation”, which disguise the aggressive nature of the Russian military actions.

233. In addition, she makes religious references and techniques to portray the invasion as a holy war sanctioned or even demanded by God, largely exploiting the sensitivities of the prevalent Orthodox Christian culture both in Russia and Ukraine. She also presents her advocacy for occupation and violence through prayer-like calls directed to God, sometimes personified as “Mother Russia”: “Mother Russia, take Donbas [...] Kherson and Zaporizhzhia home,” and “punish those who tore apart Gorlovka Madonna.” Such “prayers” essentially imply that “Mother Russia”, being equivalent to God, is infallible, cannot be questioned and demands absolute obedience. To further amplify the perception of righteousness in her statements, she consistently emphasizes her “Christian” identity.

C. Dmitry Kiselyov

1. Background

234. Dmitry Kiselyov (*Дмитрий Константинович Киселев*), born in 1954, is a famous journalist and TV anchor in Russia. Since 2008, he has been the deputy director of the All-Russian State Television and Radio Broadcasting Company, and has served as Head of Rossiya Segodnia, a government-owned media group, since 2013.

235. Kiselyov began his career in 1990. Since then, he has hosted or otherwise participated in numerous shows covering news and political topics on Russia’s central TV channels such as Channel One, Russia-1, REN TV, TNT, and TV Centre. Presently, he works as a host and news presenter of a news program “News of the Week” on Russia-1 broadcast every Sunday for approximately 4 hours. The program is considered the most popular weekly news TV program in 2022.⁴⁰⁴ It features Kiselyov’s

⁴⁰³ See, e.g., IMT Nuremberg, Trial, Judgment and Sentences, (1948) 22 *Trial of German Major War Criminals* 501; *Prosecutor v. Nabimana et al.*, Trial Chamber, *supra* note 231, paras. 111 ff.

⁴⁰⁴ RIA Novosti, “*Vesti Nedeli’ Was Recognised as the Most Popular Weekly Format of 2022*”, 4 January 2023, available at <https://ria.ru/20230104/kiselev-1843087704.html>, accessed on 6 May 2024.

monologues on current political topics, historical events and reports from the combat zone. The main part of the program is dedicated to the war in Ukraine and foreign relations. He has also interviewed high-ranking Russian officials, such as the minister of Foreign Affairs Segey Lavrov and President Putin.

2. Kiselyov's propaganda narratives and criminal acts

236. Kiselyov focuses on four primary narratives:

- 1) Asserting the unity of Russians and Ukrainians as one nation;
- 2) Arguing that Ukraine and its people bear hatred for Russia and all Russian;
- 3) Portraying Ukraine as a state of revived Nazism;
- 4) Declaring Ukraine a failed state.
- 5) In addition, Solovyov routinely calls for violence against Ukrainians or endorses violent practices carried out in Ukraine.

Each of these narratives along with the respective statements is examined below.

1) *“Russians and Ukrainians are one nation”*

237. Kiselyov promotes the narrative of Russians and Ukrainians being one people or nation, which is now divided. He often reinforces it by the historical references, such as that Ukraine used to be a part of Russia or that many famous Russian figures, including writers, scientists, and artists, were originally from Ukraine.

- “In fact, Russia and Ukraine are now a divided people, a divided nation. Just like after the Second World War, Germans found themselves as a divided nation, dispersed across two opposing states.”⁴⁰⁵
- “Kyiv, the mother of Russian cities, was founded and celebrated as a Russian city back in the times when the word ‘Ukraine’ did not even exist.”⁴⁰⁶
- “The new, yet very important holiday, the Day of Reunification with Russia, was celebrated for the first time on Saturday. The Donetsk and Luhansk People’s Republics, as well as the Zaporizhzhia and Kherson regions [participated]. On the occasion of the holiday, President Putin addressed the nation. Putin’s speech was: “We are one people, and together we will overcome everything, and respond to any challenges.”⁴⁰⁷

2) *“Ukrainians hate Russians”*

238. Kiselyov portrays Ukraine as carrying hatred towards Russia and everything Russian, including its culture and the Russian Orthodox Church, which has been artificially fostered for many years.

- “For eight years, the ruthless propaganda of the Kyiv regime persuaded the population of the country that killing Russians is normal.”⁴⁰⁸

⁴⁰⁵ News of the Week, 27 February 2022, available at <https://smotrim.ru/video/2387946>, accessed on 30 April 2024, at 00:28:25–00:28:50.

⁴⁰⁶ News of the Week, 21 August 2022, available at <https://smotrim.ru/video/2463912>, accessed on 30 April 2024, at 00:40:25–00:40:45.

⁴⁰⁷ News of the Week, 1 October 2023, available at <https://smotrim.ru/video/2690966>, accessed on 30 April 2024, at 00:02:25–00:03:20.

⁴⁰⁸ News of the Week, 1 May 2022, available at <https://smotrim.ru/video/2406600>, accessed on 30 April 2024, at 00:14:30–00:14:50]. This statement was uttered by a war correspondent as part of the footage presented by Kiselyov under “Reports by our war correspondents about our heroic military, and their difficult and selfless work to liberate Ukraine from filth that has been accumulated there”.

- “Teaching children who have been indoctrinated for years that Bandera is a hero and Russians are enemies is not easy.”⁴⁰⁹
- “They needed to create an atmosphere of hatred towards Moscow and become anti-Russia – they did it. (...) Until now, they have been hitting the most sensitive points of both Russia and Ukraine, aiming to eradicate their common ground and sow enmity between the peoples forever. Under these conditions, an entire generation has already been raised in Ukraine.”⁴¹⁰
- “Aggressive mediocrity is what has become the breeding ground for the **Nazification** of Ukraine, which has steadily progressed over the past decades. The process is still going on in the Kyiv-controlled territory. Violent **derussification** is also underway. All that is Russia-related is being erased from memory. Even the names of those who created our common culture in Kyiv, when there was no sign of Nazis, are being sacrificed.”⁴¹¹
- “[Speaking about alleged fake news against Russia] You can detonate something, then disperse a dirty bomb, then link radioactive contamination to the explosion. There will be so much noise that people will forget where it all started. And the Western public will believe. And the Ukrainians under Kyiv’s control may believe too because hatred is fostered as classical conditioning.”⁴¹²
- “[Speaking about the events of the Orange Revolution in Ukraine in 2004–2005] I remember vividly this nationalist frenzy. Orange tents on Maidan, where sandwiches and condoms were handed out to the youth for free. Orange scarves, ribbons, and posters. And the rising hatred for Russia and for all that is Russia-related.”⁴¹³

3) “Ukraine is state of revived Nazism”

239. Kiselyov depicts Ukraine as a country where the resurgence of Nazi ideology is evident. This portrayal is reinforced through vast exaggerations of marginal and isolated events, like torch-lit nationalist processions featuring portraits of figures like Bandera, as well as aggressive anti-government protests in Ukrainian cities involving confrontations with law enforcement. This resurgence is directly attributed to the historical collaboration between the Organization of Ukrainian Nationalists, under the leadership of Stepan Bandera, and Nazi Germany during the Second World War. The narrative extends to suggest that Ukraine’s denazification efforts following the Second World War were incomplete, implying a need for intervention to cleanse Ukraine of its perceived Nazi influence.

- “Our historical experience says that denazification can only be coercive and forceful, and it can only be carried out from the outside. Actually, this is what has started now. Russia is taking on this work to eradicate Nazism from Europe once again.”⁴¹⁴
- “During the years of independence, aggressive Ukrainian nationalism flourished as a result of Russophobia [Footage is shown of people marching with sticks, bats, and helmets; a rally in front

⁴⁰⁹ News of the Week, 17 September 2023, available at <https://smotrim.ru/video/2683336>, accessed on 30 April 2024, at 01:32:00–01:32:15.

⁴¹⁰ News of the Week, 27 February 2022, available at <https://smotrim.ru/video/2387946>, accessed on 30 April 2024, at 00:30:00–00:31:00.

⁴¹¹ News of the Week, 21 August 2022, available at <https://smotrim.ru/video/2463912>, accessed on 30 April 2024, at 00:39:25–00:40:00.

⁴¹² News of the Week, 9 July 2023, available at <https://smotrim.ru/video/2646558>, accessed on 30 April 2024, at 00:31:00–00:31:20.

⁴¹³ News of the Week, 27 August 2023, available at <https://smotrim.ru/video/2671956>, accessed on 30 April 2024, at 00:41:20–00:41:50.

⁴¹⁴ News of the Week, 27 February 2022, available at <https://smotrim.ru/video/2387946>, accessed on 30 April 2024, at 00:08:20–00:08:50.

of the Russian embassy in Kyiv with cries of "Moskovits, get out of Ukraine" and throwing stones, even by children]. The Russian language began to be openly suppressed [footage of Ukrainian children singing and holding a flag of the Azov Regiment], schools closed, churches attacked, and temples seized [footage of clashes near churches]. Nationalism transformed into Nazism with a cult of strength [footage of torches being lit and a flag with an image of Stepan Bandera, followed by a torchlight procession and cries of "Death to Moskovits"], semi-military units, praise for Hitler's accomplices, and the spread of Nazi symbolism."⁴¹⁵

- "Overall, this is some sort of nationwide obsession. It seems like they've forgotten in Ukraine how much suffering Nazism brought to Ukraine during the Great Patriotic War."⁴¹⁶
- "After all, the incomplete denazification of Soviet Ukraine at the time is now coming back as a problem for us."⁴¹⁷
- "...with the surrender of the main Azov forces, armed nationalism in Ukraine did not end. (...) And there are also those who simply sympathize with the ideas of Nazism."⁴¹⁸
- "Ukraine will have to undergo demilitarization and denazification. These are the official goals of Russia's Special Military Operation. Similar steps were taken by Nazi Germany, which collapsed during the Second World War. History tells us that demilitarization and denazification are only possible through external force, forcibly, and only as a result of the military defeat of the Nazi regime. (...) **The education system in Ukraine needs cleansing**; textbooks glorifying Nazis, collaborators of Hitler during the Second World War, must be banned, and instead, those reflecting anti-fascist values, the values of our common culture, must be created. Just like in Germany, Nazi organizations must be disbanded, Nazi symbols declared illegal, and streets named after Nazis renamed."⁴¹⁹

240. The following statement was made by a speaker hosted by Kiselyov on his show, and explicitly endorsed by the latter: "The newspaper 'Myśl Polska' released an extremely harsh article regarding the political ideology of Ukrainianism upon Zelensky's arrival. We observe the consequences of years of Nazi ideological indoctrination among newcomers [Ukrainians]. The official cult of Stepan Bandera, Roman Shukhevych, and other Nazi collaborators has left an indelible mark on generations of Ukrainians. Ukraine is a territory where denazification is absolutely necessary."⁴²⁰

4) "Ukraine is failed state"

241. Kiselyov characterizes Ukraine as a failed and unnatural state, labeling it a "failed experiment" that has been unable to establish a genuine nation on historically Russian territory during its independence. He suggests that Ukraine has become a tool manipulated by Western countries.

- "Ukraine is disposable material for the United States and Europe. The historical mission of the *Nezalezhnaya* [Nezalezhnaya Ukraina: Independent Ukraine after 1991] is to screw things up for

⁴¹⁵ News of the Week, 13 March 2022, available at <https://smotrim.ru/video/2391643>, accessed on 30 April 2024, at 00:24:30–00:25:05.

⁴¹⁶ News of the Week, 5 November 2023, available at <https://smotrim.ru/video/2709157>, accessed on 30 April 2024, at 01:31:50–01:32:10.

⁴¹⁷ News of the Week, 6 March 2022, unavailable on the Internet and saved in a secure location, at 01:55:20–01:55:30.

⁴¹⁸ News of the Week, 29 May 2022, available at <https://smotrim.ru/video/2417610>, accessed on 30 April 2024, at 00:52:55–00:53:20. The statement was made by a speaker hosted by Kiselyov as part of the speaker's footage.

⁴¹⁹ News of the Week, 6 March 2022, unavailable on the Internet and saved in a secure location, at 01:48:10–01:54:00.

⁴²⁰ News of the Week, 9 April 2023, available at <https://smotrim.ru/video/2597629>, accessed on 30 April 2024, at 00:49:40–00:50:15.

Russia, that's it."⁴²¹

- “And here’s what surprised me in Kyiv back then. People, such as journalists, politicians, businessmen, did not actually understand why a state was needed at all, and what to do with it? Why have such state institutions as the president, parliament, courts, army, press, why even have a flag? All of this was perceived more as decoration, and the real meanings were different. [...] Thus, Ukraine failed to cope with independence.”⁴²²
- “The West not only flooded the country with weapons but also nurtured all sorts of rubbish in people’s heads. People got lost.”⁴²³
- “They lured Ukraine into emptiness, those to whom neither local culture, nor language, nor its economy matter. Under the guise of talks about Ukraine’s European choice, they plunged it into spelaean nationalism.”⁴²⁴
- “Ukraine gained real statehood with the collapse of the USSR in 1991. Before that, the Ukrainian SSR was built inside the USSR by the Soviet authorities using the forces of the entire Soviet Union. Lenin included the east of Ukraine, Stalin included the west, and Khrushchev also attached Crimea from the south. To put it honestly, the structure turned out to be **rather artificial**, not to say **‘unnatural’**. In 1991, without any experience of its own statehood, the **experiment** of independence began. (...) The **experimental state called ‘Ukraine’** squandered all this in a very short historical period.”⁴²⁵
- “...they [Western countries] fostered blatant nationalism in Ukraine under the guise of consciousness and independence. In reality, it all turned into obscurity and the actual loss of statehood, or basically into a national catastrophe.”⁴²⁶

5) *Calls for violence*

242. Kiselyov’s speeches often directly or implicitly call for violence against Ukrainians. For example, in an episode of “News of the Week”, Kiselyov said:

“Our historical experience says that **denazification can only be coercive and forceful**, and it can only be carried out from the outside. Actually, this is what has started now. Russia is taking on this work– to once again eradicate Nazism from Europe.”⁴²⁷

243. In another episode of “News of the Week”, Kiselyov stated:

“A part of the territory has already been **cleansed from the Nazi disease but the**

⁴²¹ News of the Week, 6 March 2022, unavailable on the Internet, saved in a secure location, at 01:40:30–01:40:45.

⁴²² News of the Week, 27 August 2023, available at <https://smotrim.ru/video/2671956>, accessed on 30 April 2024, at 00:39:40–00:41:00.

⁴²³ News of the Week, 24 July 2022, available at <https://smotrim.ru/video/2448900>, accessed on 30 April 2024, at 01:47:30–1:47:50.

⁴²⁴ News of the Week, 27 February 2022, available at <https://smotrim.ru/video/2387946>, accessed on 30 April 2024, at 00:27:45–00:28:10.

⁴²⁵ News of the Week, 27 August 2023, available at <https://smotrim.ru/video/2671956>, accessed on 30 April 2024, at 00:36:10–00:38:25.

⁴²⁶ News of the Week, 26 November 2023, available at <https://smotrim.ru/video/2720204>, accessed on 30 April 2024, at 00:21:00–00:21:40.

⁴²⁷ News of the Week, 27 February 2022, available at <https://smotrim.ru/video/2387946>, accessed on 30 April 2024, at 00:08:20–00:08:50.

battle goes on.⁴²⁸

244. In another episode, Kiselyov affirmed:

“The moratorium on the death penalty may be lifted. It is understood that the upcoming processes implies a swift reform of the judicial system and supplemented laws. Looking at the experience of Germany, Nazi criminals were sifted and divided into four categories based on the severity of their crimes: main criminals, criminals, secondary criminals, and followers. **A specific set of punishments was applicable to each group, ranging from hanging to public office disqualification. Naturally, denazification should touch upon various aspects of Ukrainian life.** Like it actually happened in post-war Germany.”⁴²⁹

245. In another episode of “News of the Week”, he stated:

“It’s clear that everything happening in Ukraine is perceived by us with pain and deep sadness. **It will have to be corrected.** There are no other options. It’s out of control. But it’s us. Nazism doesn’t just disappear on its own. History teaches us that in such a diagnosis, **only the military defeat of the regime and a complete reboot can help.**”⁴³⁰

246. Kiselyov also delivered the following speech before Russian soldiers:

“The West supported a *coup d’état* there. And they decided to replace the genetic root from which Ukraine and our people grew. **They replaced Kyivan Rus’ with Bandera.** They rejected everything good about Russia and the USSR. And **they decided to build a real Nazi state on this basis.** What is Nazism? It means that based on principles of national superiority, it’s believed that one nationality should have schools, while another should not, that one nationality should have land, while another should not. One should have their language, while another should not.”⁴³¹

3. Assessment

a. Intensity of the speech

247. Similarly to Solovyov and Simonyan, Kiselyov’s statements demonstrate a significant level of intensity given his extensive experience and influential position in Russian television. For many years, Kiselyov has been one of Russia’s most recognizable journalists and a host of the most popular informational program “News of the Week” in 2022. His position in the administration of two leading media outlets underscores his exceptional influence in the sphere, with international media describing Kiselyov as Russia’s “chief propagandist”.⁴³²

⁴²⁸ News of the Week, 19 February 2023, available at <https://smotrim.ru/video/2569261>, accessed on 30 April 2024, at 01:03:2– 01:03:35.

⁴²⁹ News of the Week, 6 March 2022, unavailable on the Internet and saved in a secure location, at 01:52:45–01:53:40.

⁴³⁰ News of the Week, 2 July 2023, available at <https://smotrim.ru/video/2642169>, accessed on 30 April 2024, at 01:46:00–01:46:35.

⁴³¹ Meeting with volunteers in the Russian University of Special Forces where volunteer training is conducted, available at <https://ria.ru/20220704/ukraina-1800159374.html>, accessed on 30 April 2024.

⁴³² See, for instance, Financial Times, “*Russia And Its Propagandists Strive for Normality After Wagner Uprising*”, 27 June 2023, available at <https://www.ft.com/content/a6fb9f42-f17b-4d1f-9298-6eb0eed35e86>, accessed on 6 May 2024; Business Insider, “*Photos Appear to Show Putin’s Top Propagandist at 5-star Dubai Resort Hours After Threatening a Nuclear Strike on the UK*”, 3 May 2022, available at <https://www.businessinsider.com/putin-propagandist-dmitry-kiselyov-dubai-resort-photos-after-nuclear-threat-2022-5>, accessed on 6 May 2024.

248. Kiselyov enjoys an extensive presence on Russian television, and has disseminated his propaganda on the leading TV channels for decades. Currently, “News of the Week” is broadcast on the State-owned television channel Russia-1. The episodes are also available across online streaming platforms, securing a broad audience reach potentially estimated in the tens of millions.
249. This factor is reinforced by repetitiveness of Kiselyov’s statements, which strictly follow the broader patterns of Russia’s propaganda, echoing narratives of his colleagues. Their context is directly related to the invasion of Ukraine and the violent actions of the Russian army, which magnifies their potency. In addition, he has been noted for making speeches before Russian military personnel, influencing their perspectives and actions in the conflict.
250. Kiselyov’s involvement in advancing the Russian government agenda did not stay unnoticed beyond Russia. As “a central figure of the government propaganda supporting the deployment of Russian forces in Ukraine”, he was included in the first list of persons subject to individual sanctions imposed by the European Union already in 2014.
251. This underscores Kiselyov’s significant influence over public opinion and discourse within Russian society.

b. Calls for violence

252. Kiselyov’s rhetoric often advocates for violence against the entire civilian population of Ukraine, whom he labels as “Nazis” or “enemies”. He asserts that Ukraine has failed to eliminate Nazism from its midst, instead embracing its ideologies. Consequently, Kiselyov argues for a process of “denazification”, which he contends requires violent measures against the broader population of Ukraine, perceived as indoctrinated with Nazi ideals. Rather than using explicit terms, he euphemistically describes violence as “involuntary cleansing”, “correction” or “reboot” to be administered by an “external force”. Additionally, Kiselyov advocates for the abolition of the moratorium on the death penalty on the occupied territories, proposing the execution of individuals he deems as “Nazis” as part of the denazification policy.

c. Denigration and dehumanization

253. Kiselyov’s denigrating rhetoric focuses on the alleged unity of the Russian and Ukrainian people, and the allegedly failed statehood of Ukraine. According to Kiselyov, Ukrainians and Russians are one people, artificially “divided” by an arbitrarily “drawn” border which “dismembered” Russia after the collapse of the Soviet Union. He openly denies Ukraine’s sovereignty by calling Russia’s war a de-occupation, dismissing the idea of an independent Ukrainian nation as a “myth” and “nonsense”, and referring to Ukraine as an artificially assembled State without an own history of statehood. He furthermore asserts that Ukrainians themselves did initially not know why “a state, state institutions and even flag were needed at all”, perceiving it as “decorations”, and failed to cope with Ukraine’s independence, falling into “spelaean nationalism”.
254. Kiselyov also dehumanizes Ukrainians by portraying them as an enemy indoctrinated with Nazism and trained to inherently hate everything Russian by “ruthless propaganda”. Kiselyov refers to Ukrainians as “lost” and having “rubbish in their heads”, portraying them as mentally deficient or damaged, and asserts that Ukraine is a “nazified” country, where aggressive nationalism turned into ubiquitous Nazism. He also affirms that “Satanism is honored” in Ukraine. As explained earlier, the portrayal of Ukrainians as Nazis is deeply offensive and demonizing within the context of Russian and Ukrainian history. By characterizing the idea of Ukrainian independence as a form of Nazism, Kiselyov effectively dehumanizes Ukrainians, equating their national identity with a state of evil that requires systematic “denazification”.
255. This derogatory language not only diminishes the dignity of Ukrainians but also facilitates violence

against them, as it demonizes them as an immediate threat and justifies aggression. Overall, Kiselyov's rhetoric perpetuates harmful stereotypes and fosters an atmosphere of hostility towards Ukrainians, blurring the distinction between people and the state, violating their right to self-determination and identity.

d. Use of false and distorted narratives

256. Kiselyov's rhetoric heavily relies on the dissemination of false narratives and twisted accounts, often manipulating historical events to frame current situations. These narratives closely resemble those found in the speeches of Solovyov and Simonyan.
257. One of Kiselyov's recurrent themes is his attempt to draw parallels between the current invasion and the liberation of Ukrainian lands during the Second World War. He argues that Ukraine failed to fully denazify itself after the war, elevating figures like Stepan Bandera and Roman Shukhevich as heroes and thereby adopting Nazi ideologies. Consequently, he systematically equates modern Ukrainians with "Germans", alleging their praise of "Hitler accomplices" and the massive indoctrination of Nazi ideology among the population.
258. The educational system attracts particular attention in Kiselyov's narratives. He argues that Ukrainian schools and the state propaganda in general for many years instilled a "reflex level" hatred for Russian in an entire generation of Ukrainians, who now perceive even killings of Russians as normal. He portrays Ukraine as inherently "anti-Russia" and characterized by a "cult of strength", citing alleged persecutions of Russians, suppression of the Russian language, school closures, and attacks on Russian churches.
259. Another narrative advanced by Kiselyov is the notion that Russians and Ukrainians are historically one nation, dismissing the sovereignty of Ukraine and labeling independent Ukrainians as a "myth" and "nonsense". He contends that Kyiv has no historical ties to Ukraine, asserting it as "the mother of Russian cities". Ukrainians, according to Kiselyov, have been deceived into believing in that "myth" of Ukrainian identity, that is "Ukrainianism", which he equates with Nazism.
260. The above narratives collectively paint Ukraine and its people as followers of Nazism and dangerous enemies of Russia. Kiselyov's rhetoric denies the right of the Ukrainian people to self-determination, fosters a hostile atmosphere, justifying the invasion and legitimizing violence against them, including civilians.

e. Choice of language

261. Kiselyov's rhetoric may, at first, appear less inflammatory, vulgar and engaged and more sophisticated than that of Solovyov and Simonyan. Likewise, his calmer intonations and gestures may appear more rational, balanced and thus professional to the viewers, creating a false impression of objectivity. Yet, as demonstrated above, Kiselyov's speech is replete with denigrating metaphors and neologisms portraying Ukrainians as manipulated, Nazis, or russophobes. Additionally, Kiselyov uses technical terms like "nazification", as a counterpart to the widely used expression "denazification", and "derussification", a term aiming to stress the alleged systematic abolition of everything perceived as Russian in Ukraine.
262. In addition to his own statements, Kiselyov, as a TV host, also offers a platform to other invited speakers, whose radical, denigrating statements towards Ukrainians he explicitly and implicitly endorses. As part of his program, Kiselyov also shows pre-selected documentary-style videos promoting false narratives about Ukrainians and Ukraine, which must be considered to align with his personal views, and which gain nationwide visibility. It is submitted that orchestrating shows and soliciting speakers and videos encompassing hate speech, especially if such statements are explicitly or implicitly endorsed

by a speaker, should be regarded as a persecutory act in itself.

D. Dmitry Medvedev

1. Background

263. Dmitry Medvedev (*Дмитрий Анатольевич Медведев*), born in 1965, is a Russian politician and State official. As a former President (2008–2012) and Prime Minister (2012–2020) of the Russian Federation, Medvedev is a particularly well-known and outspoken politician and a loyal and close confidant of Vladimir Putin.

264. Since 2020, Medvedev has served as Deputy Chairman of the Security Council of the Russian Federation, a constitutional body composed of top Russian State officials that consults the President on matters of national security. Additionally, in December 2022, Vladimir Putin appointed him first Deputy Chairman of the Russian Military-Industrial Commission, a body which oversees the production of weapons and is headed by Putin himself.⁴³³ Since 2012, Medvedev formally heads the ruling political party “United Russia”, although Vladimir Putin is perceived as the *de facto* leader of the party.

265. Especially since Russia’s full-scale invasion of Ukraine, Medvedev earned the reputation of a nationalist and provocative hardliner. Interviews with and statements made by Medvedev are widely disseminated in various Russian State-owned and State-backed media, including the Russian State-owned news agencies TASS and RIA Novosti. Medvedev also regularly gives speeches at public events, which are broadcast by different media. Additionally, Medvedev disseminates his statements through his Russian-speaking Telegram channel, as well as through his English-speaking X (formerly Twitter) account. On both platforms, he currently reaches over 1,3 million followers.

2. Medvedev’s propaganda narratives and criminal acts

266. Medvedev’s speech crimes are mostly embedded in the following three narratives:

- 1) Asserting that Russians and Ukrainians are one people, Medvedev affirms that there is and should be no sovereign Ukrainian State; instead, Ukraine should be, as it is historically, a part of Russia;
- 2) Affirming that the Ukrainian leadership and ordinary Ukrainians are Nazis, and that Ukraine must be ‘denazified’;
- 3) Asserting that Ukrainians feel hatred towards Russians and everything Russian.
- 4) In addition, Medvedev routinely calls for violence against Ukrainians or endorses violent practices carried out in Ukraine.

Each of these narratives along with the respective statements is examined below.

1) “Russians and Ukrainians are one people”, “Ukraine does not exist”

267. Medvedev regularly asserts that Russians and Ukrainians are one people. In line with this, he affirms that there is no sovereign Ukrainian State, but that Ukraine is an artificial, failed construct that emerged only recently, after the collapse of the Soviet Union, on lands historically belonging to Russia, which makes Ukraine a part of Russia.

⁴³³ Meduza, “*Putin Creates New Position for Medvedev, Appointing Him First Deputy Chairman of the Military-Industrial Commission*”, 26 December 2022, available at <https://meduza.io/en/news/2022/12/26/putin-creates-new-position-for-medvedev-appointing-him-first-deputy-chairman-of-the-military-industrial-commission>, accessed on 4 May 2024.

- “I assume that in general, **Russians and Ukrainians are one people**. They are **not two brotherly peoples**. It was only in the 20th century, after the collapse of the Union of Soviet Socialist Republics, that they started talking about that. **They are one people**.”⁴³⁴
- “[One feels] Contempt towards the Western countries that maniacally, tempestuously, in every possible way pushed the peoples of Russia and Ukraine (or rather, **the united Russian people**) into a new civil war.”⁴³⁵
- “What are we fighting for? Russia is a huge and rich country. We don’t need foreign territories, we have plenty of everything. But there is our land, which is sacred to us, where our ancestors lived and where our people live today. And we will not give it to anyone. We defend our people. We are fighting for all our own, for our land, for our thousand-year history. Who is fighting against us? We are fighting against those who hate us, who forbid our language, our values and even our faith, who plant hatred for the history of our Fatherland. Against us today is part of a dying world. It is a bunch of mad Nazi drug addicts, the people stupefied and intimidated by them and a big pack of barking dogs from the Western kennel. (...) The goal is to stop the supreme ruler of hell, whatever name he uses – Satan, Lucifer or Iblis.”⁴³⁶
- “Ukraine is NOT a country, but artificially assembled territories.”⁴³⁷
- “Whoever is at the helm of the **cancerous neoplasm called Ukraine, it will not add legitimacy to his rule and to the legal standing of the ‘country’ itself**.”⁴³⁸
- “Not only that, **but Ukraine is a part of Russia, let’s be honest, it is a part of Russia**, but due to geopolitical reasons and due to the history of what happened, we put up with the fact that we live in different apartments for a long time, we have to reckon these made-up borders, **territories that have always been a part of not just the Russian Empire, it was all the Russian Empire**.”⁴³⁹
- “All because deep-rooted Ukrainianness, fueled by anti-Russian venom and all-consuming lies about its identity, is and has been **one big fake. This phenomenon never existed in history. And it does not exist now**. (...) Instead of being proud of the joint achievements of their ancestors, **since 1991** [the year of Ukraine’s independence from the Soviet Union], **a pseudo-history of Ukrainian statehood has been written on the fly**: the generational connection between Kyivan Rus’ and the lands of Novgorod, Pskov and the Principality of Vladimir-Suzdal was ‘cut’. **For the sake of a mythical ‘history of Ukraine’ of the 14th-17th centuries, the idea of a united Russian nation was destroyed**.”⁴⁴⁰
- “The Russian president has explained to the Western world in the most thorough and detailed way possible **why there was, is and will be no Ukraine**.”⁴⁴¹

⁴³⁴ TASS, “*Medvedev Said That Ukrainians and Russians Are Not Brotherly Peoples, But One People*”, 22 February 2024, available at <https://tass.ru/obschestvo/20055601>, accessed on 5 May 2024.

⁴³⁵ Telegram post, 9 February 2024, available at https://t.me/medvedev_telegram/444, accessed on 5 May 2024.

⁴³⁶ Telegram post, 4 November 2022, available at t.me/medvedev_telegram/206, accessed on 5 May 2024.

⁴³⁷ Telegram post, 12 November 2023, available at https://t.me/medvedev_telegram/411, accessed on 14 April 2024.

⁴³⁸ Telegram post, 17 January 2024, available at https://t.me/medvedev_telegram/437, accessed on 14 April 2024.

⁴³⁹ Interview with Russian journalists and users of the social media platform VKontakte on 23 March 2023, available at https://vk.com/video53083705_456239529, last accessed on 30 April 2024, at 00:02:40–00:03:30.

⁴⁴⁰ Telegram post, 5 April 2022, available at https://t.me/medvedev_telegram/34, accessed on 30 April 2024.

⁴⁴¹ Telegram post, 9 February 2024, available at https://t.me/medvedev_telegram/444, accessed on 30 April 2024.

- “The enlightened world has once again shuddered to learn about the allocation of tens of meaningless billions of dollars for the zombies from **Country 404**.”⁴⁴²
- “We need to stop the enemy and then launch an offensive. Today, the goal [of the offensive] is not only to liberate our lands and protect our people. Its goal is the complete overthrow of the Nazi Kyiv regime that has entrenched itself in **Country 404**.”⁴⁴³
- “I was wondering, given the vast geographical knowledge of Americans, do they even know the exact location of **Country 404**?”⁴⁴⁴
- “Ukraine is the Land of Sannikov [a phantom island located in the Arctic Ocean], it was founded by Lenin. It existed for a short time and disappeared from the map. There is no such land. No matter what they think in the West and in the occupied Russian city of Kyiv.”⁴⁴⁵
- “One must admit that Odesa, Mykolaiv, Kyiv, and practically everything else is not Ukraine at all.”⁴⁴⁶
- “It’s not just a bankrupt country, it’s a foreign-controlled country in its entirety, it’s a failed state...”⁴⁴⁷

2) “Ukrainians are Nazis”

- “The passionate part of Ukrainians has been praying to the Third Reich for the last 30 years.”⁴⁴⁸
- “Our main task is quite different: to defeat all our enemies – the Ukronazis, the United States of America, their NATO henchmen, including disgusting Poland, and other Western scum. We must finally regain all our lands. Forever protect all our people.”⁴⁴⁹
- “Although they [Russians in exile] apparently consider all those who are now fighting against or at least advocating victory over Ukrainian Nazism to be lower-class people, incapable of subtle emotions and adequate perception of life.”⁴⁵⁰
- “It is our duty to remember history and be worthy of this heroic feat [the victory over Nazi Germany leading to the end of the siege of Leningrad]. We won then, and we will defeat the Nazis today!”⁴⁵¹
- “Therefore, the operation must continue until the results of the demilitarization and denazification of Ukraine are achieved – as it was conceived by the president of the country, as it was decided.”⁴⁵²

⁴⁴² Telegram post, 11 August 2023, available at https://t.me/s/medvedev_telegram?before=372, accessed on 30 April 2024. ; “**Country 404**” refers to Ukraine as a failed country, drawing from the “404 Not Found” internet error to imply it is effectively nonexistent or dysfunctional.

⁴⁴³ Telegram post, 7 June 2023, available at https://t.me/medvedev_telegram/335, accessed on 5 May 2024.

⁴⁴⁴ Telegram post, 12 October 2022, available at https://t.me/medvedev_telegram/193, accessed on 5 May 2024.

⁴⁴⁵ Telegram post, 2 July 2023, available at https://t.me/medvedev_telegram/346, accessed on 5 May 2024.

⁴⁴⁶ Telegram post, 12 November 2023, available at https://t.me/medvedev_telegram/411, accessed on 30 April 2024.

⁴⁴⁷ Interview with Russian journalists and users of the social media platform VKontakte on 23 March 2023, available at https://vk.com/video53083705_456239529, accessed on 30 April 2024, at 01:21:05–01:21:30.

⁴⁴⁸ Telegram post, 5 April 2022, available at https://t.me/medvedev_telegram/34, accessed on 30 April 2024.

⁴⁴⁹ Telegram post, 1 May 2023, available at https://t.me/medvedev_telegram/318, accessed on 5 May 2024.

⁴⁵⁰ Telegram post, 28 December 2022, available at https://t.me/medvedev_telegram/239, accessed on 5 May 2024.

⁴⁵¹ TASS, “*We Won Then, We Will Defeat the Nazis Today As Well.*” Medvedev urged to remember the heroes of the blockade”, 18 January 2023, available at <https://tass.ru/obschestvo/16825071>, accessed on 5 May 2024.

⁴⁵² RIA Novosti, “*Medvedev: ‘The Unipolar World Is Over, The US Is No Longer The Master of Planet Earth’*”, 26 March 2022, available at <https://ria.ru/20220326/medvedev-1780208448.html>, accessed on 5 May 2024.

- “Therefore, strikes on civilian targets [launched by Ukraine’s Armed Forces into Russian territory] are also acceptable to the Nazis and the population recruited by them. Many *Ukroimbeciles* [Ukrainian imbeciles] are genuinely happy about them.”⁴⁵³

3) “Ukrainians hate Russians”

- “That’s why Ukraine’s existence is fatal to Ukrainians. They are practical people in the long run. As much as they now wish death on the Russians. [...] Choosing between perpetual war and inevitable death and life, the vast majority of Ukrainians (well, except for a minimal number of thuggish nationalists) will ultimately choose life. They will realize that life in a big common state, which they don’t like much now, is better than death. Their death and the death of their loved ones. And the sooner Ukrainians will realize this, the better.”⁴⁵⁴
- “The second goal is to destroy the militarist machine and to denazify these regions so that there are no nationalists there who promote absolutely anti-Russian, russophobic narratives, trying to pit Russia and Ukraine against one another.”⁴⁵⁵

4) *Calls for violence*

- “But we must not stop until the current inherently terrorist Ukrainian state is completely dismantled. **It must be destroyed to the ground. Or rather, so that not even ashes of it remain.** So that this abomination can never, under any circumstances, be revived.”⁴⁵⁶
- “The special military operation will continue until the **complete annihilation of the Nazi regime in Kyiv** and the liberation of the original Russian territories from the enemy.”⁴⁵⁷
- “I have said this many times, the current Ukrainian state is dangerous for the Ukrainians themselves. And for them this choice looks like this: **either life in a normal common state with Russia (or at least something close to a common state), or endless war.** They have to make this choice for themselves.”⁴⁵⁸
- “**The existence of Ukraine is mortally dangerous for Ukrainians.** And I do not mean only the current state, the Banderite political regime. I am talking about any, absolutely any Ukraine. Why? The presence of an independent state on historically Russian territories will now be a constant reason for the resumption of hostilities. It’s too late. Whoever is at the helm of **the cancerous neoplasm called Ukraine, it will not add legitimacy to his rule and to the legal standing of the ‘country’ itself.** And, therefore, the likelihood of a new fight will remain indefinitely. Practically always. (...) This is why Ukraine’s existence is fatal to Ukrainians. They are practical people after all. As much as they now wish death on the Russians. [...] **Choosing between eternal war and inevitable death and life, the absolute majority of Ukrainians (well, except for a minimal number of thuggish nationalists) will ultimately choose life. They will realize that life in a big common state, which they do not love much now, is better than death.**

⁴⁵³ Telegram post, 24 July 2023, available at https://t.me/medvedev_telegram/359, accessed on 5 May 2024.

⁴⁵⁴ Telegram post, 17 January 2024, available at https://t.me/medvedev_telegram/437, accessed on 13 April 2024.

⁴⁵⁵ Interview with Al Jazeera bureau in Russia, 3 June 2022, available at https://vk.com/video53083705_456239469, accessed on 30 April 2024, at 00:06:25–00:07:00.

⁴⁵⁶ Telegram post, 19 August 2023, available at https://t.me/medvedev_telegram/376, accessed on 14 April 2024.

⁴⁵⁷ Telegram post, 30 September 2023, available at t.me/medvedev_telegram/390, accessed on 5 May 2024.

⁴⁵⁸ Komsomolskaya Pravda, “Dmitry Medvedev – *On The Fate of The SMO, Camps For Saboteurs Against Russia And World War III. Big Interview*”, 22 February 2024, available at https://www.youtube.com/watch?v=v9J_iPIusAw, last accessed on 30 April 2024, [00:14:00 - 00:14:40].

Their death and the death of their loved ones. And the sooner Ukrainians realize this, the better”.⁴⁵⁹

- “I recently wrote about why Ukraine will disappear. **Now it’s time to say how Ukraine will disappear...**”⁴⁶⁰
- “If these are people who are harmful to Russia, they must be exposed and punished, sent to Siberia, just like that, for re-education, to corrective labor camps.”⁴⁶¹
- “And we need to choose unconventional targets for our strikes. Not just storage facilities, energy hubs and oil bases. There are other places where they’re not expecting us yet. And where the effect will be very significant.”⁴⁶²
- “Therefore, the operation must continue until the results of the demilitarization and denazification of Ukraine are achieved – as it was conceived by the president of the country, as it was decided.”⁴⁶³
- On 12 June 2023, Medvedev shared an image showing the Maidan Nezalezhnosti (Independence Square in Kyiv) on his Telegram channel. A raised Russian flag is photoshopped into the picture, and the inscription reads “Happy Russia Day!”, with the caption of the image adding: “Independence Square. Soon – Russia Square.”⁴⁶⁴

3. Assessment

a. Intensity of the speech

268. The context of Medvedev’s speeches must be considered particularly grave. He currently serves as Deputy Chairman of Russia’s Security Council, a key body at the federal level that consults the Russian President on national security affairs, and is not only a top official within the Russian State, but is also widely known to be a member of Vladimir Putin’s inner circle. Several States introduced personal sanctions against Medvedev, including Ukraine, the United States of America, the European Union, the United Kingdom, Canada, Japan, Australia and New Zealand.⁴⁶⁵

269. As former Russian President and Prime Minister, Medvedev is one of the best-known and recognizable Russian politicians. In particular, his speeches following Russia’s full-scale invasion of Ukraine earned him a reputation as a prominent pro-Kremlin hardliner and rigorous supporter of Russia’s war against Ukraine. His statements are widely disseminated by top State-owned and State-backed media, as well as in foreign press. Additionally, on the social media platforms Telegram and X (formerly Twitter), over 1,3 million subscribers are subscribed to Medvedev’s channels. He thereby ranks fifth among the most subscribed Russian political Telegram channels.⁴⁶⁶

⁴⁵⁹ Telegram post, 17 January 2024, available at https://t.me/medvedev_telegram/437, accessed on 13 April 2024.

⁴⁶⁰ Telegram post, 25 May 2023, available at https://t.me/medvedev_telegram/330, accessed on 13 April 2024.

⁴⁶¹ Komsomolskaya Pravda, *supra* note 458, at 00:52:10–00:52:40.

⁴⁶² Telegram post, 24 July 2023, available at https://t.me/medvedev_telegram/359, last accessed on 30 April 2024.

⁴⁶³ RIA Novosti, “*Medvedev: The Unipolar World Is Over, The US Is No Longer The Master of Planet Earth*”, 26 March 2022, available at <https://ria.ru/20220326/medvedev-1780208448.html>, accessed on 5 May 2024.

⁴⁶⁴ Telegram post, 12 June 2023, available at https://t.me/medvedev_telegram/337, accessed on 5 May 2024.

⁴⁶⁵ US Department of the Treasury, “*U.S. Treasury Escalates Sanctions on Russia for Its Atrocities in Ukraine*”, 6 April 2022, available at <https://home.treasury.gov/news/press-releases/jy0705>, accessed on 5 May 2024.

⁴⁶⁶ Statista Research Department, “*Leading political Telegram Channels in Russia as of February 1, 2024, By Number of Subscribers*”, available at <https://www.statista.com/statistics/1342604/most-followed-political-telegram-channels-russia/>, accessed on 4 May 2024.

b. Calls for violence

270. In his statements, Medvedev regularly calls for violence against Ukrainians, and aggressively advocates for the continuation of the Russian war against Ukraine “until the current inherently terrorist Ukrainian state is completely dismantled”, “destroyed to the ground”, and until Ukraine is “demilitarized” and “denazified”. Medvedev justifies Russia’s ongoing invasion and occupation of Ukrainian territories as “regaining all [of Russia’s] lands”, stressing that Ukraine must either surrender and be absorbed by Russia, or Russia will continue its “endless war” leading to the death of Ukrainians. Fundamentally denying Ukraine’s right to exist, Medvedev blames the responsibility for the Russian full-scale invasion on Ukraine, and foreshadows further violence, emphasizing that until Ukraine exists, “the likelihood of a new fight will remain” practically always.
271. Medvedev also urged to expose and punish Ukrainians in the territories occupied by Russia who “harm” Russia by sending them to Siberia for reeducation and forced labor. This statement is reminiscent of the Stalinist-era purges and foreshadows politically motivated prosecution and punishment of Ukrainian citizens in the territories under Russian control.

c. Denigrating and dehumanizing language

272. In his statements, Medvedev uses dehumanizing and demonizing language, referring to Ukrainians as a people “praying to the Third Reich”, “zombies” “drugged and intimidated” by a “bunch of mad Nazi drug addicts”. Furthermore, Medvedev uses denigrating expressions, such as “Ukroimbeciles”, a neologism consisting of the words “Ukrainian” and “imbecile”. In colloquial Russian language, but also in modern Russian psychiatric literature, the latter is still used as a medical term designating a person with significant intellectual disabilities, despite the ableist character of the word.
273. Furthermore, Medvedev explicitly denies the distinct identity of Ukrainians, stating that Russians and Ukrainians form “one” or “the united Russian people”. In particular, he calls Ukraine a “fake” and “failed” State, an artificial construct with an invented “pseudo-history”, and a “cancerous neoplasm” that unlawfully claims and occupies “historically Russian land”. He also repeatedly calls Ukraine “Country 404”, a reference to the error message “404 Not Found”, a standard response code generated if a computer server is not able to find an Internet website requested by a user. Thus, according to Medvedev, the Ukrainian State does not exist at all. He also refers to Ukraine as the “Land of Sannikov”, a non-existent phantom island in the Arctic Ocean, named after Yakov Sannikov, who claimed to have seen the island during his expedition. This narrative blurs the distinction between the state of Ukraine and its people, and by questioning Ukraine’s right to exist, Medvedev denigrates Ukrainians and denies their right to self-determination.

d. Use of false and distorted narratives

274. As described above, the narratives deliberately used by Medvedev, including the denial of a distinct Ukrainian State and a Ukrainian identity, as well as the portrayal of the Ukrainian government as Nazis, constitute false narratives. In addition, Medvedev victimizes Russians by presenting them as the object of the irrational hatred of Ukrainians, who allegedly hate Russians, persecute them, and wish them death.

e. Choice of language

275. In his interviews and publications on social media platforms, Medvedev consistently uses graphic, euphemistic and inflammatory language. He regularly calls for violent actions, including referring to the “complete annihilation” and destruction of Ukraine “to the ground”. He also uses derogatory neologisms, such as “Ukronazis” and “Ukroimbeciles”, as well as absurd references to technology and popular culture, such as “Country 404”.

E. Sergey Mardan

1. Background

276. Sergey Klyuchenkov (*Сергей Александрович Ключенков*), widely known under pseudonyms Sergey Mardan (Сергей Мардан) as well as Sergey Leleka (Сергей Лелека), born in 1969, is a famous journalist working in Komsomolskaya Pravda, one of the leading Russian newspapers.⁴⁶⁷ Since the onset of the invasion in Ukraine, Mardan has authored no fewer than 44 articles dedicated to the invasion in Ukraine or Russian foreign policy.⁴⁶⁸

277. In addition, from 2019 to 30 November 2022, Mardan hosted a radio show called “Morning Mardan” on Komsomolskaya pravda station airing every weekday for approximately 2 hours. The program was also streamed in video format on Internet platforms like Youtube and Vkontakte. Currently, he collaborates closely with Solovyov and hosts another show, “Mardan Live” on “Solovyov Live” (para. 178) channel, which airs from Monday to Friday for about 1.5 hours on average. Both shows feature Mardan’s monologues and guest interviews, focusing on topics related to the war in Ukraine and Russia’s broader foreign policy issues.

278. Furthermore, Mardan manages the popular Telegram channel “MARDAN”, where he reached over 240 000 subscribers⁴⁶⁹. There, he shares multiple posts daily covering similar themes discussed in his shows.

2. Mardan’s propaganda narratives and criminal acts

279. Mardan disseminates two primary narratives:

- 1) The distinct Ukrainian nation does not exist. Those residing in Ukraine are, in fact, ethnically Russian but have been manipulated into adopting a Ukrainian identity, primarily due to their political stance opposing Russia;
- 2) Building upon the first narrative, Ukraine’s existence is considered impossible, as it represents a fascist and Satanic entity;
- 3) In addition, Mardan routinely calls for violence against Ukrainians or endorses violent practices carried out in Ukraine.

Each of these narratives along with the respective statements are examined below.

1) “Ukrainian nation does not exist”

280. Mardan’s speech primarily targets individuals living in Ukraine who he claims are ethnically Russian but only identify as Ukrainian. These individuals express support for Ukrainian government policies and oppose the military actions of the Russian authorities. He refers to these individuals as “political Ukrainians” and labels the overall phenomenon as “political Ukrainianness”.

- “... people who are hostile to the Russian state, the Russian people, are essentially hostile to the Russian people as a whole. This is the essence of political Ukrainianness...”⁴⁷⁰
- “For me, people who choose political Ukrainianness are intellectually deficient. You cannot exchange the great Russian history, you cannot exchange the Russian identity [...] for something

⁴⁶⁷ Medialogia, Rating of Media Outlets in 2024, available at <https://www.mlg.ru/ratings/>, accessed on 26 May 2024.

⁴⁶⁸ Publications by Mardan in Komsomolskaya Pravda, available at <https://www.msk.kp.ru/daily/author/829679/>, accessed on 29 May 2024.

⁴⁶⁹ “MARDAN” Telegram channel, available at <https://t.me/mardanaka>, accessed on 25 May 2024.

⁴⁷⁰ Morning Mardan, 12 April 2022, available at <https://rutube.ru/video/9ed01543f6f0e0fd0301c5efe474c955/>, accessed on 30 April 2024, at 01:11:40–01:12:00.

completely meaningless, fake, fabricated out of thin air [...] these are people with damaged brains.”⁴⁷¹

- “Ukrainianness as an ideology encompasses any political, religious, or national ideas united by only one shared characteristic – hatred towards Russians and, accordingly, towards Russia as the state of Russians.”⁴⁷²
- “Ukrainians are Ukrainians, and political *khokbols* are political *khokbols*.⁴⁷³ People who position themselves as political Ukrainians, as supporters of the Ukrainian state, they are *khokbols*, they are enemies.”⁴⁷⁴
- “Before, you were Russians, you were part of Russia, and then suddenly they told you that you are Ukrainians, and you invented an obscene, deceitful, ridiculous myth for yourselves, which you continue to believe in even after 24 February.”⁴⁷⁵
- “Who is a Ukrainian, I suddenly understood. **A Ukrainian is a sick Russian. It’s like a transvestite, he was born a man, then something happened to him, he had an operation and became a woman.** He puts on a dress, a wig, puts on lipstick, and walks around the city like that. [...] **So, a Ukrainian is a Russian spiritual transvestite, trying to fit into another skin.** It’s always interesting to figure out when they switched from being a healthy Russian, a southern Russian person, to absolute schizophrenia. **The future of Ukraine is the Russian people who will return to their normal state [...] from madness, spiritual transvestism, to the normal state.**”⁴⁷⁶
- “A Russian person, torn away from the Russian culture, a Russian person, ripped out of the context of the Russian state, goes wild, turns into scum, yes. A political Ukrainian is a Russian gone wild.”⁴⁷⁷

2) “Ukraine must be destroyed”

281. Mardan expands the above narrative to assert that the Ukrainian state itself is illegitimate and dangerous. He characterizes Ukraine as a fraudulent, diabolical and fascist entity, devoid of any genuine existence and threatening the well-being of the region. He advocates for the destruction of Ukraine, viewing it as a necessary step towards restoring what he perceives as the rightful regional order.

- **“Ukraine is a fascist, criminal state whose official ideology is hatred for the Russian people. That is why the Ukrainian state must be completely destroyed,** and political

⁴⁷¹ Morning Mardan, 8 August 2022, available at <https://rutube.ru/video/4f0457aebc2b305fb9b3ae47b61ca933/>, accessed on 30 April 2024, at 00:30:30–00:31:00.

⁴⁷² Morning Mardan, 12 April 2022, available at <https://rutube.ru/video/9ed01543f6f0e0fd0301c5efe474c955/>, accessed on 30 April 2024, at 01:06:15–01:06:30.

⁴⁷³ Derogatory slur for Ukrainians.

⁴⁷⁴ Morning Mardan, 19 August 2022, available at <https://rutube.ru/video/0623e92887976c4df9bed390ce64a100/>, accessed on 30 April 2024, at 00:45:15–00:45:40.

⁴⁷⁵ Morning Mardan, 25 February 2022, available at <https://www.youtube.com/watch?v=N0FH2yy5KRw>, accessed on 30 April 2024, at 00:49:25–00:50:00.

⁴⁷⁶ This statement was made by late Vladlen Tatarsky, a popular Russian war blogger, in his interview given to Mardan. While it cannot be directly attributed to Mardan, he can be said to have endorsed it given the fact that nodded and smiled in approval of this statement. In addition, it is important for context related purposes. Mardan Live, 22 October 2022, available at <https://smotrim.ru/video/2499997>, accessed on 30 April 2024, at 00:40:40–00:42:10.

⁴⁷⁷ Mardan Live, 17 November 2023, available at <https://smotrim.ru/video/2715926>, accessed on 30 April 2024, at 00:14:50–00:15:20.

Ukrainianness must be banned.”⁴⁷⁸

- “In my view, **the denazification of Ukraine means completely destroying the Ukrainian state to its foundation.** In the future, any manifestation of Ukrainian patriotism, whether political or even geographical, should be a punishable crime.”⁴⁷⁹
- “Russia consistently defends its traditional values, whether cultural, religious or moral, and this is where the confidence in the righteousness of our cause lies. **Ukraine has turned into a huge sect with religious and mental deviations, which will inevitably be destroyed.**”⁴⁸⁰
- “[...] this gangrene will continue to fester. **Ukrainian statehood is real gangrene, a diseased limb that needs to be severed [...].** And it seems to me, considering the scale of the threat Russia faces now, on 9 November 2022, the threat to Russia itself, to the Russian state, to the Russian people is so great that nothing like this has happened for decades. It’s hard to understand what comes next. [...] **you can’t negotiate with scoundrels, negotiate with villains, negotiate with enemies, it’s just impossible.** Especially if you have what’s called existential contradictions with the enemy. Translated into Russian, existential contradictions mean the following: either he kills you, or you kill him. **So either we destroy the Ukrainian state, erase it from the map of Europe, or Russia as a state will be erased from the map of Europe, and that’s exactly what the setting looks like.**”⁴⁸¹
- “**But with Ukraine, it’s a special case. Why is it such an incredibly ugly, venomous, toxic homunculus? Because this monster, invented, fantasized, created simply as a result of some fantastic, twisted intellectual effort by several generations of complex-ridden, meaningless, empty people...** Because it’s essentially an empty place. This homunculus claims to be a European country, a European culture. [...] All of Ukraine is an example, a symbol of a completely hopeless, monstrous dead end. And, generally speaking, talking about it for so long would be stupid if it weren’t sometimes horribly sad that millions of actual Russian people have been driven into this dead end. [...] During the Civil War, the fabric of the state was torn apart and thousands of gangs, murderers, bandits, rapists roamed there. Most of them, of course, burned in the flames of this war, destroyed by the new, newly born state as a separate force. But what did this wild Russia look like in 1918–1919? This very wild scum, losing its human form, gouging out the eyes of horses in noble estates and crucifying metropolitans on the royal gates of cathedrals. That’s what Ukraine is...”⁴⁸²

3) Explicit or implicit calls for violence against Ukrainians

282. Mardan regularly advocates for violence against Ukrainians, including the civilian population, with exceptional clarity. In an episode of Morning Mardan, he stated:

“What solution seems obvious to me? I’ve wanted to talk about this for a long time. Firstly, **real terror must be declared against the people conducting these operations, pure terror. Demonstrative, vivid, utterly horrifying.** Any Ukrainian patriot remaining in these areas, indulging in wet dreams about the return

⁴⁷⁸ Telegram post, 21 May 2022, available at <https://t.me/mardanaka/9232>, accessed on 30 April 2024.

⁴⁷⁹ Morning Mardan, 16 September 2022, available at <https://rutube.ru/video/b04cf9329c3273bfaf6bc9ceb9bfcfd4/>, accessed on 30 April 2024, at 00:21:10–00:22:00.

⁴⁸⁰ Telegram post, 3 December 2022, available at <https://t.me/mardanaka/12127>, accessed on 30 April 2024.

⁴⁸¹ Morning Mardan, 9 November 2022, available at <https://rutube.ru/video/508720d006d403491bdcef22f6691fc4/>, accessed on 30 April 2024, at 00:53:00–00:55:30.

⁴⁸² Mardan Live, 17 November 2023, available at <https://smotrim.ru/video/2715926>, accessed on 30 April 2024, at 00:12:00–00:16:30.

of the Ukrainian state, anyone showing any form of disloyalty to Russia and the Russian army, they should all receive the full treatment for the slightest display of disloyalty. Put a yellow and blue ribbon on your car, or, I don't know, **wear a Ukrainian flag on your jacket – you get a rifle butt to the teeth. Mutter something against a Russian soldier, even if it's incomprehensible – straight to the van and the basement. And if by some chance you decide to pass on information about the movement of the Russian army, whoever you are, no matter how old you are – [you're in for it].** And there's military counterintelligence for that, which shouldn't be bothering with trials and investigations during combat operations and should act according to the laws of wartime. That's what should happen to all the collaborators of the Kyiv regime in the liberated territories. And maximum publicity. Everyone should know that Russia isn't just here forever, but it's a strong, solid power, a real machine built by our grandfathers and great-grandfathers over a thousand years. You might like it, you might not, but if it comes, it's for good. And if you don't like it, leave for Poland immediately.”⁴⁸³

283. Mardan persistently calls for killings, violence and expulsions of Ukrainians:

“We are warriors of Light. They are an army of darkness. Since they are Satanists, **the most correct thing would be to burn them alive.** The inquisitors were not fools.”⁴⁸⁴

“[About Ukrainian teachers in the Russian-occupied territories who do not support the Russian occupation] Take away their credit cards that they get money on and make them gobble them up. **Evict them from their apartments.** Something in the spirit of our good old Gulag. They're waiting for the Gulag, so give them the Gulag. **Why not organize a small local Zaporizhzhia Gulag, neat, in the steppe under the scorching sun. For teachers who have not yet learned to love our beautiful homeland.**”⁴⁸⁵

“Those who do not want to be Russian, those who have chosen to be Ukrainians, well, so be it. **Everyone must pay for their choices.**”⁴⁸⁶

284. In another Telegram post, Mardan stated:

“**Ukrainianness as a system must be completely eradicated in the liberated territories.** Full and total **de-Ukrainization.** From the removal of signs in Ukrainian to the prohibition of the Ukrainian language in secondary schools. Any attempt to speak Ukrainian should be regarded as disloyalty (what else?) and result in the speaker being given a one-way ticket and banned from any profession except cashier in a supermarket. And that's how they will be taught to speak without an accent, saying

⁴⁸³ Morning Mardan, 8 September 2022, available at <https://rutube.ru/video/71ab37de64d34f167c4b69cbd7fff432/>, accessed on 30 April 2024, at 01:03:20–01:05:40.

⁴⁸⁴ Telegram post, 21 May 2022, available at <https://t.me/mardanaka/9233>, accessed on 30 April 2024.

⁴⁸⁵ Radio Komsomolskaya Pravda, 6 August 2022, video excerpt available at <https://novayagazeta.eu/articles/2022/08/06/zhurnalists-kp-predlozhit-ustroit-gulag-dlia-ukrainskikh-uchitelei-otkazivaiushchikhsia-sotrudnicat-s-rossiei-news>, accessed on 5 June 2024.

⁴⁸⁶ Morning Mardan, 25 February 2022, available at <https://www.youtube.com/watch?v=N0FH2yy5KRw>, accessed on 30 April 2024, at 00:04:00–00:04:30.

"Hello and all the best to you." Without any fricative "g"⁴⁸⁷. If they want to eat, they will speak like a native resident of Yaroslavl. And Shevchenko's monuments should also be thrown into the dump."⁴⁸⁸

285. In other episodes of "Morning Mardan", Mardan stated:

"Some have yet to realize, some still spare our feelings, some still worry that God forbid, we haven't yet decided for ourselves that this entity that emerged on the world map in 1991 under the name "the state of Ukraine" is a chimera that must be erased from that map. **And people who identify themselves as patriots of this chimera are degenerates. People who fight for it are criminals.** Well, each of them individually may be normal, many of them are native Russian speakers. This changes nothing. Chikatilo⁴⁸⁹ was also a native Russian speaker. Does that make him somehow more acceptable, more normal? [...] What does madness have to do with it? They're just beasts. They don't need winding up to descend into inhumanity. **They are no longer humans.** Nobody pities them. Nobody at all. This is who the Russian army is fighting against, vampires. It's fighting against the risen living dead."⁴⁹⁰

"[Reading a question from the chat] 'Why do you call Ukrainians *kbokbols*?' I call *kbokbols* 'political *kbokbols*'. You, Denis Voitenko, simply don't listen carefully: I call *kbokbols* so-called Ukrainian patriots and political *kbokbols*. **I dehumanize them, yes, you understand correctly, those who wear the yellow-blue rag**, those are political *kbokbols* for me, enemies, that's how I label them."⁴⁹¹

3. Assessment

a. Intensity of the speech

286. Mardan's speeches display a substantial intensity, comparable to that of the other propagandists in question. While his position may not be as prominent as the others, he still has garnered considerable recognition and audience engagement. Notably, he is a regular contributor to *Komsomolskaya Pravda*, one of the leading Russian newspapers, with dozens of publications dedicated to the invasion in Ukraine and Russia's military actions.

287. Moreover, his talk shows have been regularly broadcast on two major radio platforms, as well as a TV channel and popular internet platforms, including those administered by Solovyov, reaching millions of listeners and viewers (para. 191). These shows, lasting for several hours per week, feature highly repetitive content, as described earlier. Additionally, he maintains a very active presence on his Telegram channel, which has over 240,000 followers, where he shares multiple posts daily focusing on Russian military actions in Ukraine.

b. Calls for violence

288. Mardan's statements contain extremely explicit calls for violence against individuals living in

⁴⁸⁷ In Ukrainian (and actually some South Russian subdialects), the cyrillic letter "g" is regarded as a voiced glottal fricative and sounds like "ghe", being a distinctive feature of the Ukrainian language as opposed to the classic Russian language.

⁴⁸⁸ Telegram post, 13 December 2022, available at <https://t.me/mardanaka/12310>, accessed on 30 April 2024.

⁴⁸⁹ Andrei Romanovich Chikatilo was a notorious Soviet serial killer born in Ukraine.

⁴⁹⁰ Mardan Live, 27 March 2023, available at <https://smotrim.ru/video/2587472>, accessed on 30 April 2024, at 00:03:55–00:06:50.

⁴⁹¹ Morning Mardan, 19 September 2022, available at <https://rutube.ru/video/e295f1fdb28a1714cbd2d869bbc2b3a7/>, accessed on 30 April 2024, at 01:28:45–01:29:30.

Ukraine and holding opposing political views, who are perceived as enemies of Russia. His rhetoric suggests a belief in the necessity of the most extreme measures.

289. Mardan unequivocally advocates for the annihilation of the whole state of Ukraine calling to “destroy Ukraine to its foundation” and “erase Ukraine from the map”. As a part of this policy, he urges to carry out “a real, vivid, utterly horrifying terror” against so-called “political Ukrainians”. According to him, “political Ukrainians” are individuals residing in Ukraine who identify as Ukrainian but are, in fact, ethnically Russian. These individuals demonstrate their allegiance to Ukraine through their support for Ukrainian government and military actions against Russia or even their failure to support the Russian government and their invasion of Ukraine. Such Ukrainians, including civilians, must “pay for it”. This would include “killing”, “eradication” or even “burning alive” of such Ukrainians, who “caught virus of Russophobia” and “do not want to be Russian”. As an alternative, he does not exclude expulsion of such Ukrainians, stating that “they must leave”. This radical tactic would eliminate any dissent and enforce loyalty to Russia.

290. This rhetoric stands out as one of the most extreme among Russian propagandists. It advocates for the unrestricted and massive use of force against the civilian population of Ukraine opposing the Russian invasion. Mardan’s statements not only promote violence but also play a significant role in desensitizing brutality within Russian political discourse.

c. Denigration and dehumanization

291. Mardan’s statements represent a stark example of dehumanization and denigration aimed at facilitating and justifying violence against the targeted group. In this context, he openly acknowledges dehumanizing “political Ukrainians”: “I dehumanize them, yes, you understand correctly, those who wear the yellow-blue rag, those are political ‘khokhly’ for me”. In doing so, he employs several typical patterns already observed in the statements of other propagandists, but often in considerably more radical forms.

292. First, Mardan portrays the Ukrainian state as inherently evil, referring to it as “fascist”, “criminal”, or likening it to a “dead end” or “gangrene” that must be eradicated. He employs imagery of monstrous or subhuman creatures to describe Ukraine, such as “venomous homunculus” or “chimera”. He uses similar dehumanizing language towards the “political Ukrainians”, directly declaring that they “no longer have a human form” and comparing them with animals or subhuman creatures, such as “vampires”, “living dead” and “beasts”. Similarly, he portrays “political Ukrainians” as “enemies” of Russia and an evil force in general, labeling them as “scum”, “villains”, “scoundrel” or “empty people”. This narrative effectively erases the border between the state and its citizens, allowing for further dehumanization of the latter.

293. Mardan further amplifies his rhetoric by employing ethnic and cultural insults such as “khokhly” and “political Ukrainians”. The very term “political Ukrainians” reduces the Ukrainian nation to merely a “political” component, which significantly undermines the national identity of Ukrainians and denies their fundamental right to self-determination. It suggests that Ukrainians are essentially “incomplete” Russians, drawing a derogatory comparison to individuals who alter their national identity, akin to changing one’s sexual identity, thereby denigrating the self-identification of the Ukrainian people.

294. Finally, he links the targeted group with mental illnesses, depicting it as “intellectually deficient”, “sick”, “unhealthy”, “mad”, “denigrates” or having “damaged brains”, “schizophrenia” and even comparing them to notorious serial killers like Andrei Chikatilo.

295. All the above techniques considerably contribute to dehumanization of Ukrainians opposing the Russian invasion and justify violent actions against them. Mardan’s speech is marked by exceptionally inflammatory language which clearly fosters a strong climate of hostility and intolerance.

d. Use of false and distorted narratives

296. Mardan's central false narrative asserts that all Ukrainians are essentially ethnic Russians who decided or were misled into adopting a separate national identity. This narrative not only denies the unique identity of Ukrainians but also attempts to erase their cultural heritage and national consciousness. It undermines their right to self-determination and serves to legitimize Russian aggression towards Ukraine. Moreover, this idea promotes hatred and discrimination against Ukrainians, portraying them as betrayers or pretenders to their own heritage. It represents another example of manipulation of history and historical framing employed by Russian propaganda.
297. Mardan also employs typical general rhetoric such as ideas that support for the independent Ukraine amounts to Nazism or that Ukrainians betrayed their historical bonds with Russia (see para. 69).

e. Choice of language

298. Mardan frequently incorporates typical neologisms like "denazification", "liberation" or "de-Ukrainisation" in his rhetoric. However, rather than aiming to sanitize his language, it seems in this regard that he only attempts to adhere to the prevailing propaganda narratives dictated by the authorities. Indeed, Mardan openly explains that for him "denazification of Ukraine means completely destroying the Ukrainian state".
299. Thus, exceptionally inflammatory, provocative and direct language appears a distinctive feature of Mardan's speech. Unlike other propagandists who often use euphemistic expressions to soften their rhetoric, Mardan opts for abhorrent graphic metaphors in order to evoke disgust towards the victims, for instance, likening "political Ukrainians" to a "festering gangrene" or "toxic homunculus". In a similar way, he draws, as he believes, taboo parallels within the Russian society, such as "transvestites wearing wigs and skirts" or notorious criminals like Andrey Chikatilo, to elicit strong emotional responses. Furthermore, Mardan employs a diverse range of synonymic metaphors to heighten the intensity of his language, amplifying the impact of his message (for example, "incredibly ugly, venomous, toxic" or "meaningless, fake, fabricated out of thin air").

F. Alexey Gromov

1. Legal Principles

300. According to Article 25(3)(b) of the Statute, a person is criminally responsible for ordering, soliciting or inducing the commission of a crime within the jurisdiction of the Court, which in fact occurred or was attempted. It implies that that person held a position of authority and instructed another person in any form to commit a crime. The order must have had a direct effect on the commission of the crime and the perpetrator must have been at least aware that, as a consequence, the crime would be committed in the ordinary course of events.⁴⁹² Criminal responsibility for ordering does not require a formal superior-subordinate relationship, including military hierarchy, but rather relies on *de facto* authority of any kind on the part of the accused that would compel another person to commit a crime.⁴⁹³
301. In addition, Article 28(2) of the Statute extends criminal responsibility to military or civilian

⁴⁹² ICC, *Prosecutor v. Mudacumura*, Pre-Trial Chamber (Decision on the Prosecutor's Application under Article 58), No. ICC-01/04-01/12-1-Red, 13 July 2012, paras. 63–65; *Prosecutor v. Akayesu*, *supra* note 307, para. 492.

⁴⁹³ ICTY, *Prosecutor v. Boškoski and Tarčulovski*, Appeals Chamber (Judgment), IT-04-82-A, 19 May 2010, para. 164; ICTR, *Prosecutor v. Ntawukulilyayo*, Trial Chamber (Judgment and Sentence), ICTR-05-82-T, 3 August 2010, para. 416.

superiors⁴⁹⁴ who failed to prevent or investigate crimes committed by subordinates under their effective authority and control. The superior must have known or consciously disregarded information about the commission of the crimes which lied within their effective responsibility, and failed to take necessary measures despite their *de jure* or *de facto* power to prevent a subordinates' crime or to punish them after the crime is committed.⁴⁹⁵ The required knowledge of the crimes is established where information was available to the superior which would have put them on notice of offenses committed by subordinates.⁴⁹⁶ It is expected from the superior, at least, to dismiss the subordinate and ensure that a criminal investigation is opened.⁴⁹⁷ Thus, a superior is held accountable for an omission under Article 28(2), whereas under Article 25(3)(b), the ordering person is responsible for commission by virtue of having given orders.⁴⁹⁸

2. Alexey Gromov's criminal conduct and responsibility

302. As described above (paras. 94–95 and 100–101), Alexey Gromov is the highest-ranking Russian official in charge of overseeing information dissemination and propaganda politics. He personally shapes the core propaganda narratives and even dictates specific content circulated through traditional media channels, such as television, radio, and print. In order to regulate these activities, he arranges weekly meetings with representatives from major media outlets, issuing direct instructions that are obligatory to follow. Media organizations are also to submit their publication plans and broader ideas for Gromov's approval, ensuring alignment with his directives. In addition to those meetings, he disseminates written talking points that are in fact binding to all Russian state media. This significant power of Gromov stems from his prominent position within the Presidential Administration and his close ties to top-ranking officials, including President Putin, with whom he has worked closely since the outset of Putin's presidency.

303. In light of the above, Gromov exercises full control and effective authority over the whole sector of Russia's traditional media, both *de jure* and *de facto*, exerting crucial influence over its activities and the content disseminated. This includes the criminal conduct of, at least, journalists and media figures Solovyov, Kiselyov, Simonyan and Mardan, which fall within his effective responsibility. His orders regarding the content of disseminated information are mandatory and have a direct effect on the eventual commission of the crimes of persecution described above. Therefore, there are reasonable grounds to believe that Gromov is criminally responsible as a person who ordered their commission within the meaning of Article 25(3)(b) of the Statute. In any event, Gromov, as the intellectual author of the Russian propaganda activities, was fully aware of the criminal conduct of the perpetrators. Yet, he failed to take any measures to prevent or investigate the crimes of hate speech in question. Therefore, alternatively, there are reasonable grounds to believe that he is responsible for those crimes as a superior within the meaning of Article 28(2) of the Statute.

G. Targeted group

304. The above analysis of the five propagandists' rhetoric highlights the primary motive for targeting victims based on political disagreement regarding the Russian invasion of Ukraine and its occupation of the Ukrainian territories as well as the victims' overall attitude to the politics of Ukrainian and Russian

⁴⁹⁴ *Prosecutor v. Akayesu*, *supra* note 307, para. 492.

⁴⁹⁵ ICTR, *Prosecutor v. Semanza*, Trial Chamber (Judgment and Sentence), ICTR-97-20-T, 15 May 2003, para. 402.

⁴⁹⁶ ICTY, *Prosecutor v. Mucić et al.*, Appeals Chamber (Judgment), IT-96-21-A, 20 February 2001, para. 241.

⁴⁹⁷ Otto Triffterer, "Article 28: Responsibility of Commanders and Other Superiors", in Otto Triffterer (ed.), "Commentary on the Rome Statute of the International Criminal Court" (3rd edn., Verlag C. H. Beck oHG, 2016) pp. 127–130, p. 1103.

⁴⁹⁸ Kai Ambos, "Article 25: Individual Criminal Responsibility", in Otto Triffterer (ed.), "Commentary on the Rome Statute of the International Criminal Court" (3rd edn., Verlag C. H. Beck oHG, 2016) pp. 18–19, p. 1002.

authorities. The targeted group comprises nationals of Ukraine or other individuals identifying as a part of the Ukrainian nation who support their government's stance on maintaining Ukrainian independence and sovereignty while upholding their distinct national identity and right to self-determination, including the right to pursue a democratic model of governance. In a similar way, the perpetrators have aimed their hate speech towards those Ukrainians who are critical of the Russian aggression and occupation, and those that refuse to collaborate with the occupying authorities, perceiving the Russian army as an enemy.

305. For instance, Simonyan has explicitly divided Ukrainians into "our people", those supportive of Russian military actions, and "them," those opposed, labeling the latter as "russophobes", "Nazis", or "anti-Russian". This deliberate targeting reflects a discriminatory pattern rooted in political ideology and national identity:

- "It is a civil war in Ukraine, in which **the part of Ukrainians who are russophobes and anti-Russian** in the same sense that fascists were anti-Semites, **they are destroying another part of their own people**. And Russia simply takes the side of one of these fighting parties. Why on this side? **Because they are Russian, and the others are anti-Russian**".
- "**They will leave our people alone** and give us, along with our people, with Russian people who have been held hostage by Ukraine for decades. Together with them, they will let us build our new Russia and leave them alone."
- "**We need to save our people**, those who are still there with their brains washed, their souls cluttered with the dirt that Kyiv has been throwing at them for decades."

306. In an even more explicit manner, Mardan's speeches exploit the concept of "political Ukrainianness," which creates a clear division based on political views. He brands "political Ukrainians", that is those supporting an independent Ukraine, as enemies of Russia. This involves any display of political loyalty to Ukraine, such as the use of the national flag, or, by contrast, opposition to Russia. This perspective serves as a justification for the victims' targeting and persecution:

- "**Any Ukrainian patriot** remaining in these areas, indulging in wet dreams about the return of the Ukrainian state, **anyone showing any form of disloyalty to Russia and the Russian army**, they should all receive the full treatment for the slightest display of disloyalty. Put a yellow and blue ribbon on your car, or, I don't know, **wear a Ukrainian flag on your jacket – you get a rifle butt to the teeth. Mutter something against a Russian soldier, even if it's incomprehensible – straight to the van and the basement**"
- "**People who position themselves as political Ukrainians**, as supporters of the Ukrainian state, they are 'khokhly', **they are enemies**"
- "... **people who are hostile to the Russian state**, the Russian people, are essentially hostile to the Russian people as a whole. **This is the essence of political Ukrainianness...**"

307. Similarly, Solovyov consistently targets those who manifested any kind of political support to the current Ukrainian government, including voting for the President Zelenskiy in the past, or who sees Russia as an enemy. He labels them as "Nazis" and presents their political stances as a ground for suppression and violent punishment:

- "**These are the Nazis** who applauded the death of Donbass for 8 years. **They voted for this scoundrel [Volodymyr Zelenskiy]** [...] For their baseness, Vasily Dmitrievich, everyone will answer."
- "**Democracy is the rule of the majority. Your majority approved the killing of children in Donbass. Your majority will pay for this.** [...] **And you have become Nazis**, you have

betrayed Slavic brotherhood, you took [Stepan] Bandera, raised him on your banners, a citizen of Poland, who called for killings, including Russians. You have sold your brotherhood.”

- “Because our people are there [in Ukraine]. Yes, many with brains washed by Nazi propaganda. **Many sincerely believe that Russia is their enemy.**”

308. Medvedev also explicitly targets Ukrainian nationals who oppose the Russian invasion and occupation. He portrays the existence of Ukraine as a state as detrimental to its own citizens, asserting that they face a choice between changing their political and national stance or “endless war” and “inevitable death”. This framing aims to delegitimize their opposition and justify their persecution. He further vilifies Ukrainian nationalists, labeling them as “thuggish” and “absolutely anti-Russian”:

- “**That’s why Ukraine’s existence is fatal to Ukrainians.** [...] Choosing between perpetual war and inevitable death and life, the vast majority of Ukrainians (well, except for a minimal number of thuggish nationalists) will ultimately choose life. **They will realize that life in a big common state, which they don’t like much now, is better than death.** Their death and the death of their loved ones. And the sooner Ukrainians will realize this – the better.”
- “The second goal is to destroy the militarist machine and to denazify these regions **so that there are no nationalists there who promote absolutely anti-Russian, russophobic theses...**”
- “I have said this many times, **the current Ukrainian state is dangerous for the Ukrainians themselves.** And for them this choice looks like this: **either life in a normal common state with Russia, or at least something close to a common state, or endless war.** They have to make this choice for themselves.”

309. Kiselyov’s narratives also focus on Ukrainians whose political allegiance aligns with the Ukrainian government. He explicitly targets a part of Ukrainian population whom he perceives as being under “Kyiv’s control” or belonging to Ukrainian nationalists, which he contends are steeped in Russophobia and has transformed into Nazism. He highlights prominent political events such as the Orange Revolution or the Maidan protests in 2014, characterizing them as supported by broader Ukrainian population who harbor animosity towards Russia and its people as a result of political indoctrination by the Ukrainian and “Western” governments:

- “They needed to create an atmosphere of hatred towards Moscow and become anti-Russia – they did it.”
- “**You can detonate something, then disperse a dirty bomb, then link radioactive contamination to the explosion. The noise should be such that people forget where it all started.** And the Western public will believe. And the **Ukrainians under Kiev’s control may believe too because hatred is cultivated at the reflex level**”.
- “[Speaking about the events of the Orange Revolution in Ukraine in 2004-2005] I remember vividly this nationalist frenzy. Orange tents on Maidan, where sandwiches and condoms were handed out to the youth for free. Orange scarves, ribbons, and posters. **And the rising hatred towards Russia and everything Russian**”.

310. Therefore, the criminal actions of the five propagandists in question were directed against individuals on their political and national grounds. These individuals belonged to members of the Ukrainian nation, including its citizens, who either expressly supported the country and government, or opposed the military actions and politics of the Russian authorities. By singling out individuals based on their political views and national identity, the perpetrators engaged in discriminatory behavior and instigated fear and hatred towards a protected group under Article 7(1)(h) of the Statute. However, this analysis does not exclude the possibility of persecution on other grounds and against other groups of

victims, including those not initially identified as part of the targeted group.

H. Crimes committed in connection with another crime under Article 7(1) or under the jurisdiction of the Court

311. While hate speech as the crime against humanity of persecution constitutes an inchoate crime, with no causality between the speech act and a subsequent act of violence required (para. 167), the speech must occur “in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court”.
312. This Communication submits that there are reasonable grounds to believe that the Russian military leadership and the Russian Armed Forces have committed numerous war crimes and crimes against humanity, which are codified in Articles 5(b) and (c), 7 and 8 of the Statute, and thus fall under the subject-matter jurisdiction of the Court. In particular, the Court has already issued arrest warrants against four individuals for the war crimes of unlawful deportation of Ukrainian children and the destruction of civilian objects, with the latter also amounting to the crime against humanity under Article 7(1)(k) of the Statute.
313. Additionally, the Court also has subject-matter jurisdiction over the crime of aggression under Article 5(d) of the Rome Statute. Although the Court cannot exercise its jurisdiction over aggression in respect of Russian nationals due to Article 15bis(5), the ratio of the nexus requirement could be understood as to limit the scope of persecution to cases of such gravity that other crimes within the ICC’s subject-matter jurisdiction occur in connection with them rather than ensuring that no procedural obstacle preclude the investigation and prosecution of a specific crime by the Court. Accordingly, the crime of aggression constitutes a crime that may fall under the jurisdiction of the Court within the meaning of Article 7(1)(h) of the Statute. Thus, the persecutory acts were committed in connection with the crimes enumerated above.
314. As previously shown, the statements analyzed above are examples of inflammatory, denigrating and inciting speech broadcast on Russian State-owned and State-backed media reaching millions of viewers daily. Over the years, it has aggressively shaped public opinion about Ukrainians and Ukraine in Russia and made many Russian citizens believe that Ukraine’s government consists of Nazis and that the country must be “liberated” and “denazified”. As a result, testimonies of Russian soldiers as well as of survivors and witnesses demonstrate that many Russian soldiers firmly believed that Ukraine is full of Nazis, with their rhetoric suggesting that this narrative was instilled in them by Russian State propaganda (paras. 56, 62 and 111).
315. Thus, survivors from different Ukrainian regions that came under Russian occupation recall that Russian soldiers repeatedly asked “where the Nazis are”.⁴⁹⁹ Several Russian prisoners of war explicitly admitted that they initially expected to free Ukraine from Nazis, as claimed on Russian television:⁵⁰⁰

⁴⁹⁹ CNN, “*Ukrainian Woman Reveals the Question Russian Soldiers “Always” Asked*” 28 September 2022, available at <https://www.youtube.com/watch?v=5IuEB4QOCxU&>, accessed on 7 May 2024, at 02:30–02:40; DW, “*Disappeared During The Occupation. How An MP From Kupyansk Is Being Searched For*”, 16 December 2022, available at <https://www.dw.com/ru/iscez-vo-vrema-okkupacii-kak-do-sih-por-isut-deputata-iz-kupanska/a-64125472>, accessed on 7 May 2024.

⁵⁰⁰ DW, “*Russian prisoners of war in Ukraine: ‘Got Captured By Azov. Did Not See Fascists’*” 8 June 2022, available at <https://www.youtube.com/watch?v=Riyqhe72JqA>, accessed on 8 May 2024; CNN, “*‘We All Will Be Judged’ Russian Prisoners of War Voice Disquiet, Shame Over War in Ukraine*”, 16 March 2022, available at <https://edition.cnn.com/2022/03/15/europe/ukraine-russian-prisoners-of-war-int/index.html>, accessed on 7 May 2024; Important Stories, “*You Do Realize We’re the Fascists? Why Russian Servicemen Are Refusing to Fight in Ukraine and How Russia Is Trying to Send Them Back to The Front*”, 18 August 2022, available at <https://importantstories.media/en/stories/2022/08/18/you-do-realize-were-the-fascists/>, accessed on 8 May 2024.

“I mainly, well, only got information from the news. What they were saying there – in reality, when I got here, it didn’t add up. I, well, realized that they describe what is happening here differently, [they say] that there are nationalists here, that the UAF are shelling their own towns. (...) I have not seen a single nationalist. (...) Initially, we expected, as they said on the news, that people are in need here, we will help, we will be welcome here. But it turned out to be different. (...) We realized that we were not needed here, that we were deceived.”⁵⁰¹

316. Likewise, a Russian soldier insisted, in a call intercepted by Ukrainian law enforcement agencies in March 2022: “Mom, we haven’t seen a single fascist here. ... This war is based on a false pretense.”⁵⁰²

317. As described previously in Section III, this speech has not only enabled and justified Russia’s aggression against Ukraine, but also incited the commission of international crimes. Thus, for instance, in a case documented by the OHCHR, Russian soldiers executed a civilian in the town of Bucha after asking where the “Nazis” were.⁵⁰³ Furthermore, as described above, in places of detention, civilians have been tortured and ill-treated while often accused of being “Nazis” or “fascists”, and in one case documented by the OSCE, a bat/truncheon decorated with stickers labeled “denazification” was placed in the corner of the interrogation room.

318. Overall, hate speech has foreshadowed, accompanied and justified the crimes committed by the Russian Armed Forces against the civilian population of Ukraine, and has thereby been committed in connection with other crimes falling under the jurisdiction of the Statute.

I. Mens rea

319. This Communication submits that all five individuals made their statements with the required intent and knowledge, as described above (paras. 168–172). In particular, all five individuals have uttered their statements intentionally, with the knowledge that their statements have coincided with the ongoing widespread and systematic attack directed against the civilian population of Ukraine, all within the broader context of the Russian aggression. Medvedev is a top State official and close confidant of Vladimir Putin, holding key positions in the governmental bodies responsible for national security and production of arms (para. 268). It must therefore be assumed that he is well-informed about the ongoing widespread and systematic attack against Ukrainian civilians launched by the Russian Federation.

320. The other four perpetrators are Russian key media figures who devote large amounts of their airtime and social media posts to the Russian war in Ukraine, analyzing and commenting on the developments at the front. Solovyov, Kiselyov and Simonyan hold high positions in the management of the leading mass media outlets in the country and have close professional and personal links with the authorities, including, allegedly, President Putin himself (paras. 91, 92, 95, 99 and 211), who create and authorize the main propaganda narratives to be disseminated. In addition, Solovyov has repeatedly traveled to the Ukrainian territories occupied by the Russian Federation, such as the city of Mariupol, almost completely destroyed after the Russian assault,⁵⁰⁴ and met with Russian soldiers at the

⁵⁰¹ DW, “*Russian prisoners of war in Ukraine: ‘Got Captured By Azov. Did Not See Fascists’*” – DW exclusive, 8 June 2022, available at <https://www.youtube.com/watch?v=Riyqhe72JqA>, accessed on 8 May 2024, at 04:46–06:35 (in Russian).

⁵⁰² The New York Times, “*Putin Is a Fool? Intercepted Calls Reveal Russian Army in Disarray*”, 28 September 2022, available at <https://www.nytimes.com/interactive/2022/09/28/world/europe/russian-soldiers-phone-calls-ukraine.html>, accessed on 31 May 2024.

⁵⁰³ OHCHR, *supra* note 64, para. 103.

⁵⁰⁴ Solovyov, Telegram post, 3 May 2022, <https://t.me/SolovievLive/104446>, accessed on 26 May 2024.

frontline.⁵⁰⁵ Moreover, they regularly publish their conversations with military correspondents (so-called *voenkory*) who gather information directly from the combat zone.⁵⁰⁶ These high professional positions, leading roles in shaping public opinion and direct access to information from the authorities and military, also strongly indicate the knowledge of these four individuals about the relevant circumstances.

321. The perpetrators' intent to discriminate against the targeted Ukrainians can be inferred from the statements analyzed above. They are clearly demonstrated by their particularly offensive and incendiary content, the methodical construction and repetition of arguments, suggesting a high degree of premeditation, as well as the use of various propaganda techniques, such as repetition and highly emotional tone of delivery, aimed at instigating hatred towards a particular group based on their national and political characteristics. Some of the perpetrators openly acknowledge the described nature of their speech and the intent in question. For example, Mardan stated: "I dehumanize them, yes, you understand correctly, those who wear the yellow-blue rag, those are political *kbokhols* for me, enemies, that's how I label them".

322. Therefore, the criminal conduct of the five perpetrators in question was carried out with the requisite knowledge and intent within the meaning of Articles 7(1)(h) and 30 of the Statute.

J. Conclusion

323. The above comprehensive analysis of the propaganda speeches delivered by the five propagandists reveals that their expressions meet the criteria of prohibited hate speech outlined in the previous section (para. 173). Each of them satisfies the intensity requirement and at least two other additional criteria that fulfill the "severe deprivation of fundamental rights" requirement, indicating a high probability that their speeches constitute the crime of persecution under Article 7(1)(h) of the Statute.

324. Firstly, the intensity of hate speech is evident given the broader context in which it occurs: an active armed conflict exacerbated by widespread and systematic attacks against the Ukrainian civilian population. With full knowledge of this context, the Propagandists have exploited their influential positions in the media sphere and within the Russian society as a whole, to swarm their target audiences with prepackaged propaganda narratives through various media channels. They include state television, radio, newspapers and popular Internet platforms reaching dozens of millions of viewers and listeners, both in Russia and Ukraine.

325. Each of the five explicitly or implicitly endorsed previous violent acts and advocated for further violence against the victim group with various degrees of severity, including direct calls for its extermination and annihilation of cities and the state of Ukraine. Such extreme brutality cannot but significantly contribute to the possibility of these acts of violence materializing, or at the very least to instill fear of violence in the Ukrainians, resulting in violation of the victims' rights to security.

326. Additionally, the alleged perpetrators consistently denigrated and dehumanized so-called "political Ukrainians" based on their membership in the targeted group, employing language that undermines their dignity and value through ethnic and political slurs, negative stereotyping, labeling, verminisation, pathologization and demonization techniques, such as likening Ukrainians to Nazis or Satanists. These tactics, which were used in the most serious discrimination crimes in Rwanda and Yugoslavia, as well as during the Holocaust, portray the targeted group as subhuman or inherently evil, thus facilitating and inviting violence against them, and undermining their right to human dignity.

⁵⁰⁵ See, e.g.: TASS, "*Vladimir Solovyov reported that he came under fire while visiting the DPR*" 5 March 2023, available at <https://tass.ru/proisshestiya/17200255>, accessed on 7 May 2024.

⁵⁰⁶ See, e.g., an interview with a military correspondent of Mardan, in *Komsomolskaya Pravda*, "*What Soldiers In The Trenches of Donbass Say: When Ukraine Will Break And What Borders We Will Reach*", 1 June 2022, available at <https://www.kp.ru/daily/27399/4595812/>, accessed on 26 May 2024.

327. Furthermore, they constantly employed different false narratives and conspiracy theories mainly based on manipulations of historical memory. One of the most common of them is the idea that Ukrainians and Russians are one people, aimed at undermining the legitimacy of Ukrainian national identity and denial of their right to self-determination. Additionally, propagandists often propagate false victimisations, portraying Russia as the victim of Ukrainian aggression, or frame the ongoing invasion in the Second World War historical setting, comparing the war to “liberation” from the Nazi Germany. By manipulating historical events and distorting reality, these false narratives serve to fuel hatred, justify violence and shape a distorted public perception of the source and culprit of the conflict.
328. Lastly, their choice of language, including vivid images, graphic metaphors, derogative neologisms, and euphemisms, serves to find a strong emotional response and instill feelings of fear, hatred, or disgust towards the out-group, thus sanitizing violent acts and facilitating their continuation.
329. The above analysis demonstrates the existence of reasonable grounds to believe that the crimes in question occurred as described herein.

VII. Admissibility and Interests of Justice

A. Complementarity, Article 17

330. According to the principle of complementarity, a case is inadmissible if the state is investigating, prosecuting, or has made a decision not to prosecute a suspect, unless it is unwilling or unable genuinely to do so, or if the person has already been tried for the conduct.⁵⁰⁷ The key question is whether there are any genuine national investigations or prosecutions in relation to the criminal conduct in question.⁵⁰⁸ The assessment must be case specific, namely, whether existing national proceedings encompass the same persons, for the same conduct, as are being investigated and prosecuted by the ICC.⁵⁰⁹ The ICC Appeals Chamber has confirmed that this assessment cannot be undertaken on the basis of hypothetical national proceedings that may or may not take place in the future: it must be based on the concrete facts as they exist at the time. The absence of any national proceedings is sufficient to render a case admissible.⁵¹⁰ Only if there are relevant national proceedings, the ICC Prosecutor shall then assess “whether such national proceedings are vitiated by an unwillingness or inability to genuinely carry out the proceedings”.⁵¹¹
331. In order to determine “inability” in a particular case, the Court should consider the “unavailability” of the national judicial system to carry out the relevant proceedings.⁵¹² A state might be

⁵⁰⁷ ICC Statute, Article 17(1)(a)–(c).

⁵⁰⁸ ICC, *Situation in the Democratic Republic of Congo, Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, Appeals Chamber (Judgment on the Appeal of Mr Germain Katanga Against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case), ICC-01/04-01/07, 25 September 2009, para. 78.

⁵⁰⁹ *Ibid.*

⁵¹⁰ *Ibid.*: “It follows that in case of inaction, the question of unwillingness or inability does not arise; inaction on the part of a State having jurisdiction (that is, the fact that a State is not investigating or prosecuting, or has not done so) renders a case admissible before the Court, subject to article 17 (1) (d) of the Statute.” This interpretation of Article 17 (1) (a) and (b) of the Statute also finds broad support from academic writers who have commented on the provision and on the principle of complementarity.

⁵¹¹ ICC, *Situation in Libya, Prosecutor v Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Pre-Trial Chamber (Decision on the Admissibility of the Case Against Abdullah Al-Senussi), ICC-01/11-01/11, 11 October 2013, para. 210; see also ICC, Policy Paper on Preliminary Examinations, *supra* note 5, para. 49.

⁵¹² ICC Statute, Article 17(3).

declared "unable" if, under its domestic law, conduct that is proscribed under the Rome Statute can be punished only as "ordinary crimes".⁵¹³

332. To the knowledge of the Filing Parties, only one of the individuals identified in this Communication, Margarita Simonyan, is subject to an ongoing investigation by the Ukrainian authorities for a range of offenses under the Criminal Code of Ukraine (CCU), including public calls to genocide (Article 442.2 CCU), trespass against territorial integrity and inviolability of Ukraine (Article 110.2 CCU), propaganda of war (Article 436 CCU), and justifying Russia's armed aggression against Ukraine (Article 436-2.3 CCU).⁵¹⁴ Although this investigation addresses some of the same speech acts alleged in this submission, the specific conduct described in this Communication is broader, encompassing statements that go beyond instigation of genocide, propaganda of war, justification of aggression or calls for trespass of Ukrainian territory, to cover all hate speech that aims at arousing discriminatory hatred against Ukrainians. This type of speech amounts to a distinct and different crime that, in and of itself, deprives Ukrainians of fundamental rights to security, dignity and self-determination, namely the crime against humanity of persecution.

333. In addition, even if the Ukrainian authorities were willing to investigate and charge Simonyan with "hate speech as a crime against humanity of persecution", they would be unable to do so since, at the present time, the ICC Statute crimes, including crimes against humanity, have not been incorporated into the Criminal Code of Ukraine. As such, Ukraine's Criminal Code does not adequately qualify or encompass the criminal conduct described in this Communication within the meaning of Article 5 of the ICC Statute. The possibility to prosecute only "ordinary crimes" renders the Ukrainian authorities "unable" to investigate and prosecute the conduct set forth in this Communication within the meaning of Article 17.

334. For the same reasons, the Ukrainian authorities will be unable to investigate and prosecute the other alleged perpetrators of this crime identified in the Communication.

335. The Filing Parties are furthermore not aware of any complaints filed by the Russian authorities in relation to criminal conduct of persons identified in this Communication. Given the fundamental role that the state-sponsored propaganda scrutinized here plays in justifying Russia's aggression against Ukraine, and in facilitating the widespread and systematic attack against Ukraine's civilians, it is beyond cavil that Russian authorities would not be willing to conduct "genuine" investigations and prosecutions in relation to crimes set forth in this Communication.

B. Gravity, Art. 17(1)(d)

336. Under Article 17(1)(d) of the ICC Statute, a case may be determined to be inadmissible when it is "not of sufficient gravity to justify further action by the Court". An assessment of gravity is based on the scale, nature, and manner of commission of crimes, and their impact.⁵¹⁵ *Scale* refers to the number of direct and indirect victims, the extent of the damage caused by the crimes, in particular the bodily or psychological harm caused to the victims and their families, or their geographical or temporal spread.

⁵¹³ Report of the ILC on the work of its 46th Sess. (2 May–22 July 1994), GAOR 48th Sess., Suppl, No. 10 (Doc. A/49/10), 118: "The Commission understands that the term "ordinary crimes" refers to the situation where the act has been treated as a common crime as distinct from an international crime having the special characteristics of the crimes referred to in article 20 of the Statute [crimes within the jurisdiction of the Court]".

⁵¹⁴ Ukraine charges in absentia Russian propagandist Margarita Simonyan for promoting genocide, available at <https://meduza.io/en/news/2024/04/01/ukraine-charges-in-absentia-russian-propagandist-margarita-simonyan-for-promoting-genocide>, accessed on 5 May 2024.

⁵¹⁵ Regulation 29(2) of the Regulations of the Office of the Prosecutor; ICC, Policy Paper on Preliminary Examinations, *supra* note 5, para. 61, and ICC, *Situation in Darfur, Sudan, Prosecutor v. Bahar Idriss Abu Garda*, Pre Trial Chamber (Decision on the Confirmation of Charges), ICC-02/05-02/09- 243-Red, 8 February 2010, para. 31.

The *nature* of the crimes refers to the specific elements of each offence, with a particular focus on killings, sexual violence, crimes against children, persecution and the imposition of conditions of life on a group calculated to bring about its destruction. The *manner of commission* requires an examination of the means employed to execute the crime, the degree of participation and intent of the perpetrator, the extent to which the crimes were systematic or result from a plan or organized policy or otherwise resulted from the abuse of power or official capacity, and elements of particular cruelty, including the vulnerability of the victims and any discriminatory motives. The *impact* of crimes refers to the suffering endured by the victims, their increased vulnerability; the terror subsequently instilled, or the social, economic and environmental damage inflicted on the affected communities.⁵¹⁶

337. The cases against Russian propagandists warrant prosecution before the Court based on the gravity of the alleged crimes, as assessed through the above criteria.

338. Firstly, the scale of the offenses is substantial. The dissemination of hateful content by the propagandists has reached millions of viewers and listeners in the occupied territories of Ukraine, and beyond. Thus, there are at least several million Ukrainians who have suffered discriminatory persecution as the direct recipients of hate speech in Crimea, and the occupied regions of Donbas, as well as Zaporizhia and Kherson oblasts. In addition, since arguably all Ukrainians have suffered from Russia's aggression in one way or another, and thousands have been subjected to forced deportations, arbitrary arrests, torture, and other international crimes facilitated by hate speech, the number of indirect victims of hate speech in Ukraine exceeds tens of millions of individuals throughout the country.

339. Secondly, the nature of the crimes is severe, as detailed in Section VI of this Communication. The propagandists have distorted and fabricated facts, falsified history, and demonized Ukrainians loyal to the Ukrainian state, portraying them as Nazis, Satanists, and "zombified" puppets of the West who hate Russia. This rhetoric, at times accompanied by express or implied calls for violence, has instilled fear and led to serious detrimental effects on the mental health and well-being of millions of Ukrainians,⁵¹⁷ particularly those in the occupied territories, on a discriminatory basis, amounting to violations of their rights to security, equality and human dignity.

340. Thirdly, the manner of commission demonstrates the existence of a policy to manipulate information and the intentional use of oratory skills to spread hate. Despite being aware of the ongoing attacks against civilians and civilian infrastructure in Ukraine, the alleged perpetrators leveraged their status, influence, and technical means to create and disseminate messages designed to dehumanize, denigrate, and vilify Ukrainians based on their nationality and political preferences.

341. The impact of these discriminatory practices extends beyond individual victims to affect entire groups and communities. Hate speech creates a climate of fear, rejection, and devaluation, leading to social divisions, erosion of social cohesion, and heightened tensions.⁵¹⁸ The perpetuation of hate speech can thus trigger further violence, threatening peace and stability in society and resulting in the deprivation of the right to security. As has been demonstrated in Section IV of this Communication, hate speech has enabled the creation of a climate of deep-seated hatred of Ukrainians among Russians,

⁵¹⁶ See, e.g., ICC, Policy Paper on Preliminary Examinations, *supra* note 5.

⁵¹⁷ Victims of hate speech are often targeted because of their identity or other immutable characteristics. As a result, they feel devalued, unwelcome, denigrated, threatened and despised in society because of their identity. Thus, hate speech has serious and often long-lasting consequences on victims' mental health and physical well-being. EU Commission, *supra* note 21, pp. 8–9.

⁵¹⁸ See: Study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs "*Hate Speech and Hate Crime in the EU and the Evaluation of Online Content Regulation Approaches*", July 2020, available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655135/IPOL_STU\(2020\)655135_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655135/IPOL_STU(2020)655135_EN.pdf), accessed on 7 May 2024.

including Russian soldiers, who have targeted Ukrainians because they are ‘Nazis’, and even among Ukrainians themselves.

342. The harmful impacts on both individual victims and society at large underscore the gravity of the crimes committed by the propagandists. Prosecution before the Court is therefore justified based on the criteria of gravity outlined in the ICC Statute.

C. Interests of Justice, Art. 53(1)(c)

343. Article 53(1)(c) of the ICC Statute provides that the OTP shall consider whether, “taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice”.

344. Unlike jurisdiction and admissibility, which require an affirmative finding, the “interests of justice” is a countervailing consideration: the OTP must assess whether there are substantial reasons to believe that an investigation would not serve the interests of justice.⁵¹⁹ According to the OTP’s stated practice, “there is a strong presumption that investigations and prosecutions will be in the interests of justice, and therefore a decision not to proceed on the grounds of the interests of justice would be highly exceptional”.⁵²⁰ In making a determination, the OTP “will consider, in particular, the interests of victims, including the views expressed by the victims themselves as well as by trusted representatives and other relevant actors”.⁵²¹

345. The ICC Appeals Chamber has reaffirmed that: (i) As Article 53(1) is formulated in the negative, the Prosecutor “need not affirmatively determine that an investigation would be in the interests of justice”, and (ii) A key aspect of the assessment is “the gravity of the crimes and the interests of victims as articulated by the victims themselves”.⁵²²

346. Taking into consideration the gravity of the crimes described in this Communication and the impact of these crimes on the victims and communities in the occupied territories of Ukraine, as well as the entire population of Ukraine, there is no basis to suggest that opening an investigation would not serve the interests of justice. FIDH member organizations in Ukraine, who have worked alongside the victims of alleged international crimes committed by the Russian Federation, have expressed their support for the filing of this Communication. It is therefore submitted that there are no substantial reasons to believe that an investigation would not serve the interests of justice.

VIII. Conclusion and Requests

347. The Filing Parties consider that in light of the evidence set out above, there are reasonable grounds to believe that the speech acts of Vladimir Solovyov, Margarita Simonyan, Dmitry Kiselyov, Dmitry Medvedev and Sergei Mardan constitute hate speech amounting to the crime against humanity of persecution, which falls under the jurisdiction of the ICC under Articles 7(1)(h) and 7(2)(g) of the

⁵¹⁹ ICC-OTP, Report on Preliminary Examination Activities 2019, 5 December 2019, para. 8. See also ICC Statute, Article 53(1) (regarding “[i]nitiation of an investigation”): (“The Prosecutor shall, having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute. In deciding whether to initiate an investigation, the Prosecutor shall consider whether: [...] (c) Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.”); ICC, *Situation in the Republic of Kenya*, Pre-Trial Chamber (Request for authorisation of an investigation pursuant to Article 15), ICC-01/09, 26 November 2009, paras. 60 and 63.

⁵²⁰ ICC-OTP, Policy Paper on Preliminary Examinations, *supra* note 5, para. 71.

⁵²¹ ICC-OTP, Policy Paper on Preliminary Examinations, *supra* note 5, para. 68.

⁵²² ICC, *Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan*, Appeals Chamber, ICC-02/17-138, 5 March 2020, para. 49.

Rome Statute. Additionally, the Filing Parties consider that Alexey Gromov bears criminal responsibility for the same acts as a superior who has either ordered their commission or failed to prevent them.

348. For the foregoing, the Filing Parties respectfully request the ICC Prosecutor to further investigate the crimes alleged in this Communication.